operation of the best carbon dioxide storage facilities.

(D) ENHANCED HYDROCARBON RECOVERY.—The Secretary shall determine the most appropriate approach for charging a fee on the quantity of carbon dioxide injected into oil and gas fields, after taking into consideration—

(i) the quantity of carbon dioxide that is permanently stored;

(ii) whether or not the enhanced hydrocarbon recovery operation is also being operated as a carbon dioxide storage facility; and

(iii) any other factors that the Secretary determines to be appropriate.

(E) REVIEW AND ADJUSTMENT.—The Secretary shall, on at least an annual basis, review the Fund balance—

(i) to ensure that there are sufficient amounts in the Fund to make the payments required under subsection (d)(3)(A); and

(ii) to determine whether or not to increase or decrease the amount, or discontinue collection, of the fee, after taking into consideration—

(I) the annual quantity of carbon dioxide injected by carbon dioxide storage facilities;

(II) the number and estimated value of claims against the Fund; and

(III) any other relevant factors, as determined by the Secretary.

(3) DEPOSIT.—Notwithstanding section 3302 of section 31, United States Code, the fees collected under paragraph (1) shall be deposited in the Fund.

(d) CARBON STORAGE TRUST FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund, to be known as the ''Carbon Storage Trust Fund'', consisting of such amounts as are deposited under subsection (c)(3).

(2) USE OF FUND.—

(A) IN GENERAL.—Amounts in the Fund shall be made available, without further appropriation or fiscal year limitation—

(i) to the Secretary for the payment of civil claims from a carbon dioxide storage facility that are brought after a certificate of closure for the carbon dioxide storage facility has been issued;

(ii) to the Secretary for long-term stewardship after the date of issuance of a certificate for closure; and

(iii) to the Secretary or other appropriate regulatory authority to pay any reasonable and verified administrative costs incurred by the Secretary or regulatory authority in carrying out the Program.

(B) LIMITATION.—Amounts in the Fund shall only be used for the purposes described in clause (i), (ii), or (iii) of subparagraph (A).

(C) LIMITATION ON PAYMENTS.—

(i) IN GENERAL.—Subject to clause (ii), an aggregate claim for damages brought under subparagraph (A)(i) shall be limited to an amount to be established by the Secretary as soon as practicable after the date of enactment of this Act, based on mechanisms such as—

(I) actuarial modeling of probable damage; and

(II) net present value analysis.

(ii) CONGRESSIONAL ACTION.—If estimated or actual aggregate damages exceed the amount established under clause (i)—

(I) the Secretary shall notify Congress; and

(II) on receipt of notice under subclause (I), Congress may provide for payments in excess of that amount, in accordance with guidelines established by Congress by law.

(D) EXCEPTION FOR GROSS NEGLIGENCE AND INTENTIONAL MISCONDUCT.—Notwithstanding subparagraph (A), no amounts in the Fund shall be used to pay a claim for liability arising out of conduct of an operator of a carbon dioxide storage facility that is grossly negligent or that constitutes intentional misconduct, as determined by the Secretary.

(E) PROCEDURES FOR ADJUDICATION OF CLAIMS.—Claims of damage brought under subparagraph (A)(i) relating to carbon dioxide in a carbon dioxide storage facility subject to a certificate of closure shall be—

(i) filed in the United States Court of Federal Claims; and

(ii) adjudicated in accordance with procedures established by the United States Court of Federal Claims.

(3) INITIAL FUNDING.—

(A) IN GENERAL.—If sufficient amounts are not available in the Fund to cover potential claims during the first years of the Program, the Secretary may request from the Secretary of the Treasury an interest-bearing advance in funding from the Treasury to carry out the Program, subject to subparagraph (B).

(B) TERMS AND CONDITIONS.—The terms and conditions for the repayment of an advance under subparagraph (A) shall be specified by the Secretary of the Treasury.

SEC. 6. LIMITATION ON CIVIL CLAIMS.

(a) IN GENERAL.—Except as provided in subsection (b), on issuance of a certificate of closure, a civil claim or claim for the performance of long-term stewardship responsibilities under applicable Federal and State law, may not be brought against—

(1) the operator or owner of the carbon dioxide storage facility subject to the certificate of closure;

(2) the generator of the carbon dioxide stored in the applicable geological storage unit; or

(3) the owner or operator of the pipeline used to transport the carbon dioxide to the carbon dioxide storage facility subject to the certificate of closure.

(b) EXCEPTION.—Subsection (a) shall not apply in the case of a civil claim involving the gross negligence or intentional misconduct of an owner, operator, or generator.

Mr. ENZI. Mr. President, we need clean energy. We need cheap energy. We need abundant energy from right here at home. Why not concentrate some of our efforts on hitting a triple play?

Coal is our Nation's most abundant energy source. It provides more than 50 percent of our Nation's electricity today and makes electricity more affordable for millions of Americans. It provides for thousands of well paying American jobs and is an essential part of my home State's economy.

Unfortunately, in the discussions surrounding climate change, some have suggested that we should end our Nation's use of coal. Because of the abundant, cost-effective nature of this resource, that doesn't make sense. Instead of talking about eliminating one of our country's most important energy sources, we should be talking about how we can make coal cleaner.

An essential element of the effort to make coal cleaner will be the development of carbon capture and storage, CCS, technology. There are many pieces to that effort, and today, Senator CASEY and I have introduced The Carbon Storage Stewardship Trust Fund Act of 2009 to address one issue with CCS liability for the stored CO_2.

Our legislation sets up a framework that answers the question of who is responsible for the CO_2 once it is placed underground. The Carbon Storage Stewardship Trust Fund Act of 2009 requires companies injecting CO_2 into the ground to obtain private liability insurance for a period of time. After the CO_2 is injected and the injection site is certified as closed by the Federal Government, liability for the CO_2 is transferred to the Federal Government.

To cover any claims that may arise from damages caused by the injected CO_2, the bill sets up a Federal trust fund that is paid for through a small fee charged for each ton of CO_2 that is injected. Additionally, it provides a method for compensation for those damages.

While this legislation is far from everything we need to make commercial CCS a reality, it is an important step and answers an important question about long-term liability of CO_2. I appreciate Senator CASEY's leadership on this issue and look forward to working with him and other Members of the Senate to move this legislation forward.

Mr. SPECTER:

S. 1504. A bill to provide that Federal courts shall not dismiss complaints under rule 12(b)(6) or (e) of the Federal Rules of Civil Procedure, except under the standards set forth by the Supreme Court of the United States in *Conley* v. *Gibson*, 355 U.S. 41 (1957); to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I seek recognition to speak on legislation I am introducing that will restore the system of notice pleading that has served our Federal judicial system well since 1938, the year the Federal Rules of Civil Procedure were adopted.

Civil litigation in our Federal system is commenced by the filing a complaint that puts the defendant on notice of the plaintiffs claims. Rule 8(a)(2) of the Federal Rules of Civil Procedure provides that a complaint need only contain a ''short and plain statement of the claim showing the pleader'', usually the plaintiff, ''is entitled to relief.'' This is not a demanding standard. An appendix to the Rules includes a form complaint for negligence that the drafters of Rule 8 obviously thought would satisfy Rule 8's standard. That complaint, in relevant part, alleges only that ''[o]n June 1, 1936, in a public highway called Boylston Street in Boston Massachusetts, defendant negligently drove a motor vehicle against plaintiff who was crossing the highway.''

The Federal Rules require the court to await the submission of the plaintiff's evidence—first at the summary-judgment stage and, if summary judgment is not granted, then at trial—before evaluating or passing on the truth of the complaint's allegations. It's only sensible that courts do so: Not until a plaintiff has had access to relevant information in the defendant's possession during the discovery process that follows the filing of a complaint as a matter of right can the plaintiff normally offer evidence to support the complaint's allegations.

For over 70 years following the adoption of the Federal Rules, the Supreme Court of the U.S. consistently and faithfully implemented Rule 8's notice-pleading language. Its leading decision on the subject, *Conley* v. *Gibson*, 355 U.S. 41, 1957, prohibited federal courts from dismissing a complaint ''for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief.''

Two years ago in *Bell Atlantic Corporation* v. *Twombly*, 550 U.S. 544, 2007, the Court jettisoned the standard set forth in Conley and announced that henceforth it would require not only factual specificity in complaints not previously required of plaintiffs, but also that a complaint's allegation of wrongdoing appear ''plausible'' to the court. This year in *Ashcroft* v. *Iqbal*, 129 S. Ct. 1937, 2009, the Supreme Court significantly expanded upon Twombly by, to quote Professor Stephen Burbank of the University of Pennsylvania Law School, effectively authorizing federal judges to indulge their ''subject judgments'' in evaluating an allegation's plausibility. According to an article that just appeared in The York Times, Justice Ruth Bader Ginsburg recently told a group of Federal judges that, as a result of these two cases, the Supreme Court has ''messed up the federal rules'' governing pleading.

When it passed the Rules Enabling Act, Congress established a carefully designed process for amending the Federal Rules of Civil Procedure. The process ends with the Supreme Court's presentation of a proposed rule change to Congress for approval. In Twombly and Ashcroft the Court effectively end ran that process.

The effect of the Court's actions will no doubt be to deny many plaintiffs with meritorious claims access to the Federal courts and, with it, any legal redress for their injuries. I think that is an especially unwelcome development at a time when, with the litigating resources of our executive-branch and administrative agencies stretched thin, the enforcement of Federal antitrust, consumer protection, civil rights and other laws that benefit the public will fall increasingly to private litigants.

The Notice Pleading Restoration Act will require the Federal courts to test the sufficiency of a complaint's allegations under the well-established standards that prevailed in the Federal courts until Twombly. I urge its passage.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 220—SUPPORTING THE DESIGNATION OF SEPTEMBER AND ''NATIONAL ATRIAL FIBRILLATION AWARENESS MONTH'' AND ENCOURAGING EFFORTS TO EDUCATE THE PUBLIC ABOUT ATRIAL FIBRILLATION

Mr. FEINGOLD (for himself, Ms. COLLINS, Mr. DORGAN, and Mr. CRAPO) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 220

Whereas atrial fibrillation is a cardiac condition in which electrical pulses disrupt the regular beating of the atria in the heart, hampering the ability of the atria to fill the ventricles with blood, and subsequently causing blood to pool in the atria and form clots;

Whereas atrial fibrillation is the most common cardiac malfunction and affects at least 2,200,000 people in the United States, with increased prevalence anticipated as the population of the United States ages;

Whereas atrial fibrillation is associated with an increased, long-term risk of stroke, heart failure, and mortality from all causes, especially among women;

Whereas atrial fibrillation accounts for approximately ⅓ of hospitalizations for cardiac rhythm disturbances;

Whereas, according to the American Heart Association, 3 to 5 percent of people in the United States aged 65 and older are estimated to have atrial fibrillation;

Whereas atrial fibrillation is recognized as a major contributor to strokes, with an estimated 15 to 20 percent of strokes occurring in people afflicted with atrial fibrillation;

Whereas it is estimated that treating atrial fibrillation costs approximately $3,600 per patient annually for a total cost burden in the United States of approximately $15,700,000,000;

Whereas obesity is a significant risk factor for atrial fibrillation;

Whereas better education for patients and health care providers is needed in order to ensure timely recognition of atrial fibrillation symptoms;

Whereas more research into effective treatments for atrial fibrillation is needed; and

Whereas September is an appropriate month to observe as National Atrial Fibrillation Awareness Month: Now, therefore, be it

Resolved, That the Senate—

(1) supports the designation of September as ''National Atrial Fibrillation Awareness Month'';

(2) supports efforts to educate people about atrial fibrillation;

(3) recognizes the need for additional research into treatment for atrial fibrillation; and

(4) encourages the people of the United States and interested groups to observe and support National Atrial Fibrillation Awareness Month through appropriate programs and activities that promote public awareness of atrial fibrillation and potential treatments for atrial fibrillation.

SENATE RESOLUTION 221—EXPRESSING SUPPORT FOR THE GOALS AND IDEALS OF THE FIRST ANNUAL NATIONAL WILD HORSE AND BURRO ADOPTION DAY TAKING PLACE ON SEPTEMBER 26, 2009

Mr. REID (for himself, Mrs. FEINSTEIN, and Mr. ENSIGN) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources:

S. RES. 221

Whereas, in 1971, in Public Law 92–195 (commonly known as the ''Wild Free-Roaming Horses and Burros Act'') (16 U.S.C. 1331 et seq.), Congress declared that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West;

Whereas, under that Act, the Secretary of the Interior and the Secretary of Agriculture have responsibility for the humane capture, removal, and adoption of wild horses and burros;

Whereas the Bureau of Land Management and the Forest Service are the Federal agencies responsible for carrying out the provisions of the Act;

Whereas a number of private organizations will assist with the adoption of excess wild horses and burros, in conjunction with the first National Wild Horse and Burro Adoption Day; and

Whereas there are approximately 31,000 wild horses in short-term and long-term holding facilities, with 18,000 young horses awaiting adoption: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals of a National Wild Horse and Burro Adoption Day to be held annually in coordination with the Secretary of Interior and the Secretary of Agriculture;

(2) recognizes that creating a successful adoption model for wild horses and burros is consistent with Public Law 92-195 (commonly known as the ''Wild Free-Roaming Horses and Burros Act'') (16 U.S.C. 1331 et seq.) and beneficial to the long-term interests of the people of the United States in protecting wild horses and burros; and

(3) encourages citizens of the United States to adopt a wild horse or burro so as to own a living symbol of the historic and pioneer spirit of the West.

SENATE CONCURRENT RESOLUTION 34—EXPRESSING THE SENSE OF CONGRESS THAT A COMMEMORATIVE POSTAGE STAMP SHOULD BE ISSUED TO HONOR THE CREW OF THE USS MASON DE–529 WHO FOUGHT AND SERVED DURING WORLD WAR II

Mr. BURRIS submitted the following concurrent resolution; which was referred to the Committee on Homeland Security and Governmental Affairs:

S. CON. RES. 34

Whereas the USS Mason DE–529 was the only United States Navy destroyer with a predominantly black enlisted crew during World War II;

Whereas the integration of the crew of the USS Mason DE–529 was the role model for racial integration on Navy vessels and served as a beacon for desegregation in the Navy;

Whereas the integration of the crew signified the first time that black citizens of the United States were trained to serve in ranks other than cooks and stewards;

Whereas the USS Mason DE–529 served as a convoy escort in the Atlantic and Mediterranean Theatres during World War II;

Whereas, in September 1944, the crew of the USS Mason DE–529 helped save Convoy NY119, ushering the convoy to safety despite a deadly storm in the Atlantic Ocean;

Whereas, in 1998, the Secretary of the Navy John H. Dalton made an official decision to name an Arleigh Burke Class Destroyer the USS Mason DDG-87 in order to honor the USS Mason DE–529;

Whereas, in 1994, President Clinton awarded the USS Mason DE–529 a long-overdue commendation, presenting the award to 67 of the surviving crewmembers; and

Whereas commemorative postage stamps have been issued to honor important vessels, aircrafts, and battles in the history of the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the United States Postal Service should issue a postage stamp honoring the crew of the USS Mason DE–529 who fought and served during World War II; and

(2) the Citizens' Stamp Advisory Committee should recommend to the Postmaster General that such a stamp be issued.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1690. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1390, to authorize appropriations for fiscal year 2010 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table.

SA 1691. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1692. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1693. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1694. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1695. Mr. INHOFE submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1696. Mr. ENZI submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1697. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1698. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1699. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1700. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1701. Mr. JOHANNS submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1702. Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1703. Ms. LANDRIEU (for herself and Ms. SNOWE) submitted an amendment intended to be proposed by her to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1704. Mr. CARPER (for himself, Ms. COLLINS, and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1705. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1706. Mr. DORGAN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1707. Mrs. SHAHEEN submitted an amendment intended to be proposed by her to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1708. Mr. BURR submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1709. Mr. WICKER submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1710. Mr. LEVIN (for himself, Mr. MCCAIN, and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1711. Mr. ALEXANDER submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1712. Mr. MCCAIN (for himself, Mr. LIEBERMAN, Mr. GRAHAM, Mr. KAUFMAN, and Mr. CASEY) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1713. Mrs. GILLIBRAND submitted an amendment intended to be proposed by her to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1714. Mrs. GILLIBRAND submitted an amendment intended to be proposed by her to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1715. Mrs. GILLIBRAND submitted an amendment intended to be proposed by her to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1716. Mr. LEAHY (for himself, Mr. BINGAMAN, and Mr. KENNEDY) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1717. Mr. FRANKEN (for himself, Mr. ISAKSON, Ms. LANDRIEU, Mr. GRAHAM, Mr. BROWN, and Mr. BEGICH) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1718. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1719. Mr. PRYOR (for himself and Mr. CORKER) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1720. Mr. BAYH submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1721. Mr. BAYH submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1722. Mr. BAYH (for himself and Mr. GRAHAM) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1723. Mr. UDALL, of Colorado submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1724. Mr. UDALL, of Colorado submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1725. Mr. SCHUMER (for himself, Mr. JOHANNS, Mr. WHITEHOUSE, Mr. DEMINT, Mr. COBURN, Mr. LUGAR, and Ms. MURKOWSKI) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1726. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1727. Mr. DEMINT (for himself and Mrs. SHAHEEN) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1728. Mr. DEMINT submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1729. Mr. BAUCUS (for himself and Mr. TESTER) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1730. Mrs. GILLIBRAND submitted an amendment intended to be proposed by her to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1731. Mr. FEINGOLD (for himself and Mr. WYDEN) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1732. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1733. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1734. Mr. BURRIS submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1735. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1736. Ms. MURKOWSKI (for herself and Mr. BEGICH) submitted an amendment intended to be proposed by her to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1737. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1738. Mr. CASEY (for himself and Mr. BAYH) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1739. Mr. HATCH (for himself, Mr. WEBB, Mr. BENNETT, Mr. VOINOVICH, and Ms. COLLINS) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1740. Mr. HATCH (for himself and Mr. BENNETT) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1741. Mr. RISCH (for himself, Mr. CRAPO, and Mr. BOND) submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.

SA 1742. Mr. THUNE submitted an amendment intended to be proposed by him to the bill S. 1390, supra; which was ordered to lie on the table.