

a plan for and demonstrate ongoing, measurable progress toward achieving self-sufficiency of cord blood collection and banking operations.

Extends the length of a cord blood bank contract from three years to five years. A five year extension of cord blood contracts will be permitted if such entities: (1) demonstrate a superior ability to satisfy the requirements included in the original statute to be federal cord blood banks; (2) provide a plan for increasing cord blood unit collections at collection sites that exist at the time of consideration of such extension, assist with the establishment of new collection sites, or contract with new collection sites; and (3) annually provide to the HHS Secretary a plan for and demonstrate ongoing, measurable progress toward achieving self-sufficiency of cord blood collection and banking operations.

Redefines the term, "first-degree relative" as a sibling of the individual requiring a transplant. Authorizes appropriations for the National Cord Blood Inventory Program (NCBI) at \$23 million in fiscal years 2011-2014 and \$20 million in fiscal year 2015. The substitute amendment eliminates language in the law which allows funds to remain available until expended since this is overridden by long-standing policy in appropriations bills. The statutory language was originally necessary because the 2005 authorization law passed after funds had been appropriated.

(b) Clarifies that the C.W. Bill Young Cell Transplantation Program, known as the Program, shall support studies and outreach projects to increase cord collection donation and collection from a genetically diverse population, including exploring novel approaches or incentives, such as remote or other innovative technological advances that could be used to collect cord blood units, to expand the number of cord blood collection sites partnering with cord blood banks that receive a contract under the NCBI program.

Directs the Secretary, acting through the Administrator of the Health Resources and Services Administration, to submit to Congress an annual report on activities conducted through the National Program including novel approaches for the purpose of increasing cord blood unit donation and collection. Directs the Secretary to set an annual goal of increasing collections of high quality cord blood units through remote collection or other novel approaches. The Secretary shall identify at least one of these approaches to replicate and expand nationwide as appropriate. If such a project cannot be identified by the Secretary, then the Secretary shall submit a plan for expanding remote collection of high quality cord blood units. Remote collection is defined as cord blood unit collections occurring at locations that do not hold written contracts with existing cord blood banks for collection support.

Requires the Secretary, in consultation with the Advisory Council, to submit to Congress an interim report not later than 6 months after date of enactment, describing the existing methods used to distribute federal funds to cord blood banks; how cord blood banks contract with collection sites for the collection of cord blood units; and recommendations to improve these methods to encourage the efficient collection of high quality and diverse cord blood units.

Requires the Advisory Council shall submit recommendations to the Secretary one year after enactment about whether:

1. remote models for cord blood unit collection should be allowed with only limited, scientifically justified safety protections; and
2. HHS should allow for cord blood unit collection from routine deliveries without temperature or humidity monitoring of de-

livery rooms in hospitals approved by the Joint Commission.

Authorizes appropriations for the C.W. Bill Young Cell Transplantation Program (the Program) at \$30 million in fiscal years 2011-2014 and \$33 million in fiscal year 2015. The substitute amendment eliminates language in the law which allows funds to remain available until expended since this is overridden by long-standing policy in appropriations bills. The statutory language was originally necessary because the 2005 authorization law passed after funds had been appropriated.

Directs the Government Accountability Office (GAO) to submit a report on cord blood unit donation and collection as well as methods used to distribute funds to cord blood banks no later than one year after enactment. The report shall be submitted to the Senate Committee on Health, Education, Labor and Pensions, the Senate Committee on Appropriations, the House Energy and Commerce Committee and the House Committee on Appropriations.

Mr. FRANKEN. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be agreed to, the bill, as amended, be read three times, passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 3751), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed.

#### VIETNAM VETERANS MEMORIAL VISITOR CENTER

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 406, H.R. 3689.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3689) to provide for an extension of the legislative authority of the Vietnam Veterans Memorial Fund, Inc. to establish a Vietnam Veterans Memorial visitor center, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. DURBIN. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table, that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3689) was ordered to a third reading, was read the third time, and passed.

#### PREVENTION OF INTERSTATE COMMERCE IN ANIMAL CRUSH VIDEOS ACT OF 2010

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Judiciary be discharged from further consideration of H.R. 5566, and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5566) to amend title 18, United States Code, to prohibit interstate commerce in animal crush videos, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I am pleased that the Senate will pass the Animal Crush Video Prohibition Act. In doing so, we have taken this important step toward banning obscene animal crush videos, and I thank Senators KYL, MERKLEY and BURR for their leadership on this issue. We worked on a bipartisan basis to ensure that this legislation respects the first amendment and the role of our court system, while at the same time giving law enforcement a valuable and necessary tool to stop obscene animal cruelty. I urge the House to quickly adopt the legislation.

Earlier this year, in *United States v. Stevens*, the Supreme Court struck down a Federal statute banning depictions of animal cruelty because it held the statute to be overbroad and in violation of the first amendment. Animal crush videos, which can depict obscene, extreme acts of animal cruelty, were a primary target of that legislation.

Two months ago, in response to the *Stevens* decision, the House overwhelmingly passed a narrower bill banning animal crush videos on obscenity grounds. The Senate Judiciary Committee regularly looks at questions raised by Supreme Court decisions and the first amendment, and the House-passed bill was referred to the Senate Judiciary Committee for consideration.

There are a few well-established exceptions to the first amendment. The United States has long prohibited the interstate sale of obscene materials, and the Supreme Court recognized this exception to the first amendment in 1957. Earlier this month, the Judiciary Committee held a hearing focused on the obscene nature of many animal crush videos. We heard testimony from experts who confirmed that many animal crush videos depict extreme acts of animal cruelty which are designed to appeal to a specific, prurient, sexual fetish. Indeed, these animal crush videos are patently offensive, lack any redeeming social value, and can be banned consistent with the Supreme Court's obscenity jurisprudence. In drafting the substitute amendment to the House bill, we were careful to respect the role that courts and juries play in determining obscenity. In any given case, it will be up to the prosecutor to prove and the jury to determine whether a given depiction is obscene, because obscenity is a separate element of the crime. The other element that occurs in animal crush videos and which warrants a higher punishment than simple obscenity is that

it involves the intentional torture or pain to a living animal. Congress finds this combination deplorable and worthy of special punishment. That is why the maximum penalty is higher than general obscenity law.

The United States also has a history of prohibiting speech that is integral to criminal conduct. The acts of animal cruelty depicted in many animal crush videos violate State laws, but these laws are hard to enforce. The acts of cruelty are often committed in a clandestine manner that allows the perpetrators to remain anonymous. The nature of the videos also makes it extraordinarily difficult to establish the jurisdiction necessary to prosecute the crimes. Given the severe difficulties that State law enforcement agencies have encountered in attempting to investigate and prosecute the underlying conduct, reaffirming Congress's commitment to closing the distribution network for obscene animal crush videos is an effective means of combating the crimes of extreme animal cruelty that they depict.

I have long been a champion of first amendment rights. As the son of Vermont printers, I know firsthand that the freedom of speech is the cornerstone of our democracy. This is why I have worked hard to pass legislation such as the SPEECH Act, which protects American authors, journalists and publishers from foreign libel lawsuits that undermine the first amendment.

Today the Senate struck the right balance between the first amendment and the needs of law enforcement, while adhering to the separation of powers enshrined in our Constitution. I commend the bipartisan coalition that worked hard, alongside the Humane Society and first amendment experts, to strike this balance, and I look forward to the time when obscene animal crush videos no longer threaten animal welfare.

Mr. DURBIN. Mr. President, I ask unanimous consent the substitute at the desk be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and any statements related to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4668) was agreed to, as follows:

(Purpose: In the nature of a substitute)

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Animal Crush Video Prohibition Act of 2010".

#### SEC. 2. FINDINGS.

The Congress finds the following:

(1) The United States has a long history of prohibiting the interstate sale, marketing, advertising, exchange, and distribution of obscene material and speech that is integral to criminal conduct.

(2) The Federal Government and the States have a compelling interest in preventing intentional acts of extreme animal cruelty.

(3) Each of the several States and the District of Columbia criminalize intentional acts of extreme animal cruelty, such as the intentional crushing, burning, drowning, suffocating, or impaling of animals for no socially redeeming purpose.

(4) There are certain extreme acts of animal cruelty that appeal to a specific sexual fetish. These acts of extreme animal cruelty are videotaped, and the resulting video tapes are commonly referred to as "animal crush videos".

(5) The Supreme Court of the United States has long held that obscenity is an exception to speech protected under the First Amendment to the Constitution of the United States.

(6) In the judgment of Congress, many animal crush videos are obscene in the sense that the depictions, taken as a whole—

(A) appeal to the prurient interest in sex;  
(B) are patently offensive; and  
(C) lack serious literary, artistic, political, or scientific value.

(7) Serious criminal acts of extreme animal cruelty are integral to the creation, sale, distribution, advertising, marketing, and exchange of animal crush videos.

(8) The creation, sale, distribution, advertising, marketing, and exchange of animal crush videos is intrinsically related and integral to creating an incentive for, directly causing, and perpetuating demand for the serious acts of extreme animal cruelty the videos depict. The primary reason for those criminal acts is the creation, sale, distribution, advertising, marketing, and exchange of the animal crush video image.

(9) The serious acts of extreme animal cruelty necessary to make animal crush videos are committed in a clandestine manner that—

(A) allows the perpetrators of such crimes to remain anonymous;

(B) makes it extraordinarily difficult to establish the jurisdiction within which the underlying criminal acts of extreme animal cruelty occurred; and

(C) often precludes proof that the criminal acts occurred within the statute of limitations.

(10) Each of the difficulties described in paragraph (9) seriously frustrates and impedes the ability of State authorities to enforce the criminal statutes prohibiting such behavior.

#### SEC. 3. ANIMAL CRUSH VIDEOS.

(a) IN GENERAL.—Section 48 of title 18, United States Code, is amended to read as follows:

##### "§ 48. Animal crush videos

"(a) DEFINITION.—In this section the term 'animal crush video' means any photograph, motion-picture film, video or digital recording, or electronic image that—

"(1) depicts actual conduct in which 1 or more living non-human mammals, birds, reptiles, or amphibians is intentionally crushed, burned, drowned, suffocated, impaled, or otherwise subjected to serious bodily injury (as defined in section 1365 and including conduct that, if committed against a person and in the special maritime and territorial jurisdiction of the United States, would violate section 2241 or 2242); and

"(2) is obscene.

"(b) PROHIBITIONS.—

"(1) CREATION OF ANIMAL CRUSH VIDEOS.—It shall be unlawful for any person to knowingly create an animal crush video, or to attempt or conspire to do so, if—

"(A) the person intends or has reason to know that the animal crush video will be distributed in, or using a means or facility of, interstate or foreign commerce; or

"(B) the animal crush video is distributed in, or using a means or facility of, interstate or foreign commerce.

"(2) DISTRIBUTION OF ANIMAL CRUSH VIDEOS.—It shall be unlawful for any person to knowingly sell, market, advertise, exchange, or distribute an animal crush video in, or using a means or facility of, interstate or foreign commerce, or to attempt or conspire to do so.

"(c) EXTRATERRITORIAL APPLICATION.—Subsection (b) shall apply to the knowing sale, marketing, advertising, exchange, distribution, or creation of an animal crush video outside of the United States, or any attempt or conspiracy to do so, if—

"(1) the person engaging in such conduct intends or has reason to know that the animal crush video will be transported into the United States or its territories or possessions; or

"(2) the animal crush video is transported into the United States or its territories or possessions."

"(d) PENALTY.—Any person who violates subsection (b) shall be fined under this title, imprisoned for not more than 7 years, or both.

"(e) EXCEPTIONS.—

"(1) IN GENERAL.—This section shall not apply with regard to any visual depiction of—

"(A) customary and normal veterinary or agricultural husbandry practices;

"(B) the slaughter of animals for food; or

"(C) hunting, trapping, or fishing.

"(2) GOOD-FAITH DISTRIBUTION.—This section shall not apply to the good-faith distribution of an animal crush video to—

"(A) a law enforcement agency; or

"(B) a third party for the sole purpose of analysis to determine if referral to a law enforcement agency is appropriate.

"(f) NO PREEMPTION.—Nothing in this section shall be construed to preempt the law of any State or local subdivision thereof to protect animals."

(b) CLERICAL AMENDMENT.—The item relating to section 48 in the table of sections for chapter 3 of title 18, United States Code, is amended to read as follows:

"48. Animal crush videos."

(c) SEVERABILITY.—If any provision of section 48 of title 18, United States Code (as amended by this section), or the application of the provision to any person or circumstance, is held to be unconstitutional, the provision and the application of the provision to other persons or circumstances shall not be affected thereby.

The amendment was ordered to be engrossed and the bill read a third time.

The bill (H.R. 5566), as amended, was read the third time and passed.

#### ANTI-BORDER CORRUPTION ACT OF 2010

Mr. DURBIN. Mr. President, I ask unanimous consent the Senate proceed to Calendar No. 619, S. 3243.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 3243) to require U.S. Customs and Border Protection to administer polygraph examinations to all applicants for law enforcement positions with U.S. Customs and Border Protection, to require U.S. Customs and Border Protection to complete all periodic background reinvestigations of certain law enforcement personnel, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which