

Court to exercise jurisdiction over appeals challenging the constitutionality of the Program.

More recently, the Court refused to decide whether the Foreign Sovereign Immunities Act shields Saudi Arabia and its officials from damages suits arising from their apparent complicity in the 9–11 terrorist attacks. Last year the United States Court of Appeals for the Second Circuit ruled (incorrectly, in my view) that the Act immunizes them from suit. The victims petitioned the Court for certiorari. In its certiorari-stage brief, the Solicitor General conceded that the Second Circuit had misinterpreted the Act. But late last year the Court denied the petition without dissent and, as usual, without explanation. (In re Terrorist Attacks on September 11, 2001 (No. 08–640).) The result will be to deny legal redress to thousands of 9–11's victims.

No less important, the Court also continues to leave too many circuit splits unresolved. The article in the *Duke Law Journal* I cited a moment ago notes that the Roberts Court "is unable to address even half" of the circuit splits "identified by litigants." (George and Guthrie, *supra*, at 1449.) Mr. Starr notes that the "Supreme Court by and large does not even pretend to maintain the uniformity of federal law." (Starr, *supra*, at 1364.) Among the questions on which the circuits have recently split are: May jurors consult the Bible during their deliberations in a criminal case and, if so, under what circumstances? Must a civil lawsuit predicated on a "state secret" be dismissed? Does the spouse of a United States citizen remain eligible for an immigrant visa after the citizen dies? Must an employee who alleges that he was unlawfully discriminated against for claiming benefits or exercising other rights under an employer-sponsored healthcare or pension plan "exhaust administrative remedies" (that is, first allow the plan to address his claim) before filing suit in court? When does a collective bargaining agreement confer on retirees the right to lifetime healthcare benefits? May a federal court "toll" the statute of limitations in a suit brought against the federal government under the Federal Tort Claims Act if the plaintiff establishes that the government withheld information on which his claim is based? Is a defendant convicted of drug trafficking with a gun subject to additional prison time under a penalty-enhancing statute, or is his sentence limited to the period of time provided for in the federal drug-trafficking law? When may a federal agency withhold information in response to a FOIA request or court subpoena on the ground that it would disclose the agency's "internal deliberations." Should a federal admiralty claim, to which a jury trial right does not attach, be tried to a jury if it is joined with a non-admiralty claim?

Two developments since I gave my last floor speech have served only to reinforce my conclusion that public scrutiny must be brought to bear on the Court.

The first is the Court's well-documented disregard of precedent, which the Court took to new levels during its 2008 Term. (E.g., Erwin Chemerinsky, "Forward, Supreme Court Review," 43 *Tulsa L. Rev.* 627 (2008).) Consider three especially significant opinions handed down just this year: (1) *14 Penn Plaza, LLC v. Pyett*, which held that an employee can be compelled to arbitrate a statutory discrimination claim under a collectively bargained-for arbitration clause to which he or she did not consent, contrary to the Court's thirty-five-year-old decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974); (2) *Gross v. FBL Financial Services, Inc.* (2009), which held that in age discrimination cases, unlike cases brought under Title

VII of the Civil Rights Act of 1964, the employer never bears the burden of proof no matter how compelling a showing of discrimination the plaintiff makes, contrary to the Court's thirty-year-old decision in *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); and (3) *Ashcroft v. Iqbal*, which gave license to district court judges to evaluate the "plausibility" of a complaint's allegations, contrary to well-established rules of pleadings that date back at least fifty years to *Conley v. Gibson*, 355 U.S. 41 (1957). Legislation to overturn each of these decisions is now pending.

Each of these examples reflects a second recent trend: the Court's bias in favor of corporate interests over the public interest. This has been the subject of extensive commentary. One commentator, Professor Jeffrey Rosen, has characterized the Court as "Supreme Court, Inc." as a result of its decidedly pro-business rulings. (Jeffrey Rosen, "Supreme Court, Inc.," *The New York Times*, Mar. 16, 2008.) Another, Professor Erwin Chemerinsky, has characterized the current Court as the "most pro-business Court of any since the mid-1930's." (Chemerinsky, "The Roberts Court at Age Three," 54 *Wayne Law Review* 947 (2008).)

A final point: While the Justices have so far refused to appear on television during open courtroom proceedings, they have not been shy about appearing on television outside the courtroom. Chief Justice Roberts and Stevens have appeared for interviews on ABC's "Prime Time," Justice Ginsburg on CBS News, Justice Breyer on "Fox News Sunday," and Justices Scalia and Thomas on CBS's "60 Minutes." All of the Justices appeared for interviews that C-SPAN aired recently during its "Supreme Court Week" series. Justice Breyer and Auto even appeared on television to debate how the Court should interpret the Constitution and statutes. We cannot accept the Justices' plea for anonymity when they so regularly appear before the camera.

I note in conclusion that, since my last floor speech, the media has continued to call for the televising of the Supreme Court's proceedings. At least a dozen editorials have appeared during 2009 alone. (E.g., "Televised justice would be for all," *Boston Herald*, August 7, 2009; "Cameras in the court," *USA Today*, July 13, 2009; "Camera shy justice: The Supreme Court should be televised," *Pittsburgh Post Gazette*, July 7, 2009; "Supreme Court TV," *Los Angeles Times*, June 11, 2009.) One editorial writer, *The National Law Journal's* Tony Mauro, makes the case especially well, when he writes: "The Internet Age demands transparency from all institutions all the time. Any government body that lags behind is in danger of losing legitimacy, relevance and, at the very least, public awareness. . . . It does not take a battery of surveys to realize that the public will learn and understand more about the Supreme Court . . . if its proceedings are on view nationwide." ("Court, cameras, action! Souter's departure could clear the way for far more transparency at the Supreme Court," *USA Today*, May 27, 2009.) A list of 2009 editorials, as compiled by C-SPAN, is appended.

Television coverage of the Supreme Court is long overdue. It is time for Congress to act. I urge my colleagues to support the resolution I am introducing today.

## SENATE RESOLUTION 340—EX-PRESSING SUPPORT FOR DESIGNATION OF A NATIONAL VETERANS HISTORY PROJECT WEEK TO ENCOURAGE PUBLIC PARTICIPATION IN A NATIONWIDE PROJECT THAT COLLECTS AND PRESERVES THE STORIES OF THE MEN AND WOMEN WHO SERVED OUR NATION IN TIMES OF WAR AND CONFLICT

Mr. CRAPO (for himself and Mrs. LINCOLN) submitted the following resolution; which was referred to the Committee on Veterans' Affairs:

S. RES. 340

Whereas the Veterans History Project was established by a unanimous vote of the United States Congress to collect and preserve the wartime stories of American veterans;

Whereas Congress charged the American Folklife Center at the Library of Congress to undertake the Veterans History Project and to engage the public in the creation of a collection of oral histories that would be a lasting tribute to individual veterans and an abundant resource for scholars;

Whereas there are 17,000,000 wartime veterans in America whose stories can educate people of all ages about important moments and events in the history of the United States and the world and provide instructive narratives that illuminate the meanings of "service", "sacrifice", "citizenship", and "democracy";

Whereas the Veterans History Project relies on a corps of volunteer interviewers, partner organizations, and an array of civic minded institutions nationwide who interview veterans according to the guidelines it provides;

Whereas increasing public participation in the Veterans History Project will increase the number of oral histories that can be collected and preserved and increase the number of veterans it so honors; and

Whereas "National Veterans Awareness Week" commendably preceded this resolution in the years 2005 and 2006: Now, therefore, be it

*Resolved*, That the Senate—

(1) recognizes "National Veterans Awareness Week";

(2) supports the designation of a "National Veterans History Project Week";

(3) calls on the people of the United States to interview at least one veteran in their families or communities according to guidelines provided by the Veterans History Project; and

(4) encourages local, State, and national organizations, along with Federal, State, city, and county governmental institutions, to participate in support of the effort to document, preserve, and honor the service of American wartime veterans.

## SENATE RESOLUTION 341—SUPPORTING PEACE, SECURITY, AND INNOCENT CIVILIANS AFFECTED BY CONFLICT IN YEMEN

Mr. CARDIN (for himself and Mr. LUGAR) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 341

Whereas the people and government of Yemen currently face tremendous security challenges, including the presence of a substantial number of al Qaeda militants, a rebellion in the northern part of the country,

unrest in southern regions, and piracy in the Gulf of Aden;

Whereas these security challenges are compounded by a lack of governance throughout portions of the country;

Whereas this lack of governance creates a de facto safe haven for al Qaeda and militant forces in regions of Yemen;

Whereas Yemen also faces significant development challenges, reflected in its ranking of 140 out of 182 countries in the United Nations Development Program's 2009 Human Development Index;

Whereas Yemen is also confronted with limited and rapidly depleting natural resources, including oil, which accounts for over 75 percent of government revenue, and water, ⅓ of which goes to the cultivation of qat, a narcotic to which a vast number of Yemenis are addicted;

Whereas government subsidies are contributing to the depletion of Yemen's scarce resources;

Whereas the people of Yemen suffer from a lack of certain government services, including a robust education and skills training system;

Whereas the Department of State's 2009 International Religious Freedom Report notes that nearly all of the once-sizeable Jewish population in Yemen has emigrated, and, based on fears for the Jewish community's safety in the country, the United States Government has initiated a special process to refer Yemeni Jews for refugee resettlement in the United States;

Whereas women in Yemen have faced entrenched discrimination, obstacles in accessing basic education, and gender-based violence in their homes, communities, and workplaces while little is done to enforce or bolster the equality of women;

Whereas these challenges pose a threat not only to the Republic of Yemen, but to the region and to the national security of the United States;

Whereas, to the extent that Yemen serves as a base for terrorist operations and recruitment, these threats must be given sufficient consideration in the global strategy of the United States to combat terrorism;

Whereas this threat has materialized in the past, including the March 18 and September 17, 2008, attacks on the United States Embassy in Sana'a and the October 12, 2000, attack on the U.S.S. *Cole* while it was anchored in the Port of Aden, as well as numerous other terrorist attacks;

Whereas the population of Yemen has suffered greatly from conflict and underdevelopment in Yemen;

Whereas up to 150,000 civilians have fled their homes in northern Yemen since 2004 in response to conflict between Government of Yemen forces and al-Houthi rebel forces; and

Whereas the people and government of the United States support peace in Yemen and improved security, economic development, and basic human rights for the people of Yemen: Now, therefore, be it

*Resolved*, That the Senate—

(1) supports the innocent civilians in Yemen, especially displaced persons, who have suffered from instability, terrorist operations, and chronic underdevelopment in Yemen;

(2) recognizes the serious threat instability and terrorism in Yemen pose to the security of the United States, the region, and the population in Yemen;

(3) calls on the President to give sufficient weight to the situation in Yemen in efforts to prevent terrorist attacks on the United States, United States allies, and Yemeni civilians;

(4) calls on the President to promote economic and political reforms necessary to ad-

vance economic development and good governance in Yemen;

(5) applauds steps that have been taken by the President and the United Nations High Commissioner for Refugees to assist displaced persons in Yemen;

(6) urges the Government of Yemen and rebel forces to immediately halt hostilities, allow medical and humanitarian aid to reach civilians displaced by conflict, and create an environment that will enable a return to normal life for those displaced by the conflict; and

(7) calls on the President and international community to use all appropriate measures to assist the people of Yemen to prevent Yemen from becoming a failed state.

Mr. CARDIN. Mr. President, today I would like to draw attention to a dangerous situation that has implications for the national security of the U.S. and our allies, a situation involving dire humanitarian circumstances, with over 150,000 displaced persons since 2004. I am speaking about the situation in Yemen.

Senator LUGAR and I are introducing a resolution supporting peace, security, and the innocent civilians affected by conflict in Yemen. This resolution calls on the President and international community to use all appropriate measures to prevent Yemen from becoming a failed state.

The gravity of the challenges Yemen faces should not be ignored. To document a few of these challenges: Yemen is home to a substantial number of al-Qaeda militants, a rebellion in the northern part of the country, unrest in southern regions, and piracy in the Gulf of Aden. Yemen has limited and rapidly depleting natural resources including oil, which accounts for over 75 percent of government revenue, and water. Yemen is underdeveloped, ranking 140th out of 182 countries in the United Nations Development Program's 2009 Human Development Index. Thousands of Yemenis are currently displaced as a result of the ongoing conflict between the Government of Yemen and al-Houthi rebel forces. Regions of Yemen have a large degree of lawlessness; religious minorities—particularly the Jewish population—have emigrated due to safety concerns; and human rights violations persist.

The U.S., the international community, and the people of Yemen must do all that we can to prevent Yemen from becoming a failed state. Disrupting, dismantling, and defeating al-Qaeda and violent extremism requires a global strategy that includes preventing Yemen from serving as a base for terrorist operations conducted elsewhere. Americans and our allies are all too familiar with the dangers of terrorists operating unimpeded. The March 18 and September 17, 2008, attacks on the U.S. Embassy in Sana'a and the October 12, 2000 attack on the U.S.S. *Cole* remind us of this threat specifically in Yemen.

Aside from Yemen's impact on the national security of America and our allies, we cannot ignore the tremendous hardships many in Yemen currently endure. Yemenis deserve to have

basic security, basic human rights, and their basic needs met. We need to stand with those who want to live in peace and achieve improved living conditions. I am especially concerned with the plight of those displaced by conflict in Yemen, and I applaud efforts taken by the Obama administration and United Nations High Commissioner for Refugees to assist these displaced persons. I urge the Government of Yemen and rebel forces to halt hostilities, allow medical and humanitarian aid to reach civilians displaced by conflict, and create an environment that will enable a return to normal life for internally displaced persons in Yemen.

I would like to thank the senior Senator from Indiana, who is the Ranking Member of the Senate Foreign Relations Committee, for cosponsoring this resolution on this important issue.

SENATE RESOLUTION 342—RECOGNIZING NATIONAL AMERICAN INDIAN AND ALASKA NATIVE HERITAGE MONTH AND CELEBRATING THE HERITAGE AND CULTURE OF AMERICAN INDIANS AND ALASKA NATIVES AND THE CONTRIBUTIONS OF AMERICAN INDIANS AND ALASKA NATIVES TO THE UNITED STATES

Mr. DORGAN (for himself, Mr. BARRASSO, Mr. BAUCUS, Mr. BEGICH, Mr. BINGAMAN, Ms. CANTWELL, Mr. CONRAD, Mr. CRAPO, Mr. FRANKEN, Mr. JOHNSON, Mr. MCCAIN, Mr. MERKLEY, Ms. MURKOWSKI, Mrs. MURRAY, Mr. TESTER, Mr. THUNE, Mr. UDALL of Colorado, and Mr. UDALL of New Mexico) submitted the following resolution; which was considered and agreed to:

S. RES. 342

Whereas from November 1, 2009, through November 30, 2009, the United States celebrates National American Indian and Alaska Native Heritage Month;

Whereas American Indians and Alaska Natives are descendants of the original, indigenous inhabitants of what is now the United States;

Whereas, in 2000, the United States Census Bureau reported that there were more than 4,000,000 people in the United States of American Indian and Alaska Native descent;

Whereas, on December 2, 1989, the Committee on Indian Affairs of the Senate held a hearing exploring the contributions of the Iroquois Confederacy, and its influence on the Founding Fathers in the drafting of the Constitution of the United States with the concepts of freedom of speech, the separation of governmental powers, and checks and balances among the branches of government;

Whereas the Senate has reaffirmed that a major national goal of the United States is to provide the resources, processes, and structure that will enable Indian Tribes and tribal members to obtain the quantity and quality of health care services and opportunities that will eliminate the health disparities between American Indians and the general population of the United States;

Whereas Congress recently reaffirmed its trust responsibility to improve the housing conditions and socioeconomic status of American Indians and Alaska Natives by providing affordable homes in a safe and healthy environment;