legislative history because the CVRA ''is unambiguous.'' Response of the United States, *In re Antrobus*, No. 08–4002, at 12 n.7 (10th Cir. Feb. 12, 2008).

At the time that the Justice Department filed this brief, no Court of Appeals agreed with the Tenth Circuit. At the time, three other Circuits had all issued unanimous rulings that crime victims were entitled to regular appellate review. See *In re W.R. Huff Asset Mgmt. Co.*, 409 F.3d 555, 562 (2d Cir. 2005); *Kenna v. US. Dist. Ct. for the Cent. Dist. of Ca.*, 435 F.3d 1011, 1017 (9th Cir. 2006); *In re Walsh*, 229 Fed.Appx. 58, at 60 (3rd Cir. 2007).

My next question for you is, given that the Justice Department has an obligation to use its ''best efforts,'' 18 U.S.C. §3771(c)(1), to afford crime victims their rights, how could the Department argue in Antrobus (and later cases) that the CVRA ''unambiguously'' denied crime victims regular appellate protections of their rights when three circuits had reached the opposite conclusion?

GOVERNMENT'S RIGHT TO ASSERT ERROR DENIAL OF VICTIMS' RIGHTS

To further bolster protection of crime victims' rights, Congress also included an additional provision in the CVRA—§3771(d)(4)—allowing the Justice Department to obtain review of crime victims' rights issues in appeals filed by defendants: ''In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.'' 18 U.S.C. §3771(d)(4). The intent underlying this provision was to supplement the crime victims' appeal provision found in §3771(d)(3) by permitting the Department to also help develop a body of case law expanding crime victims' rights in the many defense appeals that are filed. It was not intended to in any way narrow crime victims' rights to seek relief under §3771(d)(3). Nor was it intended to bar crime victims from asserting other remedies. For instance, it was not intended to block crime victims from taking an ordinary appeal from an adverse decision affecting their rights (such as a decision denying restitution) under 28 U.S.C. §1291. Crime victims had been allowed to take such appeals in various circuits even before the passage of the CVRA. See, e.g., *United States v. Kones*, 77 F.3d 66 (3rd Cir. 1996) (crime victim allowed to appeal restitution ruling); *United States v. Perry*, 360 F.3d 519 (6th Cir. 2004) (crime victims allowed to appeal restitution lien issue); *Doe v. United States*, 666 F.2d 43, 46 (4th Cir. 1981) (crime victim allowed to appeal rape shield ruling).

As I explained at the time the CVRA was under consideration, this provision supplemented those pre-existing decisions by ''allow[ing] the Government to assert a victim's right on appeal even when it is the defendant who seeks appeal of his or her conviction. This ensures that victims' rights are protected throughout the criminal justice process and that they do not fall by the wayside during what can often be an extended appeal that the victim is not a party to.'' 150 CONG. REC. S4270 (Apr. 22, 2004) (statement of Sen. Kyl).

I have heard from crime victims' advocates that the Department has not been actively enforcing this provision. Indeed, these advocates tell me that they are unaware of even a single case where the Department has used this supplemental remedy. My final question: Is it true that the Department has never used this provision in even a single case in the more than six years since the CVRA was enacted?

Sincerely,

JON KYL,
U.S. Senator.

HONORING OUR ARMED FORCES

SERGEANT VORASACK T. XAYSANA

Mr. BENNET. Mr. President, it is with a heavy heart that I rise today to honor the life and heroic service of SGT Vorasack T. Xaysana. Sergeant Xaysana, assigned to the Headquarters and Headquarters Company, 2nd Battalion, based in Fort Hood, TX, died on April 10, 2011. Sergeant Xaysana was serving in support of Operation New Dawn in Kirkuk, Iraq. He was 30 years old.

A native of Westminster, CO, Sergeant Xaysana enlisted in the Army in 2005. During over 6 years of service, he distinguished himself through his courage and dedication to duty. Sergeant Xaysana's exemplary service quickly won the recognition of his commanding officers. He earned, among other decorations, the Iraq Campaign Medal, the Global War on Terrorism Service Medal, and the Army Good Conduct Medal.

Sergeant Xaysana worked on the front lines of battle, serving in the most dangerous areas of Iraq. Mark Twain once said, ''The fear of death follows from the fear of life. A man who lives fully is prepared to die at any time.'' Sergeant Xaysana's service was in keeping with this sentiment—by selflessly putting country first, he lived life to the fullest. He lived with a sense of the highest honorable purpose.

At substantial personal risk, he braved the chaos of combat zones throughout Iraq. Though his fate on the battlefield was uncertain, he pushed forward, protecting America's citizens, her safety, and the freedoms we hold dear. For his service and the lives he touched, Sergeant Xaysana will forever be remembered as one of our country's bravest.

To Sergeant Xaysana's parents, Thong Chanh and Manithip, and to his entire family, I cannot imagine the sorrow you must be feeling. I hope that, in time, the pain of your loss will be eased by your pride in Vorasack's service and by your knowledge that his country will never forget him. We are humbled by his service and his sacrifice.

GRAZING IMPROVEMENT ACT

Mr. BARRASSO. Mr. President, I rise today to submit for the RECORD an article written by Karen Budd-Falen and published May 28, 2011, in the Wyoming Livestock Journal. The article's title is ''Leveling the Playing Field: Support for the Grazing Improvement Act of 2011.''

The title of the article is instructive. Anyone living and working in rural communities knows the playing field is not level. The National Environmental Policy Act has become the preferred tool to delay and litigate grazing permit renewals for American ranchers.

Livestock grazing on public lands has a strong tradition in Wyoming and all Western States. Ranchers are proud stewards of the land, yet the permitting process to renew their permits is severely backlogged due to litigation aimed at eliminating livestock from public land.

During times of high unemployment and increasing food prices, we need to be encouraging jobs in rural economies. We need to be fostering an environment to raise more high quality, safe, American beef and lamb; not litigating less.

That is why I introduced the Grazing Improvement Act of 2011. This legislation will provide the certainty and stability public grazing permit holders desperately need in order to continue supporting rural jobs, providing healthy food, and maintaining open spaces for recreation and wildlife.

It is time to help level the playing field for hard working ranching families across the West. Their livelihood should not be held hostage by litigation and anti-grazing special interest groups. I thank my colleagues, Senators ENZI, CRAPO, HATCH, HELLER, RISCH, and THUNE, in supporting ranching families and this legislation.

Mr. President, I ask unanimous consent to have printed in the RECORD the article to which I referred.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wyoming Livestock Roundup, May 28, 2011]

LEVELING THE PLAYING FIELD: SUPPORT FOR THE GRAZING IMPROVEMENT ACT OF 2011

(By Karen Budd-Falen)

If jobs and the economy are the number one concern for America, why are rural communities and ranchers under attack by radical environmental groups and overzealous federal regulators?

America depends upon the hundreds of products that livestock provide, yet radical groups and oppressive regulations make it almost impossible for ranchers to stay in business. Opposition to these jobs comes in the form of litigation by radical environmental groups to eliminate grazing on public lands, radical environmental group pressure to force ''voluntary'' grazing permit buyouts from ''willing sellers,'' and holding permittees hostage to the court deference given to regulatory ''experts.'' The playing field is not level and the rancher is on the losing side. The Grazing Improvement Act of 2011 will level the playing field. I urge your support.

The Grazing Improvement Act of 2011 does the following:

1. Term of Grazing Leases and Permits. Both BLM and Forest Service term grazing permits are for a 10-year term. This bill extends that term to 20 years. This extension does not affect either the BLM's or Forest Service's ability to make interim management decisions based upon resource or other needs, nor does it impact the preference right of renewal for term grazing permits or leases.

2. Renewal, Transfer and Reissuance of Grazing Leases and Permits. This section codifies the various ''appropriation riders'' for the BLM and Forest Service requiring that permits being reissued, renewed or transferred continue to follow the existing terms and conditions until the paperwork is complete. Thus, the rancher is not held hostage to the ability of the agency to get its

job done—a job that is admittedly harder because of radical environmental appeals, litigation and FOIA requests.

This bill also codifies the ability of the BLM and Forest Service to ''categorically exclude'' grazing permit renewal, reissuance or transfer from the paperwork requirements under National Environmental Policy Act (NEPA) if the permit or lease continues current grazing management on the allotment. Minor modifications to a permit or lease can also be categorically excluded from NEPA if monitoring indicates that the current grazing management has met or is moving toward rangeland and riparian objectives and there are no ''extraordinary circumstances.'' Finally, this section allows the BLM and Forest Service to continue to set their priority and timing for permit renewal or reissuance.

3. Applicability of Administrative Procedure Act. This provision is really what levels the playing field for the rancher, against the environmental ''willing buyer'' and the arbitrary decisions of the governmental regulator.

First, this provision applies a real decision making process, with an independent hearing officer or judge, to Forest Service administrative appeals. Currently, legal challenges to Forest Service decisions are heard by the ''next higher Forest Service line officer.'' There have long been allegations that this system is significantly skewed so that the Forest Service decision maker is ''almost always right.'' For example, out of the 28 decisions that were administratively appealed in Forest Service Region 2 (Wyoming, Colorado, Kansas, Nebraska, South Dakota) from 2009 to the present, only two were rejected as being legally or factually wrong. In that same time period, in California, out of 78 appeals, only 13 decisions were either rejected or withdrawn. In Arizona and New Mexico, the Forest Service ''independent review by the next higher line officer'' only found 15 out of 83 decisions were deficient. In other words, just considering these three Forest Service regions, the agency found itself right 85 percent of the time. In a fair and equal system, no one is right that many times!

This provision would change that pattern so that Forest Service grazing permittees would appeal the decisions they believed were legally, factually or scientifically wrong to an independent law judge and the Forest Service would have to show why its decision is right, rather than the permittee having to show why the decision is wrong. The permittee would also be able to cross-examine Forest Service ''experts'' on the reasons for the decision and the agency would have to supply some justification for its decision. It is critical that Forest Service permittees have the ability to protect themselves from arbitrary decisions—an ability they do not have now.

Second, this Act would level the playing field for BLM permittees. Like the Forest Service provisions discussed above, this bill ''changes'' the current appeals system by requiring the BLM to prove its decision is legally and scientifically correct, rather than forcing the permittee to prove why the decision is legally and scientifically wrong.

Additionally, the OHA has determined that when the BLM issues a decision adversely affecting a permittee's grazing privileges, the BLM decision can still be upheld, even if the BLM did not comply with all of the grazing regulations. In short, under the current appeals system, the permittee's experts have to show why the BLM experts are wrong (a burden that is very hard to carry) and the BLM decision can still be held to be correct, even if the BLM only substantially complied with its regulations. This is not a level playing field and a problem that absolutely needs corrected.

Finally, this section also returns to the law the ''automatic stay'' provisions eliminated by the Bruce Babbitt ''Range Reform '94'' regulations, except for decisions of a temporary nature and except in emergency situations.

In truth, this bill is more than mere technical changes to erroneous agency regulations—it gives some very real protection to the permittees. For example, the Ruby Pipeline ''donation'' to Western Watersheds Project to purchase grazing preferences on a ''willing seller'' basis only works if the permittee is honestly ''willing to sell.'' However, if the permittee is always behind the curve in protecting his grazing permit and the only way he can ''win'' is by ''voluntarily selling'' his permit for pennies on the dollar, the word ''willing'' is truly compulsion. And, in the case of the Forest Service, the current administrative appeals process is like asking your father to change the decision of your mother, when your mother and father agreed on the decision before it was dictated to you.

Finally, this bill reverses the U.S. Justice Department capitulations to environmental groups during the course of recent litigation. These ''settlements'' have significantly restricted the BLM's and Forest Service's ability to legitimately use categorical exclusions to renew grazing permits. Neither the Justice Department nor the federal bureaucrats should be allowed to make Congressional policy without the Congressional branch of government.

Make no mistake—this is not just a public lands ranchers' bill; this bill will help preserve family ranches, rural communities and the American beef supply. This is an American jobs bill! I urge your support and ask that you request your Congressional representatives support this bill.

ADDITIONAL STATEMENTS

30TH ANNIVERSARY OF THE GOOD SHEPHERD FOOD BANK

● Ms. COLLINS. Mr. President. In early 1981, JoAnn and Ray Pike of Lewiston, ME, became concerned about the growing number of families and elderly in their community who were going hungry. Inspired by a newspaper story about an organization in Kansas City that received food donations from the food industry to distribute to those in need, the Pikes and their home prayer group turned concern into action.

On Palm Sunday of that year, the people of the twin cities of Lewiston-Auburn joined in a walkathon and raised $6,000. The Good Shepherd Food Bank was born. Thirty years later, it serves all 16 Maine counties, providing nourishment and hope to more than 70,000 Maine people each month.

This remarkable story of compassion started small. The first food bank was located in an apartment and garage at the Pike home. Within 8 months, the quantity of donated food outgrew that space and the operation moved to a former textile mill in Lewiston. Today, the food bank has more than 100,000-square feet of warehouse space in Lewiston, Portland, and Brewer, enough to store 12 million pounds of food per year.

At first, a handful of food companies joined this effort. Word of the good work being done in Lewiston quickly spread, and food manufacturers, distributors, and supermarkets throughout Maine stepped forward—more than 200 companies now contribute to the food bank.

Getting so much food to so many people over such a large area is a great challenge. It is a challenge that has been met by volunteers. The Good Shepherd Food Bank has established partnerships with more than 600 organizations throughout Maine—churches, charities, and civic clubs—that form a vast distribution network. This results in an operation of extraordinary efficiency. For every $1 donated to support food bank operations, $8.50 worth of food is provided.

As a founding member of the Senate Hunger Caucus, I know we have done much here in Washington to ensure food security for all, but that there is more to do. I also know that so much of the real work of helping those in need is done in our communities by caring and dedicated citizens. The Good Shepherd Food Bank of Maine is a shining example of such caring and dedication, and I congratulate this wonderful organization and its many supporters on 30 years of inspiring service.●

TRIBUTE TO MALCOLM ROSS O'NEILL

● Mr. LEVIN. Mr. President, today I wish to recognize the distinguished career of a highly decorated soldier and accomplished public servant. Following decades of unwavering service to our Nation, Dr. Malcolm Ross O'Neill recently retired as the Assistant Secretary of the Army for Acquisition, Logistics & Technology, AL&T. In his capacity as the Assistant Secretary and Army acquisition executive, Dr. O'Neill led the Army's 41,000-member acquisition workforce in its vital mission to equip and sustain the world's most capable, powerful, and respected Army.

Dr. O'Neill has made significant contributions to our national security over the course of a career spanning nearly five decades. He proudly served 34 years on active duty as an Army officer, both in peacetime and in combat. Dr. O'Neill was commissioned in the U.S. Army as a field artillery officer in 1962 and served with the 82nd Airborne Division; as an adviser with the 21st Reconnaissance Company of the 21st Army of the Republic of Vietnam Division; and assistant chief of staff, Ammunition, with the Danang Support Command in Vietnam. His first acquisition job was as a member of the source selection team for what was then called surface-to-air missile, development—now the Patriot missile system. His extensive military experience includes service as commander, U.S. Army Laboratory Command; deputy director of the Strategic Defense Initiative Organization; and director of the Ballistic Missile Defense Organization.

Under Dr. O'Neill's leadership as Assistant Secretary of the Army, the