Act to improve screening and treatment of cancers, provide for survivorship services, and for other purposes.

S. 1418

At the request of Mr. DODD, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. 1418, a bill to provide assistance to improve the health of newborns, children, and mothers in developing countries, and for other purposes.

S. 1455

At the request of Mr. WHITEHOUSE, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1455, a bill to provide for the establishment of a health information technology and privacy system.

S. 1459

At the request of Mr. MENENDEZ, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 1459, a bill to strengthen the Nation's research efforts to identify the causes and cure of psoriasis and psoriatic arthritis, expand psoriasis and psoriatic arthritis data collection, study access to and quality of care for people with psoriasis and psoriatic arthritis, and for other purposes.

S. 1471

At the request of Mr. WHITEHOUSE, the names of the Senator from Pennsylvania (Mr. CASEY) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 1471, a bill to provide for the voluntary development by States of qualifying best practices for health care and to encourage such voluntary development by amending titles XVIII and XIX of the Social Security Act to provide differential rates of payment favoring treatment provided consistent with qualifying best practices under the Medicare and Medicaid programs, and for other purposes.

S. 1593

At the request of Mr. BAUCUS, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 1593, a bill to amend the Internal Revenue Code of 1986 to provide tax relief and protections to military personnel, and for other purposes.

S. 1603

At the request of Mr. MENENDEZ, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1603, a bill to authorize Congress to award a gold medal to Jerry Lewis, in recognition of his outstanding service to the Nation.

S. 1624

At the request of Mr. BAUCUS, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of S. 1624, a bill to amend the Internal Revenue Code of 1986 to provide that the exception from the treatment of publicly traded partnerships as corporations for partnerships with passive-type income shall not apply to partnerships directly or indirectly deriving income from providing investment adviser and related asset management services.

S. 1677

At the request of Mr. DODD, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 1677, a bill to amend the Exchange Rates and International Economic Coordination Act of 1988 and for other purposes.

S. 1742

At the request of Mr. THUNE, the names of the Senator from Kentucky (Mr. MCCONNELL), the Senator from Ohio (Mr. VOINOVICH), the Senator from Colorado (Mr. ALLARD), the Senator from Arizona (Mr. MCCAIN) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 1742, a bill to prevent the Federal Communications Commission from repromulgating the fairness doctrine.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. MURKOWSKI (for herself and Mr. STEVENS):

S. 1746. A bill to provide for the recognition of certain Native communities and the settlement of certain claims under the Alaska Native Claims Settlement Act, and for other purposes; to the Committee on Energy and Natural Resources.

Ms. MURKOWSKI. Mr. President, at the very beginning of the Alaska Native Claims Settlement Act of 1971 there are a series of findings and declarations of congressional policy which explain the underpinnings of this landmark legislation.

The first clause reads, ''There is an immediate need for a fair and just settlement of all claims by Natives and Native groups of Alaska, based on aboriginal land claims.'' The second clause states, ''The settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives.''

Mr. President, 34, going on 35, years have passed since the Alaska Native Claims Settlement Act became law and still the Native peoples of five communities in Southeast Alaska—Haines, Ketchikan, Petersburg, Tenakee and Wrangell—the five ''landless communities'' are still waiting for their fair and just settlement.

The Alaska Native Claims Settlement Act awarded approximately $1 billion and 44 million acres of land to Alaska Natives and provided for the establishment of Native Corporations to receive and manage such funds and lands. The beneficiaries of the settlement were issued stock in one of 13 regional Alaska Native corporations. Most beneficiaries also had the option to enroll and receive stock in a village, group or urban corporation.

For reasons that still defy explanation the Native peoples of the ''landless communities,'' were not permitted by the Alaska Native Claims Settlement Act to form village or urban corporations. These communities were excluded from this benefit even though they did not differ significantly from other communities in Southeast Alaska that were permitted to form village or urban corporations under the Alaska Native Claims Settlement Act. This finding was confirmed in a February 1994 report submitted by the Secretary of the Interior at the direction of the Congress. That study was conducted by the Institute of Social and Economic Research at the University of Alaska.

The Native people of Southeast Alaska have recognized the injustice of this oversight for more than 34 years. An independent study issued more than 12 years ago confirms that the grievance of the landless communities is legitimate. Legislation has been introduced in the past sessions of Congress to remedy this injustice. Hearings have been held and reports written. Yet legislation to right the wrong has inevitably stalled out. This December marks the 35th anniversary of Congress' promise to the Native peoples of Alaska, the promise of a rapid and certain settlement. And still the landless communities of southeast Alaska are landless.

I am convinced that this cause is just, it is right, and it is about time that the Native peoples of the five landless communities receive what has been denied them for going on 35 years.

The legislation that I am introducing today would enable the Native peoples of the five ''landless communities'' to organize five ''urban corporations,'' one for each unrecognized community. These newly formed corporations would be offered and could accept the surface estate to approximately 23,000 acres of land. Sealaska Corporation, the regional Alaska Native Corporation for southeast Alaska would receive title to the subsurface estate to the designated lands. The urban corporations would each receive a lump sum payment to be used as start-up funds for the newly established corporation. The Secretary of the Interior would determine other appropriate compensation to redress the inequities faced by the unrecognized communities.

It is long past time that we return to the Native peoples of southeast Alaska a small slice of the aboriginal lands that were once theirs alone. It is time that we open our minds and open our hearts to correcting this injustice which has gone on far too long and finally give the Native peoples of southeast Alaska the rapid and certain settlement for which they have been waiting.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1746

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act''.

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds the following:

(1) In 1971, Congress enacted the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) (referred to in this section as the ''Act'') to recognize and settle the aboriginal claims of Alaska Natives to the lands Alaska Natives had used for traditional purposes.

(2) The Act awarded approximately $1,000,000,000 and 44,000,000 acres of land to Alaska Natives and provided for the establishment of Native Corporations to receive and manage such funds and lands.

(3) Pursuant to the Act, Alaska Natives have been enrolled in one of 13 Regional Corporations.

(4) Most Alaska Natives reside in communities that are eligible under the Act to form a Village or Urban Corporation within the geographical area of a Regional Corporation.

(5) Village or Urban Corporations established under the Act received cash and surface rights to the settlement land described in paragraph (2) and the corresponding Regional Corporation received cash and land which includes the subsurface rights to the land of the Village or Urban Corporation.

(6) The southeastern Alaska communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell are not listed under the Act as communities eligible to form Village or Urban Corporations, even though the population of such villages comprises greater than 20 percent of the shareholders of the Regional Corporation for Southeast Alaska and display historic, cultural, and traditional qualities of Alaska Natives.

(7) The communities described in paragraph (6) have sought full eligibility for lands and benefits under the Act for more than three decades.

(8) In 1993, Congress directed the Secretary of the Interior to prepare a report examining the reasons why the communities listed in paragraph (6) had been denied eligibility to form Village or Urban Corporations and receive land and benefits pursuant to the Act.

(9) The report described in paragraph (8), published in February, 1994, indicates that—

(A) the communities listed in paragraph (6) do not differ significantly from the southeast Alaska communities that were permitted to form Village or Urban Corporations under the Act;

(B) such communities are similar to other communities that are eligible to form Village or Urban Corporations under the Act and receive lands and benefits under the Act—

(i) in actual number and percentage of Native Alaskan population; and

(ii) with respect to the historic use and occupation of land;

(C) each such community was involved in advocating the settlement of the aboriginal claims of the community; and

(D) some of the communities appeared on early versions of lists of Native Villages prepared before the date of the enactment of the Act, but were not included as Native Villages in the Act.

(10) The omissions described in paragraph (9) are not clearly explained in any provision of the Act or the legislative history of the Act.

(11) On the basis of the findings described in paragraphs (1) through (10), Alaska Natives who were enrolled in the five unlisted communities and their heirs have been inadvertently and wrongly denied the cultural and financial benefits of enrollment in Village or Urban Corporations established pursuant to the Act.

(b) PURPOSE.—The purpose of this Act is to redress the omission of the communities described in subsection (a)(6) from eligibility by authorizing the Native people enrolled in the communities—

(1) to form Urban Corporations for the communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell under the Act; and

(2) to receive certain settlement lands and other compensation pursuant to the Act.

**SEC. 3. ESTABLISHMENT OF ADDITIONAL NATIVE CORPORATIONS.**

Section 16 of the Alaska Native Claims Settlement Act (43 U.S.C. 1615) is amended by adding at the end thereof the following new subsection:

''(e)(1) The Native residents of each of the Native Villages of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, Alaska, may organize as Urban Corporations.

''(2) Nothing in this subsection shall affect any entitlement to land of any Native Corporation previously established pursuant to this Act or any other provision of law.''.

**SEC. 4. SHAREHOLDER ELIGIBILITY.**

Section 8 of the Alaska Native Claims Settlement Act (43 U.S.C. 1607) is amended by adding at the end thereof the following new subsection:

''(d)(1) The Secretary of the Interior shall enroll to each of the Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, or Wrangell those individual Natives who enrolled under this Act to the Native Villages of Haines, Ketchikan, Petersburg, Tenakee, or Wrangell, respectively.

''(2) Those Natives who are enrolled to an Urban Corporation for Haines, Ketchikan, Petersburg, Tenakee, or Wrangell pursuant to paragraph (1) and who were enrolled as shareholders of the Regional Corporation for Southeast Alaska on or before March 30, 1973, shall receive 100 shares of Settlement Common Stock in such Urban Corporation.

''(3) A Native who has received shares of stock in the Regional Corporation for Southeast Alaska through inheritance from a decedent Native who originally enrolled to the Native Villages of Haines, Ketchikan, Petersburg, Tenakee, or Wrangell, which decedent Native was not a shareholder in a Village or Urban Corporation, shall receive the identical number of shares of Settlement Common Stock in the Urban Corporation for Haines, Ketchikan, Petersburg, Tenakee, or Wrangell as the number of shares inherited by that Native from the decedent Native who would have been eligible to be enrolled to such Urban Corporation.

''(4) Nothing in this subsection shall affect entitlement to land of any Regional Corporation pursuant to section 12(b) or section 14(h)(8).''.

**SEC. 5. DISTRIBUTION RIGHTS.**

Section 7 of the Alaska Native Claims Settlement Act (43 U.S.C. 1606) is amended—

(1) in subsection (j), by adding at the end thereof the following new sentence: ''Native members of the Native Villages of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell who become shareholders in an Urban Corporation for such a community shall continue to be eligible to receive distributions under this subsection as at-large shareholders of the Regional Corporation for Southeast Alaska.''; and

(2) by adding at the end thereof the following new subsection:

''(s) No provision of or amendment made by the Unrecognized Southeast Alaska Native Communities Recognition and Compensation Act shall affect the ratio for determination of revenue distribution among Native Corporations under this section and the '1982 Section 7(i) Settlement Agreement' among the Regional Corporations or among Village Corporations under subsection (j).''.

**SEC. 6. COMPENSATION.**

The Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) is amended by adding at the end thereof the following new section:

''URBAN CORPORATIONS FOR HAINES, KETCHIKAN, PETERSBURG, TENAKEE, AND WRANGELL

''SEC. 43. (a) Upon incorporation of the Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, the Secretary, in consultation and coordination with the Secretary of Commerce, and in consultation with representatives of each such Urban Corporation and the Regional Corporation for Southeast Alaska, shall offer as compensation, pursuant to this Act, one township of land (23,040 acres) to each of the Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, and other appropriate compensation, including the following:

''(1) Local areas of historical, cultural, traditional, and economic importance to Alaska Natives from the Villages of Haines, Ketchikan, Petersburg, Tenakee, or Wrangell. In selecting the lands to be withdrawn and conveyed pursuant to this section, the Secretary shall give preference to lands with commercial purposes and may include subsistence and cultural sites, aquaculture sites, hydroelectric sites, tidelands, surplus Federal property and eco-tourism sites. The lands selected pursuant to this section shall be contiguous and reasonably compact tracts wherever possible. The lands selected pursuant to this section shall be subject to all valid existing rights and all other provisions of section 14(g), including any lease, contract, permit, right-of-way, or easement (including a lease issued under section 6(g) of the Alaska Statehood Act).

''(2) $650,000 for capital expenses associated with corporate organization and development, including—

''(A) the identification of forest and land parcels for selection and withdrawal;

''(B) making conveyance requests, receiving title, preparing resource inventories, land and resource use, and development planning;

''(C) land and property valuations;

''(D) corporation incorporation and startup;

''(E) advising and enrolling shareholders;

''(F) issuing stock; and

''(G) seed capital for resource development.

''(3) Such additional forms of compensation as the Secretary deems appropriate, including grants and loan guarantees to be used for planning, development and other purposes for which Native Corporations are organized under the Act, and any additional financial compensation, which shall be allocated among the five Urban Corporations on a pro rata basis based on the number of shareholders in each Urban Corporation.

''(b) The Urban Corporations for Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, shall have one year from the date of the offer of compensation from the Secretary to each such Urban Corporation provided for in this section within which to accept or reject the offer. In order to accept or reject the offer, each such Urban Corporation shall provide to the Secretary a properly executed and certified corporate resolution that states that the offer proposed by the Secretary was voted on, and either approved or rejected, by a majority of the shareholders of the Urban Corporation. In the event that the offer is rejected, the Secretary, in consultation with representatives of the Urban Corporation that rejected the offer and the Regional Corporation for Southeast Alaska, shall revise the offer and the Urban Corporation shall have an additional six months within which to accept or reject the revised offer.

''(c) Not later than 180 days after receipt of a corporate resolution approving an offer of the Secretary as required in subsection (b), the Secretary shall withdraw the lands and convey to the Urban Corporation title to the surface estate of the lands and convey to the Regional Corporation for Southeast Alaska title to the subsurface estate as appropriate for such lands.

''(d) The Secretary shall, without consideration of compensation, convey to the Urban Corporations of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, by quitclaim deed or patent, all right, title, and interest of the United States in all roads, trails, log transfer facilities, leases, and appurtenances on or related to the land conveyed to the corporations pursuant to subsection (c).

''(e)(1) The Urban Corporations of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell may establish a settlement trust in accordance with the provisions of section 39 for the purposes of promoting the health, education, and welfare of the trust beneficiaries and preserving the Native heritage and culture of the communities of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, respectively.

''(2) The proceeds and income from the principal of a trust established under paragraph (1) shall first be applied to the support of those enrollees and their descendants who are elders or minor children and then to the support of all other enrollees.''.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated such sums as shall be necessary to carry out this Act and the amendments made by this Act.

---

By Mr. SPECTER:

S. 1747. A bill to regulate the judicial use of presidential signing statements in the interpretation of Act of Congress; to the Committee on the Judiciary.

Mr. SPECTER. Mr President, I seek recognition today to offer the Presidential Signing Statements Act of 2007. The purpose of this bill is to regulate the use of Presidential Signing Statements in the interpretation of acts of Congress. This bill is similar in substance to the Presidential Signing Statements Act of 2006, which I introduced on July 26, 2006. The Senate Judiciary Committee also held a hearing on this topic on June 27, 2006.

I believe that this is necessary to protect our constitutional system of checks and balances. This bill achieves that goal in the following ways.

First, it prevents the President from issuing a signing statement that alters the meaning of a statute by instructing Federal and State courts not to rely on Presidential signing statements in interpreting a statute.

Second, it grants Congress the power to participate in any case where the construction or constitutionality of any act of Congress is in question and a presidential signing statement for that act was issued by (i) allowing Congress to file an amicus brief and present oral argument in such a case; (ii) instructing that if Congress passes a joint resolution declaring its view of the correct interpretation of the statute, the court must admit that resolution into the case record; and (iii) providing for expedited review in such a case.

Presidential signing statements are nothing new. Since the days of President James Monroe, Presidents have issued statements when signing bills. It is widely agreed that there are legitimate uses for signing statements. For example, Presidents may use signing statements to instruct executive branch officials how to administer a law. They may also use them to explain to the public the likely effect of a law. And, there may be a host of other legitimate uses.

However, the use of signing statements has risen dramatically in recent years. When I introduced the Presidential Signing Statement bill last year, I noted that as of June 26, 2006, President Bush had issued 132 signing statements. Since then, he has issued an additional 17 statements, for a total of 149 to date. In comparison, President Clinton issued 105 signing statements during his two terms. Moreover, President Bush's signing statements often raise objections to several provisions of a law. For example, a recent report by the Government Accountability Office released June 18, 2007, found that, for 11 appropriations acts for fiscal year 2006, President Bush issued signing statements identifying constitutional concerns or objections to 160 different provisions appearing in the acts. While the mere numbers may not be significant, the reality is that the way the President has used those statements threatens to render the legislative process a virtual nullity, making it completely unpredictable how certain laws will be enforced.

The President cannot use a signing statement to rewrite the words of a statute nor can he use a signing statement to selectively nullify those provisions he does not like. This much is clear from our Constitution. The Constitution grants the President a specific, narrowly defined role in enacting legislation. Article I, section 1 of the Constitution vests ''all legislative powers . . . in a Congress.'' Article I, section 7 of the Constitution provides that when a bill is presented to the President, he may either sign it or veto it with his objections. He may also choose to do nothing, thus rendering a so-called pocket veto. The President, however, cannot veto part of bill, he cannot veto certain provisions he does not like.

The Founders had good reason for constructing the legislative process as they did: by creating a bicameral legislature and then granting the President the veto power. According to The Records of the Constitutional Convention, the veto power was designed by our Framers to protect citizens from a particular Congress that might enact oppressive legislation. However, the Framers did not want the veto power to be unchecked, and so, in article I, section 7, they balanced it by allowing Congress to override a veto by two-thirds vote.

As I stated when I introduced the Presidential Signing Statement bill last year, this is a finely structured constitutional procedure that goes straight to the heart of our system of check and balances. Any action by the President that circumvents this finely structured procedure is an unconstitutional attempt to usurp legislative authority. If the President is permitted to rewrite the bills that Congress passes and cherry pick which provisions he likes and does not like, he subverts the constitutional process designed by our Framers.

The Supreme Court has affirmed that the constitutional process for enacting legislation must be safeguarded. As the Supreme Court explained in INS v. Chahda, ''It emerges clearly that the prescription for legislative action in article I, section 1 and 7 represents the Framers' decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure.''

So, while signing statements have been commonplace since our country's founding, we must make sure that they are not being used in an unconstitutional manner; a manner that seeks to rewrite legislation, and exercise line item vetoes.

As I have previously explained, President Bush has used signing statements in ways that have raised some eyebrows. An example is the signing statement accompanying Senator MCCAIN's ''anti-torture amendment'' to the Department of Defense Emergency Supplemental Appropriations Act, otherwise known as the ''McCain Amendment.'' In that legislation, Congress voted by an overwhelming majority, 90 to 9, to ban all U.S. personnel from inflicting ''cruel, inhuman or degrading'' treatment on any prisoner held anywhere by the United States. President Bush, who had threatened to veto the legislation, instead invited Senator MCCAIN to the White House for a public reconciliation and declared they had a mutual goal: to make it clear to the world that this government does not torture and that we adhere to the international convention of torture.''

Now from that, you might conclude that by signing the McCain amendment into law, President Bush and his administration has fully committed to not using torture. But you would be wrong. After the public ceremony of signing the bill into law, the President issued a signing statement saying his administration would construe the new law ''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.'' This vague language may mean that, despite the enactment of the McCain Amendment, the administration may still be preserving a right to inflict torture on prisoners and to evade the International Convention Against Torture.

Now, the National Defense Authorization Bill, like the McCain amendment, has a crucial provision regarding torture: it provides that the Combatant Status Review Tribunals, CSRTs, in Guantanamo Bay ''may not consider a [detainee's] statement that was obtained through methods that amount to torture.'' See section 1023(4)(e). But

who knows how this provision will be enforced if deemed inconsistent with the unitary executive theory?

And, the McCain amendment is just the tip of the iceberg: On close examination of the same signing statement, we see that President Bush has declared the right to construe the entire Detainee Treatment Act and all provisions relating to detainees, in a manner consistent with the unitary executive theory and with his powers as Commander and Chief. This is extremely troublesome. Like the DTA, this bill has crucial sections relating to detainees. Specifically, this bill contains much-needed provisions that protect detainees' due process rights in CSRT procedures, including allowing detainees a right to legal counsel, a right to compel and cross examine witnesses, and a right to have their status determined by a military judge. Should a similar signing statement be issued to S. 1547, that all sections related to detainees will be construed in a certain way, there is really no way to know how these crucial provisions will be enforced.

We must ensure that such provisions, and for that matter, any and all provisions in this bill, are not subject to revision by a Presidential signing statement.

In addition to these examples, I have noted another instance in which a questionable signing statement was issued, for the PATRIOT Act. We passed the PATRIOT Act after months of deliberation. We debated nearly every provision, often redrafting and revising. Moreover, we worked very closely with the President because we wanted to get it right. We wanted to make sure that we were passing legislation that the executive branch would find workable. In fact, in many ways, the process was an excellent example of the legislative branch and the executive branch working together towards a common goal.

In the end, the bill that was passed by the Senate and the House contained several oversight provisions intended to make sure the FBI did not abuse the special terrorism-related powers to search homes and secretly seize papers. It also required Justice Department officials to keep closer track of how often the FBI uses the new powers and in what type of situations.

The President signed the PATRIOT Act into law, but afterwards, he wrote a signing statement that said he could withhold any information from Congress provided in the oversight provisions if he decided that disclosure would ''impair foreign relations, national security, the deliberative process of the executive, or the performance of the executive's constitutional duties.''

As I noted last year, during the entire process of working with the President to draft the PATRIOT Act, he never asked the Congress to include this language in the act. At a hearing we held last June on signing statements, I asked an executive branch official, Michelle Boardman from the Office of Legal Counsel, why the President did not ask the Congress to put the signing statement language into the bill. She simply didn't have an answer.

Given this backdrop, I believe this bill is necessary. As I noted when I introduced the Presidential Signing Statement bill last summer, this bill does not seek to limit the President's power, and it does not seek to expand Congress's power. Rather, this bill simply seeks to safeguard our Constitution.

This bill will provide courts with much-needed guidance on how legislation should be interpreted. The recent GAO report on Presidential Signing Statements found that Federal courts cited or referred to presidential signing statements in 137 different opinions reported from 1945 to May 2007. It also shows that the Supreme Court's reliance on presidential signing statements has been sporadic and unpredictable. In some cases, such as United States v. Lopez, 115 S.Ct. 1624 at 1631, 1995, where the Court struck down the Gun-Free School Zones Act, the Supreme Court has relied on Presidential signing statements as a source of authority to interpret an act, while in other cases, such as the military tribunals case, Hamdan v. Rumsfeld, 126 S.Ct. 2749 (2006), Scalia dissenting, it has conspicuously declined to do so. This inconsistency has the unfortunate result of rendering the effect of Presidential signing statements on Federal law unpredictable.

As I stated when I initially introduced the Presidential Signing Statements Act of 2006, it is well within Congress's power to resolve judicial disputes such as this by enacting rules of statutory interpretation. In fact, the Department of Defense Authorization bill already contains at least one ''rule of construction'' provision. See section 845(e). This power flows from article 1, section 8, clause 18 of the Constitution, which gives Congress the power ''To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.'' Rules of statutory interpretation are ''necessary and proper'' to execute the legislative power.

Several scholars have agreed: Jefferson B. Fordham, a former dean of the University of Pennsylvania Law School said, ''[I]t is within the legislative power to lay down rules of interpretation for the future;'' Mark Tushnet, a professor at Harvard Law School explained, ''In light of the obvious congressional power to prescribe a statute's terms, and so its meaning, congressional power to prescribe interpretive methods seems to me to follow;'' Michael Stokes Paulsen, an associate dean of the University of Minnesota Law School noted, ''Congress is the master of its own statutes and can prescribe rules of interpretation governing its own statutes as surely as it may alter or amend the statutes directly.'' Finally, J. Sutherland, the author of the leading multivolume treatise for the rules of statutory construction has said, ''There should be no question that an interpretive clause operating prospectively is within legislative power.''

Furthermore, any legislation that sets out rules for interpreting an act makes legislation more clear and precise, which is exactly what we aim to achieve here in Congress. Congress can and should exercise this power over the interpretation of Federal statutes in a systematic and comprehensive manner.

Put simply, this bill seeks to implement measures that will safeguard the constitutional structure of enacting legislation. In preserving this structure, this bill reinforces the system of checks and balances and separation of powers set out in our Constitution, and I urge my colleagues to support it.

---

By Mr. COLEMAN (for himself, Mr. DEMINT, Mr. MCCONNELL, Mr. SESSIONS, Mrs. HUTCHISON, Mr. ISAKSON, Mr. CRAIG, Mr. CHAMBLISS, Mr. GRAHAM, Mr. CORNYN, Mr. BOND, Mr. MCCAIN, Mr. COCHRAN, Mr. VOINOVICH, Mr. THUNE, Mr. COBURN, Mr. ALLARD, Mr. ROBERTS, and Mr. KYL):

S. 1748. A bill to prevent the Federal Communications Commission from repromulgating the fairness doctrine; to the Committee on Commerce, Science, and Transportation.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1748

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Broadcaster Freedom Act of 2007''.

**SEC. 2. FAIRNESS DOCTRINE PROHIBITED.**

Title III of the Communications Act of 1934 is amended by inserting after section 303 (47 U.S.C. 303) the following new section:

**''SEC. 303A. LIMITATION ON GENERAL POWERS: FAIRNESS DOCTRINE.**

''Notwithstanding section 303 or any other provision of this Act or any other Act authorizing the Commission to prescribe rules, regulations, policies, doctrines, standards, or other requirements, the Commission shall not have the authority to prescribe any rule, regulation, policy, doctrine, standard, or other requirement that has the purpose or effect of reinstating or repromulgating (in whole or in part) the requirement that broadcasters present opposing viewpoints on controversial issues of public importance, commonly referred to as the 'Fairness Doctrine', as repealed in *General Fairness Doctrine Obligations of Broadcast Licensees*, 50 Fed. Reg. 35418 (1985).''.

---

By Mr. KYL:

S. 1749. A bill to amend the Federal Rules of Criminal Procedure to provide

adequate protection to the rights of crime victims, and for other purposes; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I rise to introduce The Crime Victims' Rights Rules Act, which would continue the work started in The Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act.

The bill would make comprehensive procedural changes to the Federal Rules of Criminal Procedure to protect crime victims' rights throughout the federal criminal process, thereby guaranteeing that crime victims' rights will be fully respected in our federal courts.

As one of the Senate sponsors of the CVRA, I know that Congress intended the Act to bring dramatic changes to the way that the federal courts treat crime victims. Fortunately, in the two-and-a-half years since that legislation became law, positive strides have been made for crime victims. For example, with funding provided by act, the National Crime Victims Law Institute has been able to support crime victims' legal clinics around the country. I am also encouraged that court decisions have recognized the importance of crime victims' rights in the process.

But while progress has been made in implementing the CVRA, at least one important step remains to be taken: The Federal Rules of Criminal Procedure must be comprehensively amended to recognize the rights of crime victims throughout the process.

The Federal rules have been described as ''the playbook'' for Federal judges, prosecutors, and defense attorneys. Currently, the Federal rules make virtually no mention of crime victims. If crime victims are to fully integrated into the daily workings of our criminal justice process, then their role in that process must be fully protected in the federal rules.

I am encouraged to see that the Federal courts have been taking some modest steps toward protecting crime victims in the Federal rules. Federal district court judge Paul Cassell initiated the process by recommending rule changes to the Advisory Committee on Criminal Rules. His comprehensive set of useful proposals appeared in an excellent law review article published in The Brigham Young University Law Review in 2005. In recent months, the Advisory Committee has adopted a few of his proposals to implement some aspects of the CVRA. These changes are expected to take effect next year.

These amendments are positive, but far more remains to be done. The Advisory Committee's six proposed amendments, five changes to existing rules and one new rule, do little more than reiterate limited parts of the statute. Crime victims have been treated unfairly in the Federal criminal justice system for far too long to be left to rely on a handful of minimal protections. To respect crime victims' rights fully in the process, it is necessary to take more decisive and comprehensive action to thoroughly amend the rules.

When Congress passed the CVRA in 2004, it promised that crime victims would have rights throughout the criminal justice process. Of particular importance, the CVRA guaranteed that crime victims would have the right to be treated with ''fairness.'' My proposed amendments would add to the Federal rules the changes needed to treat crime victims fairly. These changes to the rules would provide vital protections for crime victims without interfering with the rights of criminal defendants or the need for Federal judges to manage their dockets effectively.

One example of the bill's changes is the amendment to Rule 50 to protect the victims' right to a speedy trial. The bill would amend Rule 50 to provide: ''The court shall assure that a victim's right to proceedings free from unreasonable delay is protected. A victim has the right to be heard regarding any motion to continue any proceeding. If the court grants a motion to continue over the objection of a victim, the court shall state its reasons in the record.''

It is hard for me to see how anyone could object to this procedural change. The CVRA promised to crime victims the right ''to proceedings free from unreasonable delay.'' The bill would place that right into the Federal rules.

Another example of the kind of change that the bill would make is its amendment of Rule 21 to protect crime victims' rights in transfer decisions. In some situations, federal courts can transfer a criminal case from one district to another. The bill would amend Rule 21 to provide: ''The court shall not transfer any proceeding without giving any victim an opportunity to be heard. The court shall consider the views of the victim in making any transfer decision.''

It is again hard to understand how anyone could object to the requirement that a judge give a crime victim the chance to be heard before a case is transferred to a distant location. For example, the bill would have protected the right of the Oklahoma City bombing victims to present to the trial judge their views on whether the trial should have been transferred out of Oklahoma and, if so, to where.

The bill does not mandate any particular substantive result, leaving it to the trial judge to make the ultimate determination about whether to transfer a case. But the bill would change the process by which such decisions are made, ensuring that victims are treated fairly by giving them an opportunity to provide their views to the judge.

A further example of the changes in the bill is the amendment to Rule 48 to protect the victim's right to be heard before a case is dismissed. The bill would provide: ''In deciding whether to grant the government's motion to dismiss, the court shall consider the views of any victims.''

With this procedural change, the victim would have the opportunity to present the court any reasons why a case should not be dismissed. This right is implicit in the CVRA's mandate that crime victims be treated with fairness. It is hard to understand how a crime victim is treated with fairness if the court dismisses a case without considering the victim's position on the dismissal.

Indeed, the only case to have considered this issue reached exactly this conclusion. As United States v. Heaton explains,

> When the government files a motion to dismiss criminal charges that involve a specific victim, the only way to protect the victim's right to be treated fairly and with respect for her dignity is to consider the victim's views on the dismissal. It is hard to begin to understand how a victim would be treated with fairness if the court acted precipitously to approve dismissal of a case without even troubling to consider the victim's views. To treat a person with ''fairness'' is generally understood as treating them ''justly'' and ''equitably.'' A victim is not treated justly and equitably if her views are not even before the court. Likewise, to grant the motion without knowing what the victim thought would be a plain affront to the victim's dignity. *U.S.* v. *Heaton*, 458 F. Supp. 2d 1271, 1272 (D. Utah 2006).

I agree with Heaton that the CVRA requires that crime victims have the opportunity to submit their views to the court on any dismissal. That is why this bill would place this right specifically into the federal criminal rules.

One particularly important part of the bill is its change to Rule 17 to protect the confidential and personal records of crime victims. The Advisory Committee itself proposed an amendment to Rule 17 to create specific procedures for subpoenas directed at confidential and private information concerning crime victims.

This change was designed to prevent a recurrence of the problems that recently occurred in the Elizabeth Smart kidnapping case in Salt Lake City. My colleagues may remember this case, which involved the abduction of a teenaged girl from her home. Fortunately, she was found a year later and the suspected kidnapper apprehended. In the state criminal proceedings that followed, defense attorneys subpoenaed confidential school and medical records about Elizabeth. Because these subpoenas went directly to Elizabeth's school and hospital, she was never given the opportunity to object to them, and some confidential information was improperly turned over to defense counsel.

The Advisory Committee has recognized that this same ''end run'' around the victim could occur under the federal rules. It has therefore adopted a rule requiring notice to crime victims before their personal and confidential information is subpoenaed.

But this seeming protection has a catch: a defendant can avoid giving any notice to victim by arguing to a court, in an ex parte proceeding, that exceptional circumstances exist.

This kind of ex parte procedure raises serious ethical concerns. In fact, the American Bar Association wrote to the Advisory Committee in February urging it to make certain that crime victims receive notice and an opportunity to be heard before such subpoenas issue. As Robert Johnson, Chair of the ABA's Criminal Justice section explained, the canons of judicial ethics forbid ex parte contacts with judges on substantive matters. Mr. Johnson went on to urge the Advisory Committee to give careful consideration of the ethical violations that might occur from ex parte subpoenas:

While the proposed amendment to Rule 17 is intended to protect the interests of crime victims, the ABA urges the Committee to carefully examine the proposal to determine if the proposal regarding Rule 17 would be contrary to the Court's responsibility under Canon 3(B)(7) in allowing ex parte contact on a substantive matter. Even if the Committee decides that it is not a substantive matter, the Committee should consider whether the proposed rule would allow a tactical advantage as a result of the ex parte communication and the judge is required to promptly notify the other party of the substance of the ex parte communication and allow an opportunity to respond.

It seems that the Advisory Committee's proposed rule permitting ex parte subpoenas of personal and confidential information of crime victims in some situations might run afoul of these ethical rules. Accordingly, under the bill, crime victims would enjoy an absolute right to notice before such information as psychiatric and medical records could be subpoenaed. This is the standard process that our adversary system of justice uses.

The CVRA promised crime victims that they would enjoy ''the right to be treated with fairness and with respect for the victim's dignity and privacy.'' My bill would respect victims' dignity and privacy by giving them a court hearing before any of their confidential records could be turned over to an offender accused of victimizing them. This is not to say that such information will never be disclosed to the defense. A judge will have to make the determination whether disclosure is appropriate. But the judge would make that determination only after hearing from the prosecutor, defense counsel and most important of all the crime victim whose privacy rights are directly affected.

One of the most significant parts of the bill is its creation of a new Rule 44.1, which would provide: ''When the interests of justice require, the court may appoint counsel for a victim to assist the victim in exercising their rights as provided by law.''

This important change builds on existing Federal law. Title 28 already permits the court in a criminal case to ''request an attorney to represent any person unable to afford counsel.'' For criminal cases involving child victims, Title 18 U.S.C. section 3509 allows the appointment of a guardian to represent the child's interests. Although the statutes provide these rights, they have yet to be actually implemented so that crime victims can actually take advantage of them.

I want to be clear that I am not proposing that all crime victims should have counsel appointed for them. At the same time, though, I would think all could agree that there are situations where a trial court ought, as a matter of discretion, to have the ability to appoint legal counsel for a crime victim. For example, a crime victim might present a novel or complex claim that the courts have not yet considered. Or a crime victim might suffer from physical or mental disabilities as a result of the crime that would make it difficult for the victim to be heard without the help of an advocate.

For many years, courts have had the ability to appoint counsel for potential defendants on a discretionary basis. My bill would allow that same, well-recognized power to be used to appoint counsel for crime victims.

One last section of the bill deserves special note because it demonstrates the need for Congress to step into the rules process. The bill would amend Rule 32 to guarantee victims the right to speak at sentencing hearings.

This is a change from the more limited right that the Advisory Committee has given victims the right ''to be reasonably heard.'' The Advisory Committee's note to this provision seemingly suggests that courts would not have to give all victims the right to speak at sentencing. This more limited right runs counter to the legislative history as to how the CVRA was to operate. While the CVRA gave crime victims the right to be reasonably heard, it was the undisputed legislative intent that victims would have the right to speak. I explained on the Senate floor at the time the act was under consideration that:

It is not the intent of the term ''reasonably'' in the phrase ''to be reasonably heard'' to provide any excuse for denying a victim the right to appear in person and directly address the court. Indeed, the very purpose of this section is to allow the victim to appear personally and directly address the court.

My colleague Senator FEINSTEIN remarked at that time that my understanding was her ''understanding as well.''

The Advisory Committee's action also contravenes at least two published court decisions on this issue. In United States v. Kenna, Judge Kozinski wrote for the Ninth Circuit that the CVRA's legislative history reveals ''a clear congressional intent to give crime victims the right to speak at proceedings covered by the CVRA.'' And in United States v. Degenhardt, Judge Cassell reached the same conclusion writing for the District of Utah.

My bill would provide the right of victims to speak at sentencing hearings. Of course, prosecutors, defense counsel, and defendants have on enjoyed this right. Crime victims, too, deserve the opportunity to speak to the court to ''allocute'' as this right is called and to make sure that the court and the defendant understand the crime's full harm.

I will not take the time here to go through all of the other provisions of the bill. But I did want to highlight one important note about the appropriateness of Congress acting to amend the rules to protect crime victims. Congress enacted the CVRA in October 2004. In the almost 3 years since then, I have waited patiently to give the federal courts the first opportunity to review the need for rule changes. At the same time, though, I have made clear my position, as one of the cosponsors of the CVRA, that Congress expected significant reforms in the Federal rules. As I explained to my colleagues at that time, the crime victims' community in this country was looking to the CVRA to serve as a model for the states and a formula for fully protecting crime victims. It was because the CVRA was expected to have such a far-reaching impact that the crime victims' community was willing to defer, at least temporarily, its efforts to pass a constitutional amendment protecting victims' rights.

I made this point directly to the advisory committee in a letter I sent to Judge Levi on February 15 of this year. Thus, several months ago, I placed the Advisory Committee on notice that, if it failed to act to fully protect crime victims, Congress might step into the breach.

A few weeks ago, Judge Levi replied to my letter, and I greatly appreciate his comments and explanations. In his reply, he acknowledged that many of the proposals were worthy of close attention. He indicated, however, that the Advisory Committee was going to delay action on them for some indefinite period of time. The reasons he gave for the delay were to:

1. gather more information on precisely how the proposals would operate in specific proceedings and what effects they might have, 2. obtain empirical data substantiating the existence and nature of any problem or problems that could be addressed by rule, and 3. provide additional time for courts to acquire experience under the CVRA and to develop case law construing it.

Judge Levi also suggested that some of the proposed rule changes would have created, in his view, new ''substantive rights'' for crime victims that went beyond the CVRA.

Judge Levi's letter demonstrates why the Rules Enabling Act wisely left the final decision on how to structure rules of evidence and procedure to Congress. The letter refers to the need to ''gather more information'' and ''empirical data'' on crime victims'' issues before proceeding. While some might point out that the Advisory Committee has already had more than 2½ years to collect such data, I can appreciate the difficulty that a court rules committee can have in assessing the scope of a national problem. Congress, however, is already well-informed on the need for protecting crime victims' rights.

Congress adopted the CVRA only after 8 years of legislative efforts and hearings on the Crime Victims Rights Amendment. This record leaves Congress well positioned to recognize the need for prompt and effective action to protect crime victims.

The letter also refers to the need for courts to develop case law construing the CVRA. The problem with this approach is that the anticipated case law may never develop. Most crime victims are not trained in the nuances of the law and lack the means to retain legal counsel. Victims are often indigent and are frequently emotionally and physically harmed by the defendant's crime. They are then involuntarily forced into the middle of complicated and unfamiliar legal proceedings. To expect that in these circumstances, crime victims will often be able to undertake the kind of sophisticated and pathbreaking litigation that would be necessary to establish crime victims seems unreasonable. One of the main reasons for the CVRA was to change a legal culture that has been hostile to crime victims. To expect that this legal culture will somehow, on a case-by-case basis, welcome crime victims is unlikely. Indeed, it is ironic that while waiting for case law to ''develop,'' the Advisory Committee refused to add to the Federal rules a provision confirming the existing discretionary right of trial judges to appoint legal counsel for crime victims who need legal assistance on complicated issues.

The wait-for-caselaw approach is also troubling because it assumes that Federal court litigation will serve sufficiently to clarify the rights of victims in the Federal system. But the Federal Rules of Criminal Procedure form the template for rules of criminal procedure in states throughout the country. One of the main purposes of the CVRA was to create a model for protecting victims in the criminal justice system. Unless the text of the Federal rules themselves protects crime victims, the states will not have a model they can look to in drafting their own rules to guarantee victims fair treatment.

The final reason given for deferring action on rules changes is that the Advisory Committee thought that some of the changes might create new substantive rights better left to Congress. It's a bit of an Alphonse-and-Gaston situation: Congress says ''after you'' to the Advisory Committee, only to have the Advisory Committee say ''after you.'' To avoid an impasse that leaves crime victims unprotected, obviously someone needs to take the lead. That is why I am today introducing The Crime Victims' Rights Rules Act.

One last provision in the bill is also worth highlighting. The bill includes a sense of the Congress provision that crime victims ought to be represented on the Advisory Committee on Criminal Rules.

This point was called to my attention by Professor Douglas Beloof, a distinguished law professor at the Lewis and Clark College of Law and the Director of the well-regarded National Crime Victims Law Institute. Professor Beloof testified before the Advisory Committee in January.

He was surprised to discover at that time that, while the Justice Department, the defense bar, and judges are all represented on the Committee, there is no representative for crime victims. Not only does this leave crime victims organizations without a liaison for bringing information to the attention of the Committee, but, more important, it deprives the Committee of the valuable perspective that such a representative could bring on the rule change issues the Committee regularly considers.

With the passage of the CVRA, crime victims, no less then the Justice Department and the defense bar, became participants with recognized rights in the criminal justice process. They should, therefore, be represented directly on the Advisory Committee on Criminal Rules.

When Congress passed the CVRA, it made a commitment to crime victims that they would no longer be overlooked in the criminal justice process. Nowhere is that commitment better exemplified than in the CVRA's promise that victims will be given ''the right to be treated with fairness and with respect for the victim's dignity and privacy.'' Until the rules governing criminal proceedings in our Federal courts fully protect crime victims, that important goal will not be achieved.

I urge my colleagues to carry forward the promises made in the Crime Victims Rights Act. Crime victims' rights must be respected throughout the Federal Rules of Criminal Procedure. The Crime Victims' Rights Rules Act would amend the rules to ensure that crime victims are no longer overlooked in the federal criminal process.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 262—DESIGNATING JULY 2007 AS ''NATIONAL WATERMELON MONTH''

Mr. CHAMBLISS (for himself and Mr. ISAKSON) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 262

Whereas watermelon production constitutes an important sector of the agricultural industry of the United States;

Whereas, according to the January 2006 statistics compiled by the National Agricultural Statistics Service of the United States Department of Agriculture, the United States produces 4,200,000,000 pounds of watermelon annually;

Whereas watermelon is grown in 49 States, is purchased and consumed in all 50 States, and is exported to Canada;

Whereas evidence indicates that eating 2½ to 5 cups of fruits and vegetables daily as part of a healthy diet will improve health and protect against diseases such as cancer, high blood pressure, stroke, and heart disease;

Whereas proper diet and nutrition are important factors in preventing diseases such as childhood obesity and diabetes;

Whereas watermelon has no fat or cholesterol and is an excellent source of the vitamins A, B6, and C, fiber, and potassium, which are vital to good health and disease prevention;

Whereas watermelon is also an excellent source of lycopene;

Whereas lycopene, an antioxidant found only in a few red plant foods, has been shown to reduce the risk of certain cancers;

Whereas watermelon is a heart-healthy food that has qualified for the heart-check mark from the American Heart Association;

Whereas watermelon has been a nutritious summer favorite from generation to generation; and

Whereas it is important to educate citizens of the United States regarding the health benefits of watermelon and other fruits and vegetables: Now, therefore, be it

*Resolved,* That the Senate—

(1) supports the goals and ideals of ''National Watermelon Month'';

(2) calls on the Federal Government, States, localities, schools, nonprofit organizations, businesses, other entities, and the people of the United States to observe the month with appropriate programs and activities; and

(3) designates July 2007 as ''National Watermelon Month''.

Mr. CHAMBLISS. Mr. President, I rise today to introduce a resolution that will recognize July 2007 as ''National Watermelon Month.'' Watermelon production is a vital part of our Nation's agricultural sector and this resolution recognizes that fact.

According to statistics released by the National Agricultural Statistics Service of the U.S. Department of Agriculture in January 2006, the United States produces 4,200,000,000 pounds of watermelon annually. This amount of annual production is remarkable when you consider the number of actual watermelons it represents. Watermelon varieties range in size from 5 pounds to over 40 pounds, so the number produced, consumed, and exported each year is truly amazing.

Research has shown that the inclusion of fruits and vegetables in our diets is vitally important for a healthy lifestyle. Evidence indicates that eating between 2½ and 5 cups of fruits and vegetables everyday will improve health and protect against many of the diseases, especially those influenced by diet, that afflict our Nation. Watermelon provides many of the vitamins, fiber and nutrients which help prevent many of these diseases. Watermelon is also a good source of lycopene, an antioxidant that has been shown to reduce the risk of certain cancers. The health benefits associated with watermelon are so outstanding that the American Heart Association has certified watermelon as a heart-healthy food, thereby qualifying it for the heart-check certification mark.

I cannot address this body without mentioning the importance of the watermelon to my home State of Georgia. The University of Georgia College of Agricultural and Environmental Sciences Center for Agribusiness and