''(5)(A) States have made important strides in increasing the number of children who are placed in permanent homes with adoptive parents and in reducing the length of time children wait for such a placement; and

''(B) many thousands of children, however, still remain in institutions or foster homes solely because of legal and other barriers to such a placement;

''(6)(A) on the last day of fiscal year 2009, there were 115,000 children waiting for adoption;

''(B) children waiting for adoption have had parental rights of all living parents terminated or the children have a permanency goal of adoption;

''(C)(i) the average age of children adopted with public child welfare agency involvement during fiscal year 2009 was a little more than 6 years; and

''(ii) the average age of children waiting for adoption on the last day of that fiscal year was a little more than 8 years of age and more than 30,000 of those children were 12 years of age or older; and

''(D)(i) 25 percent of the children adopted with public child welfare agency involvement during fiscal year 2009 were African-American; and

''(ii) 30 percent of the children waiting for adoption on the last day of fiscal year 2009 were African-American;

''(7) adoption may be the best alternative for assuring the healthy development of children placed in foster care;

''(8) there are qualified persons seeking to adopt such children who are unable to do so because of barriers to their placement and adoption; and

''(9) in order both to enhance the stability of and love in the home environments of such children and to avoid wasteful expenditures of public funds, such children—

''(A) should not have medically indicated treatment withheld from them; or

''(B) be maintained in foster care or institutions when adoption is appropriate and families can be found for such children.''; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting ''older children, minority children, and'' after ''particularly''; and

(B) by striking paragraph (2) and inserting the following:

''(2) maintain an Internet-based national adoption information exchange system to—

''(A) bring together children who would benefit from adoption and qualified prospective adoptive parents who are seeking such children;

''(B) conduct national recruitment efforts in order to reach prospective parents for children awaiting adoption; and

''(C) connect placement agencies, prospective adoptive parents, and adoptive parents to resources designed to reduce barriers to adoption, support adoptive families, and ensure permanency; and''.

(b) INFORMATION AND SERVICES.—Section 203 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5113) is amended—

(1) in subsection (a), by striking all that follows ''facilitate the adoption of'' and inserting ''older children, minority children, and children with special needs, particularly infants and toddlers with disabilities who have life-threatening conditions, and services to couples considering adoption of children with special needs.'';

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by striking ''and'' after ''regarding adoption'' and inserting a comma; and

(ii) by inserting '', and post-legal adoption services'' after ''adoption assistance programs'';

(B) in paragraph (2), by inserting '', including efforts to promote the adoption of older children, minority children, and children with special needs'' after ''national level'';

(C) in paragraph (7)—

(i) by striking ''study the efficacy of States contracting with'' and inserting ''increase the effective use of'';

(ii) by striking the comma after ''organizations)'' and inserting ''by States,'';

(iii) by inserting a comma after ''institutions''; and

(iv) by inserting '', including assisting in efforts to work with organizations that promote the placement of older children, minority children, and children with special needs'' after ''children for adoption'';

(D) in paragraph (9)—

(i) in subparagraph (B), by striking ''and'' at the end;

(ii) in subparagraph (C), by adding ''and'' after the semicolon at the end; and

(iii) by adding at the end the following:

''(D) identify best practices to reduce adoption disruption and termination;''; and

(E) in paragraph (10)—

(i) in the matter preceding subparagraph (A), by inserting ''tribal child welfare agencies,'' after ''local government entities,''; and

(ii) in subparagraph (A)—

(I) in clause (ii), by inserting '', including developing and using procedures to notify family and relatives when a child enters the child welfare system'' before the semicolon at the end;

(II) by redesignating clauses (vii) and (viii) as clauses (viii) and (ix), respectively; and

(III) by inserting after clause (vi) the following:

''(vii) education and training of prospective adoptive or adoptive parents;''; and

(3) in subsection (d)—

(A) in paragraph (1), by striking the second sentence and all that follows; and

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the second sentence, by inserting '', consistent with the purpose of this title'' after ''by the Secretary''; and

(II) by striking the third sentence and inserting the following: ''Each application shall contain information that—

''(i) describes how the State plans to improve the placement rate of children in permanent homes;

''(ii) describes the methods the State, prior to submitting the application, has used to improve the placement of older children, minority children, and children with special needs, who are legally free for adoption;

''(iii) describes the evaluation the State plans to conduct, to identify the effectiveness of programs and methods of placement under this subsection, and submit to the Secretary; and

''(iv) describes how the State plans to coordinate activities under this subsection with relevant activities under section 473 of the Social Security Act (42 U.S.C. 673).'';

(ii) in subparagraph (B)(i), by inserting ''older children, minority children, and'' after ''successful placement of''; and

(iii) by adding at the end the following:

''(C) EVALUATION.—The Secretary shall compile the results of evaluations submitted by States (described in subparagraph (A)(iii)) and submit a report containing the compiled results to the appropriate committees of Congress.''.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 205 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5115) is amended—

(1) in subsection (a)—

(A) by striking ''2004'' and inserting ''2010''; and

(B) by striking ''2005 through 2008'' and inserting ''2011 through 2015'';

(2) by redesignating subsection (b) as subsection (c); and

(3) by inserting after subsection (a) the following:

''(b) Not less than 30 percent and not more than 50 percent of the funds appropriated under subsection (a) shall be allocated for activities under subsections (b)(10) and (c) of section 203.''.

TITLE IV—ABANDONED INFANTS ASSISTANCE ACT OF 1988

SEC. 401. ABANDONED INFANTS ASSISTANCE.

(a) FINDINGS.—Section 2 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 5117aa) is amended—

(1) in paragraph (4), by striking ''including those'' and all that follows through ''(AIDS)'' and inserting ''including those with HIV/AIDS''; and

(2) in paragraph (5), by striking ''acquired immune deficiency syndrome'' and inserting ''HIV/AIDS''.

(b) REPEAL.—Title II of the Abandoned Infants Assistance Act of 1988 (Public Law 100–505; 102 Stat. 2536) is repealed.

(c) DEFINITIONS.—Section 301 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 5117aa–21) is amended—

(1) by striking paragraph (2); and

(2) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 302 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 5117aa–22) is amended—

(1) in subsection (a)(1)—

(A) by striking ''2004'' and inserting ''2010''; and

(B) by striking ''2005 through 2008'' and inserting ''2011 through 2015''; and

(2) in subsection (b)(2), by striking ''fiscal year 2003'' and inserting ''fiscal year 2010''.

REMOVAL CLARIFICATION ACT OF 2010

Mr. DURBIN. Mr. President, I ask unanimous consent the Judiciary Committee be discharged from further consideration of H.R. 5281 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. 5281) to amend title 28, United States Code, to clarify and improve certain provisions relating to the removal of litigation against Federal officers or agencies to Federal courts, and for other purposes.

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

Mr. LEAHY. Mr. President, the Removal Clarification Act of 2010 is an important piece of legislation that will

clarify a Federal agency or officer's ability to remove State judicial proceedings to Federal court. The bill has strong support from both sides of the aisle, and was passed by the House of Representatives without opposition. I have worked with Senator SESSIONS on an amendment to further clarify the rules governing removal to Federal court of State judicial proceedings when judicial orders including subpoenas are issued to Federal agencies or officials.

Existing law allows removal to Federal court of any ''civil action or criminal prosecution'' that is ''commenced in a State court'' against a Federal agency or officer. However, there is a question whether a subpoena directed toward a Federal agency or officer itself constitutes a ''civil action or criminal prosecution'' that allows removal under section 1442. While some courts have allowed removal in these situations, others have not. Compare *Brown & Williamson Tobacco Corp.* v. *Williams*, 62 F.3d 408, 413–15, D.C. Cir. 1995 with *Indiana* v. *Adams*, 892 F.Supp. 1101, S.D. Ind. 1995, *Alabama* v. *Stephens*, 876 F.Supp. 263, M.D. Ala. 1995, *Price* v. *Johnson*, 600 F.3d 460, 5th Cir. 2010 (dismissing appeal of district court's refusal to allow removal of subpoena proceeding against congresswoman).

The Removal Clarification Act of 2010 resolves this split in authority by amending section 1442 to clarify that the section allows removal of any proceeding in which a judicial order, including a subpoena for testimony or documents, is sought from or issued to a Federal agency or officer.

Earlier versions of this bill did not expressly address whether removal under the new statute would be limited to just the subpoena proceeding, in a case that is otherwise purely between private litigants but in which a Federal agency or officer has been subpoenaed, or whether the whole case would be removed. Members in both the House and Senate agree that in cases involving only the issuance of a subpoena to a Federal agency or officer, only the subpoena proceeding should be removed and the remainder of the civil action or criminal prosecution should remain in State court.

Some courts that currently allow removal of a subpoena proceeding have made it their practice to remove only that proceeding if the rest of the case is not otherwise removable. I cite e.g., *Pollock* v. *Barbarosa Group, Inc.*, 478 F. Supp.2d 410, W.D.N.Y. 2007; *In re Subpoena in Collins*, 524 F.3d 249, D.C. Cir. 2008; *Colorado* v. *Rodarte*, 2010 WL 924099, D. Colo. 2010. Other courts, however, have held that the entire case should be removed, even if no Federal officer was a defendant in the underlying suit and the case is not otherwise removable. I cite e.g., *Swett* v. *Schenk*, 792 F.2d 1447, 1450–51, 9th Cir. 1986; *Ferrell* v. *Yarberry*, 848 F.Supp. 121, E.D. Ark. 1994. Moreover, while these cases at least hold that the district court may remand the case to the State court once the subpoena proceeding is resolved, other courts hold that once a case is removed under section 1442, there is no authority to remand the case to the State court even after the Federal issue is resolved. I cite e.g., *Jamison* v. *Wiley*, 14 F.3d 222, 238–39, 4th Cir. 1994.

To make clear that removal of a subpoena proceeding, or other minor proceeding, is limited only to that proceeding if the case is not otherwise removable, the Senate amendment to this bill adds a second sentence to section 1442(c) that provides: ''If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.''

The language of 1442(c) is intended to be broad because it seeks to encompass not only subpoenas for testimony or documents, but also any other kind of judicial process that state courts could direct to Federal officers in relation to the performance of their official duties. The parenthetical clause in the first sentence of 1442(c) specifying that the proceeding need not be ancillary is added because some states allow subpoenas to be issued, or direct other judicial orders toward persons, before a complaint has even been filed. This was the situation in the Price v. Johnson case, which occurred earlier this year. When such pre-suit proceedings occur, they cannot be described as ancillary because there is nothing for them to be ancillary to.

Although the language in the first sentence of section 1442(c) is broad, I should make clear that it does not encompass all judicial proceedings. A proceeding in which a ''judicial order . . . is sought or issued'' means a minor proceeding, such as a subpoena proceeding, but does not include the complaint for relief itself. The second sentence of section 1442(c) would therefore not apply to a case in which a complaint for relief or a criminal prosecution has been brought against a Federal agency or officer, or a case that is removable under any other section of the United States Code. If the Federal agency or officer is a defendant in the underlying case, the normal rule, as described in section 3726 of Wright & Miller's Federal Practice and Procedure, would continue to apply:

Because Section 1442(a)(1) authorizes removal of the entire case even if only one of the controversies it raises involves a federal officer or agency, the section creates a species of statutorily-mandated supplemental subject-matter jurisdiction. The district court can exercise its discretion to decline jurisdiction over the supplemental claims if the federal agency drops out of the case, or even if the federal defendant remains a litigant. Whether the supplemental claims should be remanded if the federal officer's ''anchor'' claim is dismissed or settled, or if the supplemental claims have been asserted against non-federal parties, depends on considerations of comity, federalism, judicial economy, and fairness to litigants.

Changes made by this bill to section 1442 are not intended to displace ''the requirement that federal officer removal must be predicated on the allegation of a colorable federal defense.'' I cite *Mesa* v. *California*, 489 U.S. 121, 129, 1989. This legislation also does not displace the settled rule that ''the invocation of removal jurisdiction by a Federal officer does not revise or alter the underlying law to be applied. In this respect, it is a purely derivative form of jurisdiction, neither enlarging nor contracting the rights of the parties.'' I cite *Arizona* v. *Manypenny*, 451 U.S. 232, 242, 1981.

The new time limit created by section 1446(g) allows a Federal agency or officer subpoenaed to seek removal either within 30 days of receiving, through service, notice of when the subpoena is requested or issued or 30 days of receiving, through service, notice of when the same subpoena is sought to be enforced. This new subsection allows a Federal agency or officer to remove a pre-suit subpoena proceeding to Federal court before any complaint is filed, and also effectively allows a Federal officer who has been subpoenaed to wait until the subpoena is sought to be enforced before seeking removal.

I thank Senator SESSIONS for working with me to clarify the House's bipartisan bill. I also thank Representative HANK JOHNSON for working with us to explain the purposes and intricacies of this procedural issue.

Mr. DURBIN. I further ask the amendment which is at the desk be agreed to, the bill, as amended, be read a third time, and the clerk read a pay-go statement for the record.

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

The amendment (No. 4732) was agreed to, as follows:

On page 2, strike lines 8 through 18 and insert the following:

United States Code, is amended—

(1) in subsection (a), in the matter preceding paragraph (1)—

(A) by inserting ''that is'' after ''or criminal prosecution'';

(B) by inserting ''and that is'' after ''in a State court''; and

(C) by inserting ''or directed to'' after ''against''; and

(2) by adding at the end the following:

''(c) As used in subsection (a), the terms 'civil action' and 'criminal prosecution' include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.''.

On page 3, strike lines 4 through 19 and insert the following:

''(g) Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsections (b) and (c) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.''.

On page 3, strike line 23 and all that follows through page 4, line 6, and insert the following:

SEC. 3. PAYGO COMPLIANCE.

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 Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

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

The bill (H.R. 5281), as amended, was read the third time.

The assistant legislative clerk read as follows:

Mr. Conrad: This is the Statement of Budgetary Effects of PAYGO Legislation for H.R. 5281, as amended.

Total Budgetary Effects of H.R. 5281 for the 5-year Statutory PAYGO Scorecard: $0.

Total Budgetary Effects of H.R. 5281 for the 10-year Statutory PAYGO Scorecard: $0.

Also submitted for the RECORD as part of this statement is a table prepared by the Congressional Budget Office, which provides additional information on the budgetary effects of this Act, as follows:

CBO ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR H.R. 5281, THE REMOVAL CLARIFICATION ACT OF 2010, WITH AMENDMENTS (HEN10A39) PROVIDED TO CBO ON DECEMBER 1, 2010

	By fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011–2015	2011–2020
Net Increase or Decrease (−) in the Deficit												
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	0

Source: Congressional Budget Office.
Note: H.R. 5281 would clarify when certain litigation is moved to federal courts. This legislation would increase the number of cases handled by the federal courts; however, CBO estimates that it would have no significant effect on direct spending by the federal court system.

Mr. DURBIN. Further, I ask unanimous consent that the bill be passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

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

The bill (H.R. 5281), as amended, was read the third time and passed, as follows:

H.R. 5281

Resolved, That the bill from the House of Representatives (H.R. 5281) entitled ''An Act to amend title 28, United States Code, to clarify and improve certain provisions relating to the removal of litigation against Federal officers or agencies to Federal courts, and for other purposes.'', do pass with the following amendments:

(1)On page 2, strike lines 8 through 18 and insert the following:

United States Code, is amended—

(1) in subsection (a), in the matter preceding paragraph (1)—

(A) by inserting ''that is'' after ''or criminal prosecution'';

(B) by inserting ''and that is'' after ''in a State court''; and

(C) by inserting ''or directed to'' after ''against''; and

(2) by adding at the end the following:

''(c) As used in subsection (a), the terms 'civil action' and 'criminal prosecution' include any proceeding (whether or not ancillary to another proceeding) to the extent that in such proceeding a judicial order, including a subpoena for testimony or documents, is sought or issued. If removal is sought for a proceeding described in the previous sentence, and there is no other basis for removal, only that proceeding may be removed to the district court.''.

(2)On page 3, strike lines 4 through 19 and insert the following:

''(g) Where the civil action or criminal prosecution that is removable under section 1442(a) is a proceeding in which a judicial order for testimony or documents is sought or issued or sought to be enforced, the 30-day requirement of subsections (b) and (c) is satisfied if the person or entity desiring to remove the proceeding files the notice of removal not later than 30 days after receiving, through service, notice of any such proceeding.''.

(3)On page 3, strike line 23 and all that follows through page 4, line 6, and insert the following:

SEC. 3. PAYGO COMPLIANCE.

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 Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

MEASURE READ THE FIRST TIME—S. 4006

Mr. DURBIN. Mr. President, I understand there is a bill at the desk and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 4006) to provide for the use of unobligated discretionary stimulus dollars to address AIDS Assistance Program waiting lists and other cost containment measures impacting State ADAP programs.

Mr. DURBIN. I now ask for the second reading and, in order to place the bill on the calendar under rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read a second time on the next legislative day.

FOR THE RELIEF OF SHIGERU YAMADA

FOR THE RELIEF OF HOTARU NAKAMA FERSCHKE

Mr. DURBIN. Mr. President, I ask unanimous consent the Committee on the Judiciary be discharged from further consideration and the Senate proceed to the en bloc consideration of S. 124 and S. 1774, two private relief bills.

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

Mr. DURBIN. I ask unanimous consent the amendment at the desk be agreed to, the bills, as amended, if amended, be read a third time and the budgetary pay-go statement be read.

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

The clerk will report.

Mr. Conrad: This is the Statement of Budgetary Effects of PAYGO Legislation for S. 1774.

Total Budgetary Effects of S. 1774 for the 5-year Statutory PAYGO Scorecard: $0.

Total Budgetary Effects of S. 1774 for the 10-year Statutory PAYGO Scorecard: $0.

Also submitted for the RECORD as part of this statement is a table prepared by the Congressional Budget Office, which provides additional information on the budgetary effects of this Act, as follows:

CBO ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS FOR S. 1774, A BILL FOR THE RELIEF OF HOTARU NAKAMA FERSCHKE, WITH AN AMENDMENT (EAS10517) PROVIDED TO CBO ON DECEMBER 2, 2010

	By fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011–2015	2011–2020
Net Increase or Decrease (−) in the Deficit												
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	0

S. 1774 would make Hotaru Nakama Ferschke eligible for permanent U.S. residence. CBO estimates that it would have no significant effect on direct spending by the Department of Homeland Security or on federal assistance programs.

The amendment (No. 4733) was agreed to, as follows:

(Purpose: To add PAYGO language)

At the end, add the following:

(e) PAYGO.—The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go-Act of 2010, shall