

that the prohibition on disclosure of maritime transportation security information is not used inappropriately to shield certain other information from public disclosure, and for other purposes (Rept. No. 111-387).

Report to accompany S. 2870, a bill to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes (Rept. No. 111-388).

### EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted on December 22, 2010:

By Mr. KERRY, from the Committee on Foreign Relations:

[Treaty Doc. 110-23 Investment Treaty with Rwanda with one declaration (Ex. Rept. 111-8)]

The text of the committee-recommended resolution of advice and consent to ratification is as follows:

*Resolved (two-thirds of the Senators present concurring therein),*

Section 1. Senate Advice and Consent subject to a declaration.

The Senate advises and consents to the ratification of the Treaty Between the Government of the United States of America and the Government of the Republic of Rwanda Concerning the Encouragement and Reciprocal Protection of Investment, signed at Kigali on February 19, 2008 (Treaty Doc. 110-23), subject to the declaration of section 2.

Section 2. Declaration.

The advice and consent of the Senate under section 1 is subject to the following declaration:

Articles 3 through 10 and other provisions that qualify or create exceptions to these Articles are self-executing. With the exception of these Articles, the Treaty is not self-executing. None of the provisions in this Treaty confers a private right of action.

### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. MERKLEY (for himself, Mr. JOHNSON, Mr. CORKER, and Mr. ENZI):

S. 4052. A bill to require the Federal Deposit Insurance Corporation to fully insure Interest on Lawyers Trust Accounts; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. LANDRIEU (for herself and Ms. SNOWE):

S. 4053. A bill to reauthorize and improve the SBIR and STTR programs, and for other purposes; considered and passed.

By Mr. SPECTER:

S. 4054. A bill to restore the law governing pleading and pleading motions that existed before the decisions of the Supreme Court of the United States in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009); to the Committee on the Judiciary.

By Mr. BROWN of Ohio (for himself, Mr. CASEY, Mr. BINGAMAN, Mrs. HAGAN, and Ms. STABENOW):

S. 4055. A bill to extend trade adjustment assistance, and for other purposes; to the Committee on Finance.

By Mr. CASEY:

S. 4056. A bill to amend the Internal Revenue Code of 1986 to permit the disclosure of certain tax return information for the purposes of missing or exploited children investigations; to the Committee on Finance.

By Mr. SANDERS (for himself and Mr. LEAHY):

S. 4057. A bill to provide for an earlier start for State health care coverage innovation waivers under the Patient Protection and Affordable Care Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KERRY:

S. 4058. A bill to extend certain expiring provisions providing enhanced protections for servicemembers relating to mortgages and mortgage foreclosure; considered and passed.

By Mr. MENENDEZ:

S. 4059. A bill to authorize the Department of House and Urban Development to transform neighborhoods of extreme poverty into sustainable, mixed-income neighborhoods with access to economic opportunities, by revitalizing severely distressed housing, and investing and leveraging investments in well-functioning services, educational opportunities, public assets, public transportation, and improved access to jobs; to the Committee on Banking, Housing, and Urban Affairs.

### SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. SCHUMER (for himself and Mr. BENNETT):

S. Res. 705. A resolution providing for a technical correction to S. Res. 700; considered and agreed to.

By Mr. REID (for himself, Mr. McCONNELL, Mr. KERRY, and Mr. KYL):

S. Res. 706. A resolution extending the authority for the Senate National Security Working Group; considered and agreed to.

By Mr. REID:

S. Res. 707. A resolution honoring Lula Davis; considered and agreed to.

### ADDITIONAL COSPONSORS

S. 3424

At the request of Mr. DURBIN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 3424, a bill to amend the Animal Welfare Act to provide further protection for puppies.

AMENDMENT NO. 4892

At the request of Mr. JOHANNIS, his name was added as a cosponsor of amendment No. 4892 proposed to Treaty Doc. 111-5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

AMENDMENT NO. 4904

At the request of Mr. CORKER, the names of the Senator from Connecticut

(Mr. LIEBERMAN), the Senator from Massachusetts (Mr. BROWN), the Senator from Alaska (Ms. MURKOWSKI), the Senator from Arizona (Mr. MCCAIN), the Senator from Nebraska (Mr. JOHANNIS), the Senator from Michigan (Mr. LEVIN), the Senator from Arizona (Mr. KYL), the Senator from Indiana (Mr. BAYH), and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of amendment No. 4904 proposed to Treaty Doc. 111-5, treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

At the request of Mr. LUGAR, his name was added as a cosponsor of amendment No. 4904 proposed to Treaty Doc. 111-5, supra.

### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER:

S. 4054. A bill to restore the law governing pleading and pleading motions that existed before the decisions of the Supreme Court of the United States in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009); to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, last year I introduced the Notice Pleading Restoration Act of 2009, H.R. 1504. As I explained in my accompanying floor statement, my objective was to restore the pleading standard that had governed federal civil practice if not since the Federal Rules of Procedure originally took effect in 1938, then at very least since the Supreme Court decided *Conley v. Gibson* in 1957. Several months earlier the Supreme Court had issued the second of two controversial decisions—*Bell Atlantic Corp. v. Twombly*, 2007, and *Iqbal v. Ashcroft*, 2009—in which it had replaced that standard with a heightened pleading standard that, not least among its several flaws, was plainly inconsistent with the original meaning of the Federal Rules. My concern was not only that the Court had closed the courthouse doors to plaintiffs with meritorious claims and limited the private enforcement of public law, but also that, in yet another of its recent incursions on Congress's lawmaking powers, it had end-run the process for amending the Rules established by the Rules Enabling Act of 1934. That process includes, as its last step, Congressional approval of any amendment.

While there was widespread agreement among the country's leading academic proceduralists on the need for legislation overruling the Court's decisions, there was much less agreement among them as to what, exactly, the

legislation should say. I chose in S. 1504 to incorporate the pleading standard set forth in Conley. A companion House bill introduced after S. 1504, H.R. 4115, took a somewhat different approach. Various commentators proposed yet other approaches.

After a hearing on the legislation before the Judiciary Committee, I consulted through my general counsel, Matthew L. Wiener, with leading academic proceduralists and several distinguished practicing lawyers with an eye toward offering a possible substitute amendment. The conclusion I soon drew was that Congress must indeed overrule *Twombly* and *Iqbal* but without (as the Court had done) prescribing a pleading standard outside the rulemaking process established by the Enabling Act. The best way to do so, I concluded, was simply to draft legislation requiring adherence to the Supreme Court's pre-*Twombly* decisions interpreting the applicable federal rules unless and until they are amended in accordance with the Enabling Act. The bill I have introduced today, the Notice Pleading Restoration Act of 2010, takes just that approach. I urge the next Congress to take up this bill when it convenes in January.

For their wise counsel in helping me work through the issues presented by the legislation, I would like to acknowledge and thank the following lawyers, most of them professors of civil procedure: Allen D. Black, a partner at Fine, Kaplan & Black, R.P.C.; John S. Beckerman, Professor of Law, Rutgers University School of Law-Camden; Stephen B. Burbank, the David Berger Professor for the Administration of Justice at the University of Pennsylvania Law School; Sean Carter, a shareholder of Cozen O'Connor; Jonathan W. Cuneo, a partner at Cuneo Gilbert & LaDuca LLP and a former counsel to the House Judiciary Committee; Michael C. Dorf, the Robert S. Stevens Professor of Law at Cornell University School of Law; William N. Eskridge, Jr., the John A. Garver Professor of Jurisprudence at Yale Law School; Suzette M. Malveaux, Associate Professor of Law, Columbus School of Law, Catholic University of America; Arthur R. Miller, University Professor at the New York University School of Law; John Payton, President and Director-Counsel, NAACP Legal Defense Fund; Alexander Reinert, an Associate Professor of Law at the Benjamin Cardozo School of Law; David L. Shapiro, the William Nelson Cromwell Professor of Law, Emeritus, at Harvard Law School; Stephen N. Subrin, Professor of Law, Northeastern University School of Law; and Tobias Barrington Wolff, a Professor of Law at the University of Pennsylvania Law School.

Professor Burbank deserves special acknowledgment for first suggesting and explaining the general approach underlying my bill during his testimony before the Senate Judiciary Committee on December 2, 2009, and special thanks for lending my staff so

much of his valuable time during the last year-and-a-half. I commend his unimpeachable testimony to my colleagues and their staffs.

Not all of these lawyers, I must emphasize in closing, endorse my legislation, and none of them of course is responsible for its particulars. Most of them submitted prepared statements for the record of the December 2 hearing, and their individual views can be found there.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 705—PROVIDING FOR A TECHNICAL CORRECTION TO S. RES. 700

Mr. SCHUMER (for himself and Mr. BENNETT) submitted the following resolution; which was considered and agreed to:

S. RES. 705

*Resolved,*

#### SECTION 1. TECHNICAL CORRECTION.

Senate Resolution 700, 111th Congress, agreed to December 10, 2010, is amended in section 3(b)—

- (1) by striking paragraph (1); and
- (2) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

### SENATE RESOLUTION 706—EXTENDING THE AUTHORITY FOR THE SENATE NATIONAL SECURITY WORKING GROUP

Mr. REID (for himself, Mr. MCCONNELL, Mr. KERRY, and Mr. KYL) submitted the following resolution; which was considered and agreed to:

S. RES. 706

*Resolved,* That Senate Resolution 105 of the One Hundred First Congress, 1st session (agreed to on April 13, 1989), as amended by Senate Resolution 149 of the One Hundred Third Congress, 1st session (agreed to on October 5, 1993), as further amended by Senate Resolution 75 of the One Hundred Sixth Congress, 1st session (agreed to on March 25, 1999), as further amended by Senate Resolution 383 of the One Hundred Sixth Congress, 2d session (agreed to on October 27, 2000), as further amended by Senate Resolution 355 of the One Hundred Seventh Congress, 2d session (agreed to on November 13, 2002), as further amended by Senate Resolution 480 of the One Hundred Eighth Congress, 2d session (agreed to November 20, 2004), as further amended by Senate Resolution 625 of the One Hundred Ninth Congress, 2d Session (agreed to on December 6, 2006), and as further amended by Senate Resolution 715 of the One Hundred Tenth Congress, 2d session (agreed to November 20, 2008), is further amended in section 4 by striking "2010" and inserting "2012".

### SENATE RESOLUTION 707—HONORING LULA DAVIS

Mr. REID submitted the following resolution; which was considered and agreed to:

S. RES. 707

Whereas Lula Davis, the Secretary for the Majority, will be retiring at the end of the

111th Congress, after a long and distinguished career;

Whereas Lula Davis was first elected as Assistant Democratic Secretary in 1997, and she was the first woman ever to hold that position;

Whereas Lula Davis was elected to be the Secretary for the Majority at the beginning of the 111th Congress, the first African American to serve in this position, and during the 111th Congress she has expertly tackled one of the toughest jobs in politics;

Whereas throughout her time in the Senate, Lula Davis has played a major role in managing the debate and passage of many significant pieces of legislation;

Whereas many legislative accomplishments over the years would not have happened without the leadership of Lula Davis;

Whereas Lula Davis lived in rural Louisiana, and worked as a teacher and guidance counselor;

Whereas Lula Davis remains committed to children in our community, founding and continuing to run a nonprofit mentoring and charitable organization called "Leadership Cares," which provides holiday meals to more than 650 families annually;

Whereas Lula Davis has encouraged many of her fellow Senate staff to volunteer alongside her family and friends to make a difference for those in need;

Whereas Lula Davis started her Senate career as a legislative aide to her home-state Senator, Russell Long, and went on to serve in almost every position on the floor staff, including office assistant, floor assistant, chief floor assistant, Assistant Secretary, and Secretary;

Whereas Lula Davis is a master of the complex formal and informal rules under which the Senate operates;

Whereas Lula Davis has consistently provided thoughtful and reliable advice to both Democratic and Republican leadership and all members of the Senate;

Whereas Lula Davis is loyal to the Senate and to Senators, and respects the traditions that make this body great;

Whereas the Senate has tremendous respect for Lula Davis and her hard work, and deeply appreciates her enormous contributions to the Senate and to the United States: Now, therefore, be it

*Resolved,* That the Senate expresses its deepest thanks to Lula Davis for her many years of outstanding service to the United States Senate and to the United States of America.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 4921. Mr. LEVIN (for himself and Mr. MCCAIN) proposed an amendment to the bill H.R. 6523, to authorize appropriations for fiscal year 2011 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.

SA 4922. Mr. KIRK submitted an amendment intended to be proposed to amendment SA 4904 proposed by Mr. CORKER to Treaty Doc. 111-5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

SA 4923. Mr. REID (for Mrs. GILLIBRAND (for herself and Mr. SCHUMER)) proposed an amendment to the bill H.R. 847, to amend the Public Health Service Act to extend and improve protections and services to individuals directly impacted by the terrorist attack in