S. 1030

At the request of Mrs. LINCOLN, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 1030, a bill to amend the Internal Revenue Code of 1986 to eliminate the reduction in the credit rate for certain facilities producing electricity from renewable resources.

S. 1055

At the request of Mrs. BOXER, the names of the Senator from Rhode Island (Mr. REED), the Senator from Louisiana (Mr. VITTER) and the Senator from Massachusetts (Mr. KIRK) were added as cosponsors of S. 1055, a bill to grant the congressional gold medal, collectively, to the 100th Infantry Battalion and the 442nd Regimental Combat Team, United States Army, in recognition of their dedicated service during World War II.

S. 1076

At the request of Mr. MENENDEZ, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1076, a bill to improve the accuracy of fur product labeling, and for other purposes.

S. 1147

At the request of Mr. KOHL, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 1147, a bill to prevent tobacco smuggling, to ensure the collection of all tobacco taxes, and for other purposes.

S. 1301

At the request of Mr. MENENDEZ, the name of the Senator from Florida (Mr. LEMIEUX) was added as a cosponsor of S. 1301, a bill to direct the Attorney General to make an annual grant to the A Child Is Missing Alert and Recovery Center to assist law enforcement agencies in the rapid recovery of missing children, and for other purposes.

S. 1422

At the request of Mrs. MURRAY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1422, a bill to amend the Family and Medical Leave Act of 1993 to clarify the eligibility requirements with respect to airline flight crews.

S. 1553

At the request of Mr. GRASSLEY, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1553, a bill to require the Secretary of the Treasury to mint coins in commemoration of the National Future Farmers of America Organization and the 85th anniversary of the founding of the National Future Farmers of America Organization.

S. 1556

At the request of Mrs. FEINSTEIN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1556, a bill to require the Secretary of Veterans Affairs to permit facilities of the Department of Veterans Affairs to be designated as voter registration agencies, and for other purposes.

S. 1660

At the request of Ms. KLOBUCHAR, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 1660, a bill to amend the Toxic Substances Control Act to reduce the emissions of formaldehyde from composite wood products, and for other purposes.

S. 1681

At the request of Mr. LEAHY, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 1681, a bill to ensure that health insurance issuers and medical malpractice insurance issuers cannot engage in price fixing, bid rigging, or market allocations to the detriment of competition and consumers.

S. 1756

At the request of Mr. HARKIN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1756, a bill to amend the Age Discrimination in Employment Act of 1967 to clarify the appropriate standard of proof.

S. 1822

At the request of Mr. MERKLEY, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1822, a bill to amend the Emergency Economic Stabilization Act of 2008, with respect to considerations of the Secretary of the Treasury in providing assistance under that Act, and for other purposes.

S. 1833

At the request of Mr. UDALL of Colorado, the names of the Senator from California (Mrs. BOXER), the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from Pennsylvania (Mr. CASEY) were added as cosponsors of S. 1833, a bill to amend the Credit Card Accountability Responsibility and Disclosure Act of 2009 to establish an earlier effective date for various consumer protections, and for other purposes.

S. 1834

At the request of Mr. AKAKA, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1834, a bill to amend the Animal Welfare Act to ensure that all dogs and cats used by research facilities are obtained legally.

S. 1927

At the request of Mr. DODD, the names of the Senator from Colorado (Mr. BENNET), the Senator from Michigan (Mr. LEVIN), the Senator from New Hampshire (Mrs. SHAHEEN), the Senator from California (Mrs. BOXER) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 1927, a bill to establish a moratorium on credit card interest rate increases, and for other purposes.

S. 1928

At the request of Mr. BAUCUS, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 1928, a bill to extend and modify the temporary suspension of duty on golf bag bodies made of woven fabrics of nylon or polyester sewn together with pockets, and dividers or graphite protectors, accompanied with rainhoods.

S. 1930

At the request of Mr. CASEY, the names of the Senator from New Hampshire (Mrs. SHAHEEN) and the Senator from New York (Mrs. GILLIBRAND) were added as cosponsors of S. 1930, a bill to amend the Internal Revenue Code of 1986 to enhance the administration of, and reduce fraud related to, the first-time homebuyer tax credit, and for other purposes.

S. RES. 316

At the request of Mr. MENENDEZ, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. Res. 316, a resolution calling upon the President to ensure that the foreign policy of the United States reflects appropriate understanding and sensitivity concerning issues related to human rights, ethnic cleansing, and genocide documented in the United States record relating to the Armenian Genocide, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KAUFMAN (for himself, Mr. LEAHY, Mr. SPECTER, Mr. KOHL, Mr. SCHUMER, and Ms. KLOBUCHAR):

S. 1959. A bill to improve health care fraud enforcement; to the Committee on the Judiciary.

Mr. KAUFMAN. Mr. President, it is no longer a secret that fraud represents one of the fastest growing and most costly forms of crime in America today. In no small part, our current economic crisis can be attributed to unchecked mortgage fraud. Mortgage fraud itself was spurred by rampant accounting fraud, which enabled crooked executives to fatten their larders on a bubble of fake equity. And on the back-end, securities fraud, in the form of market manipulation and insider trading, hastened the eventual market crash and maximized its impact on Main Street and average American investors. In response, this body passed the Fraud Enforcement Recovery Act, FERA, which directed critical resources and tools to anti-financial fraud efforts.

FERA was passed in response to an unprecedented financial crisis. Americans should expect Congress to do more than simply react to crises after their most destructive impacts have already been felt. We owe it to our constituents to be proactive and to seek out and solve problems on the horizon so that disaster can be averted.

In the midst of the debate concerning comprehensive health care reform, we must be proactive in combating health care fraud and abuse. Each year, criminals drain between $72 and $220 billion from private and public health care plans through fraud. We pay these costs as taxpayers and through higher health insurance premiums. As we take steps to increase the number of Americans who are covered by health insurance, and to improve the health care system for everyone, we must also ensure that law enforcement has the tools that it needs to deter, detect, and punish health care fraud.

The Finance and HELP committees have worked long and hard to find ways to fight fraud and bend the cost curve down. They have done a great job. There's more work to be done, however, which is why today I, along with Senators LEAHY, SPECTER, KOHL, SCHUMER, and KLOBUCHAR, introduce the Health Care Fraud Enforcement Act of 2009.

This bill makes straightforward but critical improvements to the Federal sentencing guidelines, to health care fraud statutes, and to forfeiture, money laundering, and obstruction statutes. The bill would also make available more Federal resources to activities specifically designed to target health care fraud. Taken together, these measures send a strong and unmistakable signal to those who would engage in health care fraud that they will be caught, and they will be punished.

The bill makes important changes to the Federal sentencing guidelines to ensure that health care fraud offenses will be punished commensurate with the cost that these offenders inflict upon our health care system. Health care represents ⅙ of our national economy, and so unchecked health care fraud has the potential to inflict devastating harm to our national prosperity.

Despite the enormous losses in many health care fraud cases, analysis from the United States Sentencing Commission suggests that health care fraud offenders often receive shorter sentences than other white collar offenders in cases with similar loss amounts. And according to statements from cooperating health care fraud defendants, many criminals are drawn to health care fraud because of this low risk-to-reward ratio. For this reason, the bill directs the Sentencing Commission to increase the offense score of health care fraud offenses by two to four levels, depending on the dollar amount involved in the crime.

The bill also clarifies that courts should refuse to entertain arguments by defendants that they can avoid stiff punishment because only a portion of their fraudulent claims were likely to be paid.

In addition, the bill updates the definition of ''health care fraud offense'' in the Federal criminal code to include violations of the anti-kickback statute, the Food, Drug and Cosmetic Act, and certain provisions of ERISA. These changes will allow the full panoply of law enforcement tools to be used against all health care fraud.

The bill also strengthens whistleblower actions based on medical care kickbacks, which tempt by health care providers to churn unnecessary medical care at great risk to patients and great cost to the taxpayer. By making all payments that stem from an illegal kickback subject to the False Claims Act, this bill leverages the private sector to help detect and recover money paid pursuant to these illegal practices.

The Department of Justice has had success both prosecuting illegal kickbacks and pursuing False Claims Act matters based on underlying violations of the Anti-Kickback Statute. Nevertheless, defendants in such FCA cases continue to mount legal challenges that sometimes defeat legitimate enforcement efforts.

For example, a court recently held that, even though a device company may have paid a kickback to a doctor to use a particular medical device, the bill to the government for the procedure to implant the device was not false or fraudulent because the claim was submitted by the innocent hospital, and not by the guilty doctor. In other words, a claim that results from a kickback and that is fraudulent when submitted by a wrongdoer is laundered into a ''clean'' claim when an innocent third party finally submits the claim to the government for payment. This has the effect of insulating both the payor and the recipient of the kickback from False Claims Act liability. This obstacle to a successful action particularly limits the ability of the Department of Justice to recover from pharmaceutical and device manufacturers, because in such instances the claims arising from the illegal kickbacks typically are not submitted by the doctors who received the kickbacks, but by pharmacies and hospitals that had no knowledge of the underlying unlawful conduct.

This bill remedies the problem by amending the anti-kickback statute to ensure that all claims resulting from illegal kickbacks are ''false or fraudulent,'' even when the claims are not submitted directly by the wrongdoers themselves. I want to emphasize that in such circumstances, neither anti-kickback nor False Claims Act liability will lie against the innocent third party that submitted the claim.

The bill also addresses confusion in the case law over the appropriate meaning of ''willful'' conduct in health care fraud. Both the anti-kickback statute and the health care fraud statute include the term ''willfully.'' In both contexts, the Ninth Circuit Court of Appeals has read the term to require proof that the defendant not only intended to engage in unlawful conduct, but also knew of the particular law in question and intended to violate that particular law.

This heightened mental state requirement may be appropriate for criminal violations of hyper-technical regulations, but it is inappropriate for these crimes, which punish simple fraud. The Finance Committee health care reform bill, America's Healthy Future Act, addresses this problem for the anti-kickback statute, but not for the general health care fraud offense. Accordingly, the Health Care Fraud Enforcement Act tracks the Finance bill and clarifies that ''willful conduct'' in this context does not require proof that the defendant had actual knowledge of the law in question or specific intent to violate that law. As a result, health care fraudsters will not receive special protection that they don't deserve.

Next, the bill provides the Department of Justice with critical subpoena authority for investigations conducted pursuant to the Civil Rights for Institutionalized Persons Act, also known as CRIPA.

Pursuant to that important statute, the Civil Rights Division of the Department of Justice investigates conditions in publicly operated institutions, such as nursing homes, mental health institutions, facilities for persons with disabilities, residential schools for children with disabilities, as well as jails and prisons, where there has been an allegation of pattern or practice of violating residents' Federal civil rights. Under CRIPA, only injunctive relief is available; the statute does not provide for the award of damages.

CRIPA investigations commonly concern allegations of inadequate medical and mental health care, unsafe living conditions, and the failure to protect residents from harm. The majority of CRIPA investigations are conducted with the voluntary cooperation of state and local jurisdictions. When unlawful conditions are identified, CRIPA investigations are typically resolved through a negotiated settlement agreement that addresses the reforms necessary to correct policies, procedures and practices to address the identified deficiencies.

Some jurisdictions, however, have refused to cooperate with the Division. CRIPA does not authorize the Department of Justice to issue subpoenas for documents, records, or even for access into the institution that is the target of the investigation. As a result, investigations have been hamstrung and the effectiveness of CRIPA to remedy systemic abuse of institutionalized persons has been unnecessarily limited.

For example, in a CRIPA investigation of a county nursing home in New Jersey, the local jurisdiction would not cooperate. The Division's investigation revealed inadequate medical and mental health care, unlawful restraint, and inadequate nutrition and hydration. In one particularly serious incident, which occurred weeks after a meeting with the county officials to request their cooperation with the investigation, a resident was fed so quickly by staff that she aspirated and died. Emergency room physicians extracted a volume of mashed potatoes from the resident's lungs that filled a Ziploc bag. Another nursing home resident slowly starved to death because staff improperly positioned that resident's feeding tube. The Division was compelled to file suit, resulting in a negotiated settlement more than 4 years after the investigation began. To be sure, these abuses are a civil rights issue that demand attention even in the absence of fraud prevention. But substandard care also represents fraud and waste, because taxpayers have paid for the provision of satisfactory medical services at facilities that fall under CRIPA jurisdiction.

The absence of subpoena authority enables non-cooperating jurisdictions to obstruct and delay the Division in its mission to ensure that the Federal rights of persons in the custody of state and local officials are respected. The resultant litigation when jurisdictions exploit the absence of subpoena power is extraordinarily costly, yet the substantive outcome, appropriate injunctive relief, is the same.

The bill addresses the problem by authorizing the Department of Justice to issue subpoenas for access to any institution that is the subject of an investigation related to a violation of CRIPA, and for any documents, records, materials, files, reports, memoranda, policies, procedures, investigations, video or audio recordings, and quality assurance reports of such institution.

In a final substantive change, the bill corrects an apparent drafting error by providing that obstruction of criminal investigations involving administrative subpoenas under HIPAA, the Health Insurance Portability and Accountability Act of 1996, should be treated in the same manner as obstruction of criminal investigations involving grand jury subpoenas.

Finally, the Health Care Fraud Enforcement Act provides the resources needed for law enforcement to uncover and go after these frauds. Health care fraud cannot be fought effectively without more investigators and prosecutors. This bill authorizes the appropriation of $20,000,000 each year from 2011 through 2016 for investigations, prosecutions, and civil or other proceedings relating to fraud and abuse in connection with any health care benefit program. The bill authorizes the United States Attorneys' Offices to be appropriated an additional $10,000,000 each year for this purpose, the Criminal Division of the Department of Justice, $5,000,000 each year, and the Civil Division of the Department of Justice, $5,000,000 each year.

As we move toward meaningful health care reform, we must ensure that criminals who engage in health care fraud, and those who contemplate doing so, understand that they face swift prosecution and substantial punishment. Congress should move quickly to pass this legislation so that American taxpayers can be confident that their government has the tools and resources necessary to protect its investment in the health and welfare of our Nation.

I urge my colleagues to support the Health Care Fraud Enforcement Act of 2009.

Mr. LEAHY. Mr. President, I am pleased to join Senator KAUFMAN, as well as Senators SPECTER, KOHL, SCHUMER, and KLOBUCHAR, to introduce the Health Care Fraud Enforcement Act of 2009. This legislation builds on the impressive steps the administration has already taken to step up health care fraud prevention and enforcement, and on the real progress represented by the anti-fraud provisions of the Finance and Health, Education, Labor and Pension Committee bills already before Congress. I was glad to contribute to those efforts.

I feel strongly, though, that more needs to be done. This bill will provide prosecutors with needed tools for the effective investigation, prosecution, and punishment of health care fraud. By making modest but important changes to the law, it ensures that those who drain our health care system of billions of dollars each year, driving up costs and risking patients' lives, will go to jail, and that their fraudulent gains will be returned to American taxpayers and health care beneficiaries.

For more than 3 decades, I have fought in Congress to combat fraud and protect taxpayer dollars. This spring, I introduced with Senator GRASSLEY and Senator KAUFMAN the Fraud Enforcement and Recovery Act, the most significant anti-fraud legislation in more than a decade. When that legislation was enacted, it provided law enforcement with new tools to detect and prosecute financial and mortgage fraud. Now, as health care reform moves through the Senate, I want to make sure we do all we can to tackle the fraud that has contributed greatly to the skyrocketing cost of health care.

The scale of health care fraud in America today is staggering. According to conservative estimates, about three percent of the funds spent on health care are lost to fraud—more than $60 billion a year. In the Medicare program alone, the Government Accountability Office estimates that more than $10 billon was lost to fraud just last year. While Medicare and Medicaid fraud is significant, it is important to remember that health care fraud does not occur solely in the public sector. Private health insurers also see billions of dollars lost to fraud. That fraud is often harder for the Government to track. Private companies have less incentive to report it, and in some cases, are responsible for the fraudulent practices themselves. Reining in private sector fraud must be a part of any comprehensive health care reform.

The Health Care Fraud Enforcement Act of 2009 makes a number of straightforward, important improvements to existing statutes to strengthen prosecutors' ability to combat health care fraud. The bill would increase the Federal sentencing guidelines for health care fraud offenses. Despite the enormous losses in many health care fraud cases, offenders often receive shorter sentences than other white collar criminals. This lower risk is one reason criminals are drawn to health care fraud. By increasing the Federal sentencing guidelines for health care fraud offenses, we send a clear message that those who steal from the Nation's health care system will face swift prosecution and substantial punishment.

The bill also provides for a number of statutory changes to strengthen fraud enforcement. For example, it would expand the definition of a ''Federal health care fraud offense'' to include violations of the anti-kickback statute and several other key health care-related criminal statutes, which will allow for more vigorous enforcement of those offenses, including making their proceeds subject to criminal forfeiture. It would also amend the anti-kickback statute to ensure that all claims resulting from illegal kickbacks are considered false claims for the purpose of civil action under the False Claims Act, even when the claims are not submitted directly by the wrongdoers themselves. All too often, health care providers secure business by paying illegal kickbacks, which needlessly increase health care risks and costs. This change will help ensure that the government is able to recoup from wrongdoers the losses caused by false health care fraud claims. The bill clarifies the intent requirement of another key health care fraud statute in order to facilitate effective, fair, and vigorous enforcement.

The bill also provides the Department of Justice with limited subpoena authority for civil rights investigations conducted pursuant to the Civil Rights for Institutionalized Persons Act. This provision allows the Government to more effectively investigate conditions in publicly operated institutions, such as nursing homes, mental health institutions, and residential schools for children with disabilities, where there have been allegations of civil rights violations.

Lastly, the bill provides needed resources for criminal and civil enforcement of health care fraud laws. It authorizes the appropriation of $20,000,000 a year to the Department of Justice from 2011 through 2016 for investigations, prosecutions, and civil or other proceedings relating to fraud and abuse in connection with any health care benefit program. Studies indicate a return on investment of anywhere from $6 to $15 in Government recovery of fraud proceeds for every $1 spent on health care fraud enforcement, so this is a prudent and needed investment.

We all agree that reducing the cost of health care for American citizens is a critical goal of health care reform. We in Congress must do our part by ensuring that, when we pass a health care reform bill, it includes all the tools and resources needed to crack down on the scourge of health care fraud. This bill is an important part of that effort.

By Mr. AKAKA:

S. 1963. A bill to amend title 38, United States Code, to provide assistance to caregivers of veterans, to improve the provision of health care to veterans, and for other purposes; read the first time.

Mr. AKAKA. Mr. President, today I am introducing landmark legislation that will provide critical assistance to veterans and their family caregivers. The Caregiver and Veterans Omnibus Health Services Act of 2009, contains provisions from S. 252, the Veterans Health Care Authorization Act of 2009, and S. 801, the Caregiver and Veterans Health Services Act of 2009. The Committee reported both S. 252 and S. 801, and but they are being held by a single Senator. Today, I reintroduce these vital improvements to veterans' health care as S. 1963.

The bipartisan provisions contained in S. 1963 provide needed assistance and support to family members and others who are serving as caregivers for the most seriously injured veterans of the conflicts in Iraq and Afghanistan. This assistance includes health care, counseling, support and a living stipend. They also expand services for women veterans, those with traumatic brain injury, and veterans that live in rural areas. Because the Nation's veterans and their caregivers cannot wait any longer for this help, I am introducing S. 1963, and asking that it be immediately placed on the Calendar.

S. 1963 has one simple theme: that every veteran deserves access to high quality health care, whether that care is provided by VA, or by a family caregiver. The Congress has previously recognized the contributions of caregivers. S. 1963 also contains many other important veterans' health improvements, including expanding services for women veterans; telemedicine technologies; transportation grants; and scholarship and loan repayment programs; and eliminating copayments for catastrophically disabled veterans. States which have an especially high number of veterans living in rural areas, such as Montana, Nevada, Wyoming, Florida, Arizona, Arkansas, Virginia, Idaho, Oklahoma, and New Mexico, would benefit greatly from the provisions in the bill which are designed to improve health care for rural veterans.

By Mr. AKAKA:

S. 1964. A bill to require disclosure of financial relationships between brokers and dealers and mutual fund companies, and of certain commissions paid by mutual fund companies; to the Committee on Banking, Housing, and Urban Affairs.

Mr. AKAKA. Mr. President, today, I am introducing the Mutual Fund Transparency Act of 2009. Mutual funds are vital investment vehicles for middle-income Americans that provide diversification and professional money management. Many working families rely on their mutual fund investments to pay for their children's education, prepare for retirement, and attain other financial goals.

I first introduced a version of this legislation in 2003. That fall, appalling abuses of investor trust were exposed. Ordinary investors were being harmed by the greed of brokers, mutual fund employees, and institutional and large investors. The transgressions made it clear that the boards of mutual fund companies were not providing sufficient oversight and failed to adequately protect the interests of their shareholders.

After the introduction of my bill, Securities and Exchange Commission, SEC, Chairman William Donaldson proposed several rules that mirrored the provisions in my bill, including a requirement that funds relying on certain exemptive rules have an independent chairman and that 75 percent of board directors be independent. However, legal actions taken against the SEC by the Chamber of Commerce and subsequent inaction under his successor, Chairman Christopher Cox, have prevented the adoption of these rules. The SEC needs additional statutory authority to finish these reforms and ensure that investors can rely on independent mutual fund boards to protect their interests.

My bill will ensure the independence of mutual fund boards, increase the transparency of fees and expenses of mutual funds, and impose a fiduciary duty on all investment advisors.

I have included in this legislation a number of provisions intended to ensure the independence of mutual fund boards. Poor board governance was a contributing factor to the mutual fund scandals in 2003. Independent directors must have a dominant presence on the board to ensure that investors' interests are the top priority. Once again, my legislation requires mutual fund boards to have an independent chairman and that 75 percent of their members be independent. The legislation strengthens the definition of an independent director. These changes will ensure that the interest of investors will be the paramount priority of the board.

My legislation will ensure that investors are provided with relevant and meaningful disclosures from which they can make better informed decisions. Mr. President, my bill will increase the transparency of the complex financial relationship between brokers and mutual fund companies in ways that are both meaningful and easy to understand for investors. Shelf-space payments and revenue-sharing agreements between mutual fund companies and brokers present conflicts of interest that must be disclosed to investors. Without such disclosures, investors cannot make informed financial decisions. Investors may believe that brokers are recommending funds based on the expectation of solid returns or low volatility, when the broker's recommendation may be influenced by hidden broker commissions. I have included a point-of-sale disclosure requirement in my legislation. In my bill, investors would have to be provided with the amount of differential payments and average fees for comparable transactions. My legislation also requires that confirmation notices be provided for mutual fund transactions, which will indicate how their broker was compensated.

Investors are not provided with a complete and accurate idea of the expenses involved with owning a particular fund. Consumers often compare the expense ratios of funds when making investment decisions. However, expense ratios fail to take into account the cost of commissions in the purchase and sale of securities. To further increase the transparency of the actual costs of the fund, brokerage commissions must be counted as an expense in filings with the SEC and included in the calculation of the expense ratio. Currently, brokerage commissions are disclosed to the SEC, but not to individual investors. Brokerage commissions are only disclosed to investors upon request. My bill strengthens brokerage commission disclosure provisions and ensures that commissions will be included in a document that investors have access to and can utilize. The inclusion of brokerage commissions in the expense ratio creates an incentive to reduce the use of soft dollars. Soft dollars can be used to lower expenses since most purchases using soft dollars do not count as expenses and are not calculated into the expense ratio. This change will make it easier for investors to know the true cost of the fund and compare the expense ratios of funds meaningfully.

When I reintroduced a version of this bill in 2005, I added a provision pertaining to the fiduciary duty of brokers. Although I have modified that provision for the current bill, my intent to apply a fiduciary duty to brokers remains the same. This is an essential provision because it ensures that all financial professionals have the same responsibility to act in the best interests of their clients whether they are an investment advisor or a broker.

We must improve the financial literacy of mutual fund investors so that they can make more sound investment decisions. I have included a requirement that the SEC study financial literacy among mutual fund investors. The SEC would be required to develop a strategy to increase the financial literacy of investors that results in positive change in investor behavior. In addition, the bill requires the Comptroller General of the United States to conduct a study on mutual fund advertising and make recommendations to improve investor protections and ensure that investors can make informed financial decisions when purchasing shares.

We must enact this vital legislation to help protect the investments that our working families make in mutual funds. These reforms are long overdue. I will build upon the administration's regulatory modernization proposal on fiduciary duty for brokers and pre-sale disclosure of mutual fund expenses.

I look forward to working with my friend, SEC Chairman Mary Schapiro, to bring about structural reform in the mutual fund industry and increase disclosures in order to provide useful and relevant information to mutual fund investors.

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

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

S. 1964

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 ''Mutual Fund Transparency Act of 2009''.

SEC. 2. DISCLOSURE OF FINANCIAL RELATIONSHIPS BETWEEN BROKERS AND DEALERS AND MUTUAL FUND COMPANIES.

(a) IN GENERAL.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

''(13) CONFIRMATION OF TRANSACTIONS FOR MUTUAL FUNDS.—

''(A) IN GENERAL.—Each broker and dealer shall disclose in writing to customers that purchase the shares of any open-end or closed-end company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) or any interest in a unit investment trust or municipal securities registered under this title used for education savings plans—

''(i) the amount of any compensation received or to be received by the broker or dealer in connection with such transaction from any sources; and

''(ii) such other information as the Commission determines appropriate.

''(B) REVENUE SHARING.—The term 'compensation' under subparagraph (A) includes any direct or indirect payment made by an investment adviser (or any affiliate of an investment adviser) to a broker or dealer for the purpose of promoting the sales of securities of an entity described in subparagraph (A), and payments made by an underwriter of the fund to a broker or dealer.

''(C) TIMING OF DISCLOSURE.—The disclosure required under subparagraph (A) shall be provided or sent to a customer not later than the date of the completion of the transaction.

''(D) LIMITATION.—The disclosures required under subparagraph (A) may not be made exclusively in—

''(i) a registration statement or prospectus of an entity described in subparagraph (A); or

''(ii) any other filing of an entity described in subparagraph (A) with the Commission.

''(E) COMMISSION AUTHORITY.—

''(i) IN GENERAL.—The Commission shall issue such final rules or regulations as are necessary to carry out this paragraph, not later than 1 year after the date of enactment of the Mutual Fund Transparency Act of 2009.

''(ii) FORM OF DISCLOSURE.—Disclosures under this paragraph shall be in such form as the Commission shall require by rule.

''(F) DEFINITIONS.—In this paragraph—

''(i) the terms 'open-end company' and 'closed-end company' have the same meanings as in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5);

''(ii) the term 'unit investment trust' has the same meaning as in section 4 of the Investment Company Act of 1940 (15 U.S.C. 80a–4); and

''(iii) the term 'education savings plan' means a qualified tuition program described in section 529(b)(1)(A)(ii) of the Internal Revenue Code of 1986.''.

(b) DISCLOSURE OF BROKERAGE COMMISSIONS.—Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–29) is amended by adding at the end the following:

''(k) DISCLOSURE OF BROKERAGE COMMISSIONS.—The Commission, by rule, shall require that brokerage commissions as an aggregate dollar amount and percentage of assets paid by an open-end or closed-end company or a unit investment trust or issuer of municipal securities during the 5-year period preceding the date of the transaction be included in any disclosure of the amount of fees and expenses that may be payable by the holder of the securities of such company for purposes of—

''(1) the registration statement of that company; and

''(2) any other filing of that company with the Commission, including the calculation of expense ratios.''.

SEC. 3. MUTUAL FUND GOVERNANCE.

(a) INDEPENDENT FUND BOARDS.—Section 10(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(a)) is amended—

(1) by striking ''shall have'' and inserting the following: ''shall—

''(1) have'';

(2) by striking ''60 per centum'' and inserting ''25 percent'';

(3) by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(2) have as chairman of its board of directors an interested person of such registered company; or

''(3) permit any person (other than an interested person, as described in paragraph (1)) to serve as a member of its board of directors, unless that person—

''(A) is approved or elected by the shareholders of such registered investment company at least once every 5 years; and

''(B) has been found, on an annual basis, by a majority of the directors who are not interested persons, after reasonable inquiry by such directors, not to have any material business or familial relationship with the registered company, a significant service provider to the company, or any entity controlling, controlled by, or under common control with such service provider, that could reasonably be interpreted as a conflict of interest or cast doubt on the independence of the director.''.

(b) ACTION BY INDEPENDENT DIRECTORS.—Section 10 of the Investment Company Act of 1940 (15 U.S.C. 80a–10) is amended by adding at the end the following:

''(i) ACTION BY BOARD OF DIRECTORS.—No action taken by the board of directors of a registered investment company may require the vote of a director who is an interested person of such registered investment company.

''(j) INDEPENDENT COMMITTEE.—

''(1) IN GENERAL.—The members of the board of directors of a registered investment company who are not interested persons of such registered investment company shall establish a committee comprised solely of such members, which committee shall be responsible for—

''(A) selecting persons to be nominated for election to the board of directors; and

''(B) adopting qualification standards for the nomination of directors.

''(2) DISCLOSURE.—The standards developed under paragraph (1)(B) shall be disclosed in the registration statement of the registered investment company.''.

(c) DEFINITION OF INTERESTED PERSON.—Section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)) is amended—

(1) in subparagraph (A)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of an investment adviser or principal underwriter to such registered investment company, or of any entity controlling, controlled by, or under common control with such investment adviser or principal underwriter;

''(viii) any natural person who has served as an officer or director, or as an employee within the preceding 10 fiscal years, of any entity that has within the preceding 5 fiscal years acted as a significant service provider to such registered investment company, or of any entity controlling, controlled by, or under the common control with such service provider;

''(ix) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business or professional relationship with the investment company or an affiliated person of such investment company;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment company; or

''(III) any other reason determined by the Commission:''; and

(2) in subparagraph (B)—

(A) in clause (iv), by striking ''two'' and inserting ''5''; and

(B) by striking clause (vii) and inserting the following:

''(vii) any natural person who is a member of a class of persons that the Commission, by rule or regulation, determines is unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business or professional relationship with such investment adviser or principal underwriter or affiliated person of such investment adviser or principal underwriter;

''(II) a close familial relationship with any natural person who is an affiliated person of such investment adviser or principal underwriter; or

''(III) any other reason, as determined by the Commission.''.

(d) DEFINITION OF SIGNIFICANT SERVICE PROVIDER.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended by adding at the end the following:

''(54) SIGNIFICANT SERVICE PROVIDER.—

''(A) IN GENERAL.—Not later than 270 days after the date of enactment of the Mutual Fund Transparency Act of 2009, the Commission shall issue final rules defining the term 'significant service provider'.

''(B) REQUIREMENTS.—The definition developed under paragraph (1) shall include, at a minimum, the investment adviser and principal underwriter of a registered investment company for purposes of paragraph (19).''.

SEC. 4. FINANCIAL LITERACY AMONG MUTUAL FUND INVESTORS STUDY.

(a) IN GENERAL.—The Securities and Exchange Commission shall conduct a study to identify—

(1) the existing level of financial literacy among investors that purchase shares of open-end companies, as that term is defined

under section 5 of the Investment Company Act of 1940, that are registered under section 8 of that Act;

(2) the most useful and understandable relevant information that investors need to make sound financial decisions prior to purchasing such shares;

(3) methods to increase the transparency of expenses and potential conflicts of interest in transactions involving the shares of open-end companies;

(4) the existing private and public efforts to educate investors; and

(5) a strategy to increase the financial literacy of investors that results in a positive change in investor behavior.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 5. STUDY REGARDING MUTUAL FUND ADVERTISING.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on mutual fund advertising to identify—

(1) existing and proposed regulatory requirements for open-end investment company advertisements;

(2) current marketing practices for the sale of open-end investment company shares, including the use of unsustainable past performance data, funds that have merged, and incubator funds;

(3) the impact of such advertising on consumers; and

(4) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can make informed financial decisions when purchasing shares.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report on the results of the study conducted under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the United States Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 6. POINT-OF-SALE DISCLOSURE.

(a) IN GENERAL.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)), as amended by section 2 of this Act, is amended by adding at the end the following:

''(14) BROKER AND DEALER DISCLOSURES IN MUTUAL FUND TRANSACTIONS.—

''(A) IN GENERAL.—Each broker and dealer shall disclose in writing to each person that purchases the shares of an open-end or closed-end company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) or any interest in a unit investment trust or municipal securities registered under this title—

''(i) the source and amount, in dollars and as a percentage of assets, of any compensation received or to be received by the broker or dealer in connection with such transaction from any sources;

''(ii) the amount, in dollars and as a percentage of assets, of compensation received in connection with transactions in shares of other investment company shares offered by the broker or dealer, if materially different from the amount under clause (i);

''(iii) comparative information that shows the average amount received by brokers and dealers in connection with comparable transactions, as determined by the Commission; and

''(iv) such other information as the Commission determines appropriate.

''(B) REVENUE SHARING.—The term 'compensation' under subparagraph (A) shall include any direct or indirect payment made by an investment adviser (or any affiliate of an investment adviser) to a broker or dealer for the purpose of promoting the sales of securities of a registered investment company.

''(C) TIMING OF DISCLOSURE.—The disclosures required under subparagraph (A) shall be made to permit the person purchasing the shares to evaluate such disclosures before deciding to engage in the transaction.

''(D) LIMITATION.—The disclosures required under subparagraph (A) may not be made exclusively in—

''(i) a registration statement or prospectus of a registered investment company; or

''(ii) any other filing of a registered investment company with the Commission.

''(E) COMMISSION AUTHORITY.—The Commission shall promulgate such final rules as are necessary to carry out this paragraph not later than 1 year after the date of enactment of the Mutual Fund Transparency Act of 2009.''.

(b) FIDUCIARY DUTIES.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

''(k) STANDARD OF CARE.—Notwithstanding any other provision of this title or the Investment Advisers Act of 1940, the Commission shall promulgate rules, not later than 1 year after the date of enactment of the Mutual Fund Transparency Act of 2009 to provide that the standard of care for all brokers and dealers in providing investment advice about securities to retail customers or clients (and such other customers or clients as the Commission may by rule provide) shall be the fiduciary duty established under the Investment Advisers Act of 1940, including, without limitation, the duty to act solely in the best interest of the customer or client, without regard to the financial or other interest of the broker or dealer providing the advice.''.

OCTOBER 21, 2009.

Hon. DANIEL K. AKAKA,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR AKAKA: We are writing to express our strong support for your efforts to ensure that professionals who advise America's investors are held to the highest standard of care—the fiduciary standard. Section 6(b) of the Mutual Fund Transparency Act of 2009 (''MFTA'') would clearly establish that brokers are subject to a fiduciary duty with respect to investment advice provided to retail investors. This provision eliminates a regulatory gap that has long exposed investors to unscrupulous and harmful sales practices by brokers.

Under current law, brokers are subject to a general suitability standard when providing investment advice to their retail clients. Under a suitability standard, a broker is not required to ensure that his recommendations are what is best for his clients, but only what is generally suitable. The suitability standard allows brokers to recommend investments, for example, based on the amount of compensation the broker receives rather than what is in the best interest of the client. The suitability standard does not even require brokers to disclose their compensation so that their clients can evaluate conflict of interest payments for themselves.

In contrast, investment advisers are subject to a strict fiduciary duty under the Advisers Act. As such, they are required to make recommendations only if they are in the client's best interest and to disclose all material conflicts. By applying the fiduciary standard under the Advisers Act to brokers, Section 6(b) of the MFTA ensures that the protection of a fiduciary standard for retail advisory clients will not depend on an arbitrary regulatory distinction between brokers and investment advisers, but will be applied rationally to provide all Americans who receive investment advice with the regulatory protection that they expect and deserve.

We wish to express our enthusiastic support for your proposal to establish a fiduciary duty for brokers and are available to provide whatever assistance you may need in this respect.

Respectfully submitted,

MERCER BULLARD,
Founder and President, Fund Democracy, Inc.

BARBARA ROPER,
Director of Investor Protection, Consumer Federation of America.

DENISE VOIGT CRAWFORD,
Texas Securities Commissioner and President, North American Securities Administrators Association, Inc.

ELLEN TURF,
CEO, National Association of Personal Financial Advisors.

KEVIN R. KELLER,
Chief Executive Officer, Certified Financial Planner Board of Standards, Inc.

MARVIN W. TUTTLE JR.,
CAE, Executive Director and CEO, Financial Planning Association.

OCTOBER 21, 2009.

Hon. DANIEL K. AKAKA,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR AKAKA: We are writing to express our enthusiastic support for the Mutual Fund Transparency Act of 2009 because your bill will benefit fund shareholders in three significant respects. First, it will strengthen the independence of mutual fund boards to help ensure that the gross abuses of trust committed by fund managers in connection with the recent mutual fund scandal will not be repeated. Second, the bill will require that fund shareholders be provided with full and understandable disclosure of brokers' fees and conflicts of interest, and that when brokers provide individualized investment advice they will be held to the same fiduciary standards to which all other investment advisers are held. Third, the bill will promote competition through increased price transparency, and thereby improve services and reduce costs for the almost 100 million Americans who have entrusted their financial security to mutual funds.

FUND GOVERNANCE

The mutual fund scandal that erupted in September 2003 and continues to be litigated to this day revealed ''a serious breakdown in management controls in more than just a few mutual fund complexes.'' As noted by the Securities and Exchange Commission:

The breakdown in fund management and compliance controls evidenced by our enforcement cases raises troubling questions about the ability of many fund boards, as presently constituted, to effectively oversee the management of funds. The failure of a board to play its proper role can result, in addition to serious compliance breakdowns, in excessive fees and brokerage commissions, less than forthright disclosure, mispricing of securities, and inferior investment performance.''

The Act directly addresses the governance weaknesses revealed by the scandal by strengthening the independence of fund directors. It plugs loopholes that have allowed former executives of fund managers and other fund service providers, among others, to qualify as ''independent'' directors when their independence is clearly compromised by their former positions. The Act also ensures that the board's agenda will be set by an independent chairman, and not by the CEO of the fund's manager, as is common practice today, and that independent directors will control board matters and the evaluation of independent nominees. The Act's requirement that independent directors seek shareholder approval at least every five years will enhance the accountability of independent directors to the shareholders whose interests they are supposed to serve.

The Act's requirement that funds have an independent chairman and a 75 percent independent board of directors is critical in light of the SEC's failure to take final action on rules imposing similar requirements. Even if these rules were adopted, they would not prevent fund managers from terminating independent chairmen or reducing independent representation on the board to the statutory minimum of 40 percent. The SEC's rules would apply only when the funds choose to rely on certain exemptive rules. If there were a conflict between the fund's independent directors and the fund manager, the fund manager could simply stop relying on the rules and seek to install its own executives in a majority of board positions. More importantly, independent directors know that the protection given them by the SEC is limited, and they therefore will be less likely to stand up for shareholders than they would be if—as you have proposed—the SEC's proposals were codified.

FIDUCIARY DUTIES AND FULL DISCLOSURE FOR ALL INVESTMENT ADVISERS

Recent regulatory investigations and enforcement actions have uncovered persistent and widespread sales abuses by brokers. Regulators have found that brokers have systematically overcharged investors for commissions, routinely made improper recommendations of B shares, accepted undisclosed directed brokerage payments in return for distribution services, and received revenue sharing payments that create incentives to favor funds that pay the highest compensation rather than funds that are the best investment option for their clients.

Five years ago, the Commission promised that it would address the problems that have so long plagued brokers' sales practices, but the Commission's efforts have fallen far short of the mark. Its proposals failed to require full disclosure of brokers' compensation, much less the disclosure of information that would enable investors to fully evaluate their brokers' conflicts of interests. The new disclosure requirements that you have proposed will ensure that brokers will be subject to a fiduciary duty and their conflicts of interest will be fully transparent to investors. Investors will be able to view the amount the broker is being paid for the fund being recommended compared with the (often lesser) amount the broker would receive for selling a different fund, which cannot help but direct investors' attention to the conflict of interest created by differential compensation structures. We especially applaud your proposal to ensure that all broker compensation, including revenue sharing payments, is disclosed in the point-of-sale document, which ensures that disclosure rules will not create an incentive for brokers to favor revenue sharing as a means of avoiding disclosure.

Remarkably, in the wake of a longstanding pattern of brokers' sales abuses, the Commission has effectively repealed Congress's narrow exemption from advisory regulation for brokers who provide only ''solely incidental'' advice. The Commission's strained interpretation of ''solely incidental'' advice to include any advice provided ''in connection with and reasonably related to a broker's brokerage services'' has effectively stripped advisory clients of the protections of an entire statutory regime solely on the ground that the investment advice happens to be provided by a broker. The Commission's position flatly contradicts the text and purpose of the Investment Advisers Act, which, as the Supreme Court has stated: ''reflects a congressional recognition 'of the delicate fiduciary nature of an investment advisory relationship,' as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.''

Your proposal restores crucial components of Congress's carefully constructed regulatory scheme for the distinct and complementary regulation of brokerage and advisory services. It properly recognizes that a ''fiduciary, which Congress recognized the investment adviser to be,'' is also what consumers expect an investment adviser to be, as is generally the case when professional services are provided on a personalized basis. The Act also recognizes the importance of ''expos[ing] all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested,'' by requiring full disclosure of such conflicts of interests and other material information at the time that the prospective client is deciding whether to enter into the relationship.

FEE DISCLOSURE AND PRICE COMPETITION

Your fee disclosure provisions will do double duty, by addressing conflicts of interest and brokers' sales abuses while also promoting competition, thereby improving services and driving down expenses. Requiring brokers to disclose the amount of differential payments and average fees for comparable transactions will provide the kind of price transparency that is a necessary predicate for price competition and the efficient operation of free markets. In addition, the requirement that funds disclose the amount of commissions they pay will ensure that the fund expense ratio includes all of the costs of the fund's operations and will enable investors to make more informed investment decisions. The best regulator of fees is the market, but the market cannot operate efficiently when brokers and funds are permitted to hide the actual cost of the services they provide.

FINANCIAL LITERACY AND FUND ADVERTISEMENTS

Finally, we strongly agree that there is a need for further study of financial literacy, including especially information that fund investors need to make informed investment decisions and methods to increase the transparency of fees and potential conflicts of interest. Your proposed study of mutual fund advertisements is also timely, as the regulation of fund ads continues to permit misleading touting of outsized short-term performance and other abuses.

Mutual funds are Americans' most important lifeline to retirement security. The regulation of mutual funds, however, has not kept pace with their enormous growth. We applaud your continuing efforts to enhance investor protection, promote vigorous market competition and create wealth for America's mutual fund investors through effective disclosure and truly independent board oversight.

Respectfully submitted,

MERCER BULLARD,
Founder and President, Fund Democracy, Inc.

BARBARA ROPER,
Director of Investor Protection, Consumer Federation of America.

KEN MCELDOWNEY,
Executive Director, Consumer Action.

IRENE E. LEECH,
Virginia Citizens Consumer Council.

WALTER DARTLAND,
Consumer Federation of the Southeast.

DAMON SILVERS,
Director of Policy and Special Counsel, AFL–CIO.

DENISE VOIGT CRAWFORD,
Texas Securities Commissioner and President, North American Securities Administrators Association, Inc.

By Ms. LANDRIEU:

S. 1965. A bill to authorize the Secretary of the Interior to provide financial assistance to the State of Louisiana for a pilot program to develop measures to eradicate or control feral swine and to assess and restore wetlands damaged by feral swine; to the Committee on Environment and Public Works.

Ms. LANDRIEU. Mr. President, I rise today to introduce a bill that will be an important component in our efforts to rebuild Louisiana's vast wetlands. Today, the coastline of my home state is the site of one of the Nation's most pronounced ecological disasters: the massive erosion of Louisiana's coastal wetlands. Few are aware that the marsh and wetlands along Louisiana's coast comprise some 40 percent of the Nation's total salt marshes. Louisiana's coastline is a national treasure. Yet, this national treasure is disappearing at an alarming rate due to a number of natural and man-made factors, including the destruction of wetlands caused by non-native feral pig populations that are literally eating away the coast. The loss of our wetlands threatens not only our teeming wildlife, but also land, lives, energy infrastructure, and navigation.

That is why I rise today, to introduce the Feral Swine Eradication and Control Pilot Program Act of 2009, address the challenges these species pose to our efforts to reverse coastal wetland deterioration.

Every 30 minutes, a portion of Louisiana's coast the size of a football field is converted from healthy marsh into open water. Since 1930, 1.2 million acres have been lost—an area roughly the size of Delaware. Scientists predict that Louisiana will lose another 700 square miles of coastal wetlands by 2050—an area the size of the greater

Washington, D.C. and Baltimore metro areas.

Louisiana's coastal land loss problems are caused by a number of natural and man-made factors. The primary factor has been the leveeing of the Mississippi River for purposes of flood control and navigation. Historically, the river would flood seasonally, taking silt from the Midwest and depositing it across the Mississippi Delta. Levees provided the needed flood protection, yet prevented vital land-building sediments and nutrients from replenishing and elevating deteriorating marshes. Additional activity added to the problem, including dredging thousands of miles of access canals for petroleum extraction and navigation. Those canals accelerated saltwater intrusion, further weakening the marsh.

Another human activity that resulted in significant wetland loss was the introduction of two invasive species to the marshland habitat: the nutria and the feral pig. These non-native species are consuming our wetlands at an alarming rate. Nutria were initially introduced by those who wanted to raise them for their furs. Their population exploded in the wild and their appetite for marsh grass is boundless. Scientists estimate that nutria are currently affecting an estimated 100,000 acres of coastal wetlands.

The feral hog is another exotic species which has expanded its range throughout most of Louisiana. Feral swine cause extensive damage to natural wildlife habitat. In Louisiana, the wild omnivores compete with native wildlife for food resources; prey on young domestic animals and wildlife; and carry diseases that can affect pets, livestock, wildlife and people. Scientists now believe that the feral hogs are not only wreaking enormous damage to the marsh, but are also negatively impacting native freshwater mussels and insects by contributing E. coli to water systems.

According to the Louisiana Department of Wildlife and Fisheries, the wild pig is the most prolific large mammal in North America and given adequate nutrition, its populations in an area can double in just 4 months.

As I mentioned earlier, Louisiana's landscape has already been ravaged by the nutria rodent. In 2002, the first program was created to combat the increasing nutria populations. This program, the Coast-wide Nutria Control Program, CNCP, incentivized trappers to catch nutria in return for monetary compensation. This program has proven successful at decreasing nutria populations and significantly reducing their impact to coastal wetlands.

However, more effort was needed to further reduce the nutria damage to wetlands, both in Louisiana and in other marshy environments, including Maryland's Chesapeake Bay. The Nutria Eradication and Control Act was enacted in 2003 to provide a critical supplement of funding to strengthen the Coast-wide Nutria Control Program. In July, I joined my friend and colleague Senator CARDIN in introducing the reauthorization of the Nutria Eradication and Control Act. These two measures have been instrumental in reducing the nutria damage to Louisiana's wetlands.

Now, it is my hope that we can achieve similar success with the problem of feral hogs. Feral swine are listed by the World Conservation Union, IUCN, as one of the top 100 invasive species worldwide. If action is not taken to control the feral swine population, our biologists fear these animals will undo much of the progress Louisiana has made in controlling the nutria population. It is my hope that with the help of my colleagues, we can pass this bill to help eradicate these pests from our vanishing coastline once and for all.

The bill I am introducing today authorizes the Secretary of the Interior to allocate funding to create a pilot program modeled off of the Nutria Eradication and Control Act. This program will assess the nature and extent of damage to the wetlands in Louisiana and develop methods to eradicate or control the feral swine population, and restore the coastal areas damaged by this invasive species.

It is a small program, but rewards it could reap are potentially vast. Consider this, Louisiana's wetlands are not only the home to our famed wildlife, they are also the most effective protection we have against future storm damage.

Coastal wetlands are the last barrier between the sea and the land. Wetlands reduce high winds and absorb the deadly storm surges that often accompany hurricanes. Scientists estimate that every 3 to 4 miles of wetlands can absorb enough water to reduce the height of a storm surge by 1 foot. That protects the millions of hardworking men and women who live along Louisiana's coast.

But I would also like to remind my colleagues of the vital strategic importance these wetlands serve to the Nation's energy security: Louisiana is one of the economy's largest producers of energy. Without wetlands as a buffer, storms could devastate the Nation's critical energy infrastructure.

It is for all of these reasons that this legislation is crucial. I ask that my colleagues support its prompt passage.

By Mr. FEINGOLD (for himself, Ms. KLOBUCHAR, Mr. TESTER, Mr. HARKIN, and Mr. KERRY):

S. 1986. A bill to amend the Help America Vote Act of 2002 to require States to provide for same day registration; to the Committee on Rules and Administration.

Mr. FEINGOLD. Mr. President, today I will reintroduce, along with Senators KLOBUCHAR, TESTER, HARKIN and KERRY, the Same Day Registration Act of 2009, a bill that would significantly increase voter participation by allowing all eligible citizens to register to vote in federal elections on Election Day or the same day that they vote.

In many ways, the machinery of our democracy needs significant repair. We live in an age of low turnout and high cynicism. The American people have lost faith in our election system, in part because they are not confident that their votes will be counted or that the ballot box is accessible to each and every voter regardless of ability, race, or means.

What we see instead are long lines at polling places; faulty voting machines; under-trained, under-paid, over-worked poll workers; partisan election administrators; suspect vote tallies; caging lists; intimidation at the polling place; misleading flyers; illegal voter-file purges; and now, the Supreme Court approving discriminatory voter ID laws. If people cannot trust their elections, why should they trust their elected officials?

Three years ago, Professor Dan Tokaji, a leading election law expert, called for a ''moneyball approach to election reform.'' Named after Michael Lewis' book about the Oakland A's data-driven hiring system, Tokaji's approach is quintessentially progressive, as that term was understood at the turn of the century. ''I mean to suggest a research-driven inquiry,'' Tokaji wrote, ''in place of the anecdotal approach that has too often dominated election reform conversations. While anecdotes and intuition have their place, they're no substitute for hard data and rigorous analysis.''

This bill embodies the moneyball approach to election reform. In stark contrast to many so-called election reform proposals, this bill addresses a real problem—low voter turnout; it targets a major cause of the problem—archaic registration laws; and it offers a proven solution—same day registration SDR sometimes known as Election Day registration, EDR.

The bill is very simple: it amends the Help America Vote Act to require every state to allow eligible citizens to register and vote in a Federal election on the day of the election, or on any day where voting is permitted, like during early voting. Voters may register using any form that satisfies the requirements of the National Voter Registration Act, including the Federal mail in voter registration form and any state's standard registration form. North Dakota, which does not have voter registration, is exempted from the bill's requirements.

The bill itself is simple, but it addresses a significant problem: the low voter turnout that has plagued this country for the last 40 years. We live in a participatory democracy, where our government derives its power from the consent of the governed, a consent embodied in the people's exercise of their fundamental right to vote. It is self evident that a participatory democracy depends on participation.

This may be a government of the people, Mr. President, but the people are not voting. Since 1968, American political participation has hovered around 50 percent for Presidential elections and 40 percent for congressional elections. Even in 2008, a record-breaking year, national turnout was only 61.7 percent of the voting age population. The U.S. may be the only established democracy in the world where the fact that nearly 40 percent of the electorate stayed home is considered cause for celebration.

In fact, our predecessors in the Senate would be surprised to find us celebrating such low turnout: a 1974 report by the Senate Committee on the Post Office and Civil Service bemoaned the ‘‘shocking’’ drop in turnout in the 1972 election. And what was the number that so troubled the Committee? Fifty-five percent.

The report went on: ‘‘[i]t is the Committee's conviction that our disquieting record of voter participation is in large part due to the hodgepodge of registration barriers put in the way of the voter. Such obstacles have little, if anything, to recommend them. At best, current registration laws in the various states are outmoded and simply inappropriate for a highly mobile population. At worst, registration laws can be construed as a deliberate effort to disenfranchise voters who desperately need entry into the decision-making processes of our country.’’

What a shame, that the Committee's findings are still valid. Our archaic registration laws have been reformed, but they are still archaic. We have passed a number of important bills designed to combat low turnout, but turnout is still low. America is even more mobile than it was in 1974, and yet our registration laws are still out of touch with the reality that more than 40 million Americans move every year. Worst of all, our registration laws still fall especially hard on the young, the old, and the poor.

We have long known that complicated voter registration requirements constitute one of the major barriers to voting. In fact, many states adopted voter registration in order to prevent certain segments of the population from voting. Alexander Keyssar, the preeminent scholar on the history right to vote in this country, writes that although ‘‘[r]egistration laws emerged in the nineteenth century as a means of keeping track of voters and preventing fraud; they also served—and were intended to serve—as a means of keeping African-American, working-class, immigrant, and poor voters from the polls.’’

It is time for a fundamental change. A large body of research tells us that unnecessarily burdensome voter registration requirements are the single largest factor in preventing people from voting. Simply put, voter registration restrictions should not keep eligible Americans from exercising their right to vote. The solution to this problem is same day registration.

Decades of empirical research confirm same day registration's positive impact on turnout. As one academic paper states, ‘‘the evidence on whether EDR augments the electorate is remarkably clear and consistent. Studies finding positive and significant turnout impacts are too numerous to list.’’ Mr. President, studies indicate that same day registration alone increases turnout by roughly 5 to 10 percentage points.

In general, States with same day registration boast voter turnout that is 10–12 percentage points higher than States that require voters to register before Election Day. Turnout in Minnesota and Wisconsin, which implemented same day registration over 35 years ago has been especially high: in 2004, for example, when national turnout was just 55 percent, 78 percent of eligible Minnesotans and 75 percent of eligible Wisconsinites went to the polls. The last time national voter turnout was above 70 percent, it was 1896, there were only 45 States, and the gold standard was the dominant campaign issue.

Critics might worry about the possibility of fraud, but same day registration actually makes the registration process more secure. Voters registering when they vote do so in the presence of an elections official who verifies the voter's residency and identity on the spot. Mark Ritchie, Minnesota's Secretary of State, points out that same day registration ‘‘is much more secure because you have the person right in front of you—not a postcard in the mail. That is a no-brainer. We have 33 years of experience with this.’’

In contrast to most election reforms, the cost of same day registration is negligible. A recent survey of 26 local elections officials in six same day registration States found that ‘‘officials agreed that incidental expense of administering EDR is minimal.’’ In fact, same day registration may actually result in a net savings because it significantly reduces the use of provisional ballots. Provisional ballots, which are required by the Help America Vote Act, are expensive to administer. The Congressional Budget Office estimates that provisional ballots cost State and local governments about $25 million a year.

In some States the number of provisional ballots cast is surprisingly large. For example, in 2004, more than 4 percent of California's registered voters cast provisional ballots—that is 644,642 provisional ballots. In Ohio, 157,714 provisional ballots were cast, about 2 percent of all registered voters.

In contrast, in 2004 only 0.03 percent of voters in SDR states cast a provisional ballot. In Wisconsin, only 374 provisional ballots were cast. In Maine, only 95 provisional ballots were cast. In fact, only 952 provisional ballots were cast in all the SDR states combined in 2004. To be sure, this bill is no cure-all: it does not address long lines, deceptive flyers, and faulty voting machines. Other bills, good bills, address those issues.

The bottom line is this: the Same Day Registration Act would substantially increase civic participation, improve the integrity of the electoral process, reduce election administration costs, and reaffirm that voting is a fundamental right. It has been proven effective by more than 30 years of successful implementation in Minnesota and Wisconsin and decades of empirical research. Same day registration is good for voters, good for taxpayers, and good for democracy.

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. 1986

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 ‘‘Same Day Registration Act’’.

SEC. 2. SAME DAY REGISTRATION.

(a) IN GENERAL.—Title III of the Help America Vote Act of 2002 (42 U.S.C. 15481 et seq.) is amended—

(1) by redesignating sections 304 and 305 as sections 305 and 306, respectively; and

(2) by inserting after section 303 the following new section:

‘‘SEC. 304. SAME DAY REGISTRATION.

‘‘(a) IN GENERAL.—

‘‘(1) REGISTRATION.—Notwithstanding section 8(a)(1)(D) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg–6), each State shall permit any eligible individual on the day of a Federal election and on any day when voting, including early voting, is permitted for a Federal election—

‘‘(A) to register to vote in such election at the polling place using a form that meets the requirements under section 9(b) of the National Voter Registration Act of 1993; and

‘‘(B) to cast a vote in such election.

‘‘(2) EXCEPTION.—The requirements under paragraph (1) shall not apply to a State in which, under a State law in effect continuously on and after the date of the enactment of this section, there is no voter registration requirement for individuals in the State with respect to elections for Federal office.

‘‘(b) ELIGIBLE INDIVIDUAL.—For purposes of this section, the term ‘eligible individual’ means, with respect to any election for Federal office, an individual who is otherwise qualified to vote in that election.

‘‘(c) EFFECTIVE DATE.—Each State shall be required to comply with the requirements of subsection (a) for the regularly scheduled general election for Federal office occurring in November 2010 and for any subsequent election for Federal office.’’.

(b) CONFORMING AMENDMENTS.—

(1) Section 401 of such Act (42 U.S.C. 15511) is amended by striking ‘‘and 303’’ and inserting ‘‘303, and 304’’.

(2) The table of contents of such Act is amended—

(A) by redesignating the items relating to sections 304 and 305 as relating to sections 305 and 306, respectively; and

(B) by inserting after the item relating to section 303 the following new item:

‘‘Sec. 304. Same day registration.’’.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 326—RECOGNIZING THE 40TH ANNIVERSARY OF THE GEORGE BUSH INTERCONTINENTAL AIRPORT IN HOUSTON, TEXAS

Mrs. HUTCHISON (for herself and Mr. CORNYN) submitted the following resolution; which was considered and agreed to:

S. RES. 326

Whereas the George Bush Intercontinental Airport in the City of Houston, Texas (referred to in this resolution as ''IAH''), was first opened for operation on June 8, 1969;

Whereas in 1997, IAH was named in honor of the Nation's 41st President, George Herbert Walker Bush, a longtime resident of Houston who, as a member of the Houston congressional delegation, was present at the 1969 opening of the airport;

Whereas IAH is the largest airport in Houston, serving over 43,000,000 passengers in 2008, is the 8th largest airport in the United States and the 16th largest in the world for total passengers served;

Whereas more than 700,000,000 people have passed through IAH's gates since its opening;

Whereas IAH has grown to become a world-class international gateway offering service to more than 109 domestic and 65 nonstop international destinations in over 32 countries;

Whereas in 1990, the city of Houston named the IAH international arrivals building, now the IAH Terminal D, in honor of the distinguished Congressman for the 18th District of Texas, George Thomas ''Mickey'' Leland, a renowned antipoverty activist who died tragically in 1989 while on a humanitarian visit to Ethiopia;

Whereas IAH operates the largest passenger international arrivals facility in the Nation and was selected by the Department of State and the Department of Homeland Security as the first ''Model Port'' for its efficiency in welcoming international passengers arriving in the United States;

Whereas IAH is a regional and world leader in air cargo processing, consolidation, and distribution;

Whereas IAH is a critical component of the Houston economy, supporting more than 151,000 jobs and contributing over $24,000,000,000 in economic benefits to the Houston region; and

Whereas IAH serves 30 airlines and is the headquarters and major hub for award-winning Continental Airlines, which is celebrating its 75th anniversary in 2009: Now, therefore, be it

Resolved that the Senate—

(1) recognizes the 40th anniversary of the founding of the George Bush Intercontinental Airport; and

(2) congratulates officials of the George Bush Intercontinental Airport, the Houston Airport System, and the city of Houston, Texas, for the airport's record of excellent service to the citizens of Houston and the national air transportation system.

SENATE RESOLUTION 327—SUPPORTING THE GOALS AND IDEALS OF NATIONAL DOMESTIC VIOLENCE AWARENESS MONTH 2009 AND EXPRESSING THE SENSE OF THE SENATE THAT CONGRESS SHOULD CONTINUE TO RAISE AWARENESS OF DOMESTIC VIOLENCE IN THE UNITED STATES AND ITS DEVASTATING EFFECTS ON FAMILIES AND COMMUNITIES, AND SUPPORT PROGRAMS DESIGNED TO END DOMESTIC VIOLENCE

Ms. KLOBUCHAR (for herself, Mr. LEAHY, Mr. KOHL, Mr. FEINGOLD, Mrs. GILLIBRAND, Mr. CARPO, Ms. COLLINS, Mr. SPECTER, Ms. LANDRIEU, Ms. STABENOW, Mr. KAUFMAN, Mr. DURBIN, Mr. BROWN, Mr. BURRIS, Mr. WHITEHOUSE, Mr. LAUTENBERG, Mrs. BOXER, and Mrs. HAGAN) submitted the following resolution; which was considered and agreed to:

S. RES. 327

Whereas the President has designated October 2009 as ''National Domestic Violence Awareness Month'';

Whereas domestic violence affects people of all ages as well as racial, ethnic, gender, economic, and religious backgrounds;

Whereas females are disproportionately victims of domestic violence, and 1 in 4 women will experience domestic violence at some point in her life;

Whereas on average, more than 3 women are murdered by their husbands or boyfriends in the United States every day;

Whereas in 2005, 1,181 women were murdered by an intimate partner constituting 78 percent of all intimate partner homicides that year;

Whereas women ages 16 to 24 experience the highest rates, per capita, of intimate partner violence;

Whereas 1 out of 3 Native American women will be raped and 6 out of 10 will be physically assaulted in their lifetimes;

Whereas the cost of intimate partner violence exceeds $5,800,000,000 each year, $4,100,000 of which is for direct medical and mental health care services;

Whereas ¼ to ½ of domestic violence victims report that they have lost a job due, at least in part, to domestic violence;

Whereas the annual cost of lost productivity due to domestic violence is estimated at $727,800,000 with over 7,900,000 paid workdays lost per year;

Whereas some landlords deny housing to victims of domestic violence who have protection orders or evict victims of domestic violence for seeking help after a domestic violence incident, such as by calling 911, or who have other indications that they are domestic violence victims;

Whereas 92 percent of homeless women experience severe physical or sexual abuse at some point in their lifetimes;

Whereas approximately 40 to 60 percent of men who abuse women also abuse children;

Whereas approximately 15,500,000 children are exposed to domestic violence every year;

Whereas children exposed to domestic violence are more likely to attempt suicide, abuse drugs and alcohol, run away from home, and engage in teenage prostitution;

Whereas one large study found that men exposed to physical abuse, sexual abuse, and adult domestic violence as children were almost 4 times more likely than other men to have perpetrated domestic violence as adults;

Whereas nearly 1,500,000 high school students nationwide experienced physical abuse from a dating partner in a single year;

Whereas 13 percent of teenage girls who have been in a relationship report being hit or hurt by their partners and 1 in 4 teenage girls has been in a relationship in which she was pressured by her partner into performing sexual acts;

Whereas adolescent girls who reported dating violence were 60 percent more likely to report one or more suicide attempts in the past year;

Whereas there is a need for middle schools, secondary schools, and post-secondary schools to educate students about the issues of domestic violence, sexual assault, dating violence, and stalking;

Whereas 88 percent of men in a national poll reported that they think that our society should do more to respect women and girls;

Whereas a recently released multi-State study shows conclusively that the Nation's domestic violence shelters are addressing victims' urgent and long-term needs and are helping victims protect themselves and their children;

Whereas a 2008 National Census Survey reported that 60,799 adults and children were served by domestic violence shelters and programs around the Nation in a single day;

Whereas those same understaffed programs were unable to meet 8,927 requests for help that day;

Whereas there is a need to increase funding for programs aimed at intervening and preventing domestic violence in the United States; and

Whereas individuals and organizations that are dedicated to preventing and ending domestic violence should be recognized: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of National Domestic Violence Awareness Month 2009; and

(2) expresses the sense of the Senate that Congress should continue to raise awareness of domestic violence in the United States and its devastating effects on families and communities, and support programs designed to end domestic violence.

AMENDMENTS SUBMITTED AND PROPOSED

SA 2708. Mr. CASEY (for himself and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 2699 submitted by Mr. ISAKSON (for himself and Mr. DODD) and intended to be proposed to the bill H.R. 3548, to amend the Supplemental Appropriations Act, 2008 to provide for the temporary availability of certain additional emergency unemployment compensation, and for other purposes; which was ordered to lie on the table.

SA 2709. Mr. UDALL of Colorado (for himself, Mr. SCHUMER, Mr. TESTER, Mr. MERKLEY, Mr. WHITEHOUSE, and Mr. LEVIN) submitted an amendment intended to be proposed by him to the bill H.R. 3548, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2708. Mr. CASEY (for himself and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 2699 submitted by Mr. ISAKSON (for himself and Mr. DODD) and intended to be proposed to the bill H.R. 3548, to amend the Supplemental Appropriations Act, 2008 to provide for