

S. 3457

At the request of Mr. NELSON of Florida, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from New York (Mrs. GILLIBRAND) were added as cosponsors of S. 3457, a bill to require the Secretary of Veterans Affairs to establish a veterans jobs corps, and for other purposes.

S. 3463

At the request of Mr. FRANKEN, the names of the Senator from Alaska (Mr. BEGICH) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 3463, a bill to amend title XVIII of the Social Security Act to reduce the incidence of diabetes among Medicare beneficiaries.

S. 3471

At the request of Mr. RUBIO, the names of the Senator from Tennessee (Mr. ALEXANDER), the Senator from Georgia (Mr. ISAKSON), the Senator from Louisiana (Mr. VITTER), the Senator from Utah (Mr. LEE) and the Senator from Arkansas (Mr. BOOZMAN) were added as cosponsors of S. 3471, a bill to amend the Internal Revenue Code of 1986 to eliminate the tax on Olympic medals won by United States athletes.

S. 3474

At the request of Mr. MERKLEY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 3474, a bill to provide consumer protection for students.

S. 3480

At the request of Mr. JOHANNIS, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 3480, a bill to provide end user exemptions from certain provisions of the Commodity Exchange Act and the Securities Exchange Act of 1934.

S.J. RES. 29

At the request of Mr. UDALL of New Mexico, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S.J. Res. 29, a joint resolution proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

S. CON. RES. 47

At the request of Mr. MENENDEZ, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. Con. Res. 47, a concurrent resolution expressing the sense of Congress on the sovereignty of the Republic of Cyprus over all of the territory of the island of Cyprus.

S. CON. RES. 50

At the request of Mr. RUBIO, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of S. Con. Res. 50, a concurrent resolution expressing the sense of Congress regarding actions to preserve and advance the multistakeholder governance model under which the Internet has thrived.

S. RES. 392

At the request of Mrs. FEINSTEIN, the name of the Senator from Vermont

(Mr. SANDERS) was added as a cosponsor of S. Res. 392, a resolution urging the Republic of Turkey to safeguard its Christian heritage and to return confiscated church properties.

AMENDMENT NO. 2653

At the request of Mr. GRAHAM, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of amendment No. 2653 intended to be proposed to S. 3414, a bill to enhance the security and resiliency of the cyber and communications infrastructure of the United States.

AMENDMENT NO. 2732

At the request of Mr. FRANKEN, the names of the Senator from Kentucky (Mr. PAUL), the Senator from Oregon (Mr. WYDEN), the Senator from New York (Mr. SCHUMER), the Senator from Hawaii (Mr. AKAKA), the Senator from Delaware (Mr. COONS), the Senator from Connecticut (Mr. BLUMENTHAL), the Senator from Vermont (Mr. SANDERS), the Senator from New Mexico (Mr. UDALL), the Senator from Oregon (Mr. MERKLEY), the Senator from New Hampshire (Mrs. SHAHEEN), the Senator from Washington (Ms. CANTWELL), the Senator from Alaska (Mr. BEGICH), the Senator from Iowa (Mr. HARKIN), the Senator from Illinois (Mr. DURBIN), the Senator from Montana (Mr. TESTER), the Senator from Virginia (Mr. WEBB) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of amendment No. 2732 proposed to S. 3414, a bill to enhance the security and resiliency of the cyber and communications infrastructure of the United States.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

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

S. 3486. A bill to implement the provisions of the Hague Agreement and the Patent Law Treaty; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I am pleased to introduce today legislation that will help American businesses and inventors by reducing obstacles for obtaining patent protection overseas. This bipartisan measure implements two patent law treaties that were signed under President Clinton and submitted for the Senate's advice and consent by President George W. Bush. The Senate voted to ratify the treaties in 2007 without a single Senator in dissent. With this implementing legislation, Congress will complete its work so that the treaties at last can be ratified and go into effect.

Our patent system plays a key role in encouraging innovation and bringing new products to market. The discoveries made by American inventors and research institutions, commercialized by our companies, and protected and promoted by our patent laws, have made our system the envy of the world. But in this global economy, it is not enough to have an effective domestic

patent system; we must also help American inventors and businesses to protect their inventions and thrive in markets around the world. Consistent with last year's landmark patent reform legislation, the Leahy-Smith America Invents Act, this legislation will benefit American inventors by implementing two measures to reduce application barriers around the world.

The Hague Agreement Concerning International Registration of Industrial Designs provides a simplified application system for U.S. creators of industrial designs who, by filing a single standardized application for a design patent at the U.S. Patent and Trademark Office, can apply for design protection in each country that has ratified the Treaty. American design patent applicants who previously had to file separate applications in numerous countries may now file a single, English-language application at the U.S. Patent Office, reducing the costs and burdens of obtaining international protections. The U.S. Patent Office may also receive applications that have been filed internationally, but its substantive examination process remains unchanged. The standard for obtaining a design patent is not affected. By simplifying the process for American businesses to obtain design patents overseas, the Hague Agreement will reduce barriers for small and mid-size companies to expand into foreign markets.

The Patent Law Treaty also streamlines the process for American businesses seeking patent protection overseas. It limits the formalities different countries can require in patent applications, which are often used to disadvantage American applications in foreign jurisdictions. American businesses and inventors will benefit from harmonized applications, reducing the cost of doing business and encouraging U.S. innovators to protect and export their products internationally.

In June, Director Kappos of the U.S. Patent and Trademark Office testified before the Judiciary Committee about the important need for this implementing legislation, stating that the treaties are "pro-American innovation, pro-global innovation, pro-jobs, pro-opportunity." I agree. I urge the Senate to act quickly on this final step so that the treaties can at last be ratified, and American innovators and businesses can benefit from them as U.S. products continue to thrive on the global stage.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3486

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 "Patent Law Treaties Implementation Act of 2012".

“(b) **APPLICABILITY OF CHAPTER 16.**—All questions of substance, and, unless otherwise

required by the treaty and Regulations, procedures regarding an international design application designating the United States shall be determined as in the case of applications filed under chapter 16 of this title.

“(c) FEES.—The Director may prescribe fees for filing international design applications, for designating the United States, and for any other processing, services, or materials relating to international design applications, and may provide for later payment of such fees, including surcharges for later submission of fees.

“(d) ISSUANCE OF PATENT.—The Director may issue a patent based on an international design application designating the United States, in accordance with the provisions of this title. Such patent shall have the force and effect of a patent issued on an application filed under chapter 16 of this title.

“§ 390. Publication of international design application

“The publication under the treaty defined in section 381(a)(1) of an international design application designating the United States shall be deemed a publication under section 122(b).”

(b) CONFORMING AMENDMENT.—The table of parts at the beginning of title 35, United States Code, is amended by adding at the end the following:

“V. The Hague Agreement concerning international registration of industrial designs 401”.

SEC. 102. CONFORMING AMENDMENTS.

Title 35, United States Code, is amended—

(1) in section 100(i)(1)(B), by striking “right of priority under section 119, 365(a), or 365(b)” or to the benefit of an earlier filing date under section 120, 121, or 365(c)” and inserting “right of priority under section 119, 365(a), 365(b), 386(a), or 386(b) or to the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c)”;

(2) in section 102(d)(2), by striking “to claim a right of priority under section 119, 365(a), or 365(b), or to claim the benefit of an earlier filing date under section 120, 121, or 365(c)” and inserting “to claim a right of priority under section 119, 365(a), 365(b), 386(a), or 386(b), or to claim the benefit of an earlier filing date under section 120, 121, 365(c), or 386(c)”;

(3) in section 111(b)(7)—

(A) by striking “section 119 or 365(a)” and inserting “section 119, 365(a), or 386(a)”;

(B) by striking “section 120, 121, or 365(c)” and inserting “section 120, 121, 365(c), or 386(c)”;

(4) in section 115(g)(1), by striking “section 120, 121, or 365(c)” and inserting “section 120, 121, 365(c), or 386(c)”;

(5) in section 120, in the first sentence, by striking “section 363” and inserting “section 363 or 385”;

(6) in section 154—

(A) in subsection (a)—

(i) in paragraph (2), by striking “section 120, 121, or 365(c)” and inserting “section 120, 121, 365(c), or 386(c)”;

(ii) in paragraph (3), by striking “section 119, 365(a), or 365(b)” and inserting “section 119, 365(a), 365(b), 386(a), or 386(b)”;

(B) in subsection (d)(1), by inserting “or an international design application filed under the treaty defined in section 381(a)(1) designating the United States under Article 5 of such treaty” after “Article 21(2)(a) of such treaty”;

(7) in section 173, by striking “fourteen years” and inserting “15 years”;

(8) in section 365(c)—

(A) in the first sentence, by striking “or a prior international application designating the United States” and inserting “, a prior international application designating the United States, or a prior international de-

sign application as defined in section 381(a)(6) of this title designating the United States”; and

(B) in the second sentence, by inserting “or a prior international design application as defined in section 381(a)(6) of this title which designated but did not originate in the United States” after “did not originate in the United States”; and

(9) in section 366—

(A) in the first sentence, by striking “unless a claim” and all that follows through “withdrawal.” and inserting “unless a claim for benefit of a prior filing date under section 365(c) of this section was made in a national application, or an international application designating the United States, or a claim for benefit under section 386(c) was made in an international design application designating the United States, filed before the date of such withdrawal.”; and

(B) by striking the second sentence and inserting the following: “However, such withdrawn international application may serve as the basis for a claim of priority under section 365 (a) and (b) of this part, or under section 386 (a) or (b), if it designated a country other than the United States.”.

SEC. 103. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this title shall be effective on the later of—

(1) the date that is 1 year after the date of enactment of this Act, or

(2) the date of entry into force of the treaty, as defined in section 381 of title 35, as amended by this Act, with respect to the United States.

(b) APPLICABILITY OF AMENDMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this title shall apply only to international design applications, international applications as defined in section 351(c) of title 35, United States Code, and national applications filed on and after the effective date set forth in subsection (a), and patents issuing thereon.

(2) EXCEPTION.—Sections 100(i) and 102(d) of title 35, United States Code, as amended by this title, shall not apply to an application, or any patent issuing thereon, unless it is described in section 3(n)(1) of the Leahy-Smith America Invents Act (35 U.S.C. 100 note).

TITLE II—PATENT LAW TREATY IMPLEMENTATION

SEC. 201. PROVISIONS TO IMPLEMENT THE PATENT LAW TREATY.

(a) APPLICATION FILING DATE.—Section 111 of title 35, United States Code, is amended—

(1) in subsection (a), by striking paragraphs (3) and (4) and inserting the following:

“(3) FEE, OATH OR DECLARATION, AND CLAIMS.—The application shall be accompanied by the fee required by law. The fee, oath or declaration, and 1 or more claims may be submitted after the filing date of the application, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director. Upon failure to submit the fee, oath or declaration, and 1 or more claims within such prescribed period, the application shall be regarded as abandoned.

“(4) FILING DATE.—The filing date of an application shall be the date on which a specification, with or without claims, is received in the United States Patent and Trademark Office.”;

(2) in subsection (b), by striking paragraphs (3) and (4) and inserting the following:

“(3) FEE.—The application shall be accompanied by the fee required by law. The fee may be submitted after the filing date of the application, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director. Upon failure to submit the fee within such prescribed period, the application shall be regarded as abandoned.

“(4) FILING DATE.—The filing date of a provisional application shall be the date on which a specification, with or without claims, is received in the United States Patent and Trademark Office.”; and

(3) by adding at the end the following:

“(c) PRIOR FILED APPLICATION.—The Director may prescribe the conditions, including the payment of a surcharge, under which a reference made upon the filing of an application under subsection (a) to a previously filed application, specifying the previously filed application by application number and the intellectual property authority or country in which the application was filed, shall constitute the specification and any drawings of the subsequent application for purposes of a filing date. A copy of the specification and any drawings of the previously filed application shall be submitted within such period and under such conditions as may be prescribed by the Director. A failure to submit the copy of the specification and any drawings of the previously filed application within the prescribed period shall result in application being regarded as abandoned and treated as having never been filed.”.

(b) RELIEF IN RESPECT OF TIME LIMITS AND REINSTATEMENT OF RIGHTS.—

(1) IN GENERAL.—Chapter 2 of title 35, United States Code, is amended by adding at the end the following:

“§ 27. Revival of applications; reinstatement of reexamination proceedings

“(a) IN GENERAL.—The Director may establish procedures, including the requirement for payment of the fee specified in section 41(a)(7), to revive an unintentionally abandoned application for patent, accept an unintentionally delayed payment of the fee for issuing each patent, or accept an unintentionally delayed response by the patent owner in a reexamination proceeding, upon petition by the applicant for patent or patent owner.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 2 of title 35, United States Code, is amended by adding at the end the following:

“27. Revival of applications; reinstatement of reexamination proceedings.”.

(c) RESTORATION OF PRIORITY RIGHT.—Title 35, United States Code, is amended—

(1) in section 119—

(A) in subsection (a), by adding at the end the following: “The Director may prescribe regulations, including the requirement for payment of the fee specified in section 41(a)(7), pursuant to which the 12-month period set forth in this subsection may be extended by an additional 2 months if the delay in filing the application in this country within the 12-month period was unintentional.”; and

(B) in subsection (e)—

(i) in paragraph (1)—

(I) by inserting after the first sentence the following: “The Director may prescribe regulations, including the requirement for payment of the fee specified in section 41(a)(7), pursuant to which the 12-month period set forth in this subsection may be extended by an additional 2 months if the delay in filing the application under section 111(a) or section 363 within the 12-month period was unintentional.”; and

(II) in the last sentence—

(aa) by striking “including the payment of a surcharge” and inserting “including the payment of the fee specified in section 41(a)(7)”;

(bb) by striking “during the pendency of the application”;

(ii) in paragraph (3), by adding at the end the following: “For an application for patent filed under section 363 in a foreign Receiving Office, the 12-month and additional 2 month

period set forth in this subsection shall be extended as provided under the treaty and Regulations as defined in section 351.”; and

(2) in section 365(b), by adding at the end the following: “The Director may establish procedures, including the requirement for payment of the fee specified in section 41(a)(7), to accept an unintentionally delayed claim for priority under the treaty and the Regulations, and to accept a priority claim where such priority claim pertains to an application that was not filed within the priority period specified in the treaty and Regulations, but was filed within the additional 2-month period specified under section 119(a) or the treaty and Regulations.”.

(d) **RECORDATION OF OWNERSHIP INTERESTS.**—Section 261 of title 35, United States Code, is amended—

(1) in the first undesignated paragraph by adding at the end the following: “The Patent and Trademark Office shall maintain a register of interests in applications for patents and patents and shall record any document related thereto upon request, and may require a fee therefor.”; and

(2) in the fourth undesignated paragraph by striking “An assignment” and inserting “An interest that constitutes an assignment”.

SEC. 202. CONFORMING AMENDMENTS.

(a) **IN GENERAL.**—Section 171 of title 35, United States Code, is amended by adding at the end the following:

“The filing date of an application for patent for design shall be the date on which the specification as prescribed by section 112 and any required drawings are filed.”.

(b) **RELIEF IN RESPECT OF TIME LIMITS AND REINSTATEMENT OF RIGHT.**—Title 35, United States Code, is amended—

(1) in section 41—

(A) in subsection (a), by striking subsection (7) and inserting the following:

“(7) **REVIVAL FEES.**—On filing each petition for the revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, for the delayed response by the patent owner in any reexamination proceeding, for the delayed payment of the fee for maintaining a patent in force, for the delayed submission of a priority or benefit claim, or for the extension of the 12-month period for filing a subsequent application, \$1,700.00. The Director may refund any part of the fee specified in this paragraph, in exceptional circumstances as determined by the Director”; and

(B) in subsection (c), by striking paragraph (1) and inserting the following:

“(1) **ACCEPTANCE.**—The Director may accept the payment of any maintenance fee required by subsection (b) after the 6-month grace period if the delay is shown to the satisfaction of the Director to have been unintentional. The Director may require the payment of the fee specified in paragraph (a)(7) as a condition of accepting payment of any maintenance fee after the 6-month grace period. If the Director accepts payment of a maintenance fee after the 6-month grace period, the patent shall be considered as not having expired at the end of the grace period.”;

(2) in section 119(b)(2), in the second sentence, by striking “including the payment of a surcharge” and inserting “including the requirement for payment of the fee specified in section 41(a)(7)”;

(3) in section 120, in the fourth sentence, by striking “including the payment of a surcharge” and inserting “including the requirement for payment of the fee specified in section 41(a)(7)”;

(4) in section 122(b)(2)(B)(iii), in the second sentence, by striking “, unless it is shown” and all that follows through “unintentional”;

(5) in section 133, by striking “, unless it be shown” and all that follows through “unavoidable”;

(6) by striking section 151 and inserting the following:

“§ 151. Issue of patent

“If it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant. The notice shall specify a sum, constituting the issue fee and any required publication fee, which shall be paid within 3 months thereafter.

“Upon payment of this sum the patent may issue, but if payment is not timely made, the application shall be regarded as abandoned.”;

(7) in section 361, by striking subsection (c) and inserting the following:

“(c) International applications filed in the Patent and Trademark Office shall be filed in the English language, or an English translation shall be filed within such later time as may be fixed by the Director.”;

(8) in section 364, by striking subsection (b) and inserting the following:

“(b) An applicant’s failure to act within prescribed time limits in connection with requirements pertaining to an international application may be excused as provided in the treaty and the Regulations.”; and

(9) in section 371(d), in the third sentence, by striking “, unless it be shown to the satisfaction of the Director that such failure to comply was unavoidable”.

SEC. 203. EFFECTIVE DATE.

(a) **IN GENERAL.**—Except as provided in subsection (b), the amendments made by this title shall be effective on the date that is 1 year after the date of enactment of this Act and shall apply to all patents and to all applications for patent pending on or filed after the date that is 1 year after the date of enactment of this Act.

(b) **EXCEPTIONS.**—

(1) **SECTION 201(A).**—The amendments made by section 201(a) shall apply only to applications filed on or after the date that is 1 year after the date of enactment of this Act.

(2) **PATENT THAT IS SUBJECT OF LITIGATION.**—The amendments made by this title shall have no effect with respect to any patent that is the subject of litigation in an action commenced before the date that is 1 year after the date of enactment of this Act.

By Mr. KYL:

S. 3493. A bill to protect first amendment rights of journalists and internet service providers by preventing States and the United States from allowing meritless lawsuits arising from acts in furtherance of those rights, commonly called “Strategic Lawsuits Against Public Participation” or “SLAPPs”, and for other purposes; to the Committee on the Judiciary.

Mr. KYL. Mr. President, I rise today to introduce the Free Press Act. The FPA would create a Federal anti-SLAPP statute for journalists, bloggers, and other news media, authorizing them to bring a special motion to dismiss lawsuits brought against them that arise out of their speech on public issues. Once the special motion to dismiss is brought, the nonmoving party must present a prima facie case supporting the lawsuit; if the nonmovant fails to do so, the lawsuit is dismissed and fees and costs are awarded to the movant.

Anti-SLAPP laws effectively make it impossible for frivolous or marginal

libel lawsuits arising out of protected speech to advance beyond an initial stage of litigation. Such laws thereby protect journalists and bloggers from the financial impact of defending against such suits. Approximately 30 States have anti-SLAPP laws, though their coverage varies. There is no federal law. The FPA would create a federal anti-SLAPP law, and allow parties to remove some state SLAPP claims to Federal court.

At the conclusion of my remarks today, I will submit for the record a section-by-section summary of the FPA. I will first, however, comment on several features of the bill, including the meaning of some of the language that is used, and Congress’ authority to enact such legislation.

The FPA’s special motion to dismiss requires the plaintiff to present “prima facie evidence” supporting his cause of action. The standard definition of “prima facie evidence,” which is employed by the FPA, is that given by Justice Story in his opinion for the court in *Kelly v. Jackson*, 31 U.S. 622, 632, 1832: “What is prima facie evidence of a fact? It is such as, in judgment of law, is sufficient to establish a fact; and, if not rebutted, remains sufficient for that purpose.” For similar statements, see *Bailey v. Alabama*, 219 S.Ct. 219, 234, 1911, quoting *Kelly v. Jackson*; and *Neely v. United States*, 150 F.2d 977, 978, D.C. Cir. 1945, which notes “Justice Story’s often quoted definition of prima facie evidence.”

This definition is also employed by Black’s Law Dictionary, which defines “prima facie evidence” as:

Such evidence as, in the judgment of the law, is sufficient to establish a given fact and which if not rebutted or contradicted, will remain sufficient. [Prima facie evidence], if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but [it] may be contradicted by other evidence.

In a recent concurring and dissenting opinion, Justice Scalia went so far as to describe this definition of “prima facie evidence” as “canonical.” He also stated:

The established meaning in Virginia, then, of the term “prima facie evidence” appears to be perfectly orthodox: It is evidence that suffices, on its own, to establish a particular fact. But it is hornbook law that this is true only to the extent that the evidence goes unrebutted. “Prima facie evidence of a fact is such evidence as, in judgment of law, is sufficient to establish the fact; and, if not rebutted, remains sufficient for the purpose.” 7B Michie’s Jurisprudence of Virginia and West Virginia § 32, 1998, (emphasis added).

Virginia v. Black, 538 U.S. 343, 369–70, 2003, Scalia, J., concurring in part, concurring in judgment in part, and dissenting in part.

Other Federal courts continue to use this definition of “prima facie evidence:”

“A prima facie showing simply means evidence of such nature as is sufficient to establish a fact and which, if unrebutted, remains sufficient for that purpose.” *Cumulus Media, Inc. v. Clear Channel Communications, Inc.*, 304 F.3d 1167, 1176 n.13, 11th Cir. 2002.

"Under [the prima facie evidence] standard, it is plaintiff's burden to demonstrate the existence of every fact required to satisfy both the forum's long-arm statute and the Due Process Clause of the Constitution. The prima facie showing must be based upon evidence of specific facts set forth in the record. To meet this requirement, the plaintiff must go beyond the pleadings and make affirmative proof. However, in evaluating whether the prima facie standard has been satisfied, the district court is not acting as a factfinder; rather, it accepts properly supported proffers of evidence by a plaintiff as true and makes its ruling as a matter of law. When the district court employs the prima facie standard appellate review is *de novo*." *United States v. Swiss American Bank, Ltd.*, 274 F.3d 610, 618-19, 1st Cir. 2001, citations and quotations omitted.

"Prima facie evidence consists of specific factual information which, in the absence of rebuttal, is sufficient to show that a fairness doctrine violation exists. * * * In general terms, prima facie evidence is evidence which is sufficient in law to sustain a finding in favor of a claim, but which may be contradicted." *American Security Council Education Foundation v. F.C.C.*, 607 F.2d 438, 445-46 & n.24, D.C. Cir. 1979.

"A prima facie case is established by evidence adduced by the plaintiff in support of his case up to the time such evidence stands unexplained and uncontradicted. The words 'prima facie,' when used to describe evidence, *ex vi termini* imply that such evidence may be rebutted by competent testimony. The term prima facie evidence implies evidence which may be rebutted and overcome, and simply means that in the absence of explanatory or contradictory evidence the finding shall be in accordance with the proof establishing the prima facie case." *In re Chicago Rys. Co.*, 175 F.2d 282, 289-90, 7th Cir. 1949, citations and quotations omitted.

"The term prima facie evidence means * * * [e]vidence good and sufficient on its face; such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Prima facie evidence is evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence." *Gibson v. Zant*, 547 F.Supp. 1270, 1276, M.D. Ga. 1982, quoting Black's Law Dictionary, 5th Edition.

"Prima facie evidence is evidence which, if unrebutted or unexplained, is sufficient to establish the fact to which it is related. It proves the fact until other proof contradicts or overcomes the factual hypothesis initially set up by the presumption." *DAL Int'l Trading Co. v. The SS Milton J. Foreman*, 171 F.Supp. 794, 798, E.D.N.Y. 1959.

The FPA makes its special motion to dismiss available in cases arising out of speech on matters of public concern. It bears emphasis that "matters of public concern" include commentary on consumer products. As the Pennsylvania intermediate court of appeals recently noted, in *American Future Systems, Inc. v. Better Business Bureau of Eastern Pennsylvania*, 872 A.2d 1202, 1211, Pa. Super. 2005, a "statement regarding the effectiveness of a consumer product addresses a matter of public concern." Similarly, the U.S. Court of Appeals for the Ninth Circuit, in *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1056, 9th Cir. 1990, concluded that "statements about product effectiveness" address matters

of public concern. And the Second Circuit, in *Flamm v. American Assoc. of University Women*, 201 F.3d 144, 150, 2d Cir. 2000, has held that a negative evaluation of an attorney's services, directed to potential customers, addresses a matter of public concern.

The following quotation from a New Jersey Supreme Court opinion, citing other courts' decisions, illustrates the breadth of support for the proposition that commentary on products or services offered to consumers is a matter of public concern. That court noted, in *Dairy Stores, Inc. v. Sentinel Publishing Co., Inc.*, 104 N.J. 125, 144-45, 516 A.2d 220, 230, 1986, that:

Some courts have developed criteria for determining whether the activities and products of corporations constitute matters of public interest. As previously indicated, matters of public interest include such essentials of life as food and water. See *Steaks Unlimited, Inc. v. Deaner*, supra, 623 F.2d 264; *All Diet Foods Distribs., Inc. v. Time, Inc.*, supra, 56 Misc.2d 821, 290 N.Y.S.2d 445; *Exner v. American Medical Ass'n*, supra, 12 Wash.App. 215, 529 P.2d 863. Widespread effects of a product are yet another indicator that statements about the product are in the public interest. *Robinson v. American Broadcasting Cos.*, 441 F.2d 1396 (6th Cir.1971) (possible causes of cancer are a matter of public concern); *Lewis v. Reader's Digest Ass'n*, supra, 366 F.Supp. at 156, article on an arthritis cure is in public interest because significant portion of population is afflicted with arthritis; *American Broadcasting Cos., Inc. v. Smith Cabinet Mfg. Co., Inc.*, 160 Ind.App. 367, —, 312 N.E.2d 85, 90, 1974, flammability of 25,000 baby cribs held to be matter of public interest; *Krebiozen Research Found. v. Beacon Press, Inc.*, 334 Mass. 86, —, 134 N.E.2d 1, 6-9, cert. denied, 352 U.S. 848, 77 S.Ct. 65, 1 L.Ed.2d 58, 1956, possible cures for cancer are matter of public concern. Still another criterion is substantial government regulation of business activities and products.

The FPA thus protects speech consisting of consumer commentary that focuses solely on the quality, reliability, or effectiveness of a consumer product, regardless of whether such commentary addresses broader social issues. The quality of goods and services offered to the public is itself a matter of public concern. The FPA protects the dissemination of any information about a product that would be of interest to potential consumers.

Finally, the FPA allows removal to Federal court to be sought by a defendant. Although current law only allows removal when the Federal question appears on the face of a well-pleaded complaint, this rule is only statutory. Congress is well within its power to allow removal of cases that raise a colorable Federal defense.

Two current Federal statutes clearly allow removal by defendants based only on the assertion of a Federal defense. One is 28 U.S.C. § 1442(a), which allows Federal officers, among others, to remove a state civil action or prosecution to federal court. The other is 9 U.S.C. § 205, which allows removal of disputes that appear to be covered by an international arbitration agreement.

Although such a limitation is not stated on the face of section 1442, the Supreme Court has long held that "federal officer removal must be predicated on the allegation of a colorable federal defense." *Mesa v. California*, 489 U.S. 121, 129, 1989. See also *id.* at 133-34, which notes that "an unbroken line of this Court's decisions extending back nearly a century and a quarter have understood all the various incarnations of the federal officer removal statute to require the averment of a federal defense."

The most recent Supreme Court pronouncements confirm that "Article III 'arising under' jurisdiction is broader than federal question jurisdiction under § 1331," *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 495 (1983), and note that Article III federal-question jurisdiction "has been construed as permitting Congress to extend federal jurisdiction to any case of which federal law potentially forms an ingredient," *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8 n.8 (quoting *Osborn v. Bank of the United States*, 9 What. 738, 823 (1824)).

In *Martin v. Hunter's Lessee*, 1 Wheat. 304, 348-49, 1816, the Supreme Court also noted that

"[t]he judicial power * * * was not to be exercised exclusively for the benefit of parties who might be plaintiffs, and would elect the national forum, but also for the protection of defendants who might be entitled to try their rights, or assert their privileges, in the same forum," and further noting that "we are referred to the power which it is admitted congress possess to remove suits from state courts to the national courts."

The Federal-defense-based removal authorized by the FPA is thus well within Congress's constitutional authority.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section summary be printed in the RECORD.

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

S. 3493

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 "Free Press Act of 2012".

SEC. 2. SPECIAL MOTION TO DISMISS.

Part VI of title 28, United States Code, is amended by adding at the end the following:

"CHAPTER 182—SPECIAL MOTION TO DISMISS

"Sec.

"4201. Special motion to dismiss.

"4202. Stay of discovery.

"4203. Exceptions for governmental litigation and commercial speech.

"4204. Interlocutory appeal.

"4205. Special motion to quash.

"4206. Removal.

"4207. Fees, costs, and sanctions.

"§ 4201. Special motion to dismiss

"(a) IN GENERAL.—A representative of the news media (as defined in section 552(a)(4) of title 5) may file a special motion to dismiss

any claim asserted against the representative of the news media in a civil action if the claim arises in whole or in part from an oral or written statement or other expression that is on a matter of public concern or that relates to a public official or figure.

“(b) TIME LIMIT.—Unless the court grants an extension, a special motion to dismiss under this section shall be filed—

“(1) not later than 45 days after the date of service of the claim, if the claim is filed in Federal court; or

“(2) not later than 30 days after the date of removal, if the claim is removed to Federal court under section 4206.

“(c) AMENDMENTS.—If a special motion to dismiss is filed under this section as to a claim, the claim may not be amended or supplemented until a final and unappealable order is entered denying the special motion to dismiss.

“(d) BURDENS OF PROOF.—

“(1) MOVING PARTY.—A representative of the news media filing a special motion to dismiss under this section as to a claim shall have the burden of making a prima facie showing that the claim is a claim described in subsection (a).

“(2) NONMOVING PARTY.—If the movant meets the burden described in paragraph (1) for a claim, the party asserting the claim shall bear the burden of proving that the claim is—

“(A) legally sufficient; and

“(B) supported by a prima facie showing, based on admissible evidence, of facts sufficient to sustain a favorable judgment.

“(3) FAILURE TO MEET BURDEN.—If the non-moving party fails to meet the burden required for a claim under paragraph (2), the claim shall be dismissed with prejudice.

“§ 4202. Stay of discovery

“(a) IN GENERAL.—Except as provided in subsection (b), upon the filing of a special motion to dismiss under section 4201, discovery proceedings in the action shall be stayed until a final and unappealable order is entered on the special motion to dismiss.

“(b) LIMITATION AND EXCEPTION.—

“(1) LIMITATION.—A stay issued under subsection (a) based on the filing of a special motion to dismiss that only seeks dismissal of a third-party claim or a cross claim asserted by a defendant shall only stay discovery that—

“(A) is requested by the party asserting the third-party claim or cross claim; or

“(B) relates solely to the third-party claim or cross claim.

“(2) EXCEPTION.—Upon motion and for good cause shown, a court may order that specified discovery be conducted.

“§ 4203. Exceptions for governmental litigation and commercial speech

“A special motion to dismiss under section 4201 may not be filed as to a claim that—

“(1) is brought by the Federal Government or the attorney general of a State; or

“(2) arises out of a statement offering or promoting the sale of the goods or services of the person making the statement.

“§ 4204. Interlocutory appeal

“An aggrieved party may take an immediate interlocutory appeal from an order granting or denying in whole or in part a special motion to dismiss under section 4201.

“§ 4205. Special motion to quash

“(a) IN GENERAL.—A person whose personally identifying information is sought in connection with a claim that arises in whole or in part from an oral or written statement or other expression that is on a matter of public concern or that relates to a public official or figure, or a person from whom such information is sought in connection with such a claim, may file a special motion to

quash the request or order to produce the information.

“(b) BURDENS OF PROOF.—

“(1) MOVING PARTY.—A person filing a special motion to quash a request or order under this section shall have the burden of making a prima facie showing that the request or order is a request or order described in subsection (a).

“(2) NONMOVING PARTY.—If the movant meets the burden described in paragraph (1), the party who made the request or sought the order shall bear the burden of showing that the claim described in subsection (a) is—

“(A) legally sufficient; and

“(B) supported by a prima facie showing, based on admissible evidence, of facts sufficient to sustain a favorable judgment.

“(3) FAILURE TO MEET BURDEN.—If the non-moving party fails to meet the burden required for a claim under paragraph (2), the request or order to produce the personally identifying information shall be quashed.

“§ 4206. Removal

“(a) SPECIAL MOTION TO DISMISS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a civil action in a State court that raises a claim that colorably appears to be a claim described in section 4201(a) may be removed to the district court of the United States for the district and division embracing the place where the civil action is pending by a party who may file and who seeks to file a special motion to dismiss under section 4201 that asserts a colorable defense based on the Constitution or laws of the United States.

“(2) EXCEPTION.—Removal may not be requested under paragraph (1) on the basis of a third-party claim or a cross claim asserted by a defendant.

“(3) REMAND.—If a civil action is removed under paragraph (1), and a final and unappealable order is entered denying the special motion to dismiss filed under section 4201, the court may remand the remaining claims to the State court from which the civil action was removed.

“(b) SPECIAL MOTION TO QUASH.—

“(1) IN GENERAL.—A proceeding in a State court in which a request or order that colorably appears to be a request or order described in section 4205(a) is sought, issued, or sought to be enforced may be removed to the district court of the United States for the district and division embracing the place where the civil action is pending by a person who may file and who seeks to file a special motion to quash under section 4205 that asserts a colorable defense based on the Constitution or laws of the United States.

“(2) LIMITATION.—If removal is requested under paragraph (1) for a proceeding in which a request or order described in section 4205(a) is sought, issued, or sought to be enforced, and there is no basis for removal of the remainder of the civil action in connection with which the proceeding is brought, or no party has requested removal of the remainder of the civil action, only the proceeding in which the request or order described in section 4205(a) is sought, issued, or sought to be enforced may be removed.

“§ 4207. Fees, costs, and sanctions

“(a) ATTORNEY'S FEES AND COSTS.—Except as provided in subsection (c), a court shall award a person who files and prevails on a special motion to dismiss under section 4201 or a special motion to quash under section 4205 litigation costs, expert witness fees, and reasonable attorney's fees.

“(b) FRIVOLOUS MOTIONS OR PETITIONS.—Except as provided in subsection (c)(1), if a court finds that a special motion to dismiss under section 4201, a special motion to quash under section 4205, or a notice of removal

under section 4206 is frivolous or is solely intended to cause unnecessary delay, the court may award litigation costs, expert witness fees, and reasonable attorney's fees to the party that responded to the motion or notice.

“(c) EXCEPTIONS.—

“(1) GOVERNMENTAL ENTITIES.—The Federal Government and the government of a State, or political subdivision thereof, may not recover litigation costs, expert witness fees, or attorney's fees under this section.

“(2) NOVEL LEGAL QUESTIONS.—A court may not award litigation costs, expert witness fees, or attorney's fees under subsection (a) if the grant of the special motion to dismiss under section 4201 or the special motion to quash under section 4205 depended on the resolution of a novel or unsettled legal question in favor of the movant.”.

SEC. 3. RELATIONSHIP TO OTHER LAWS.

Nothing in this Act or the amendments made by this Act shall preempt or supersede any Federal or State statutory, constitutional, case, or common law that provides the equivalent or greater protection for persons engaging in activities protected by the First Amendment to the Constitution of the United States.

SEC. 4. TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CHAPTERS.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

“182. Special motion to dismiss 4201”.

(b) INTERLOCUTORY APPEALS.—Section 1292(a) of title 28, United States Code, is amended—

(1) in paragraph (3), by striking the period at the end and inserting “; and”; and

(2) by adding at the end the following:

“(4) Interlocutory orders granting or denying in whole or in part special motions to dismiss under section 4201.”.

(c) NONDISCHARGABILITY OF FEES AND COSTS.—Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (18), by striking “or” at the end;

(2) in paragraph (19), by striking the period at the end and inserting “; or”; and

(3) by inserting after paragraph (19) the following:

“(20) for litigation costs, expert witness fees, or reasonable attorney's fees awarded by a court under chapter 182 of title 28 or under comparable State laws.”.

SEC. 5. EFFECTIVE DATE; APPLICABILITY.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall—

(1) take effect on the date of enactment of this Act; and

(2) apply to a claim filed on or after the date of enactment of this Act.

(b) CLAIMS FILED BEFORE ENACTMENT.—For a claim that was filed before and is pending on the date of enactment of this Act—

(1) this Act and the amendments made by this Act shall apply to the claim if the court with original jurisdiction of the claim has not entered a judgment on the merits as to the claim as of the date of enactment of this Act; and

(2) for a claim described in paragraph (1), the periods under sections 4201 and 1446 of title 28, United States Code, as amended by this Act, shall begin on the date of enactment of this Act.

FREE PRESS ACT: SECTION-BY-SECTION SUMMARY

Section 4201. Special Motion to Dismiss. A “representative of the news media” (as defined in FOIA) may file a special motion to dismiss a legal claim arising out of speech on

a matter of public concern or that relates a public official or figure. Once the motion is properly brought, the nonmovant must show that the lawsuit is supported by a prima facie showing of facts sufficient to sustain a favorable judgment. If the nonmovant fails to meet this burden, the lawsuit is dismissed with prejudice.

Section 4202. Stay of Discovery. Upon filing of the special motion to dismiss, discovery is stayed absent good cause shown. If the motion is filed with respect to a cross claim or third-party claim, discovery is stayed only with respect to that claim. (This exception is made to prevent defendants from using the special motion to dismiss to affect litigation in which the complaint does not assert claims arising out of speech on public issues.)

Section 4203. Governmental Litigation and Commercial Speech Exceptions. A special motion to dismiss may not be brought against a claim that is brought by the Federal government or a State Attorney General, or that arises out of speech offering or promoting the sale of the speaker's goods or services.

Section 4204. Interlocutory Appeal. Either side may bring an immediate appeal of the denial or grant of a special motion to dismiss.

Section 4205. Special Motion to Quash. A party may move to quash a request to obtain the personally identifying information of a person that is made in relation to a legal claim arising out of speech on public issues. (E.g., a company seeks discovery from an ISP of the identity of persons posting unfavorable comments about the company's goods or services on a blog.) If the motion to quash is properly brought, the nonmovant must show that the legal claim is supported by a prima facie showing of facts sufficient to sustain a favorable judgment. If the nonmovant fails to meet this burden, the request for personally identifying information is quashed.

Section 4206. Removal. A state-court claim arising out of speech on public issues may be removed to federal court by a party that intends to file a special motion to dismiss the claim. Removal may not be requested on the basis of a cross claim or third-party claim. (This exception is made to prevent defendants from removing cases in which the complaint does not assert claims arising out of speech on public issues.) A proceeding to enforce discovery requesting personally identifying information may also be removed, but removal is limited to the discovery-enforcement proceeding.

Section 4207. Fees, Costs, and Sanctions. A party that prevails on a special motion to dismiss or quash shall be entitled to reasonable attorneys fees and costs. Frivolous motions to dismiss or quash or remove shall be subject to sanctions. Fees may not be recovered by the government, or in cases that turn on the resolution of a novel legal question.

By Mr. COCHRAN (for himself and Mr. WICKER):

S. 3496. A bill to amend title XVIII of the Social Security Act to permit direct payment to pharmacies for certain compounded drugs that are prepared by the pharmacies for a specific beneficiary for use through an implanted infusion pump; to the Committee on Finance.

Mr. COCHRAN. Mr. President, on May 13, 2011, the Centers for Medicare and Medicaid Services issued Change Request 7397 to stop compounding pharmacies that prepare medications

used in implanted infusion pumps from billing Medicare directly for these services. This was an attempt to reverse a policy that has been permissible in several States for over 20 years. Since then, I have worked with Senator WICKER and other Members of Congress to delay the implementation of this change until its effects have been fully considered.

This policy change has been met with opposition from pharmacies, physicians, and patients. In Mississippi, pharmacies are prohibited from selling infused pain medications to physicians, which would result in decreased access to effective treatments for chronic pain disorders. While this is a particular issue in my State, this policy change will have serious implications across the Nation.

The Centers for Medicare and Medicaid Services has worked with us over the past year to delay this policy change and to propose a rule that is now receiving comments. However, CMS officials have continued to demonstrate a lack of understanding about the potential consequences of changing payment policy. We should protect practices that have been effective in treating patients and support those who supply drugs necessary for the well-being of patients. This bill would explicitly allow compounding pharmacies to bill Medicare directly for their services in the interest of helping patients continue to receive the quality care they deserve.

By Mr. REID (for himself and Mr. MCCONNELL):

S. 3510. A bill to prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes; considered and passed.

Mr. REID. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3510

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EFFECTIVE DATE DELAY.

The STOCK Act (Public Law 112-105) is amended—

(1) in section 8(a)(1), by striking “August 31, 2012” and inserting “September 30, 2012”; and

(2) in section 11(a)(1), by striking “August 31, 2012” and inserting “September 30, 2012”.

SEC. 2. IMPLEMENTATION OF PTR REQUIREMENTS UNDER STOCK ACT.

Effective September 30, 2012, for purposes of implementing subsection (1) of section 103 of the Ethics in Government Act of 1978 (as added by section 6 of the STOCK Act, Public Law 112-105) for reporting individuals whose reports under section 101 of such Act (5 U.S.C. App. 101) are required to be filed with the Clerk of the House of Representatives, section 102(e) of such Act (5 U.S.C. App. 102(e)) shall apply as if the report under such subsection (1) were a report under such section 101 but only with respect to the trans-

action information required under such subsection (1).

By Mr. HOEVEN (for himself, Mr. CONRAD, Mr. BAUCUS, Mr. MCCONNELL, Mr. KOHL, Mr. PORTMAN, Ms. LANDRIEU, Mr. BOOZMAN, Mr. MANCHIN, Mr. BLUNT, Mr. WARNER, Mr. JOHNSON of Wisconsin, Mr. PRYOR, Mr. MORAN, Mrs. McCASKILL, Mr. ALEXANDER, Mr. NELSON of Nebraska, Mr. TOOMEY, Mr. NELSON of Florida, Mr. GRAHAM, Mr. CASEY, Mr. THUNE, Mr. WEBB, and Mr. HATCH):

S. 3512. A bill to amend subtitle D of the Solid Waste Disposal Act to facilitate recovery and beneficial use, and provide for the proper management and disposal, of materials generated by the combustion of coal and other fossil fuels; to the Committee on Environment and Public Works.

Mr. HOEVEN. Mr. President, I rise today to introduce legislation on another matter, important energy legislation for our country. I am today introducing the Hoeven-Conrad-Baucus Coal Ash Recycling and Oversight Act of 2012.

In my home State of North Dakota there is a large powerplant just north of the State capital in Bismarck. It is a coal creek power station. Now this power station generates 1,100 megawatts of electricity every year. There are two 550 megawatt plants. It has the latest, greatest technology emission control and clean coal technology. They capture the steam that was formally exhausted from the plant. They capture that steam and use it to run an ethanol plant. They produce transportation fuel with steam, a by-product of the electric generation process.

One of the other things they do, instead of land filling the coal ash, fly ash, or coal residuals, they recycle. So, in essence, they take that coal ash—they work with a natural resource company, Headwaters, based out of Utah, and they turn the coal ash into a concrete product, FlexCrete. It is used to make roads, bridges, buildings, and also products like shingles. They make building materials.

So whereas they used to take about 600,000 tons a year of coal residuals and coal ash flash and landfill it, and it costs \$6 a ton or so to landfill it, now they take that 600,000 tons a year of fly ash and residuals and turn it into building products.

The difference instead of paying to dispose of something and now being paid to recycle something is about a \$16 million a year revenue item for that plant. That means lower cost for electricity for businesses in States such as the great State of North Dakota and the great State of Minnesota and other States as well. It truly benefits our consumers, our families, and our economy. It benefits small businesses throughout the upper Midwest. So it is truly a great example of American ingenuity and innovation.

In fact, I have a picture right here. This is the North Dakota Heritage Center. Right now there is a \$50 million expansion being constructed in that Heritage Center which is located on the capital grounds in Bismarck. It is a \$50 million expansion. They are using building materials made of coal ash for this facility. That is what it is going to look like after they do this \$50 million expansion.

Let me give another example. This is the National Energy Center of Excellence at Bismarck State College. It is a 2-year college that trains people for the energy industry. It is located right above the Missouri River. This beautiful window overlooks the Missouri River. Again this is a building constructed with building materials made of fly ash. We can see how this product is being used and how effectively this is being used.

As a matter of fact, if we look nationwide, by recycling coal ash we reduce energy consumption by 162 trillion Btus every year. That is the amount of energy we would use to 1.7 million homes in a year. It is pretty substantial energy savings. Or measure it in terms of water use. By recycling coal ash, we reduce water usage by 32 billion gallons annually. That is about one-third of the total amount of water that the State of California uses in a year.

Why do I tell the story? Because right now the EPA is looking at changing the regulation of coal ash. They are looking at changing the regulation of coal ash to doing it under subtitle C of the Resource Conservation and Recovery Act. The problem is that is the hazardous waste section. Right now coal ash is regulated under subtitle D of the Resource Conservation and Recovery Act, which is the nonhazardous waste section. The EPA is looking at making that change in spite of the fact that the Department of Energy, the Federal Highway Administration, State regulatory agencies, and the EPA itself have done studies, and those studies have shown that is not a toxic waste.

The EPA first proposed this new regulation in June of 2010. This regulation would truly undermine the industry, drive up costs, and eliminate jobs when our economy can least afford it. In fact, according to industry estimates, it would increase electricity costs by up to almost \$50 billion annually and eliminate 300,000 American jobs.

Let me elaborate. Meeting the regulatory disposal requirements under the EPA's subtitle C proposal would cost between \$250 and \$450 per ton as opposed to about \$100 per ton under the current system. That would translate into \$47 billion in terms of burden on electricity generators that use coal and, of course, most importantly, their customers who would see their bills increased. As I said, overall it would cost about 300,000 American jobs for our economy.

That is why I am introducing the Hoeven-Conrad-Baucus Recycling and

Oversight Act, which is S. 3512, and it has very strong bipartisan support. It is truly a bipartisan bill, including 12 Republican sponsors and 12 Democratic sponsors. The Republican sponsors include myself, Senator McCONNELL, Senator PORTMAN, Senator BOOZMAN, Senator BLUNT, Senator RON JOHNSON, Senator MORAN, Senator ALEXANDER, Senator TOOMEY, Senator GRAHAM, Senator THUNE, and Senator HATCH. The Democratic cosponsors include Senator CONRAD, Senator BAUCUS, Senator KOHL, Senator LANDRIEU, Senator MANCHIN, Senator WARNER, Senator PRYOR, Senator MCCASKILL, Senator BEN NELSON, Senator BILL NELSON, Senator CASEY, and Senator WEBB. I wish to thank them for their willingness to join together in a bipartisan way—12 Republicans, 12 Democrats—coming together to provide the kind of energy legislation that is going to truly help move this country forward, empowering not only more energy development but better environmental stewardship.

This legislation is similar to H.R. 2273, which was sponsored by Representative DAVID MCKINLEY of West Virginia in the House, and it passed the House with strong bipartisan support. This legislation is very similar. We have made some enhancements, but it is very similar.

The bill not only preserves coal ash recycling by preventing these by-products from being treated as hazardous, it also establishes—and this is important because it is also about good environmental stewardship—it also establishes comprehensive Federal standards for coal ash disposal. Under this legislation, States can set up their own permitting program for the management and the disposal of coal ash. These programs would be required to be based on existing EPA regulations that protect human health and the environment. If a State does not implement an acceptable permitting program, then EPA regulates the program for the State. As a result, States and industry will know where they stand under the bill, since the benchmarks for what constitutes a successful State program will be set in statute. EPA can say yes, the State does meet those standards, or no, it does not, but the EPA cannot move the goalposts.

This is a States-first approach that provides regulatory certainty. Let me repeat that. This is a States-first approach that provides regulatory certainty, and it is that regulatory certainty we need to stimulate private investment that will deploy the new technologies that will not only produce more energy but will produce better environmental stewardship.

What is certain is that under this bill, coal ash disposal sites will be required to meet established standards. Those established standards include groundwater detection and monitoring, liners, corrective action when environmental damage occurs, structural stability criteria, and the financial assur-

ance and recordkeeping needed to protect the public.

This legislation is needed to protect jobs and help reduce the cost of homes and roads as well as to help reduce electric bills.

I wish to thank both Republicans and Democrats who have taken a leadership role in this effort as original sponsors of the legislation. I especially wish to express thanks to my fellow Senator from North Dakota, Mr. CONRAD, as well as Senator BAUCUS of Montana and their staffs for the hard work that has gone into this legislation. I urge our colleagues to join us in this important energy legislation.

By Mr. REED:

S. 3513. A bill to promote the development of local strategies to coordinate use of assistance under sections 8 and 9 of the United States Housing Act of 1937 with public and private resources, to enable eligible families to achieve economic independence and self-sufficiency, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. REED. Mr. President, today I introduce the Family Self-Sufficiency Act.

The Family Self Sufficiency, FSS, program is an existing employment and savings incentive initiative for families that have section 8 vouchers or live in public housing. The FSS program provides two key tools for its participants: first, it provides access to the resources and training that help participants pursue employment opportunities and meet financial goals, and second, it encourages FSS families to save by establishing an interest-bearing escrow account for them. Upon graduation from the FSS program, the family can use these savings to pay for job-related expenses, such as the purchase or maintenance of a car or for additional workforce training.

My legislation seeks to enhance the FSS program by streamlining the administration of this program, by broadening the supportive services that can be provided to a participant, and by extending the FSS program to tenants who live in privately-owned properties with project-based assistance.

First, to streamline the FSS program, my bill would combine the two separate FSS programs into one. Currently, HUD operates one FSS program for those families being served by the Housing Choice Voucher Program and another for those families being served by the Public Housing program, even though the core purpose of each FSS program, to increase economic independence and self-sufficiency, is the same for both. As a result, Public Housing Agencies, PHAs, have to operate essentially two programs to achieve the same goal. With my bill, PHAs would be relieved of this unnecessary burden.

Second, my legislation broadens the scope of the supportive services that may be offered to include attainment

of a GED, education in pursuit of a post-secondary degree or certification, and training in financial literacy. Providing families in need with affordable rental housing is critical, but coupling it with the support and services to help families get ahead is more effective. This legislation makes it easier for FSS participants to obtain the training necessary to secure employment and the education to make prudent financial decisions to better safeguard their earnings.

Lastly, this bill opens up the FSS program to families who live in privately-owned properties subsidized with project-based rental assistance. It shouldn't matter what kind of housing assistance a family gets, and families seeking to achieve self-sufficiency shouldn't be held back by this sort of technicality.

I urge my colleagues to support this bill, which will help give those receiving housing assistance a better chance to build their skills and achieve economic independence.

By Ms. SNOWE:

S. 3516. A bill to encourage spectrum licenses to make unused spectrum available for use by rural and smaller carriers in order to expand wireless coverage; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today to introduce legislation to help expand wireless broadband to rural areas. Specifically, the Rural Spectrum Accessibility Act would direct the Federal Communications Commission, FCC, establish a program that would provide an incentive, a three year extension to a spectrum license, to wireless carriers that make available, through partitioning and disaggregation, unused spectrum to smaller carriers or carriers serving rural areas.

As the FCC National Broadband Plan reports "most areas without mobile broadband coverage are in rural or remote areas." This legislation would provide an additional incentive to increase wireless broadband to these areas and make more spectrum available to smaller and rural wireless carriers through secondary market mechanisms.

This bill is loosely based on a wireless carrier's existing program, which creates a partnership with rural carriers to build and operate Long Term Evolution, LTE, wireless networks in rural areas. Through the cooperation the carrier provides spectrum and core network equipment and the rural carrier supplies the cell towers and backhaul.

The Rural Spectrum Accessibility Act is an effort to get other large carriers to implement similar initiatives to create more opportunities for the smaller and rural carriers. It should be noted the FCC actually already has partitioning and disaggregation rules, see 47 C.F.R. 22.948, this legislative proposal just provides a simple but attrac-

tive incentive for carriers to utilize them.

The main goal of this legislation is to provide another catalyst to expand next generation, 4G, Wireless broadband service to rural areas, which will mean more reliable service, more innovation, and more choice to rural consumers and businesses.

The increasing importance of wireless communications and broadband has a direct correlation to our Nation's competitiveness, economy, and national security. We must reform existing spectrum policy and management to ensure that all Americans continue to realize the boundless benefits of wireless broadband. Congress has taken some steps but more can and must be done. That is why I sincerely hope that my colleagues join me in supporting this important legislation.

By Mr. WYDEN:

S. 3518. A bill to make it a principal negotiating objective of the United States in trade negotiations to eliminate government fisheries subsidies, and for other purposes; to the Committee on Finance.

Mr. WYDEN. Mr. President, I rise today to introduce the Fair Trade in Seafood Act.

Right now, our country is proud to be a world leader in the fishing and seafood processing industries. We rank among the world's top five exporters of seafood, and its largest importer. However, the U.S. seafood industry faces many challenges on the global stage from unfair competition. The Congress should be doing everything it can to make sure we retain our status as global leader. That is why I am introducing the Fair Trade in Seafood Act. This bill will establish this issue as a Principal Negotiating Objective of the United States in the ongoing Trans-Pacific Partnership and World Trade Organization talks.

Why is this bill important? According to the United Nations Food and Agricultural Organization, 85 percent of the world's fisheries are fully exploited, overexploited, depleted, or recovering from depletion—the highest percentage since the Food and Agricultural Organization began keeping records.

Many governments continue to provide significant subsidies that push their fleets to fish longer, more intensively, and farther away than otherwise would be possible. These destructive fisheries subsidies are estimated to be at least \$16 billion annually, an amount equivalent to approximately 20 percent of the value of the world catch. The detrimental effects of these illegal subsidies are so significant that eliminating them is the single greatest action that can be taken to protect the world's oceans.

In contrast to these nefarious actors, the U.S. does not just talk about the importance of sustainable fishing practices and marine conservation. We are practicing what we preach. That means

enforcing regulations and changing old, counterproductive, destructive habits. Our seafood industry is stronger because of it. At the same time, our market is open. In my view, this is the way every country ought to run its seafood industry. Our foreign trading partners, as I mentioned, often support practices that can cause long-term harm to marine habitat. In addition, our trading partners put up trade barriers that prevent sustainably caught U.S. seafood from reaching foreign consumers. These are practices that skew the playing field in a competitive marketplace. They skew the playing field against American fishers and give foreign competitors a huge advantage in an industry that depends on global trade. Forty percent of global fishery products are traded internationally, and seafood is more globally sourced than coffee, rice, and tea combined.

These harmful foreign trade barriers and practices that encourage overfishing are top priorities that need to be addressed. These foreign trade barriers harm our country's ability to create good-paying jobs. Preserving the wealth of the world's marine environment is of paramount importance. The U.S. seafood industry represents a major portion of our economy, employing over 1.5 million workers in the commercial sector alone. The commercial seafood industry has a significant presence in over 23 States and is an industry and, in fact, a way of life, a way of life that binds communities and stitches together the regions of our country. The seafood sector employs more people than the mining or oil industries.

It is also a foundation of our economy because, without fish, there are no jobs. Preserving the wealth of our oceans and rivers is an economic imperative as much as a moral one. That is why I urge my colleagues to cosponsor the Fair Trade in Seafood Act.

In short, this Act will codify an official trade negotiating objective of the United States with respect to government fisheries subsidies. More specifically, the negotiating objective will be to eliminate fisheries subsidies provided by governments that unfairly destroy markets to the detriment of the United States commercial fishing interests and that perpetuate unsustainable fishing practices. The bill aims to ensure that any commitments with respect to such subsidies are enforceable under appropriate trade laws. This negotiating objective will apply to any trade agreement that includes any negotiations relating to the elimination or reduction of government fisheries subsidies.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3518

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 “Fair Trade in Seafood Act”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) According to the Food and Agriculture Organization of the United Nations, 85 percent of the world’s fisheries are over-exploited, fully exploited, significantly depleted, or recovering from overexploitation, the highest percentage ever on record.

(2) A primary reason for the global fisheries crisis is government subsidies that create perverse incentives for continued fishing in the face of declining catches.

(3) Despite the dire conditions of the world’s marine resources, some of the countries that engage in the most fishing continue to provide significant subsidies to their fishing fleets.

(4) Fisheries subsidies are estimated to be approximately 20 percent of the value of the world catch and have helped create a global fishing fleet that is up to 250 percent larger than that needed to fish sustainably.

(5) Many long-range foreign fleets are supported by government subsidies for fuel, other operational expenses, and vessel construction that allow their fleets to fish longer, at greater distances, and more intensively than is commercially or environmentally warranted. Those fleets would not be viable without the support of government subsidies.

(6) Many developing countries are particularly affected by fisheries subsidies provided by other governments because the developing countries are unable to compete against subsidized industrial fleets.

(7) Fisheries subsidies offered by the governments of other countries give the fleets of those countries an unfair advantage over United States fishermen by reducing the costs of operations and increasing the number, size, and power of vessels competing for fish. Foreign fisheries subsidies also undermine opportunities for United States fishermen in potential export markets.

(8) Without committed global leadership to reduce “overfishing subsidies”, there is a significant risk that the oceans will become too depleted to fish, resulting in a catastrophic blow to the world economy and environment.

(9) As one of the world’s largest importers of seafood and one of the top five exporters of seafood, the United States has a particular responsibility to lead trade negotiations to address fisheries subsidies and make the establishment of strong new rules on fisheries subsidies a core priority in United States trade negotiations.

(10) Paragraphs 28 and 31 of the Ministerial Declaration of the World Trade Organization adopted at Doha November 14, 2001, which launched the Doha Development Agenda, called for negotiations to clarify and improve disciplines on trade-distorting government fisheries subsidies.

(11) Paragraphs 9 through 11 of Annex D of the Ministerial Declaration of the World Trade Organization adopted at Hong Kong December 18, 2005, reinforced the Doha fisheries subsidies mandate, noting that “there is broad agreement that the Group should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing” and calling on “Participants promptly to undertake further detailed work to, *inter alia*, establish the nature and extent of those disciplines, including transparency and enforceability”.

(12) The negotiations on fisheries subsidies in the World Trade Organization and negotiations for the Trans-Pacific Partnership Agreement are two of the most important,

and promising, international efforts to stop global overfishing and represent meaningful efforts to directly address a key environmental issue that directly impacts international trade.

(13) On November 12, 2011, the leaders of the 9 countries in negotiations for the Trans-Pacific Partnership Agreement—Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, and the United States—announced the achievement of the broad outlines of an ambitious, 21st-century agreement. According to a statement released by those leaders, the agreed outline calls for “[a] meaningful outcome on environment [that] will ensure that the agreement appropriately addresses important trade and environment challenges and enhances the mutual supportiveness of trade and environment. The TPP countries share the view that the environment text should include effective provisions on trade-related issues that would help to reinforce environmental protection and are discussing an effective institutional arrangement to oversee implementation and a specific cooperation framework for addressing capacity building needs.”. Various proposals, including a proposal by the United States, to bring disciplines to government-subsidized fishing are under active discussion as part of the negotiations on the environment chapter of the Trans-Pacific Partnership Agreement.

(14) The United States continues to make achievement of an agreement on disciplines on government fisheries subsidies a priority in negotiations in the World Trade Organization and for the Trans-Pacific Partnership Agreement. On December 16, 2011, at the Eighth Ministerial Conference of the World Trade Organization in Geneva, the United States Trade Representative issued a statement urging “continued work toward an ambitious outcome on fisheries subsidies under the WTO”. Noting the acute impact of declining catches on developing countries, the Trade Representative further stated, “We stand ready to explore new negotiating approaches that can move us towards the elimination of harmful subsidies that contribute to overcapacity and overfishing. . . . WTO Members have a duty to address one of the root causes of overfishing and overcapacity—the fisheries subsidies that encourage fishing enterprises to fish longer, harder, and farther than would otherwise be sustainable without subsidy aid. . . . The United States is ready to continue this work in the WTO and in other appropriate fora—including free trade agreements such as the Trans-Pacific Partnership and other bilateral, regional and multilateral initiatives.”.

(15) A strong fisheries subsidies agreement by the World Trade Organization and in the Trans-Pacific Partnership Agreement would set an historic precedent by showing that international trade can directly benefit the environment while promoting exports and open markets.

SEC. 3. TRADE NEGOTIATING OBJECTIVES OF THE UNITED STATES WITH RESPECT TO GOVERNMENT FISHERIES SUBSIDIES.

It shall be a principal negotiating objective of the United States in negotiations for a trade agreement—

(1) to eliminate fisheries subsidies provided by governments that unfairly distort markets to the detriment of United States commercial fishing interests and that perpetuate unsustainable fishing practices; and

(2) to ensure that any commitments with respect to such subsidies are enforceable under appropriate trade laws.

SEC. 4. EFFECTIVE DATE.

This Act takes effect on the date of the enactment of this Act and applies with respect to negotiations for a trade agreement that—

(1) include any negotiations relating to the elimination or reduction of government fisheries subsidies; and

(2) are entered into—

(A) on or after such date of enactment; or
(B) before such date of enactment if the negotiations continue on or after such date of enactment.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 541—CONDEMNING THE GOVERNMENT OF VIETNAM FOR HUMAN RIGHTS VIOLATIONS

Mr. CORNYN (for himself, Mrs. BOXER, Mr. BOOZMAN, and Mr. DURBIN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 541

Whereas Vietnam is an authoritarian state ruled by the Communist Party of Vietnam, which continues to deny the right of the people of Vietnam to participate in free and fair elections;

Whereas, according to the 2012 annual report of the United States Commission on International Religious Freedom, “Vietnam’s overall human rights record remains poor, and has deteriorated since Vietnam was removed from the CPC [countries of particular concern] list and joined the World Trade Organization in 2007.”;

Whereas, according to the Department of State’s most recent Country Reports on Human Rights Practices, published on May 24, 2012 (in this resolution, the “DOS Human Rights Report”), the most significant human rights issues in Vietnam “were severe government restrictions on citizens’ political rights, particularly their right to change their government; increased measures to limit citizens’ civil liberties; and corruption in the judicial system and police”;

Whereas, according to the DOS Human Rights Report, the Government of Vietnam “reportedly held more than 100 political detainees at year’s end, although some international observers claimed there were more. . . . Diplomatic sources reported the existence of four reeducation centers in the country holding approximately 4,000 prisoners”;

Whereas, according to the DOS Human Rights Report, Vietnam’s Ministry of Public Security “maintains a system of household registration and block wardens to monitor the population,” while “credible reports suggested that local police used ‘contract thugs’ and ‘citizen brigades’ to harass and beat political activists and others, including religious worshippers, perceived as undesirable or a threat to public security”;

Whereas, on April 8, 2006, the pro-democracy movement Bloc 8406 was founded in Vietnam, and it has since attracted thousands of supporters calling for respect for basic human rights, the establishment of a multiparty political system, and guarantees of freedom of religion and political association;

Whereas, according to the DOS Human Rights Report, the Government of Vietnam “continued to restrict public debate and criticism severely. No public challenge to the legitimacy of the one-party state was permitted,” and “the government continued to crack down on the small, opposition political groups established in 2006, and group members faced arrests and arbitrary detentions”;