

From this bill we can expect to see a surge in American adoptions globally, and a decrease in global child homelessness and poverty. By implementing this bill we are able to create jobs for government workers processing individual cases, child care providers, school teachers and many others who provide direct services aimed at youth.

I stand today with Senator AMY KLOBUCHAR and other members of Congress re-affirming my support of S. 1376. By enacting this legislation, we are able to boost the morale of frustrated parents who may have spent years in the adoptive process and provide children with stable homes, all the while, creating jobs in communities at a time when they are needed the most.

Mr. Speaker, I ask my colleagues to join me in support of S. 1376.

Mr. POE of Texas. I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, S. 1376.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

#### ADJUSTING TIME PERIODS FOR SERVICEMEMBERS ABROAD IN CASES REGARDING PERMANENT RESIDENT STATUS

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6396) to amend the Immigration and Nationality Act to toll, during active-duty service abroad in the Armed Forces, the periods of time to file a petition and appear for an interview to remove the conditional basis for permanent resident status.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. POE) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

#### GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I seek to withdraw the motion.

The SPEAKER pro tempore. The motion with respect to H.R. 6396 is withdrawn.

#### MARINE SERGEANT MICHAEL H. FERSCHKE, JR. MEMORIAL ACT

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and pass the bill

(H.R. 6397) to amend section 101(a)(35) of the Immigration and Nationality Act to provide for a marriage for which the parties are not physically in the presence of each other due to service abroad in the Armed Forces of the United States.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 6397

*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 "Marine Sergeant Michael H. Ferschke, Jr. Memorial Act".

#### SEC. 2. MILITARY MARRIAGES LACKING PHYSICAL PRESENCE.

Section 101(a)(35) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(35)) is amended by inserting before the period at the end "(except for failure to consummate the marriage caused by physical separation due to the service abroad of one of the contracting parties in an active-duty status in the Armed Forces of the United States)".

#### SEC. 3. COMPLIANCE WITH PAYGO.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled "Budgetary Effects of PAYGO Legislation" for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, provided that such statement has been submitted prior to the vote on passage.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. POE) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

#### GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill before the House.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker and Members, the Marine Sergeant Michael Ferschke, Jr. Memorial Act, introduced by Representative JOHN DUNCAN, is a simple but, I think, important measure that will help active duty members of our Armed Forces serving overseas—as well as their spouses. Under current immigration law, when a marriage takes place between two persons who cannot both be physically present during the ceremony, the marriage is deemed not valid until it is consummated. There are no exceptions to this provision, even in cases where it sometimes results in clear injustice. And so we learned about this legal requirement through the case of Sergeant Ferschke, a United States Marine stationed at Camp Schwab in Okinawa, Japan, who, in March of 2007, while on the base, met

a Japanese woman named Hotaru Nakama at a birthday party for a mutual friend.

□ 1500

They dated for over a year before Sergeant Ferschke was deployed to Iraq. Shortly before his departure, they learned that they were going to have a baby, and they spoke about getting married, moving back to the United States and raising a family together. Two months after Sergeant Ferschke arrived in Iraq, the couple was married through a ceremony conducted over the telephone; but 1 month later, Sergeant Ferschke tragically, in combat, gave the ultimate sacrifice.

The United States military recognizes this marriage, and Mrs. Ferschke has been assisted in raising their son by the payment of a death gratuity, but the marriage, itself, cannot be recognized under our immigration laws because it was never consummated after the marriage ceremony.

Now, this legislation doesn't entirely eliminate the consummation requirement. It simply eliminates the requirement for active duty members of our Armed Forces who are serving abroad by creating a narrow exception in cases where the failure to consummate the marriage is caused by a physical separation due to active duty military service abroad by one of the parties to the marriage. This is a reasonable provision that will provide some measure of support and comfort to members of our Armed Forces serving abroad.

So I commend our colleague JOHN DUNCAN for introducing this measure. It was championed by our Immigration Subcommittee chairwoman, ZOE LOFGREN, and our ranking member, LAMAR SMITH, and JIM MCGOVERN. I thank them for their strong bipartisan support of the measure.

I urge support of this measure, and I reserve the balance of my time.

Mr. POE of Texas. I yield myself such time as I may consume.

I support H.R. 6397, and I want to commend Mr. DUNCAN from Tennessee for introducing this legislation.

Mr. Speaker, under the Immigration and Nationality Act, if a U.S. citizen dies while serving honorably in an active duty status in the United States Armed Forces as a result of injury or disease incurred in or aggravated by combat, the citizen's alien spouse can still seek permanent residence as an immediate relative of a U.S. citizen. However, the INA also provides that the term "spouse" does "not include a spouse by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other unless the marriage shall have been consummated."

This provision recently came to the attention of Congress through the case of Hotaru Ferschke. Mrs. Ferschke is the widow of late Marine Corps Sergeant Michael Ferschke. Hotaru was born in Okinawa, Japan, and met Sergeant Ferschke there in 2007 when he was stationed at Camp Schwab.

The couple dated for more than a year before he deployed to Iraq on April 15, 2008. The couple learned that Hotaru was pregnant in March of 2008. They had planned to marry before she became pregnant. Mr. Ferschke and Hotaru were married by proxy via telephone on July 10, 2008, while Sergeant Ferschke was in Iraq. They were never able to see each other again after their marriage because Sergeant Ferschke was killed in the line of duty, in combat, on August 10, 2008.

According to the INA, the Ferschkes' marriage is not recognized for immigration purposes because it was never "consummated." However, the State Department and the Marine Corps both agree that the relationship was bona fide.

Today's legislation is designed to help Hotaru and other widows in this terrible situation. It provides an exception to the consummation requirement when the failure to consummate the marriage is attributable to physical separation due to the deployment overseas of one of the spouses in an active duty status in the United States Armed Forces.

I urge my colleagues to support this bill, and I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I am pleased to recognize, for as much time as he may consume, our colleague from Massachusetts, JIM MCGOVERN.

Mr. MCGOVERN. I thank the chairman of the Judiciary Committee for yielding me the time and for his leadership on this issue. I also want to thank Congresswoman ZOE LOFGREN for her leadership.

Mr. Speaker, I am rising, basically, to praise my colleague from Tennessee, Representative DUNCAN. A few months ago, he came to the Rules Committee with this case, and he tried to amend a bill to be able to find a way to help turn this terrible tragedy into something that was reasonable so that this family could stay together and could stay here in the United States. Unfortunately, the measure was not germane to the bill that was pending before the Rules Committee, but he stuck with this issue, and I want to thank him for his perseverance because of this terrible tragedy where Sergeant Ferschke was killed in Iraq in August of 2008.

It was Sergeant Ferschke's intention that his wife would reside in the United States and that his child would be raised in the United States. Without this legislation, that would not be able to be the case. Without legislative action, Mrs. Ferschke would have been forced to return to Japan at the end of her B-2 tourist visa, and she would not have been able to raise her son here in the United States despite his United States citizenship. I think any reasonable person looking at this case believes that Mrs. Ferschke and her son should be able to stay here in the United States.

Congressman DUNCAN has helped to close this terrible loophole, so I just

want to rise and say that, without his perseverance, without his taking this case to heart and without his intervention, quite frankly, this terrible tragedy would be even worse for this family. I thank my colleague for his work on this issue.

I also thank the gentleman from Michigan for yielding to me. You know, we get up here and we always fight with each other on different issues, but here is a case where I think we can all come together for a common purpose and praise Representative DUNCAN from Tennessee for his work on this.

Mr. Speaker, I rise today in support of H.R. 6397.

Mr. Speaker, this is an important piece of legislation that fixes an unintended loophole in our immigration law that has caused additional heartache for the family of a Marine killed in action from Maryville, Tennessee.

In July 2008, U.S. Marine Corps Sergeant Michael Ferschke married the love of his life in Japan, where he was stationed. The couple was overjoyed to be expecting their first child at the time of their marriage.

Tragically, Sergeant Ferschke was killed in Iraq during combat just one month later in August 2008.

Since the birth of her son in January 2009, Sergeant Ferschke's widow, Hota, has been living in a constant state of uncertainty. Because Michael's death precluded the couple from consummating their proxy marriage—despite Hota's pregnancy at the time of the ceremony—the U.S. Department of Homeland Security does not recognize that they were legally married.

Hota has tried every legal means—and done everything right—to try to immigrate to the United States and raise their son as they had planned to do near Sgt. Ferschke's family in Tennessee.

Without legislative action, Ms. Ferschke will be forced to return to Japan at the end of her B2 tourist visa. If this comes to pass she will not be able to raise her son in the United States, despite his U.S. citizenship.

Michael and Hota had clear intentions to raise their family in Tennessee. Michael's tragic death should not prevent Hota from receiving the legal benefits, including citizenship, that other legal widows of American servicemen are entitled too.

I want to thank my friend, Congressman JIMMY DUNCAN, for his leadership on this issue and for bringing this loophole to our attention.

Mr. Speaker, I urge my colleagues to vote "yes" on H.R. 6397.

Mr. POE of Texas. Mr. Speaker, I yield such time as he may consume to the author of this bill, the gentleman from Tennessee (Mr. DUNCAN).

Mr. DUNCAN. First of all, I want to say thank you to my colleague from Massachusetts (Mr. MCGOVERN) for those very kind words and for his help on this. He has been very interested in this since my first appearance before the Rules Committee.

I also want to thank Chairman CONYERS. I want to thank Mr. POE, especially our colleague ZOE LOFGREN from California, who has helped on this as well, Senator ALEXANDER in the other body, and Senator WEBB, a former ma-

rine, who has taken a great interest in this legislation.

Mr. Speaker, before we are Members for very long, we see things that we think would be impossible, things that somehow work out. We also see the opposite of that as we see some things that appear to be easy or simple that somehow turn into nightmares or serious problems. While this is something that, I think, almost everyone on both sides of the aisle who when they've heard about it have been supportive and helpful, it has been a difficult thing to reverse as to its technicality and to get this all worked out.

This legislation has been adequately described by the three prior speakers, but I will say that I also rise in support of H.R. 6397. Certainly, this is a tragic situation in which a young marine was killed in action in Iraq 1 month after his marriage to this young woman from Japan. Then, of course, a little bit later, as has been described, the young woman, Mrs. Hota Ferschke, gave birth to Sergeant Ferschke's child.

□ 1510

Sergeant Ferschke was then killed in Iraq, as Mr. MCGOVERN mentioned, during combat on August 10, 2008. Because Sergeant Ferschke's death prevented the couple from consummating their proxy marriage, the Department of Homeland Security does not recognize that the Ferschkes were legally married.

Then Mrs. Ferschke gave birth to Michael Ferschke, III, in Okinawa on January 7, 2009. She immediately registered her son's birth with the State Department, securing his U.S. citizenship.

After Sergeant Ferschke's death, Hota Ferschke filed a petition to immigrate to the U.S. In response to Hota Ferschke's petition, the DHS issued a denial of her petition, citing sections 1703 and 101(a)(35) of the Immigration and Nationality Act.

Sergeant Ferschke and Hota had intended to raise baby Michael in the U.S. where Michael could grow up with Sergeant Ferschke's family. This legislation would amend current immigration law so that DHS would recognize a proxy marriage between two individuals caused because of an active duty servicemember's deployment abroad.

This legislation will straighten out a tragic and sad situation for a woman and her child, and I think everyone sees the merit in this, or at least I hope they do, and I urge all of my colleagues to support this legislation.

Mr. POE of Texas. Mr. Speaker, I yield back the balance of my time.

Mr. CONYERS. Mr. Speaker, I just want to commend not only JOHN DUNCAN and JIM MCGOVERN, but I think that this legislation and the energies that went into its passage exemplify the fact that Members of this body work on small matters, as well as global and international concerns, but sometimes it goes unnoticed that in many of our offices, we're working on

matters that are not of historic moment in terms of the history of this country but they're of enormous importance to the constituents for whom we serve. This example of cooperation of the whole House in bringing this matter to our attention and remedy is, I think, salutary and commendable, and I thank all of those that worked with JOHN DUNCAN on this.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Michigan (Mr. CONYERS) that the House suspend the rules and pass the bill, H.R. 6397.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

#### RECOGNIZING THE 30TH ANNIVERSARY OF THE BAYH-DOLE ACT

Mr. CONYERS. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 328) expressing the sense of the Congress regarding the successful and substantial contributions of the amendments to the patent and trademark laws that were initially enacted in 1960 by Public Law 96-517 (commonly referred to as the "Bayh-Dole Act") on the occasion of the 30th anniversary of its enactment.

The Clerk read the title of the concurrent resolution.

The text of the concurrent resolution is as follows:

##### H. CON. RES. 328

Whereas Article I, Section 8, Clause 8, of the United States Constitution provides that Congress shall have Power "to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries";

Whereas the United States Government is one of the largest funders of research in the world, but that research does not fully benefit American taxpayers unless it contributes new products and processes to the marketplace, thereby creating new companies and jobs, and solving societal problems;

Whereas the commercial development of discoveries and inventions falls upon private sector entrepreneurs, often requiring millions of dollars in development funding over many years, and even then commercial success is uncertain at best;

Whereas by enacting Public Law 96-517 (commonly referred to as the "Bayh-Dole Act") in 1980, Congress determined that a fundamental change was needed to implement a uniform Federal patent policy, restoring the intended incentives of Article I, Section 8, Clause 8 of the United States Constitution as it relates to federally funded research;

Whereas before the enactment of that Act, few inventions arising from the billions of taxpayer dollars granted each year to American research universities, nonprofit organizations, and Federal laboratories were being translated into commercial products of benefit to the public and the United States economy;

Whereas a critical factor in developing federally funded inventions into commercial

products is the continued involvement of the inventor in the process, and Government patent policies before the enactment of the Bayh-Dole Act chilled the intended incentives of the patent system in this regard;

Whereas the ability to obtain a reliable patent license for commercial development is needed to justify private sector investments, and Government patent policies before the enactment of the Bayh-Dole Act made negotiating and obtaining such licenses difficult, if not impossible;

Whereas patent ownership of potentially important inventions is crucial in the formation of many start-up companies, which form vital parts of an innovation economy, and ownership rights were discouraged by Government patent policies before the enactment of the Bayh-Dole Act;

Whereas in 1984 Congress built upon the firm foundation of the Bayh-Dole Act by permitting, in Public Law 98-620, nonprofit organizations and universities to grant licenses during the entire patent term and also to provide uniform treatment under the Bayh-Dole Act of inventions produced by nonprofit organizations that operate Government-owned laboratories;

Whereas the Bayh-Dole Act has provided incentives for universities, nonprofit organizations, and small businesses to effectively manage inventions arising from Federal support as valuable resources on behalf of United States taxpayers;

Whereas the success of the Bayh-Dole Act became apparent with the creation and dominance of the United States biotechnology and information technology industries, that remain largely dependent on university research;

Whereas the Bayh-Dole Act has been widely recognized as a best practice and is now being adopted by other countries (both developed and developing) around the world to better integrate their own research universities into their economies in order to be more competitive;

Whereas objective examples of how the Bayh-Dole Act has not only benefitted the United States but has also created a better world include the creation of over 150 new drugs, vaccines, or in vitro devices, including the hepatitis B vaccine, cisplatin, carboplatin and taxol anticancer therapeutics, laser eye surgery devices, the Palmaz balloon expandable stent, and many more; and

Whereas economic activity spurred on by the Bayh-Dole Act include the formation of more than 6,500 new companies from the inventions created under the Act, an estimated contribution of \$450,000,000,000 to United States gross industrial output, and the creation of 280,000 new high technology jobs between 1999 and 2007: Now, therefore, be it

*Resolved by the House of Representatives (the Senate concurring), That—*

(1) it is the sense of the Congress that—

(A) the Bayh-Dole Act (Public Law 96-517), as amended by Public Law 98-620, has made substantial contributions to the advancement of scientific and technological knowledge, fostered dramatic improvements in public health and safety, strengthened the higher education system, led to the development of new domestic industries and hundreds of thousands of new private sector jobs, and benefitted the economic and trade policies of the United States; and

(B) that Act remains critical to the future well being of the United States;

(2) the Congress reaffirms both its support for this landmark legislation and the critical role that innovation, entrepreneurship, and job creation hold for the future of the United States, and its commitment to the policies and objectives of that Act; and

(3) the Congress shows its gratitude for the bipartisan leadership shown by Senators Birch Bayh and Robert Dole and Representatives Peter Rodino, Hamilton Fish, Robert Kastenmeier, Tom RAILSBACK, Don Fuqua, and former Chairman and Ranking Minority members of the Senate Judiciary Committee, Edward Kennedy, and Strom Thurmond for securing the enactment of the Bayh-Dole Act, for strengthening it in 1984, and for providing unwavering support for the policies underlying that Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Michigan (Mr. CONYERS) and the gentleman from Texas (Mr. POE) each will control 20 minutes.

The Chair recognizes the gentleman from Michigan.

##### GENERAL LEAVE

Mr. CONYERS. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. I yield myself as much time as I may consume.

Mr. Speaker, this resolution recognizes the 30th anniversary of the Bayh-Dole Act, a landmark piece of legislation that reshaped the landscape of technological innovation in the United States by clarifying intellectual property rights in government-funded inventions.

What that means is that, prior to this act, our country was stuck in a form of economic malaise, and innovation was, frankly, stifled. The stiff international competition we faced at the time wasn't just a matter of Europe and Japan getting back on their feet. It was also a matter of them, frankly, outpacing us in technological development.

We knew we had to better harness all our innovation capacity, particularly the work being done at our research universities. At the time, policies mandated Federal Government ownership of patent rights for any research done with Federal funding. Since most university research had some sort of Federal funding, the universities had no say, and no stake, in the patent rights of their own research.

Then there were the rules in licensing what patents existed which were considered cumbersome and discouraged use by the private sector. The situation literally led to technologies being left on the shelf to gather dust, and we were falling behind in this area.

This bill of 30 years ago also revolutionized the way patent rights in university inventions were to be dealt with. The Bayh-Dole Act allowed universities to own patents, license them out to the private sector, and split royalties earned with professors and students who worked on the invention.

With the barriers to obtaining patent licenses removed, private investors could easily partner with federally funded research institutions and begin