

stating that “The FBI now issues more than 30,000 National Security Letters a year, . . . a hundredfold increase over historic norms.”.

(5) On March 9, 2007, the Inspector General for the United States Department of Justice issued a report on the Federal Bureau of Investigation’s use of National Security Letters from 2003 through 2005—

(A) that the Inspector General said found “widespread and serious misuse of the FBI’s national security letter authorities” that “in many instances . . . violated NSL statutes, Attorney General Guidelines, or the FBI’s own internal policies,” and found that “the FBI did not provide adequate guidance, adequate controls, or adequate training on the use of these sensitive authorities”; and

(B) that indicated the Federal Bureau of Investigation issued approximately 39,000 National Security Letter requests in 2003, 56,000 National Security Letter requests in 2004, and 47,000 National Security Letter requests in 2005.

(6) The United States Department of Justice sent a letter on March 9, 2007, to Congress, admitting that it had “determined that certain statements in our November 23, 2005 letter need clarification” in light of the Inspector General’s findings and that “the reports [The Department of Justice] provided Congress in response to statutory reporting requirements did not accurately reflect the FBI’s use of NSLs”.

(e) SIGNING STATEMENTS.—The Senate finds the following:

(1) President George W. Bush has lodged more than 800 challenges to duly enacted provisions of law by issuing signing statements that indicate that the President does not believe he must comply with such provisions of law.

(2) Such signing statements effectively assign to the executive branch alone the decision whether to fully comply with the laws that Congress has passed.

(3) On December 30, 2005, President George W. Bush signed the Department of Defense Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006, title X of which prohibits the Government from subjecting any individual “in the custody or under the physical control of the United States Government, regardless of nationality or physical location” to “cruel, inhuman, or degrading treatment or punishment”.

(4) President George W. Bush issued a signing statement to such Act that suggested he believed he did not have to comply with the prohibition on torture and cruel, inhuman and degrading treatment, stating: “The executive branch shall construe Title X in Division A of the Act, relating to detainees, in a manner consistent with the constitutional authority of the President to supervise the unitary executive branch and as Commander in Chief and consistent with the constitutional limitations on the judicial power, which will assist in achieving the shared objective of the Congress and the President, evidenced in Title X, of protecting the American people from further terrorist attacks.”

(5) On March 9, 2006, President George W. Bush signed the USA PATRIOT Improvement and Reauthorization Act of 2005, which requires that the executive branch furnish reports to Congress on certain surveillance activities.

(6) President George W. Bush issued a signing statement to such Act that suggested he believed he did not have to comply fully with these reporting requirements, stating: “The executive branch shall construe the provisions of H.R. 3199 that call for furnishing information to entities outside the executive branch, such as sections 106A and 119, in a manner consistent with the President’s constitutional authority to supervise the uni-

tary executive branch and to withhold information the disclosure of which could impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive’s constitutional duties.”.

(7) On December 20, 2006, President George W. Bush signed the Postal Accountability and Enhancement Act, which protects certain classes of sealed domestic mail from being opened except in specifically defined circumstances.

(8) President George W. Bush issued a signing statement to such Act that suggested he believed he did not have to comply with this provision, stating: “The executive branch shall construe subsection 404(c) of title 39, as enacted by subsection 1010(e) of the Act, which provides for opening of an item of a class of mail otherwise sealed against inspection, in a manner consistent, to the maximum extent permissible, with the need to conduct searches in exigent circumstances, such as to protect human life and safety against hazardous materials, and the need for physical searches specifically authorized by law for foreign intelligence collection.”

(9) The American Bar Association Task Force on Presidential Signing Statements and the Separation of Powers Doctrine concluded that President George W. Bush’s misuse of signing statements “weaken[s] our cherished system of checks and balances and separation of powers”.

#### SEC. 2. CENSURE BY THE SENATE.

The Senate censures George W. Bush, President of the United States, and Alberto R. Gonzales, Attorney General of the United States, and condemns their lengthy record of—

(1) undermining the rule of law and the separation of powers;

(2) disregarding statutes, treaties ratified by the United States, and the Constitution; and

(3) repeatedly misleading the American people.

#### SENATE RESOLUTION 304—CONGRATULATING CHARLES SIMIC ON BEING NAMED THE 15TH POET LAUREATE OF THE UNITED STATES OF AMERICA BY THE LIBRARY OF CONGRESS

Mr. SUNUNU (for himself and Mr. GREGG) submitted the following resolution; which was considered and agreed to:

#### S. RES. 304

Whereas Charles Simic was born in Yugoslavia on May 9, 1938, and lived through the events of World War II;

Whereas, in 1954, at age 16 Charles Simic immigrated to the United States, and moved to Oak Park, Illinois;

Whereas Charles Simic served in the United States Army from 1961 to 1963;

Whereas Charles Simic received a bachelor’s degree from New York University in 1966;

Whereas Charles Simic has been a United States citizen for 36 years and currently resides in Strafford, New Hampshire;

Whereas Charles Simic has authored 18 books of poetry;

Whereas Charles Simic is a professor emeritus of creative writing and literature at the University of New Hampshire, where he taught for 34 years before retiring;

Whereas Charles Simic is the 5th person to be named Poet Laureate with ties to New Hampshire, including Robert Frost, Maxine Kumin, Richard Eberhart, and Donald Hall;

Whereas Charles Simic won the Pulitzer Prize for Poetry in 1990 for his work “The World Doesn’t End”;

Whereas Charles Simic wrote “Walking the Black Cat” in 1996, which was a finalist for the National Book Award for Poetry;

Whereas Charles Simic won the Griffin Prize in 2005 for “Selected Poems: 1963–2003”;

Whereas Charles Simic held a MacArthur Fellowship from 1984 to 1989 and has held fellowships from the Guggenheim Foundation and the National Endowment for the Arts;

Whereas Charles Simic earned the Edgar Allan Poe Award, the PEN Translation Prize, and awards from the American Academy of Arts and Letters and the National Institute of Arts and Letters;

Whereas Charles Simic served as Chancellor of the Academy of American Poets;

Whereas Charles Simic received the 2007 Wallace Stevens Award from the American Academy of Poets; and

Whereas on August 2, 2007, Librarian of Congress James H. Billington announced the appointment of Charles Simic to be the Library’s 15th Poet Laureate Consultant in Poetry: Now, therefore, be it

*Resolved*, That the Senate—

(1) congratulates Charles Simic for being named the 15th Poet Laureate of the United States of America by the Library of Congress; and

(2) directs the Secretary of the Senate to transmit an enrolled copy of this resolution to Charles Simic.

#### SENATE RESOLUTION 305—TO EXPRESS THE SENSE OF THE SENATE REGARDING THE MEDICARE NATIONAL COVERAGE DETERMINATION ON THE TREATMENT OF ANEMIA IN CANCER PATIENTS

Mr. SPECTER (for himself, Mr. HARKIN, and Mr. LAUTENBERG) submitted the following resolution; which was referred to the Committee on Finance:

#### S. RES. 305

Whereas the Centers for Medicare & Medicaid Services issued a final Medicare National Coverage Determination on the Use of Erythropoiesis Stimulating Agents in Cancer and Related Neoplastic Conditions (CAG-000383N) on July 30, 2007;

Whereas 52 United States Senators and 235 Members of the House of Representatives, representing bipartisan majorities in both chambers, have written to the Centers for Medicare & Medicaid Services expressing significant concerns with the proposed National Coverage Determination on the Use of Erythropoiesis Stimulating Agents in Cancer and Related Neoplastic Conditions, issued on May 14, 2007, regarding the use of erythropoiesis stimulating agent therapy for Medicare cancer patients;

Whereas, although some improvements have been incorporated into such final National Coverage Determination, the policy continues to raise significant concerns among physicians and patients about the potential impact on the treatment of cancer patients in the United States;

Whereas the American Society of Clinical Oncology, the national organization representing physicians who treat patients with cancer, is specifically concerned about a provision in such final National Coverage Determination that restricts coverage whenever a patient’s hemoglobin goes above 10 g/dL;

Whereas the American Society of Clinical Oncology has written to the Centers for Medicare & Medicaid Services to note that such a “restriction is inconsistent with both

the FDA-approved labeling and national guidelines", to express deep concerns about such final National Coverage Determination, and to urge that the Centers for Medicare & Medicaid Services reconsider such restriction;

Whereas such restriction could increase blood transfusions and severely compromise the high quality of cancer care delivered by physicians in United States; and

Whereas the Centers for Medicare & Medicaid Services has noted that the agency did not address the impact on the blood supply in such final National Coverage Determination and has specifically stated, "[t]he concern about the adequacy of the nation's blood supply is not a relevant factor for consideration in this national coverage determination": Now, therefore, be it

*Resolved*, That it is the sense of the Senate that—

(1) the Centers for Medicare & Medicaid Services should begin an immediate reconsideration of the final National Coverage Determination on the Use of Erythropoiesis Stimulating Agents in Cancer and Related Neoplastic Conditions (CAG-000383N);

(2) the Centers for Medicare & Medicaid Services should consult with members of the clinical oncology community to determine appropriate revisions to such final National Coverage Determination; and

(3) the Centers for Medicare & Medicaid Services should implement appropriate revisions to such final National Coverage Determination as soon as feasible and provide a briefing to Congress in advance of announcing such changes.

Mr. SPECTER. Mr. President, I have sought recognition today to introduce a sense of the Senate regarding a recent Centers for Medicare and Medicaid Services, CMS, national coverage determination on the treatment of anemia in Medicare cancer patients.

On June 29, 2007, I wrote to Secretary of Health and Human Services Michael Leavitt concerning the proposed CMS coverage determination that limits access to erythropoiesis-simulating agents which increases the red blood cell counts of chemotherapy patients who have become anemic. Further, 51 other Senators sent similar letters to Department of Health and Human Services officials.

On July 30, 2007, CMS issued the final coverage determination, and while some of the proposed restrictions were substantially altered in favor of patients, I remain concerned about the impact that this decision will have on Medicare beneficiary access to needed therapies. The new policy requires that patients have lower red blood cell counts before being able to receive treatment with an erythropoiesis-simulating agent, resulting in patients that are unnecessarily weaker and may not be able to maintain their chemotherapy treatment regimens without having to turn to costly and time-consuming blood transfusions.

This restriction is inconsistent with both the FDA-approved label and prescribing instructions and is also contrary to national professional society oncology guidelines. For instance, the American Society of Clinical Oncology, the national organization representing physicians who treat patients with cancer, has written to CMS to express deep concerns about the coverage determination, urging CMS to reconsider these restrictions.

I encourage my colleagues to support this sense of the Senate that I introduce with Senators HARKIN and LAUTENBERG to have CMS reconsider the final national coverage determination on the use of erythropoiesis-simulating agents.

#### SENATE CONCURRENT RESOLUTION 43—PROVIDING FOR A CONDITIONAL ADJOURNMENT OR RECESS OF THE SENATE, AND A CONDITIONAL ADJOURNMENT OF THE HOUSE OF REPRESENTATIVES

Mr. REID submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 43

*Resolved by the Senate (the House of Representatives concurring)*, That when the Senate recesses or adjourns on any day from Friday, August 3, 2007, through Friday, August 31, 2007, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until 12 noon on Tuesday, September 4, 2007, or such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House adjourns on any legislative day from Friday, August 3, 2007, through Wednesday, August 8, 2007, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, September 4, 2007, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, or their respective designees, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and House, respectively, to reassemble at such place and time as they may designate if, in their opinion, the public interest shall warrant it.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 2649. Mr. MCCONNELL (for himself and Mr. BOND) proposed an amendment to the bill S. 1927, to amend the Foreign Intelligence Surveillance Act of 1978 to provide additional procedures for authorizing certain acquisitions of foreign intelligence information and for other purposes.

SA 2650. Mr. REID (for Mr. KERRY) proposed an amendment to the bill S. 163, to improve the disaster loan program of the Small Business Administration, and for other purposes.

SA 2651. Mr. REID (for Mr. BOND) proposed an amendment to amendment SA 2650 proposed by Mr. REID (for Mr. KERRY) to the bill S. 163, *supra*.

SA 2652. Mr. REID (for Mr. COBURN) proposed an amendment to amendment SA 2650 proposed by Mr. REID (for Mr. KERRY) to the bill S. 163, *supra*.

SA 2653. Mr. REID (for Mr. DODD (for himself and Mr. REED)) proposed an amendment to the bill H.R. 2358, to require the Secretary of the Treasury to mint and issue coins in commemoration of Native Americans and the important contributions made by Indian tribes and individual Native Americans to the development of the United States and the history of the United States, and for other purposes.

SA 2654. Mr. COLEMAN (for Mr. BOND (for himself, Mr. COLEMAN, and Ms. KLOBUCHAR)) proposed an amendment to the bill H.R. 3311, to authorize additional funds for emergency repairs and reconstruction of the Interstate I-35 bridge located in Minneapolis, Minnesota, that collapsed on August 1, 2007, to waive the \$100,000,000 limitation on emergency relief funds for those emergency repairs and reconstruction, and for other purposes.

SA 2655. Mr. REID (for Mr. KYL (for himself and Mr. LEAHY)) proposed an amendment to the bill S. 849, to promote accessibility, accountability, and openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes.

#### TEXT OF AMENDMENTS

**SA 2649.** Mr. MCCONNELL (for himself and Mr. BOND) proposed an amendment to the bill S. 1927, to amend the Foreign Intelligence Surveillance Act of 1978 to provide additional procedures for authorizing certain acquisitions of foreign intelligence information and for other purposes; as follows:

At the end, add the following:

(c) **SUNSET.**—Except as provided in subsection (d), sections 2, 3, 4, and 5 of this Act, and the amendments made by this Act, shall cease to have effect 180 days after the date of the enactment of this Act.

(d) **AUTHORIZATIONS IN EFFECT.**—Authorizations for the acquisition of foreign intelligence information pursuant to the amendments made by this Act, and directives issued pursuant to such authorizations, shall remain in effect until their expiration. Such acquisitions shall be governed by the applicable provisions of such amendments and shall not be deemed to constitute electronic surveillance as that term is defined in section 101(f) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).

**SA 2650.** Mr. REID (for Mr. KERRY) proposed an amendment to the bill S. 163, to improve the disaster loan program of the Small Business Administration, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the "Small Business Disaster Response and Loan Improvements Act of 2007".

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Extension of program authority.

#### TITLE I—DISASTER PLANNING AND RESPONSE

Sec. 101. Disaster loans to nonprofits.

Sec. 102. Disaster loan amounts.

Sec. 103. Small business development center portability grants.

Sec. 104. Assistance to out-of-State businesses.

Sec. 105. Outreach programs.

Sec. 106. Small business bonding threshold.

Sec. 107. Termination of program.

Sec. 108. Increasing collateral requirements.

Sec. 109. Public awareness of disaster declaration and application periods.

Sec. 110. Consistency between Administration regulations and standard operating procedures.

Sec. 111. Processing disaster loans.

Sec. 112. Development and implementation of major disaster response plan.