By Mr. LEVIN (for himself and Mr. ABRAHAM):

S. 2104. A bill to authorize the Automobile National Heritage Area; to the Committee on Energy and Natural Resources.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ALLARD (for himself and Mr. CHAFEE):

S. 2094. A bill to amend the Fish and Wildlife Improvement Act of 1978 to enable the Secretary of the Interior to more effectively use the proceeds of sales of certain items; to the Committee on Environment and Public Works.

FISH AND WILDLIFE REVENUE ENHANCEMENT ACT OF 1998

Mr. ALLARD. Mr. President, I am introducing a bill today to amend the Fish and Wildlife Improvement Act of 1978.

This bill will allow the Secretary of the Interior and the Secretary of Commerce to more effectively use proceeds from the sale of forfeited and abandoned wildlife items.

Mr. President, there is a warehouse in Commerce City, Colorado, operated by the U.S. Fish and Wildlife Service, which is filled with wildlife parts and products.

It is the National Repository for items that have been forfeited or abandoned to the U.S. Government and are being held for disposition by the Service.

Some of these items are quite unusual: mounted rhinoceros, coral jewelry, stuffed alligators, elephant foot footstools.

Some of these items are endangered or otherwise protected by law, and it is illegal to import them into the United States.

Those companies or individuals who were caught trying to do so either abandoned the items or they were forfeited to the U.S. Government through a legal process.

The Service distributes these wildlife items to museums and to schools for conservation education programs around the country.

Anyone who flew through Denver's old Stapleton Airport, for instance, might have seen a display in the main terminal reminding travelers about various laws regulating importation of wildlife and wildlife products.

A similar display is being erected at Denver International Airport.

In addition to the unusual wildlife specimens stored at the Service's Colorado Repository are some more familiar items such as leather boots, jackets, purses, watchbands, and sea shells.

These are in the possession of the Service because, in many cases, the required foreign export permits were not obtained or the items were falsely identified.

Although it is legal to possess and sell many of these wildlife items, there is, of course, a procedure for importing them. This includes obtaining the required foreign export permits prior to importation and properly declaring the items.

If these procedures are not followed correctly, then the items can be seized.

Abandonment or forfeiture actions are then initiated with title being transferred to the Government.

Many times, however, the people who try to bring them in will just abandon them to the Service.

These items are retained by the Service at the Commerce City facility until an appropriate disposition can be made.

I want to take just a moment here to point out that the Repository in question is located on the Rocky Mountain Arsenal northeast of Denver.

This inactive military facility is in the middle of a transformation from a Superfund site to the largest urban wildlife refuge in the country.

The Arsenal, which once produced nerve agents and chemical weapons, is now a haven for eagles, migratory birds, deer, and other wildlife.

I've been told that there is hope to one day introduce bison back into the 27 square mile facility.

The old Arsenal will become a new gem in the National Wildlife Refuge System, and an excellent resource for the people of Colorado.

A Service priority for disposing of these wildlife items is to utilize them in scientific and educational programs.

There are, however, many items in the Repository inventory excess to the needs of these scientific and educational programs.

Those excess items which are not given a high level of protection—those that are not endangered, or marine mammals, or migratory birds—can legally be sold on the open market.

If these surplus items were sold by the Service at an auction, they would generate proceeds which could be used to offset operational costs of the Repository, thereby allowing for a more efficient use of appropriated funds by the Service and a saving of money for the tax payers.

But there is a hitch. Current law mandates proceeds from the sale except for those that can be used for rewards, must be returned to the General Treasury.

This sounds fine, until you consider the mechanics of holding an auction.

An auctioneer charges a commission which is usually a percentage of the proceeds from a sale.

Since the Service estimates that they have about one million-dollars worth of surplus wildlife items on hand, which is a 10 year backlog, they can expect to pay the auctioneer a commission of around 15 percent or about $150,000.

Now, the budget for the Repository in Fiscal Year 1998 is $310,000 with salaries alone costing 80 percent of that number. They simply cannot pay about half of their funding towards an auctioneer's commission, and that is what they would have to do under current law.

Although a sale would bring in money, the majority of the proceeds would go to the General Treasury, and the Service would have to use money already in their operational budget to pay for the sale.

Needless to say, there are not enough funds to pay the auctioneer's commission, so the auction does not take place and the wildlife property sits and decays.

What this bill would do is allow the Fish and Wildlife Service, and the National Marine Fisheries Service under the Commerce Department, to keep the proceeds from the selling of wildlife products at an auction.

The money would be used for very specific purposes.

These purposes, except for one, are all related to the task of storing, shipping and disposing of the forfeited and abandoned items located around the country.

The other uses of the funds I will explain in just a minute.

This bill specifically says that the Services can use the proceeds of the sale for:

(1) Shipping items from one location to another;

(2) Storage and security of the items;

(3) Appraisal of the items;

(4) Sale of the items—this is necessary to pay an auctioneer's commission; and

(5) Payment of any valid liens against the objects.

As you can see, this will not allow the Services to establish a slush fund for their use.

The bill requires the money may be used only to continue paying for rewards, storage and shipping of the property, and to facilitate the disposal of the items, thereby making them available for the people of the United States.

The other use for the proceeds is very special.

The U.S. Fish and Wildlife Service administers a program that provides for the distribution of dead eagles to Native Americans so they may be used for religious and cultural purposes.

As you probably know, bald and golden eagles are highly protected and it is illegal for anyone to kill an eagle or possess an eagle carcass or its feathers.

The way the program is set up, dead eagles are sent to the National Eagle Repository, which is also located on Rocky Mountain Arsenal in Commerce City, Colorado.

There they are cataloged, processed, and shipped to Native Americans.

Even though the Repository distributes about 1,000 eagles to Native Americans each year, there is currently about a three year wait to receive an eagle carcass. This is because of the limited number of eagles being received at the Repository.

Most have been trapped, or electrocuted, or have collided with power lines and cars—they are not in very good shape.

When an eagle is received by the Repository, attempts are made to match

the type of eagle with that being requested, i.e. bald or golden, immature or mature.

Requests for individual feathers are also filled.

The Repository is so concerned about customer service that they will replace any broken or missing feathers with whole ones from another bird.

The cost to box and ship an eagle is about $50. This cost is absorbed by the Service rather than being passed on to the Native Americans.

This bill will allow the Fish and Wildlife Service to use the proceeds from an auction to assist the eagle program by paying for boxes, dry ice, and other costs associated with shipping the eagles.

For instance, some of the proceeds could also be used to purchase chest freezers to be placed in regional collection points.

This would be for short term storage of the eagles near where they are initially found.

This would hopefully increase the number of eagles being sent to the Repository and subsequently increase the number being shipped to the Native Americans, thereby reducing the waiting period to receive an eagle.

Before I close here, let me stress—the auctions will only be selling wildlife items that are legal to possess and sell in the U.S., items like boots, belts, wallets, purses, shell products, etc.

These items have a valid place on the U.S. market.

Items that have a higher scientific or educational value will be distributed to museums and schools.

No products from endangered species, eagles, marine mammals, or migratory birds will be sold.

The Fish and Wildlife Improvement Act already gives the authority to sell those items that are surplus for scientific and educational needs.

The Act is silent, however, as to what happens to the proceeds from the sale of abandoned items, so by default they go to the General Treasury.

The Services are therefore precluded from being able to utilize these funds.

If this bill is enacted, the proceeds from the sale of forfeited and abandoned items will aid in the shipping, storing, and disposing of wildlife products to scientific and educational programs and the distribution of eagles to Native Americans for religious and ceremonial purposes.

I hope this bill can be moved quickly in the Senate.

Mr. CHAFEE. Mr. President, I am pleased to cosponsor this bill with my colleague Senator ALLARD. This bill represents a move towards efficient use of government funds, and support for the valuable programs carried out with those scarce funds. The bill would initially generate approximately $1 million for the Service through the sale of items derived from fish and wildlife that are currently stored by the Service. This money would be used to cover the costs of disposing of these items—which is now a financial drain on the Service—and to fund programs that loan these items to schools and Native American groups for educational and religious purposes.

Each year, the Fish and Wildlife Service (Service) receives hundreds of thousands of items derived from fish, wildlife and plants, such as skins, furs, feathers, jewelry, etc. These items can be seized, forfeited or abandoned during enforcement of Federal wildlife laws, and they are eventually shipped to the National Wildlife Property Repository in Colorado. The Repository currently has about 150,000 items, with about 50,000 items stored elsewhere.

Under current law, the Service may dispose of fish, wildlife or other items forfeited or abandoned to the U.S. government, either by loan, gift, sale or destruction. There are certain restrictions on disposal of those items. For example, items made from threatened or endangered species, marine mammals and migratory birds cannot be sold according to the laws that apply to those particular species.

Revenue from the sale of forfeited items go to the Service for certain program operations; however, revenue from the sale of abandoned items go to the General Treasury, and are not available to the Service. More than 90 percent of the fish and wildlife items are abandoned, so that the Service would receive very little revenue from sales of these items. Indeed, under current law, the costs of selling these items would outweigh any revenue, so that the Service has no incentive to sell them.

The Service must further expend funds for the shipment, storage and disposal of the items that it acquires. In addition, the Service will make many of these items—those that cannot be sold under law—available for Native American religious and ceremonial purposes, educational purposes, and research, but must expend its own funds to do so. The Repository was appropriated $310,000 for operations last year. After overhead, only $61,000 was available for disposal of these items.

Disposal includes two programs in particular. The first, known as Cargo for Conservation, provides wildlife specimens to schools for educational programs. Under this program, the Service has distributed almost 400 educational kits to various organizations. The second program provides eagle carcasses and parts to Native Americans for religious and ceremonial purposes. Under this program, the Service has filled almost 1,500 requests for eagles, eagle parts and other raptors in 1997 alone, although there is currently a two year backlog in filling orders for some eagle carcasses.

The bill would specifically amend the Fish and Wildlife Improvement Act in two ways. First, it would authorize the deposit of proceeds from the sale of forfeited and abandoned items into Service accounts rather than into the general treasury. Second, it would expand the use of funds received through these sales to include costs incurred by shipping, storage and disposal of these items, as well as payment of any liens on these items.

I would like to note that this bill does not change existing authority with respect to items that may be sold by the Service. It does not allow the sale of items derived from threatened and endangered species, marine mammals, or migratory birds. The Service already has authority to sell certain items for which it is lawful to do so. This bill merely allows the Service to keep revenues derived from any items it sells, and to use those revenues for certain programs. This is a bill representing efficient use of government funds.

At the same time, this bill is not intended to imply that the Service should sell everything that it lawfully can in order to maximize profits. It is my understanding that the Service has no intention to sell items derived from sensitive species, including those that are candidates for listing as endangered or threatened. It is also my expectation that, in considering which items to sell, the Service would take into account the biological status of any species used for that item, and any implications that the sale may have for conservation efforts relating to that species. For example, any sale by the Service should not encourage new markets that may undermine protections elsewhere. Lastly, the Service should ensure that the sale of these items does not undermine enforcement efforts within the U.S.

In summary, I am pleased to cosponsor this bill with Senator ALLARD. Our staffs have worked closely with each other and with the Administration in drafting this legislation, and I look forward to working on this bill in the future.

By Mr. CHAFEE (for himself, Mr. KEMPTHORNE, Mr. LOTT, Mr. DASCHLE, Mr. BAUCUS, Mr. BREAUX, Mr. GRAHAM, Mr. WYDEN, Mr. SMITH of New Hampshire, Mr. SARBANES, Mr. WARNER, Mr. STEVENS, Ms. SNOWE, Ms. COLLINS, Mr. BOND, Mrs. MURRAY, and Mr. DOMENICI):

S. 2095. A bill to reauthorize and amend the National Fish and Wildlife Foundation Establishment Act; to the Committee on Environment and Public Works.

NATIONAL FISH AND WILDLIFE FOUNDATION ESTABLISHMENT ACT AMENDMENTS OF 1998

Mr. CHAFEE. Mr. President, today I introduce legislation to reauthorize the National Fish and Wildlife Foundation Establishment Act of 1984. This legislation makes important changes in the Foundation's charter, changes that I believe will allow the Foundation to build on its fine record of providing funding for conservation of our nation's fish, wildlife, and plant resources.

The National Fish and Wildlife Foundation was established in 1984, to bring together diverse groups to engage in conservation projects across America and, in some cases, around the world. Since its inception, the Foundation has made more than 2,300 grants totaling over $270 million. This is an impressive record of accomplishment. The Foundation has pioneered some notable conservation programs, including implementing the North American Waterfowl Management plan, Partners in Flight for neotropical birds, Bring Back the Natives Program, the Exxon Save the Tiger Fund, and the establishment of the Conservation Plan for Sterling Forest in New York and New Jersey, to name just a few.

Mr. President, the Foundation has funded these programs by raising private funds to match federal appropriations on at least a 2 to 1 basis. During this time of fiscal constraint this is an impressive record of leveraging federal dollars. Moreover, all of the Foundation's operating costs are raised privately, which means that federal and private dollars given for conservation is spent only on conservation projects.

I am proud to count myself as one of the ''Founding Fathers'' of the National Fish and Wildlife Foundation. In 1984, I, along with my colleagues Senators Howard Baker, George Mitchell, and JOHN BREAUX, saw the need to create a private, nonprofit group that could build public-private partnerships and consensus, where previously there had only been acrimony and, many times, contentious litigation.

The National Fish and Wildlife Foundation has more than fulfilled the hopes of its original sponsors. It has helped to bring solutions to some difficult natural resource problems and is becoming widely recognized for its innovative approach to solving environmental problems. For example, when Atlantic salmon neared extinction in the U.S. due to overharvest in Greenland, the Foundation and its partners bought Greenland salmon quotas. I and many others in Congress want the Foundation to continue its important conservation efforts. So, today I am introducing amendments to the Foundation's charter that will allow it to do just that.

Mr. President, this legislation is quite simple. It makes three key changes to current law. First, the bill would expand the Foundation's governing Board of Directors from 15 members to 25 members. This will allow a greater number of those with a strong interest in conservation to actively participate in, and contribute to, the Foundation's activities.

The bill's second key feature authorizes the Foundation to work with other agencies within the Department of the Interior and the Department of Commerce, in addition to the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. Mr. President, it is my view that the Foundation should continue to provide valuable assistance to government agencies within the Departments of the Interior and Commerce that may be faced with conservation issues. Finally, it would reauthorize appropriations to the Department of the Interior and the Department of Commerce through 2003.

Mr. President, I believe that this legislation I introduce today will produce real conservation benefits and I strongly urge my colleagues to give the bill their support.

Mr. KEMPTHORNE. Mr. President, nearly fourteen years ago President Reagan signed P.L. 98–244, an act to establish the National Fish and Wildlife Foundation as a charitable, nonprofit corporation of the United States specifically to further the conservation and management of the Nation's fish, wildlife, and plant resources. Since that time, the Foundation has funded more than 2,200 conservation projects through their partnership and challenge grant program.

In the State of Idaho alone, the Foundation has funded nearly 100 projects worth over $19,000,000. The good news is that they have done this work with only $5M of federal money. That is nearly a four to one contribution from the private sector. In addition, there have been many projects in adjacent States that benefit the Stat of Idaho.

But the Foundation has had its share of controversy. A Foundation grant to the Pacific Rivers Council may have allowed the Pacific Rivers Council to use other resources to nearly shut down the economy of several counties in the State of Idaho. A federal judge shut down all permitted activities in our national forests when the Pacific Rivers Council brought suit against the United States Forest Service and the National Marine Fisheries Service for failure to consider cumulative impacts of permitted activities under the Endangered Species Act. The two agencies could not agree on the extent and nature of the consultations, so the Federal judge shut down all activities in our national forests until they were in compliance. Even the plaintiffs in the suit were surprised by the effect of their suit. They quickly joined the effort to reverse the injunction and to have the two Federal agencies agree on a solution.

Since then the Foundation has implemented procedures into its grant contracts to prevent a recurrence of the devastating injunction triggered by the Pacific Rivers Council. The Foundation has repeatedly stated that ''it does not engage in lobbying or litigation and does not allow its grants to be used for those activities.''

And, I recognize that the Foundation has provided grant monies to support studies of grizzly bears and wolves in the Pacific Northwest. However, in my review of those grants I am pleased to say that the grants have been used to discover basic biological information about these predators. The Foundation has produced educational materials, backed research on the impacts of human activities, improved sanitation and safety will bear-proof dumpsters, supported GIS mapping of bear habitats, and brought in non-federal partners.

During the years I have been acquainted with the Foundation, I have found that they work with the entire spectrum of interests to leverage through private partners a limited amount of federal funding into significant monies for conservation.

Mr. LOTT. Mr. President, today Senator CHAFEE, chairman of the Senate Environment and Public Works Committee, has introduced legislation to reauthorize the National Fish and Wildlife Foundation. I support the Foundation and the activities it undertakes to further conservation and management of our nation's fish and wildlife resources.

Created by Congress in 1984, the Foundation has forged a strong relationship between government and corporate stakeholders, fostering cooperation and coordination. It has been successful in bringing private sector involvement, initiative and technology to bear in solving conservation problems. With this reauthorization, the Foundation's record of providing real on-the-ground conservation will continue.

Mr. President, all federal money appropriated to the National Fish and Wildlife Foundation must be matched by contributions from non-federal sources: corporations, State and local government agencies, foundations and individuals. The Foundation's operating policy is to raise a match of at least 2 to 1, to maximize leverage for our federal funds. With the financial assistance of the private sector and the technical knowledge of the States, the Foundation can be both effective and responsive to conservation needs.

All of the Foundation's projects are peer reviewed by agency staff, state resource officials, and other professionals in the natural resource field. No project is undertaken without the input and support of the local community and state interests. The Foundation has also initiated a process to solicit comments from members of Congress concerning grants in a member's district or state.

Mr. President, one of the things that distinguishes the Foundation from other conservation groups is its results in the field. The Foundation has worked with over 700 agencies, universities, businesses and conservation groups, both large and small, over the last decade. These relationships have helped the Foundation become one of the most effective conservation organizations in the nation.

In Mississippi, for example, the Foundation has supported local habitat restoration projects to help private landowners install water control structures to provide wintering habitat for migratory waterfowl. Our farmers have learned that it also benefits weed control, seed-bed preparation, prevention

of erosion—all at a lower cost. The Foundation has provided grants to assist private landowners in restoring bottomland hardwood habitats critical to migrating neotropical songbirds and other water-dependant wildlife species. These efforts are helping to maintain the state's original wetlands habitats.

Activities of the Foundation do produce real on-the-ground conservation benefits for the resources of our nation. I ask that my colleagues join me in supporting this legislation.

By Mr. INOUYE (for himself and Mr. AKAKA):

S. 2096. A bill to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Foilcat*; to the Committee on Commerce, Science, and Transportation.

CERTIFICATE OF DOCUMENTATION FOR THE VESSEL ''FOILCAT''

● Mr. INOUYE. Mr. President, I am introducing a bill today to direct that the vessel *Foilcat*, Official Number 1063892, be accorded coastwise trading privileges for a fixed duration and be issued a certificate of documentation under section 12103 of title 46, U.S. Code.

The *Foilcat* was originally constructed in Norway, in 1992, and is a hydrofoil vessel presently under renovation in a U.S. shipyard. It is 84.2 feet in length and is expected to be less than 100 U.S.C.G. registered tons.

The vessel is owned by Steven Loui of Honolulu, Hawaii. Mr. Loui would like to utilize his vessel to evaluate the use of hydrofoil technology in the establishment of a high speed ferry demonstration project. However, because the vessel was built in Norway, it did not meet the requirements for coastwise license endorsement in the United States.

The Hawaiian islands are exposed to high and rough surf and it is incumbent that we utilize high speed technologies in order to overcome the impediments of high surf and transportation distance requirements. *Foilcat* utilizes advanced hydrofoil technologies enabling the vessel to travel at high speeds while also providing safe and comfortable passenger ferry service. Should this technology as applied in passenger ferry service, prove successful, a series of these types of vessels will be built in the U.S.—using U.S. workers. Mr. Loui is planning to invest almost three times the amount of the vessel's purchase price in repairs and upgrades in a U.S. shipyard. My reflagging request would be for a limited time period, which would provide adequate time to evaluate the use of this technology in the establishment of inter and intra-island passenger ferry service.

The owner of the *Foilcat* is seeking a waiver of the existing law because he wishes to use the vessel to evaluate high speed technology in passenger ferry service. His desired intentions for the vessel's use will not adversely affect the coastwise trade in U.S. waters. If he is granted this waiver, it is his intention to comply fully with U.S. documentation and safety requirements. The purpose of the legislation I am introducing is to allow the *Foilcat* to engage in the coastwise trade and the fisheries of the United States.

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

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

S. 2096

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

SECTION 1. LIMITED DURATION WAIVER OF COASTWISE TRADE LAWS.

(a) IN GENERAL.—Notwithstanding sections 12106 and 12108 of title 46, United States Code, section 8 of the Passenger Vessel Act (46 U.S.C. App. 289), and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), the Secretary of Transportation may issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Foilcat*, (United States Official Number 1063892).

(b) TERMINATION.—The certificate issued under subsection (a) shall be in effect for the vessel *Foilcat* for the period—

(1) beginning on the date on which the vessel is placed in service to initiate a high-speed marine ferry demonstration project; and

(2) ending on the last day of the 36th month beginning after the date on which it became effective under paragraph (1).●

By Mr. CAMPBELL:

S. 2097. A bill to encourage and facilitate the resolution of conflicts involving Indian tribes, and for other purposes; to the Committee on Indian Affairs.

INDIAN TRIBAL CONFLICT RESOLUTION, TORT CLAIMS, AND RISK MANAGEMENT ACT OF 1998

Mr. CAMPBELL. Mr. President, today I introduce the Indian Tribal Conflict Resolution, Tort Claims and Risk Management Act of 1998 to continue the discourse on matters involving Indian tribal governments such as providing a mechanism for the collection of legitimate state retail sales taxes and affording a remedy to those persons injured by the acts of tribal governments, or those acting on their behalf.

By introducing this legislation, I am hopeful that tribal leaders, concerned parties, and those affected by the actions of tribal governments can find some common ground and craft innovative solutions to these issues which I believe will continue to hamper Indian tribes unless dealt with appropriately.

It has been said that because of Indian tribal immunity from lawsuits, states have no enforcement mechanism to collect state retail taxes on transactions made to non-members. Similarly, opponents of tribal immunity charge that tribal immunity prevents injured persons from seeking legal recourse for their injuries.

The Supreme Court has held that on retail sales made to non-members, Indian tribes are under a duty to collect and remit such state taxes. The Court made it clear that there are numerous remedies available to the states in such situations including suits against tribal officials; levying the tax at the wholesale level before goods enter reservation commerce; negotiating agreements with the tribes involved; and if these prove unworkable, then seeking congressional action.

At least 18 states and numerous tribes have chosen the negotiations route to settling their differences short of litigation and acrimony. Testimony presented to the committee on March 11, 1998, revealed that there are approximately 200 intergovernmental agreements between Indian tribes and states providing for the collection and remittance by the tribes of state sales taxes on sales made to non-members.

Rather than waive the immunity of all tribes—those who have chosen to deal with the issue of taxation through agreement and those who have not—the legislation I introduce today declares the policy of the United States to be the reaffirmation of the federal obligation to protect Indian tribes, people, and trust resources and property of Indian tribes. In fulfilling that obligation, the United States should make available the framework and machinery for the amicable settlement and resolution of disputes, including tax matters, involving states and Indian tribes.

The achievement of mutual agreements is the major objective of this bill, and in addition to encouraging such agreements, this legislation provides for the creation of an ''Intergovernmental Alternative Dispute Resolution Panel'' to consider and render decisions on tax matters that cannot be resolved through negotiation.

The panel will be composed of a five member team including representatives of the Departments of Interior, Justice, and Treasury; one representative of state governments; and one representative of tribal governments. Rather than create a ''new'' mediation framework, this bill relies on the existing Federal Mediation and Conciliation Service to provide mediation services for such situations.

Title II of the bill is intended to provide a remedy in tort situations for those tribes that are not covered by the Federal Tort Claims Act, or covered by private secured liability insurance.

This title would require the Secretary of Interior to obtain or provide tort liability insurance or equivalent coverage for each Indian tribe that receives tribal priority allocations from the Bureau of Indian Affairs (BIA).

Because many, if not most, Indian tribes maintain some type of insurance coverage, the Secretary is obligated to determine the type and adequacy of coverage already provided in order to avoid duplicative or redundant coverage.

Significantly, and as is the case with insurance policies now in place for

many tribal governments, the policy of insurance must contain a provision prohibiting the carrier from raising the defense of sovereign immunity with respect to any tort action filed involving the tribe. In this way, injured persons would be afforded a remedy. Such policies would also contain a provision precluding any waiver for pre-judgment interest or punitive damages.

The Secretary would prescribe regulations governing the amount and nature of claims covered by such insurance policy, and would also set a schedule of premiums payable by any tribe that is provided insurance under this bill.

Lastly, as Indian tribes have begun to re-develop their economies and are beginning to assert their influence, issues and matters have developed that should receive the attention of a full-time, intergovernmental body to review and analyze such situations.

This legislation creates the ''Joint Tribal-Federal-State Commission on Intergovernmental Affairs'' to thoughtfully and deliberately consider matters such as law enforcement, civil and criminal jurisdiction, taxation, transportation, economic development, and related issues. Two years after enactment, the commission is required to submit a report of its findings and recommendations to the President, the Committee on Indian Affairs in the Senate, and the Committee on Resources in the House of Representatives.

Finally, let me say that I do not agree with those who suggest that the doctrine of tribal sovereign immunity is an anachronism and one no longer deserving of protection. Several of the states, as well as the federal government, have chosen to waive their immunity from suit in very limited circumstances and under strict conditions.

It is simply inaccurate to suggest that tribal governments are the last repository of immunity. Whether by limiting damage awards as some states have done, or eliminating entire classes of activities that will not trigger immunity waivers as the federal government has done in the Federal Tort Claims Act, the doctrine of immunity is alive and well in the United States.

That there are issues that need to be dealt with I agree; that the way to address these issues is through involuntary, broad-based waivers of immunity, I disagree heartily. I call on the quiet, thoughtful, and reasonable people on both sides of these issues to craft solutions that respects Indian tribal governments and yet provides reasonable solutions for legitimate problems that do exist.

Mr. President, I ask that the contents of the legislation be printed in the RECORD.

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

S. 2097

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 ''Indian Tribal Conflict Resolution and Tort Claims and Risk Management Act of 1998''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) Indian tribal sovereignty predates the formation of the United States and the United States Constitution;

(2) a unique legal and political relationship exists between the United States and Indian tribes;

(3) through treaties, statutes, Executive orders, and course of dealing, the United States has recognized tribal sovereignty and the unique relationship that the United States has with Indian tribes;

(4) Indian tribal governments exercise governmental authority and powers over persons and activities within the territory and lands under the jurisdiction of those governments;

(5) conflicts involving Indian tribal governments may necessitate the active involvement of the United States in the role of the trustee for Indian tribes;

(6) litigation involving Indian tribes, that often requires the United States to intervene as a litigant, is costly, lengthy, and contentious;

(7) for many years, alternative dispute resolution has been used successfully to resolve disputes in the private sector, and in the public sector;

(8) alternative dispute resolution—

(A) results in expedited decisionmaking; and

(B) is less costly, and less contentious than litigation;

(9) it is necessary to facilitate intergovernmental agreements between Indian tribes and States and political subdivisions thereof;

(10) Indian tribes have made significant achievements toward developing a foundation for economic self-sufficiency and self-determination, and that economic self-sufficiency and self-determination have increased opportunities for the Indian tribes and other entities and persons to interact more frequently in commerce and intergovernmental relationships;

(11) although Indian tribes have sought and secured liability insurance coverage to meet their needs, many Indian tribes are faced with significant barriers to obtaining liability insurance because of the high cost or unavailability of such coverage in the private market;

(12) as a result, Congress has extended liability coverage provided to Indian tribes to organizations to carry out activities under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and

(13) there is an emergent need for comprehensive and cost-efficient insurance that allows the economy of Indian tribes to continue to grow and provides compensation to persons that may suffer personal injury or loss of property.

(b) PURPOSES.—The purposes of this Act are to enable Indian tribes, tribal organizations, States and political subdivisions thereof, through viable intergovernmental agreements to—

(1) achieve intergovernmental harmony; and

(2) enhance intergovernmental commerce.

SEC. 3. DEFINITIONS.

In this Act:

(1) FEDERAL AGENCY.—The term ''Federal agency'' has the meaning given the term ''Executive agency'' in section 105 of title 5, United States Code.

(2) INDIAN COUNTRY.—The term ''Indian country'' has the meaning given that term in section 1151 of title 18, United States Code.

(3) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(4) PANEL.—The term ''Panel'' means the Intergovernmental Alternative Dispute Panel established under section 103.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Department of the Interior.

(6) STATE.—The term ''State'' means each of the 50 States and the District of Columbia.

(7) TRIBAL ORGANIZATION.—The term ''tribal organization'' has the meaning given that term in section 4(*l*) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(*l*)).

SEC. 4. DECLARED POLICY OF THE UNITED STATES.

It is the policy of the United States—

(1) to continue to preserve and protect Indian tribes, Indian people, and trust resources and property of Indian tribes; and

(2) that the settlement of issues and disputes involving Indian tribes and States or political subdivisions thereof, through negotiation and accommodation, may be advanced by making available full and adequate governmental facilities for fact finding, conciliation, mediation, and voluntary arbitration to aid and encourage Indian tribes, States, and political subdivisions thereof—

(A) to reach and maintain agreements; and

(B) to make reasonable efforts to settle differences by mutual agreement reached by such methods as may be provided for in any applicable agreement for the settlement of disputes.

TITLE I—INTERGOVERNMENTAL AGREEMENTS

SEC. 101. INTERGOVERNMENTAL COMPACT AUTHORIZATION.

(a) IN GENERAL.—The consent of the United States is granted to States and Indian tribes to enter into compacts and agreements in accordance with this title.

(b) COLLECTION OF TAXES.—Consistent with the United States Constitution, treaties, and principles of tribal and State sovereignty, and consistent with Supreme Court decisions regarding the collection and payment of certain retail taxes of a State or political subdivision thereof, the consent of the United States is hereby given to Indian tribes, tribal organizations, and States and States and Indian tribes may to enter into compacts and agreements relating to the collection and payment of certain retail taxes.

(c) FILING.—Not later than 30 days after entering into an agreement or compact under this section, a State or Indian tribe shall submit a copy of the compact or agreement to the Secretary. Upon receipt of the compact or agreement, the Secretary shall publish the compact or agreement in the Federal Register.

(d) LIMITATIONS.—

(1) IN GENERAL.—An agreement or compact under this section shall not affect any action or proceeding over which a court has assumed jurisdiction at the time that the agreement or compact is executed.

(2) PROHIBITION.—No action or proceeding described in paragraph (1) shall abate by reason of that agreement or compact unless specifically agreed upon by all parties—

(A) to the action or proceedings; and

(B) to the agreement or compact.

(e) REVOCATION.—An agreement or compact entered into under this section shall be subject to revocation by any party to that agreement or compact. That revocation shall take effect on the earlier of—

(1) the date that is 180 days after the date on which notice of revocation is provided to each party to that agreement or compact; or

(2) any date that is agreed to by all parties to that agreement or compact.

(f) REVISION OR RENEWAL.—Upon the expiration or revocation of an agreement or compact under this section, the parties to such agreement or compact may enter into a revised agreement or compact, or may renew that agreement or compact.

(g) EFFECT OF RENEWAL.—For purposes of this title, the renewal of an agreement or compact entered into under this title shall be treated as a separate agreement or compact and shall be subject to the limitations and requirements applicable to an initial agreement or compact.

(h) STATUTORY CONSTRUCTION.—Nothing in this title shall be construed to—

(1) except as expressly provided in this title, expand or diminish the jurisdiction over civil or criminal matters that may be exercised by a State or the governing body of an Indian tribe; or

(2) authorize or empower a State or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction exercised by the Government of the United States to—

(A) make criminal, civil, or regulatory laws; or

(B) enforce those laws in Indian country.

SEC. 102. INTERGOVERNMENTAL NEGOTIATIONS-PROCEDURES.

(a) GOOD FAITH NEGOTIATIONS.—In negotiating a claim, the parties shall conduct full and fair good faith negotiations pursuant to this title, with the objective of achieving a intergovernmental agreement or compact that meets the requirement of this title.

(b) REQUEST FOR NEGOTIATIONS.—

(1) IN GENERAL.—An Indian tribe or a State may request the Secretary to initiate negotiations to address a claim covered under this title.

(2) NOTIFICATION.—The Secretary shall notify the parties of any request made under paragraph (1).

(3) REQUESTS.—Any request made to the Secretary under this subsection shall be in writing.

(4) PARTICIPATION AS A PREREQUISITE TO INVOKE PROCEDURES UNDER SECTION 103.—

(A) IN GENERAL.—A party may not file a claim under section 103 unless that party is available for, agrees to, and participates in, negotiations under this section.

(B) NOTICE.—Upon receipt of any request made pursuant to paragraph (1), the Secretary shall, not later than 30 days after such receipt, send a notice by registered mail, return receipt requested, advising the parties that are subject to a request made under paragraph (1), that no party may file a claim under section 103 without having participated in negotiations under this section.

(c) NEGOTIATIONS.—

(1) IN GENERAL.—The Secretary shall, in a manner consistent with section 103, cause to occur and facilitate negotiations that are subject to a request under subsection (a).

(2) NON-BINDING NATURE OF NEGOTIATIONS.—Consistent with the purposes of this title, the negotiations referred to in paragraph (1) shall—

(A) be nonbinding; and

(B) be facilitated by a mediator selected in accordance with section 103.

(3) SELECTION OF MEDIATOR.—

(A) IN GENERAL.—The Secretary shall select 3 mediators from a list supplied by the Federal Mediation and Conciliation Service and submit a list of these mediators to the parties.

(B) CHALLENGES.—Each party may challenge the selection of 1 of the mediators listed by the Secretary under subparagraph (A).

(C) SELECTION.—After each party has had an opportunity to challenge the list made by the Administrator under subparagraph (B), the Secretary shall select a mediator from the list who is not subject to such a challenge.

(4) PAYMENT.—The expenses and fees of the mediator selected under paragraph (3) in facilitating negotiations under paragraph (1) shall be paid by the Secretary.

(5) REIMBURSEMENT.—If a party that files a claim under section 103 and that party is not the prevailing party in that claim, that party shall reimburse the Secretary for any fees and expenses incurred by the Secretary pursuant to paragraph (4).

(d) PROCEDURES.—Negotiations conducted under this title shall be subject to the following procedures:

(1) COMMENCEMENT.—Negotiations conducted under this section shall commence as soon as practicable after the party that receives notice under subsection (b)(4)(B) responds to the Secretary.

(2) ADDITIONAL INVESTIGATION, RESEARCH, OR NEGOTIATION.—

(A) IN GENERAL.—Each party that enters into negotiation under this section and the Secretary may agree to additional investigation, research, or analysis to facilitate a negotiated settlement.

(B) PAYMENTS.—The cost of the additional investigation, research, or analysis referred to in subparagraph (A) shall be borne by the party that undertakes that investigation, research, or analysis, or causes that investigation, research, and analysis.

(3) EXCHANGE OF RECORDS AND DOCUMENTATION.—Each party that enters into negotiations under this section shall exchange, and make available to the Secretary, any records, documents, or other information that the party may have with regard to transactions within the scope of the claims alleged that—

(A) may be relevant to resolving the negotiations; and

(B) are not privileged information under applicable law, or otherwise subject to restrictions on disclosure under applicable law.

(4) TERMINATION.—

(A) IN GENERAL.—

(i) TERMINATION.—Except as provided in clause (i) and subparagraph (B), negotiations conducted under this section shall terminate on the date that is 1 year after the date of the first meeting of the parties to conduct negotiations under this section.

(ii) MUTUAL AGREEMENT.—The period for negotiations under clause (i) may be extended if the parties and the Secretary agree that there is a reasonable likelihood that the extension may result in a negotiated settlement.

(B) MUTUAL AGREEMENT.—At any time during negotiations under this section, the parties may mutually agree to terminate the negotiations.

(C) FULFILLMENT OF CERTAIN REQUIREMENTS.—A party shall be considered to have met the requirements described in subsection (b)(4) in any case in which negotiations are terminated by mutual agreement of the parties under subparagraph (B).

(e) NEGOTIATED SETTLEMENTS.—

(1) IN GENERAL.—A negotiated settlement of a claim covered by this title reached by the parties under this section shall constitute the final, complete, and conclusive resolution of that claim.

(2) ALTERNATIVE DISPUTE RESOLUTION.—Any claim, setoff, or counterclaim (including any claim, setoff, or counterclaim described in section 103(c)) that is not subject to a negotiated settlement under this section may be pursued by the parties or the Secretary pursuant to section 103.

SEC. 103. INTERGOVERNMENTAL ALTERNATIVE DISPUTE RESOLUTION PANEL-ESTABLISHMENT.

(a) IN GENERAL.—If negotiations conducted under section 103 do not result in a settlement, the Secretary may refer the State and Indian tribe involved to the Panel established under subsection (b).

(b) AUTHORITY OF PANEL.—To the extent allowable by law, the Panel may consider and render a decision on a referred to the Panel under this section.

(c) TAXATION.—Any claim involving the legitimacy of a claim for the collection or payment of certain retail taxes owed by an Indian tribe to a State or political subdivision thereof and shall include or admit of counterclaims, setoffs, or related claims submitted or filed by the tribe in question regarding the original claim.

(d) MEMBERSHIP OF THE PANEL.—

(1) IN GENERAL.—The Panel shall consist of—

(A) 1 representative from the Department of the Interior;

(B) 1 representative from the Department of Justice;

(C) 1 representative from the Department of the Treasury;

(D) 1 representative of State governments; and

(E) 1 representative of tribal governments of Indian tribes.

(2) CHAIRPERSON.—The members of the Panel shall select a Chairperson from among the members of the Panel.

(e) FEDERAL MEDIATION CONCILIATION SERVICE.—

(1) IN GENERAL.—In a manner consistent with this title, the Panel shall consult with the Federal Mediation Conciliation Service (referred to in this subsection as the ''Service'') established under section 202 of the National Labor Relations Act (29 U.S.C. 172).

(2) DUTIES OF SERVICE.—The Service shall, upon request of the Panel and in a manner consistent with applicable law—

(A) provide services to the Panel to aid in resolving disputes brought before the Panel;

(B) furnish employees to act as neutrals (as that term is defined in section 571(9) of title 5, United States Code) in resolving the disputes brought before the Panel; and

(C) consult with the Administrative Conference of the United States to maintain a roster of neutrals and arbitrators.

SEC. 104. JUDICIAL ENFORCEMENT.

(a) INTERGOVERNMENTAL AGREEMENTS.—

(1) IN GENERAL.—

(A) JURISDICTION.—Except as provided in subparagraph (B), the district courts of the United States shall have original jurisdiction with respect to—

(i) any civil action, claim, counterclaim, or setoff, brought by any party to a agreement or compact entered into in accordance with this title to secure equitable relief, including injunctive and declaratory relief; and

(ii) the enforcement of any agreement or compact.

(B) DAMAGES.—No action to recover damages arising out of or in connection with an agreement or compact entered into under this section may be brought, except as specifically provided for in that agreement or compact.

(2) CONSENT TO SUIT.—Each compact or agreement entered into under this title shall specify that the partner consent to litigation to enforce the agreement, and to the extent necessary to enforce that agreement, each party waives any defense of sovereign immunity.

SEC. 105. JOINT TRIBAL-FEDERAL-STATE COMMISSION ON INTERGOVERNMENTAL AFFAIRS.

(a) IN GENERAL.—The Secretary shall establish a tribal, Federal, and State commission

(to be known as the ''Tribal-Federal-State Commission'') (referred to in this section as the ''Commission'').

(b) MEMBERS.—

(1) IN GENERAL.—The Commission shall be comprised of representatives of Indian tribes, the States, and the Federal Government.

(2) DUTIES OF THE COMMISSION.—The Commission shall advise the Secretary concerning issues of intergovernmental concern with respect to Indian tribes, States, and the Federal Government, including—

(A) law enforcement;

(B) civil and criminal jurisdiction;

(C) taxation;

(D) transportation;

(E) economy development; and

(F) other matters related to a matter described in subparagraph (A), (B), (C), (D), or (E).

(3) PERIOD OF APPOINTMENT.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(4) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(5) MEETINGS.—The Commission shall meet at the call of the Chairman.

(6) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(7) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairman and Vice Chairman from among its members.

(8) POWERS.—

(A) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this section.

(B) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this Act section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(C) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(D) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(9) COMMISSION PERSONNEL MATTERS.—

(A) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(B) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) REPORT.—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Commission shall prepare and submit to the President, the Committee on Indian Affairs of the Senate, and the Committee on Resources of the House of Representatives a report on the implementation of this title that includes any recommendations that the Commission determines to be appropriate.

SEC. 106. FUNDING AND IMPLEMENTATION.

(a) IN GENERAL.—With respect to any agreement or compact between an Indian tribe and a State, the United States, upon agreement of the parties and the Secretary, may provide financial assistance to such parties for costs of personnel or administrative expenses in an amount not to exceed 100 percent of the costs incurred by the parties as a consequence of that agreement or compact, including any indirect costs of administration that are attributable to the services performed under the agreement or compact.

(b) ASSISTANCE.—The head of each Federal agency may, to the extent allowable by law and subject to the availability of appropriations, provide technical assistance, material support, and personnel to assist States and Indian tribes in the implementation of the agreements or compacts entered into under this title.

TITLE II—TORT LIABILITY INSURANCE

SEC. 201. LIABILITY INSURANCE, WAIVER OF DEFENSE.

(a) TRIBAL PRIORITY ALLOCATION DEFINED.—The term ''tribal priority allocation'' means an allocation to a tribal priority account of an Indian tribe by the Bureau of Indian Affairs to allow that Indian tribe to establish program priorities and funding levels.

(b) INSURANCE.—

(1) IN GENERAL.—Except as provided in paragraph (3), not later than 2 years after the date of enactment of this Act, the Secretary shall obtain or provide tort liability insurance or equivalent coverage for each Indian tribe that receives a tribal priority allocation from amounts made available to the Bureau of Indian Affairs for the operation of Indian programs.

(2) COST-EFFECTIVENESS.—In carrying out paragraph (1), the Secretary shall—

(A) ensure that the insurance or equivalent coverage is provided in the most cost-effective manner available; and

(B) for each Indian tribe referred to in paragraph (1), take into consideration the extent to which the tort liability is covered—

(i) by privately secured liability insurance; or

(ii) chapter 171 of title 28, United States Code (commonly referred to as the ''Federal Tort Claims Act'') by reason of an activity of the Indian tribe in which the Indian tribe is acting in the same capacity as an agency of the United States.

(3) LIMITATION.—If the Secretary determines that an Indian tribe, described in paragraph (1), has obtained liability insurance in an amount and of the type that the Secretary determines to be appropriate by the date specified in paragraph (1), the Secretary shall not be required to provide additional coverage for that Indian tribe.

(c) REQUIREMENTS.—A policy of insurance or a document for equivalent coverage under subsection (a)(1) shall—

(1) contain a provision that the insurance carrier shall waive any right to raise as a defense the sovereign immunity of an Indian tribe with respect to an action involving tort liability of that Indian tribe, but only with respect to tort liability claims of an amount and nature covered under the insurance policy or equivalent coverage offered by the insurance carrier; and

(2) not waive or otherwise limit the sovereign immunity of the Indian tribe outside or beyond the coverage or limits of the policy of insurance or equivalent coverage.

(d) PROHIBITION.—No waiver of the sovereign immunity of a Indian tribe under this section shall include a waiver of any potential liability for—

(1) interest that may be payable before judgment; or

(2) exemplary or punitive damages.

(e) PREFERENCE.—In obtaining or providing tort liability insurance coverage for Indian tribes under this section, the Secretary shall, to the greatest extent practicable, give preference to coverage underwritten by Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452), except that for the purposes of this subsection, those enterprises may include non-profit corporations.

(f) REGULATIONS.—To carry out this title, the Secretary shall promulgate regulations that—

(1) provide for the amount and nature of claims to be covered by an insurance policy or equivalent coverage provided to an Indian tribe under this title; and

(2) establish a schedule of premiums that may be assessed against any Indian tribe that is provided liability insurance under this title.

SEC. 202. STUDY AND REPORT TO CONGRESS

(a) IN GENERAL.—

(1) STUDY.—In order to minimize and, if possible, eliminate redundant or duplicative liability insurance coverage and to ensure that the provision of insurance of equivalent coverage under this title is cost-effective, before carrying out the requirements of section 201, the Secretary shall conduct a comprehensive survey of the degree, type, and adequacy of liability insurance coverage of Indian tribes at the time of the study.

(2) CONTENTS OF STUDY.—The study conducted under this subsection shall include—

(A) an analysis of loss data;

(B) risk assessments;

(C) projected exposure to liability, and related matters; and

(D) the category of risk and coverage involved which may include—

(i) general liability;

(ii) automobile liability;

(iii) the liability of officials of the Indian tribe;

(iv) law enforcement liability;

(v) workers' compensation; and

(vi) other types of liability contingencies.

(3) ASSESSMENT OF COVERAGE BY CATEGORIES OF RISK.—For each Indian tribe described in section 201(a)(1), for each category of risk identified under paragraph (2), the Secretary, in conducting the study, shall determine whether insurance coverage other than coverage to be provided under this title or coverage under chapter 171 of title 28, United States Code, applies to that Indian tribe for that activity.

(b) REPORT.—Not later than 3 years after the date of enactment of this Act, and annually thereafter, the Secretary shall submit a report to Congress concerning the implementation of this title, that contains any legislative recommendations that the Secretary determines to be appropriate to improve the provision of insurance of equivalent coverage to Indian tribes under this title, or otherwise achieves the goals and objectives of this title.

By Mr. CAMPBELL:

S. 2098. A bill to preserve the sovereignty of the United States over public lands and acquired lands owned by the United States, and to preserve State sovereignty and private property rights in non-Federal lands surrounding those public lands and acquired

lands; to the Committee on Energy and Natural Resources.

AMERICAN LAND SOVEREIGNTY PROTECTION ACT

Mr. CAMPBELL. Mr. President, as a strong supporter of American public lands and private property rights, I am concerned about the setting aside of public lands by the federal government for international agreements and oversight. The absence of congressional oversight in such programs as the United Nations Biosphere Reserve is of special concern to me. The United Nations has designated 47 ''Biosphere Reserves'' in the United States which contain a total area greater than the size of my home state of Colorado. That is why today I introduce companion legislation to H.R. 901, the American Land Sovereignty Protection Act, introduced by Representative DON YOUNG, to preserve American sovereignty and halt the extension of the executive branch into congressional constitutional authority.

We are facing a threat to our sovereignty by the creation of these land reserves in our public lands. I also believe the rights of private landowners must be protected if these international land designations are made. Even more disturbing is the fact the executive branch elected to be a party to this ''Biosphere Reserve'' program without the approval of Congress or the American people. The absence of congressional oversight in this area is a serious concern.

In fact most of these international land reserves have been created with minimal, if any, congressional input or oversight or public consultation. Congress must protect individual property owners, local communities, and State sovereignty which may be adversely impacted economically by any such international agreements.

The current system for implementing international land reserves diminishes the power and sovereignty of the Congress to exercise its constitutional power to make laws that govern lands belonging to the United States. The executive branch may be indirectly agreeing to terms of international treaties, such as the Convention of Biodiversity, to which the United States is not a party, and one which our country has refused to ratify.

A ''Biosphere Reserve'' is a federally-zoned and coordinated region that could prohibit certain uses of private lands outside of the designated international area. The executive branch is agreeing to manage the designated area in accordance with an underlying agreement which may have implications on non-federal land outside the affected area. When residents of Arkansas discovered a plan by the United Nations and the administration to advance a proposed ''Ozark Highland Man and Biosphere Reserve'' without public input, the plan was withdrawn in the face of public pressure. This type of stealth tactic to accommodate international interests does not serve the needs and desires of the American people. Rather, it is an encroachment by the Executive branch on congressional authority.

As policymaking authority is further centralized at the executive branch level, the role of ordinary citizens in the making of this policy through their elected representatives is diminished. The administration has allowed some of America's most symbolic monuments of freedom, such as the Statue of Liberty and Independence Hall to be listed as World Heritage Sites. Furthermore the United Nations has listed national parks including Yellowstone National Park—our nation's first national park.

Federal legislation is needed to require the specific approval of Congress before any area within the borders of United States is made part of an international land reserve. My bill reasserts Congress' constitutional role in the creation of rules and regulations governing lands belonging to the United States and its people.

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

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

S. 2098

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 ''American Land Sovereignty Protection Act''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The power to dispose of and make all needful rules and regulations governing lands belonging to the United States is vested in the Congress under article IV, section 3, of the Constitution.

(2) Some Federal land designations made pursuant to international agreements concern land use policies and regulations for lands belonging to the United States which under article IV, section 3, of the Constitution can only be implemented through laws enacted by the Congress.

(3) Some international land designations, such as those under the United States Biosphere Reserve Program and the Man and Biosphere Program of the United Nations Scientific, Educational, and Cultural Organization, operate under independent national committees, such as the United States National Man and Biosphere Committee, which have no legislative directives or authorization from the Congress.

(4) Actions by the United States in making such designations may affect the use and value of nearby or intermixed non-Federal lands.

(5) The sovereignty of the States is a critical component of our Federal system of government and a bulwark against the unwise concentration of power.

(6) Private property rights are essential for the protection of freedom.

(7) Actions by the United States to designate lands belonging to the United States pursuant to international agreements in some cases conflict with congressional constitutional responsibilities and State sovereign capabilities.

(8) Actions by the President in applying certain international agreements to lands owned by the United States diminishes the authority of the Congress to make rules and regulations respecting these lands.

(b) PURPOSE.—The purposes of this Act are the following:

(1) To reaffirm the power of the Congress under article IV, section 3, of the Constitution over international agreements which concern disposal, management, and use of lands belonging to the United States.

(2) To protect State powers not reserved to the Federal Government under the Constitution from Federal actions designating lands pursuant to international agreements.

(3) To ensure that no United States citizen suffers any diminishment or loss of individual rights as a result of Federal actions designating lands pursuant to international agreements for purposes of imposing restrictions on use of those lands.

(4) To protect private interests in real property from diminishment as a result of Federal actions designating lands pursuant to international agreements.

(5) To provide a process under which the United States may, when desirable, designate lands pursuant to international agreements.

SEC. 3. CLARIFICATION OF CONGRESSIONAL ROLE IN WORLD HERITAGE SITE LISTING.

Section 401 of the National Historic Preservation Act Amendments of 1980 (Public Law 96–515; 94 Stat. 2987) is amended—

(1) in subsection (a) in the first sentence, by—

(A) striking ''The Secretary'' and inserting ''Subject to subsections (b), (c), (d), and (e), the Secretary''; and

(B) inserting ''(in this section referred to as the 'Convention')'' after ''1973''; and

(2) by adding at the end the following new subsections:

''(d)(1) The Secretary of the Interior may not nominate any lands owned by the United States for inclusion on the World Heritage List pursuant to the Convention, unless—

''(A) the Secretary finds with reasonable basis that commercially viable uses of the nominated lands, and commercially viable uses of other lands located within 10 miles of the nominated lands, in existence on the date of the nomination will not be adversely affected by inclusion of the lands on the World Heritage List, and publishes that finding;

''(B) the Secretary has submitted to the Congress a report describing—

''(i) natural resources associated with the lands referred to in subparagraph (A); and

''(ii) the impacts that inclusion of the nominated lands on the World Heritage List would have on existing and future uses of the nominated lands or other lands located within 10 miles of the nominated lands; and

''(C) the nomination is specifically authorized by a law enacted after the date of enactment of the American Land Sovereignty Protection Act and after the date of publication of a finding under subparagraph (A) for the nomination.

''(2) The President may submit to the Speaker of the House of Representatives and the President of the Senate a proposal for legislation authorizing such a nomination after publication of a finding under paragraph (1)(A) for the nomination.

''(e) The Secretary of the Interior shall object to the inclusion of any property in the United States on the list of World Heritage in Danger established under Article 11.4 of the Convention, unless—

''(1) the Secretary has submitted to the Speaker of the House of Representatives and the President of the Senate a report describing—

''(A) the necessity for including that property on the list;

''(B) the natural resources associated with the property; and

''(C) the impacts that inclusion of the property on the list would have on existing and future uses of the property and other property located within 10 miles of the property proposed for inclusion; and

''(2) the Secretary is specifically authorized to assent to the inclusion of the property on the list, by a joint resolution of the Congress after the date of submittal of the report required by paragraph (1).''.

''(f) The Secretary of the Interior shall submit an annual report on each World Heritage Site within the United States to the Chairman and Ranking Minority member of the Committee on Resources of the House of Representatives and of the Committee on Energy and Natural Resources of the Senate, that contains for the year covered by the report the following information for the site:

''(1) An accounting of all money expended to manage the site.

''(2) A summary of Federal full time equivalent hours related to management of the site.

''(3) A list and explanation of all nongovernmental organizations that contributed to the management of the site.

''(4) A summary and account of the disposition of complaints received by the Secretary related to management of the site.''.

SEC. 4. PROHIBITION AND TERMINATION OF UNAUTHORIZED UNITED NATIONS BIOSPHERE RESERVES.

Title IV of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a–1 et seq.) is amended by adding at the end the following new section:

''SEC. 403. (a) No Federal official may nominate any lands in the United States for designation as a Biosphere Reserve under the Man and Biosphere Program of the United Nations Educational, Scientific, and Cultural Organization.

''(b) Any designation on or before the date of enactment of the American Land Sovereignty Protection Act of an area in the United States as a Biosphere Reserve under the Man and Biosphere Program of the United Nations Educational, Scientific, and Cultural Organization shall not have, and shall not be given, any force or effect, unless the Biosphere Reserve—

''(1) is specifically authorized by a law enacted after that date of enactment and before December 31, 2000;

''(2) consists solely of lands that on that date of enactment are owned by the United States; and

''(3) is subject to a management plan that specifically ensures that the use of intermixed or adjacent non-Federal property is not limited or restricted as a result of that designation.

''(c) The Secretary of State shall submit an annual report on each Biosphere Reserve within the United States to the Chairman and Ranking Minority member of the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, that contains for the year covered by the report the following information for the reserve:

''(1) An accounting of all money expended to manage the reserve.

''(2) A summary of Federal full time equivalent hours related to management of the reserve.

''(3) A list and explanation of all nongovernmental organizations that contributed to the management of the reserve.

''(4) A summary and account of the disposition of the complaints received by the Secretary related to management of the reserve.''.

SEC. 5. INTERNATIONAL AGREEMENTS IN GENERAL.

Title IV of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a–1 et seq.) is further amended by adding at the end the following new section:

''SEC. 404. (a) No Federal official may nominate, classify, or designate any lands owned by the United States and located within the United States for a special, including commercial, or restricted use under any international agreement unless such nomination, classification, or designation is specifically authorized by law. The President may from time to time submit to the Speaker of the House of Representatives and the President of the Senate proposals for legislation authorizing such a nomination, classification, or designation.

''(b) A nomination, classification, or designation, under any international agreement, of lands owned by a State or local government shall have no force or effect unless the nomination, classification, or designation is specifically authorized by a law enacted by the State or local government, respectively.

''(c) A nomination, classification, or designation, under any international agreement, of privately owned lands shall have no force or effect without the written consent of the owner of the lands.

''(d) This section shall not apply to—

''(1) agreements established under section 16(a) of the North American Wetlands Conservation Act (16 U.S.C. 4413); and

''(2) conventions referred to in section 3(h)(3) of the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712(2)).

''(e) In this section, the term 'international agreement' means any treaty, compact, executive agreement, convention, bilateral agreement, or multilateral agreement between the United States or any agency of the United States and any foreign entity or agency of any foreign entity, having a primary purpose of conserving, preserving, or protecting the terrestrial or marine environment, flora, or fauna.''.

SEC. 6. CLERICAL AMENDMENT.

Section 401(b) of the National Historic Preservation Act Amendments of 1980 (16 U.S.C. 470a–1(b)) is amended by striking ''Committee on Natural Resources'' and inserting ''Committee on Resources''.

By Mr. CAMPBELL:

S. 2099. A bill to provide for enhanced Federal sentencing guidelines for counterfeiting offenses, and for other purposes; to the Committee on the Judiciary.

COUNTERFEITING SENTENCING ENHANCEMENT ACT OF 1998

Mr. CAMPBELL. Mr. President, today I introduce the Counterfeiting Sentencing Enhancement Act of 1998. My bill would tighten the sentencing guidelines' base offense level in recognition of the fact that advances in computer and printing technology have fundamentally changed the nature of counterfeiting. This bill would bring our nation's counterfeiting laws out of Gutenberg's printing press era and into the modern computer age.

Counterfeiting of our nation's currency is a serious and growing problem. Incidents of computer generated counterfeiting have increased dramatically over the last three years. In 1995 only one half of one percent of counterfeit U.S. currency passed were computer generated.

Today, just three short years later, computer generated counterfeits account for approximately 43 percent of the counterfeits passed.

Traditional counterfeiters use offset printing production methods that require specialized equipment including printing presses, engraved printing press plates and green ink. These counterfeiters encounter a cumbersome process that is messy, is harder to conceal, and requires them to produce in large batches.

However, a rapidly growing number of today's counterfeiters are using personal computers, scanners, digital imaging software, full color copiers, and laser and inkjet printers. They can also use the Internet to instantaneously transmit the computer images needed for counterfeiting. This technology, which is readily available and increasingly affordable, enables criminals to produce high-quality counterfeit currency in small batches and at a low cost. It is this ability for counterfeiters to easily produce in small batches that has rendered our sentencing guidelines outdated and less effective as a deterrent.

Our sentencing guidelines under current law are based in a world where the realities of offset printing required counterfeiters to produce in rather large batches. That reality no longer exists. Basically, the more counterfeit currency a counterfeiter got caught with, the stiffer the sentence. Using computer technology, today's counterfeiters can simply print out smaller batches of counterfeit currency whenever they want to. This allows these criminals to effectively fly just under the radar of our sentencing guideline thresholds.

The administration recently acknowledged the extent of the problem. In a March 5, 1998, letter to the U.S. Sentencing Commission, Treasury Secretary Robert E. Rubin wrote that ''increases in computer counterfeiting cases represent not only a threat to our law enforcement interests, but also seriously threaten the integrity of our U.S. currency. Maintaining the stability and integrity of U.S. currency is essential to preserving the benefits derived from the dollar's status as a world currency.''

In response to these enhanced counterfeiting techniques, the Department of Treasury has been redesigning our nation's currency to make it harder to counterfeit. In addition the Secret Service has stepped up its battle against counterfeiters, both at home and abroad. But more needs to be done. This bill is another important step to toughen the penalties for counterfeiting.

Specifically, my bill strengthens the sentencing guidelines so that increases are based on offense levels determined by the amount of counterfeit bills produced and a point system based on the offender's prior criminal history. Under current law, the base offense begins with level 9 for convictions involving $2,000 in counterfeit currency or less. Increases in this level occur according to the amount of counterfeit bills over $2,000. Thus a defendant's guideline

range in counterfeiting cases depends largely on the amount of counterfeit inventory seized when the operation is shut down.

Increases in sentencing are also determined by the prior criminal history of the offender. Points are added for such things as: prior imprisonment; offenses committed while on probation, parole, or supervised release; offenses committed less than two years from prior release; and other misdemeanor and petty offenses.

Under current law at base offense level 9, seven points are needed for the imposition of a prison sentence of 12 to 18 months. Without these points for prior criminal history many offenders simply are being released on probation. I believe these sentencing guidelines are too lenient and fail to address the growing problem of counterfeiting.

Therefore, my bill increases the base offense level in section 2B5.1 of the Federal Sentencing Guidelines by not less than two levels to level 11. Under my bill, an offender would need only four points to receive the same 12 to 18 month sentence which previously required seven points. This relates to all counterfeiting offenses to address the overall harm counterfeiting can have on the integrity of U.S. currency.

Second, my bill adds a sentencing enhancement of not less than two levels for counterfeiting offenses that involve the use of computer printer or a color photocopying machine. This would place this new class of computer counterfeiters at an offense level of 13. Here, an offender would need zero points to receive the same 12 to 18 month sentence. The increase in my bill would provide for actual prison sentences in many of the cases where previous offenders were only receiving probation. I believe this legislation clearly addresses our growing problem with counterfeiters by imposing stricter sentencing penalties.

Mr. President, counterfeiting threatens the very underpinnings of our economy, the American people's confidence in the integrity and value of our nation's currency, the U.S. dollar. The ''Counterfeiting Sentencing Enhancement Act of 1998'' will send a clear message to criminals who are even thinking about counterfeiting. I urge my colleagues to join in support of this legislation.

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

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

S. 2099

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

SECTION 1. SENTENCING GUIDELINES FOR COUNTERFEITING OFFENSES.

The United States Sentencing Commission shall amend the Federal sentencing guidelines to provide—

(1) a sentencing enhancement of not less than 2 levels, with respect to the base level for offenses involving counterfeit bearer obligations of the United States, as described in section 2B5.1 of the Federal sentencing guidelines; and

(2) an additional sentencing enhancement of not less than 2 levels, with respect to any offense described in paragraph (1) that involves the use of a computer printer or a color photocopying machine.

By Mr. SPECTER (for himself, Mr. MACK, and Mr. FAIRCLOTH):

S. 2100. A bill to amend the Higher Education Act of 1965 to increase public awareness concerning crime on college and university campuses; to the Committee on Labor and Human Resources.

CAMPUS CRIME DISCLOSURE ACT OF 1998

Mr. SPECTER. Mr. President, today I introduce the Campus Crime Disclosure Act of 1998. My legislation amends the Crime Awareness and Campus Security Act of 1990,

Educational institutions were once safe havens where we sent our children. Unfortunately, today we are all aware of the increase in violence that has reached as far down as our elementary schools to our youngest and most innocent victims. I would note that just recently, in the rural Pennsylvania community of Edinboro, a young teenager lamentably shot a teacher to death at an 8th grade graduation dance and wounded other students. While there is much that Congress can do to reduce violence in our society and across all levels of educational institutions, my legislation is focused on our national commitment to improving public safety on college and university campuses, where young adults are often away from their homes for the first time and living in unfamiliar surroundings.

The legislation I am introducing today builds upon the fine work of my distinguished colleagues, Representative GOODLING of Pennsylvania and Senator JEFFORDS of Vermont, who as chairmen of the authorizing committees having jurisdiction over higher education, have included campus crime amendments in the legislation reauthorizing the Higher Education Act. However, I believe that their amendments to the 1990 Campus Security Act do not go far enough. Accordingly, my legislation includes provisions which are not included in the reauthorization bill and are necessary to bring schools into full compliance with the law, such as a more detailed definition of ''campus'' and new civil penalties.

Based on my experience as District Attorney of Philadelphia, and my frequent involvement with educators and college students, I know that safety on campuses is a very serious issue. I want to recognize one family in particular for helping keep me and my colleagues informed on the important issue of campus crime, Howard and Connie Clery, and their son Ben, of King of Prussia, Pennsylvania for their continued work on campus security policy. As my colleagues may know, in 1988, the Clerys' daughter, Jeanne, was beaten, raped and murdered by a fellow student in her campus dormitory room at Lehigh University. Soon after the tragedy, Howard and Connie began to work on getting campus safety laws passed in the States and the U.S. Congress. In fact, the campus security law enacted in 1990 is often referred to as the ''Clery Bill.'' The Clerys founded Security on Campus, Inc., which serves as a watchdog of campus crime policies and procedures administered by our nation's colleges and universities.

Based on continued conversations with the Clerys, it became apparent to me that there was a critical need for Congressional oversight of how the Department of Education has implemented the 1990 Act and whether the Department's financial resources are adequate for enforcement of the reporting requirements. On the fifth of March of this year, I held a hearing on security on campus as chairman of the Senate Labor, Health and Human Services and Education Appropriations Subcommittee, to examine the Department of Education's enforcement of campus crime reporting requirements. The Assistant Secretary for Postsecondary Education for the U.S. Department of Education, David Longanecker, testified that: ''Generally the issue of campus is one of the foremost difficult areas that we have found campuses are having a difficult time with, and it is a particular issue for an urban institution.'' Secretary Longanecker went on to say that sidewalks and public lands are excluded from the Department's current definition of campus. Further, testimony at the hearing showed that buildings which are used for commercial purposes where other parts are used for educational purposes do not fall within the Department's interpretation of ''campus,'' which, my own personal view, is an incorrect one. As one of the authors of the 1990 law, I believe that the omission of such information violates the spirit of the law and is a disservice to parents and students, especially for parents who send their children to college in urban settings, where commercial property such as food shops and retail stores and city streets thread through the entire campus. I believe it is preposterous to suggest that if a student fell victim to a crime say on a sidewalk which he or she was using to get to class would go unreported.

The Campus Crime Disclosure Act of 1998 clarifies the law as to what constitutes a college or university campus. From now on, institutions would have to report to parents, students, and other members of the general public a more precise assessment of the criminal activity on campus. Specifically, a campus will be interpreted to mean: any building or property owned and controlled by the institution or owned by a student organization recognized by the institution, any public property such as sidewalks, streets, parking facilities, and other thoroughfares that provide access to the facilities of the institution, and any property owned or

controlled by the institution that is not in close proximity to the campus must still be reported on. The bill also makes clear that all dormitories and residential facilities, whether on or off-campus, which are owned or operated by the institution, fall under the definition of campus.

My legislation gives the Secretary of Education stronger enforcement authority. Should an institution fail to report crime data, the Department of Education can fine that institution up to $25,000. According to a study conducted by the General Accounting Office, 63 institutions of higher education were in violation of the Crime Awareness and Campus Security Act of 1990. Yet, the Department of Education did not take any punitive action against these institutions. The inclusion of fines will provide the Department with the necessary tool to ensure that all schools fulfill the intention of the law.

I encourage my colleagues to join me in support of the Campus Crime Disclosure Act of 1998 to enhance security on campus. The bill is urgently needed to steer the U.S. Department of Education in the right direction as it monitors crime on America's college campuses. Quite simply, everyone benefits from clear and accurate reporting of the risks facing college students.

Mr. President, I ask unanimous consent that a copy of the text of the bill be printed in the RECORD as well as a section-by-section analysis.

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

S. 2100

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 ''Campus Crime Disclosure Act of 1998''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) According to the General Accounting Office, 63 institutions of higher education were in violation of the amendments made by the Crime Awareness and Campus Security Act of 1990 since the enactment of such Act in 1990. The Department of Education has not taken punitive action against these institutions.

(2) The Department of Education's interpretation of the statutory definition of campus has enabled institutions of higher education to underreport the instances of crimes committed against students.

(3) In order to improve public awareness of crimes committed on college and university campuses, it is essential that Congress act to clarify existing law and to discourage underreporting of offenses covered by the amendments made by the Crime Awareness and Campus Security Act of 1990.

SEC. 3. ADDITIONAL CRIME CATEGORIES.

(a) IN GENERAL.—Section 485(f)(1) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(1)) is amended—

(1) by amending subparagraph (F) to read as follows:

''(F) Statistics concerning the occurrence on campus, during the most recent calendar year, and during the 2 preceding calendar years for which data are available, of criminal offenses reported to campus security authorities or local police agencies, and of referrals of persons for campus disciplinary action, for the following:

''(i) Murder.

''(ii) Sex offenses, forcible or nonforcible.

''(iii) Robbery.

''(iv) Aggravated assault.

''(v) Burglary.

''(vi) Motor vehicle theft.

''(vii) Manslaughter.

''(viii) Larceny.

''(ix) Arson.

''(x) Liquor law violations, drug-related violations, and weapons violations.'';

(2) by striking subparagraph (H); and

(3) by redesignating subparagraph (I) as subparagraph (H).

(b) CONFORMING AMENDMENTS.—Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)) is amended—

(1) in the matter preceding subparagraph (A) of paragraph (4), by striking ''paragraphs (1)(F) and (1)(H)'' and inserting ''paragraph (1)(F)''; and

(2) in paragraph (6), by striking ''paragraphs (1)(F) and (1)(H)'' and inserting ''paragraph (1)(F)''.

SEC. 4. TIMELY MANNER.

Section 485(f)(3) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(3)) is amended by adding at the end the following: ''Such reports shall be readily available to students and employees through various mediums such as resident advisors, electronic mail, school newspapers, and announcement postings throughout the campus.''.

SEC. 5. DEFINITION OF CAMPUS.

Subparagraph (A) of section 485(f)(5) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(5)) is amended to read as follows: ''(A) For purposes of this section the term 'campus' means—

''(i) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution, including a building or property owned by the institution, but controlled by another person, such as a food or other retail vendor;

''(ii) any building or property owned or controlled by a student organization recognized by the institution;

''(iii) all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, that provides immediate access to facilities owned or controlled by the institution;

''(iv) any building or property owned, controlled, or used by an institution of higher education in direct support of, or related to the institution's educational purposes, that is used by students, and that is not within the same reasonably contiguous geographic area of the institution; and

''(v) all dormitories or other student residential facilities owned or controlled by the institution.''.

SEC. 6. REPORTING REQUIREMENTS.

Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092) is amended further by adding at the end the following:

''(8)(A) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

''(B) The Secretary shall provide to an institution of higher education that the Secretary determines is having difficulty, or is not in compliance, with the reporting requirements of this subsection—

''(i) data and analysis regarding successful practices employed by institutions of higher education to reduce campus crime; and

''(ii) technical assistance.

''(9) For purposes of reporting the statistics described in paragraph (1)(F), an institution of higher education shall distinguish, by means of a separate category, any criminal offenses, and any referrals for campus disciplinary actions, that occur—

''(A) on publicly owned sidewalks, streets, or other thoroughfares, or in parking facilities, that provide immediate access to facilities owned by the institution and are within the same reasonably contiguous geographic area of the institution; and

''(B) in dormitories or other residential facilities for students, or in other facilities affiliated with the institution.''.

SEC. 7. FINES.

Section 485(f) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)) is amended further by adding after paragraph (9) (as added by section 6) the following:

''(10)(A) Upon determination, after reasonable notice and opportunity for a hearing, that an institution of higher education—

''(i) has violated or failed to carry out any provision of this subsection or any regulation prescribed under this subsection; or

''(ii) has engaged in substantial misrepresentation of the nature of the institution's activities under this subsection,

the Secretary shall impose a civil penalty upon the institution of not to exceed $25,000 for each violation, failure, or misrepresentation.

''(B) Any civil penalty may be compromised by the Secretary. In determining the amount of such penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the institution of higher education subject to the determination, and the gravity of the violation, failure, or misrepresentation shall be considered. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the institution charged.''.

THE CAMPUS CRIME DISCLOSURE ACT OF 1998—SUMMARY

The Campus Crime Disclosure Act of 1998 amends the Higher Education Act of 1965 to increase public awareness concerning crime on college and university campuses.

Section 1. Title: ''Campus Crime Disclosure Act of 1998.''

Section 2. Findings.

Section 3. Additional Crime Categories.

Adds reporting requirements for offenses such as manslaughter, larceny, arson, and for arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons violations.

Section 4. Definition of Campus.

This section responds to the Department of Education's interpretation of the 1990 campus crime reporting law by modifying the definition of campus to include: any building or property owned and controlled by the institution or by a student organization recognized by the institution within the contiguous area of the institution, any public property such as sidewalks, streets, parking facilities, and other thoroughfares that provide access to the facilities of the institution, any building or property owned or controlled by the institution that is not within the contiguous area but used for educational purposes. The bill also makes clear that all dormitories and residential facilities (on or off-campus) which are owned or operated by the institution, fall under the definition of campus.

Section 5. Reporting Requirements.

Adds three additional reporting requirements: (1) the Secretary of Education must report back to Congress when schools are

found in noncompliance, (2) the Secretary shall provide technical assistance to schools concerning compliance with reporting requirements and the implementation of campus security procedures, and (3) requires institutions to include in their reported statistics: crimes committed on public property such as streets and sidewalks and student residences.

Section 6. Fines.

Mandates for the first time that the Secretary of Education shall impose civil penalties of up to $25,000 on institutions which fail to comply with the Act's reporting requirements.

By Mr. BENNETT (for himself, Ms. MOSELEY-BRAUN, and Mr. SHELBY):

S. 2101. A bill to amend the Public Health Service Act to provide for research and services with respect to lupus; to the Committee on Labor and Human Resources.

THE LUPUS RESEARCH AND CARE AMENDMENTS OF 1998

● Mr. BENNETT. Mr. President, I rise today to introduce the Lupus Research and Care Amendments of 1998. This legislation would authorize additional funds for lupus research and grants for state and local governments to support the delivery of essential services to low-income individuals with lupus and their families. The National Institute of Health (NIH) spent about $33 million on lupus research last year. I believe that we need to increase the funds that are available for research of this debilitating disease.

Lupus is not a well-known disease, nor is it well understood, yet at least 1,400,000 Americans have been diagnosed with lupus and many more are either misdiagnosed or not diagnosed at all. More Americans have lupus than AIDS, cerebral palsy, multiple sclerosis, sickle-cell anemia or cystic fibrosis. Lupus is a disease that attacks and weakens the immune system and is often life threatening. Lupus is nine times more likely to affect women than men. African-American women are diagnosed with lupus two to three times more often than Caucasian women. Lupus is also more prevalent among certain minority groups including Latinos, Native Americans and Asians.

Because lupus is not well understood, it is difficult to diagnose, leading to uncertainty on the actual number of patients suffering from lupus. The symptoms of lupus make diagnosis difficult because they are sporadic and imitate the symptoms of many other illnesses. If diagnosed and with proper treatment, the majority of lupus cases can be controlled. Unfortunately, because of the difficulties in diagnosing lupus and inadequate research, many lupus patients suffer debilitating pain and fatigue. The resulting effects make it difficult, if not impossible, for individuals suffering from lupus to carry on normal everyday activities including work. Thousands of these debilitating cases needlessly end in death each year.

Title I of the Lupus Research and Care Amendments of 1998 authorizes $45 million in grants starting in fiscal year 1999 to be earmarked for lupus research at NIH. This new authorization would amount to less than one-half of 1 percent of NIH's total budget but would greatly enhance NIH's research.

Title II of the Lupus Research and Care Amendments of 1998 authorizes $40 million in grants to state and local governments as well as to nonprofit organizations starting in fiscal year 1999. These grants would support the delivery of essential services to low-income individuals with lupus and their families.

I would urge all my colleagues, Mr. President, to join Senator MOSELEY-BRAUN, Senator SHELBY, and myself in sponsoring this legislation to increase funding available to fight lupus.●

By Mr. FEINGOLD (for himself, Mr. JEFFORDS, Mr. LEAHY, and Mr. WELLSTONE):

S. 2102. A bill to promote democracy and good governance in Nigeria, and for other purposes; to the Committee on Foreign Relations.

NIGERIA DEMOCRACY AND CIVIL SOCIETY EMPOWERMENT ACT

● Mr. FEINGOLD. Mr. President, I introduce a sorely needed piece of foreign policy legislation, the Nigeria Democracy and Civil Society Empowerment Act of 1998. As the Ranking Democrat of the Senate Subcommittee on Africa, I have long been concerned about the collapsing economic and political situation in Nigeria. Nigeria, with its rich history, abundant natural resources and wonderful cultural diversity, has the potential to be an important regional leader. But, sadly, it has squandered that potential and the good will of the world with repressive policies, human rights abuses and corruption.

The legislation I am introducing today provides a clear framework for U.S. policy toward that troubled West African nation. The Nigeria Democracy and Civil Society Empowerment Act declares that the United States should encourage the political, economic and legal reforms necessary to ensure the rule of law and respect for human rights in Nigeria and should aggressively support a timely and effective transition to democratic, civilian government for the people of Nigeria. I am pleased to have Senators JEFFORDS, LEAHY and WELLSTONE join me as cosponsors of this legislation.

This bill draws heavily from legislation introduced in the 104th Congress by the former chair of the Senate Subcommittee on Africa, Senator Kassebaum. I joined 21 other Senators as a proud co-sponsor of that bill. A companion measure to my bill was introduced earlier this week in the House by the distinguished chair of the House International Relations Committee, Mr. GILMAN of New York, and a distinguished member of that Committee and of the Congressional Black Caucus, Mr. PAYNE of New Jersey. I commend both of my House colleagues for their strong leadership on this important issue and I appreciate the opportunity to work with them toward passage of this legislation and the broader goal of a freer Nigeria.

Mr. President, the Nigeria Democracy and Civil Society Empowerment Act provides by law for many of the sanctions that the United States has had in place against Nigeria for a number of years. It includes a ban on most foreign direct assistance, a ban on the sale of military goods and military assistance to Nigeria, and a ban on visas for top Nigerian officials. It would allow the President to lift any of these sanctions if he is able to certify to the Congress that specific conditions, which I will call ''benchmarks,'' regarding the transition to democracy have taken place in Nigeria. These benchmarks include free and fair democratic elections, the release of political prisoners, freedom of the press, the establishment of a functioning independent electoral commission, access for international human rights monitors and the repeal of the many repressive decrees the Abacha regime has pressed upon the Nigerian people.

This legislation also provides for $37 million in development assistance over three years to support democracy and governance programs and the activities of the U.S. Information Agency, and mandates a larger presence for the U.S. Agency for International Development. I want to emphasize that this bill authorizes no new money. All of these funds would come out of existing USAID and USIA appropriations. At the same time, the bill prohibits any U.S. resources from being used to support an electoral process in Nigeria until it is clear that any planned election will be free and legitimate.

Importantly, my bill requires the President to impose additional sanctions at the beginning of 1999 if he cannot certify that a free and fair election has taken place by the end of 1998. These new sanctions, will include a ban on Nigerian participation in major international sporting events, an expansion of visa restrictions on Nigerian officials and the submission of a report that lists the senior officials that fall under such restrictions.

Finally, the bill requires the Secretary of State to submit a report on corruption in Nigeria, including the evidence of corruption by government officials in Nigeria and the impact of corruption on the delivery of government services in Nigeria, on U.s. business interests in Nigeria, and on Nigeria's foreign policy. It would also require that the Secretary's report include information on the impact on U.S. citizens of advance fee fraud and other fraudulent business schemes originating in Nigeria.

The intent of this legislation is twofold. First, it will send an unequivocal message to the ruling military junta in Nigeria that it's continued disregard for democracy, human rights and the institutions of civil society in Nigeria

is simply unacceptable. Second, the bill is a call to action to the Clinton Administration which has yet to articulate a coherent policy on Nigeria that reflects the brutal political realities there.

Nigeria has suffered under military rule for most of its nearly 40 years as an independent nation. By virtue of its size, geographic location, and resource base, it is economically and strategically important both in regional and international terms. Nigeria is critical to American interests. But Nigeria's future is being squandered by the military government of General Sani Abacha. Abacha presides over a Nigeria stunted by rampant corruption, economic mismanagement and the brutal subjugation of its people.

The abiding calamity in Nigeria occurs in the context of economic and political collapse. Nigeria has the potential to be the economic powerhouse on the African continent, a key regional political leader, and an important American trading partner, but it is none of these things. Despite its wealth, economic activity in Nigeria continues to stagnate. Even oil revenues are not what they might be, but they remain the only reliable source of economic growth, with the United States purchasing an estimated 41 percent of the output.

Corruption and criminal activity in this military-controlled economic and political system have become common, including reports of drug trafficking and consumer fraud schemes that have originated in Nigeria and reached into the United States, including my home state of Wisconsin.

After the military annulled the 1993 election of Moshood Abiola as Nigeria's president—through what was considered by many observers to be a free and fair election—Chief Abiola was thrown into prison, where he remains, as far as we know, on the pretext of awaiting trial. Reliable information about his situation and condition is difficult to obtain. Chief Abiola's wife, Kudirat, was detained by authorities last year and was later found murdered by the side of a road under circumstances that suggest the military may have been responsible.

On October 1, 1995, General Abacha announced a so-called ''transition'' program whose goal was the return of an elected civilian government in Nigeria by October 1998. But virtually none of the institutions essential to a free and fair election—an independent electoral commission, an open registration process, or open procedures for the participation of independent political parties, for example—has been put into place in Nigeria. Repression continues; political prisoners remain in jail; the press remains muzzled; and the fruits of Nigeria's abundant natural resources remain in the hands of Abacha's supporters and cronies.

Even this flawed transition process—which in its best days moved at a snail's pace—has now been completely destroyed by the recent announcement that the fifth of the five officially sanctioned parties has endorsed Gen. Abacha as their candidate. Now, what was to have been a competitive presidential election has become a circus referendum on Abacha himself. The general will allow an election so long as his name is the only one on the ballot. This is little more than a sorry joke on the premise of democracy!

Any criticism of this so-called transition process is punishable by five years in a Nigerian prison. Reports from many international human rights organizations and our own State Department document years of similar brutality. Nigerian human rights activists and government critics are commonly whisked away to secret trials before military courts and imprisoned; independent media outlets are silenced; workers' rights to organize are restricted; and the infamous State Security [Detention of Persons] Decree #2, giving the military sweeping powers of arrest and detention, remains in force.

Perhaps the most horrific example of repression by the Abacha government was the execution of human rights and environmental activist Ken Saro-Wiwa and eight others in November 1995 on trumped-up charges. Since that barbaric spectacle, it appears the Abacha government has been working even harder to tighten its grip on the country, wasting no opportunity to subjugate the people of Nigeria.

Late last year, retired Major General Musa Yar'Adua, a former Nigerian vice president and a prominent opponent of General Abacha, died in state custody under circumstances that remain shrouded in mystery. General Yar'Adua was one of 40 people arrested in 1995 during a government sweep and sentenced to 25 years in prison for an alleged coup plot widely believed to have been a pretext to silence government critics. Just a few weeks ago, we received the disturbing news that five Nigerians had been sentenced to death by a military tribunal amid other unproven accusations of coup-plotting.

The Clinton Administration response to these events has been an earnest muddle at best, and rudderless at worst. I welcome recent efforts to complete the policy review process; in fact, I have been pushing for its completion for quite some time, because I feel the perceived ''lack'' of a policy with respect to Nigeria, for the past two years or so, has been dangerous.

But, unfortunately, the long-awaited and oft-postponed principals' meeting on this issue, which finally took place in April, has not yielded any firm recommendations to the President. I have long urged the Administration to take the toughest stance possible in support of democracy in Nigeria, including a clear unequivocal statement that an electoral victory for Abacha would be totally illegitimate and unacceptable. The regime in Nigeria must know that anything less than a transparent transition to civilian rule will be met with severe consequences, including new sanctions as is mandated in this bill.

So I was particularly disappointed to hear the President remark during his recent trip to Africa that General Abacha would be considered acceptable by the United States if he chose to run in the upcoming election as a civilian. My shock at that remark was tempered somewhat by the efforts of numerous administration officials who struggled to clarify the President's remarks. They insist that the U.S. objective is to support a viable transition to civilian rule in Nigeria, but my worst fears about that ominous remark by the President have now come true. Abacha and his cronies seem to believe that the United States would consider an Abacha victory in the upcoming elections to be a viable, sustainable outcome. Why else would the plan once touted as the basis for a democratic competitive presidential election be downgraded into a rigged referendum on Abacha himself? As planned now, the referendum will be one in which Abacha cannot lose and the people of Nigeria cannot win.

Mr. President, the legislation I am introducing today represents an effort to demonstrate our horror at the continued repression in Nigeria, to encourage the ruling regime to take meaningful steps at reform, to support those Nigerians who have worked tirelessly and fearlessly for democracy and civilian rule and to move our own government toward a Nigeria policy that vigorously reflects the best American values.

I urge my colleagues to support this legislation, and I hope that we will be able to consider it soon in the Committee on Foreign Relations.

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

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

S. 2102

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 ''Nigerian Democracy and Civil Society Empowerment Act''.

SEC. 2. FINDINGS AND DECLARATION OF POLICY.

(a) FINDINGS.—Congress makes the following findings:

(1) The continued rule of the Nigerian military government, in power since a 1993 coup, harms the lives of the people of Nigeria, undermines confidence in the Nigerian economy, damages relations between Nigeria and the United States, and threatens the political and economic stability of West Africa.

(2) The transition plan announced by the Government of Nigeria on October 1, 1995, which includes a commitment to hold free and fair elections, has precluded the development of an environment in which such elections would be considered free and fair, nor was the transition plan itself developed in a free and open manner or with the participation of the Nigerian people.

(3) The United States Government would consider a free and fair election in Nigeria

one that involves a genuinely independent electoral commission and an open and fair process for the registration of political parties and the fielding of candidates and an environment that allows the full unrestricted participation by all sectors of the Nigerian population.

(4) In particular, the process of registering voters and political parties has been significantly flawed and subject to such extreme pressure by the military so as to guarantee the uncontested election of the incumbent or his designee to the presidency.

(5) The tenure of the ruling military government in Nigeria has been marked by egregious human rights abuses, devastating economic decline, and rampant corruption.

(6) Previous and current military regimes have turned Nigeria into a haven for international drug trafficking rings and other criminal organizations.

(7) On September 18, 1997, a social function in honor of then-United States Ambassador Walter Carrington was disrupted by Nigerian state security forces. This culminated a campaign of political intimidation and personal harassment against Ambassador Carrington by the ruling regime.

(8) Since 1993, the United States and other members of the international community have imposed limited sanctions against Nigeria in response to human rights violations and political repression.

(9) According to international and Nigerian human rights groups, at least several hundred democracy and human rights activists and journalists have been arbitrarily detained or imprisoned, without appropriate due process of law.

(10)(A) The widely recognized winner of the annulled June 6, 1993, presidential election, Chief Moshood K. O. Abiola, remains in detention on charges of treason.

(B) General Olusegun Obassanjo (rt.), who is a former head of state and the only military leader to turn over power to a democratically elected civilian government and who has played a prominent role on the international stage as an advocate of peace and reconciliation, remains in prison serving a life sentence following a secret trial that failed to meet international standards of due process over an alleged coup plot that has never been proven to exist.

(C) Internationally renowned writer, Ken Saro-Wiwa, and 8 other Ogoni activists were arrested in May 1994 and executed on November 10, 1995, despite the pleas to spare their lives from around the world.

(D) Frank O. Kokori, Secretary General of the National Union of Petroleum and Natural Gas Workers (NUPENG), who was arrested in August 1994, and has been held incommunicado since, Chief Milton G. Dabibi, Secretary General of Staff Consultative Association of Nigeria (SESCAN) and former Secretary General of the Petroleum and Natural Gas Senior Staff Association (PENGASSAN), who was arrested in January 1996, remains in detention without charge, for leading demonstrations against the canceled elections and against government efforts to control the labor unions.

(E) Among those individuals who have been detained under similar circumstances and who remain in prison are Christine Anyanwu, Editor-in-Chief and publisher of The Sunday Magazine (TSM), Kunle Ajibade and George Mbah, editor and assistant editor of the News, Ben Charles Obi, a journalist who was tried, convicted, and jailed by the infamous special military tribunal during the reason trials over the alleged 1995 coup plot, the ''Ogoni 21'' who were arrested on the same charges used to convict and execute the ''Ogoni 9'' and Dr. Beko Ransome-Kuti, a respected human rights activist and leader of the pro-democracy movement and Shehu Sani, the Vice-Chairman of the Campaign for Democracy.

(11) Numerous decrees issued by the military government in Nigeria suspend the constitutional protection of fundamental human rights, allow indefinite detention without charge, revoke the jurisdiction of civilian courts, and criminalize peaceful criticism of the transition program.

(12) As a party to the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights, and a signatory to the Harare Commonwealth Declaration, Nigeria is obligated to grant its citizens the right to fairly conduct elections that guarantee the free expression of the will of the electors.

(13) Nigeria has played a major role in restoring elected, civilian governments in Liberia and Sierra Leone as the leading military force within the Economic Community of West African States (ECOWAS) peacekeeping force, yet the military regime has refused to allow the unfettered return of elected, civilian government in Nigeria.

(14) Despite organizing and managing the June 12, 1993, elections, successive Nigerian military regimes nullified that election, imprisoned the winner a year later, and continue to fail to provide a coherent explanation for their actions.

(15) Nigeria has used its military and economic strength to threaten the land and maritime borders and sovereignty of neighboring countries, which is contrary to numerous international treaties to which it is a signatory.

(b) DECLARATION OF POLICY.—Congress declares that the United States should encourage political, economic, and legal reforms necessary to ensure rule of law and respect for human rights in Nigeria and support a timely and effective transition to democratic, civilian government in Nigeria.

SEC. 3. SENSE OF CONGRESS.

(a) INTERNATIONAL COOPERATION.—It is the sense of Congress that the President should actively seek the cooperation of other countries as part of the United States policy of isolating the military government of Nigeria.

(b) UNITED NATIONS HUMAN RIGHTS COMMISSION.—It is the sense of Congress that the President should instruct the United States Representative to the United Nations Commission on Human Rights (UNCHR) to use the voice and vote of the United States at the annual meeting of the Commission—

(1) to condemn human rights abuses in Nigeria; and

(2) to press for the continued renewal of the mandate of, and continued access to Nigeria for, the special rapporteur on Nigeria, as called for in Commission Resolution 1997/53.

(c) SPECIAL ENVOY FOR NIGERIA.—It is the sense of Congress that, because the United States Ambassador to Nigeria, a resident of both Lagos and Abuja, Nigeria, is the President's representative to the Government of Nigeria, serves at the pleasure of the President, and was appointed by and with the advice and consent of the Senate, the President should not send any other envoy to Nigeria without prior notification of Congress and should not designate a special envoy to Nigeria without consulting Congress.

SEC. 4. ASSISTANCE TO PROMOTE DEMOCRACY AND CIVIL SOCIETY IN NIGERIA.

(a) DEVELOPMENT ASSISTANCE.—

(1) IN GENERAL.—Of the amounts made available for fiscal years 1999, 2000, and 2001 to carry out chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), not less than $10,000,000 for fiscal year 1999, not less than $12,000,000 for fiscal year 2000, and not less than $15,000,000 for fiscal year 2001 should be available for assistance described in paragraph (2) for Nigeria.

(2) ASSISTANCE DESCRIBED.—

(A) IN GENERAL.—The assistance described in this paragraph is assistance provided to nongovernmental organizations for the purpose of promoting democracy, good governance, and the rule of law in Nigeria.

(B) ADDITIONAL REQUIREMENT.—In providing assistance under this subsection, the Administrator of the United States Agency for International Development shall ensure that nongovernmental organizations receiving such assistance represent a broad cross-section of society in Nigeria and seek to promote democracy, human rights, and accountable government.

(3) GRANTS FOR PROMOTION OF HUMAN RIGHTS.—Of the amounts made available for fiscal years 1999, 2000, and 2001 under paragraph (1), not less than $500,000 for each such fiscal year should be available to the United States Agency for International Development for the purpose of providing grants of not more than $25,000 each to support individuals or nongovernmental organizations that seek to promote, directly or indirectly, the advancement of human rights in Nigeria.

(b) USIA INFORMATION ASSISTANCE.—Of the amounts made available for fiscal years 1999, 2000, and 2001 under subsection (a)(1), not less than $1,000,000 for fiscal year 1999, $1,500,000 for fiscal year 2000, and $2,000,000 for fiscal year 2001 should be made available to the United States Information Agency for the purpose of supporting its activities in Nigeria, including the promotion of greater awareness among Nigerians of constitutional democracy, the rule of law, and respect for human rights.

(c) STAFF LEVELS AND ASSIGNMENTS OF UNITED STATES PERSONNEL IN NIGERIA.—

(1) FINDING.—Congress finds that staff levels at the office of the United States Agency for International Development in Lagos, Nigeria, are inadequate.

(2) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator of the United States Agency for International Development should—

(A) increase the number of United States personnel at such Agency's office in Lagos, Nigeria, from within the current, overall staff resources of such Agency in order for such office to be sufficiently staffed to carry out subsection (a); and

(B) consider placement of personnel elsewhere in Nigeria.

SEC. 5. PROHIBITION ON ECONOMIC ASSISTANCE TO THE GOVERNMENT OF NIGERIA; PROHIBITION ON MILITARY ASSISTANCE FOR NIGERIA; REQUIREMENT TO OPPOSE MULTILATERAL ASSISTANCE FOR NIGERIA.

(a) PROHIBITION ON ECONOMIC ASSISTANCE.—

(1) IN GENERAL.—Economic assistance (including funds previously appropriated for economic assistance) shall not be provided to the Government of Nigeria.

(2) ECONOMIC ASSISTANCE DEFINED.—As used in this subsection, the term ''economic assistance''—

(A) means—

(i) any assistance under part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) and any assistance under chapter 4 of part II of such Act (22 U.S.C. 2346 et seq.) (relating to economic support fund); and

(ii) any financing by the Export-Import Bank of the United States, financing and assistance by the Overseas Private Investment Corporation, and assistance by the Trade and Development Agency; and

(B) does not include disaster relief assistance, refugee assistance, or narcotics control assistance under chapter 8 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2291 et seq.).

(b) PROHIBITION ON MILITARY ASSISTANCE OR ARMS TRANSFERS.—

(1) IN GENERAL.—Military assistance (including funds previously appropriated for military assistance) or arms transfers shall not be provided to Nigeria.

(2) MILITARY ASSISTANCE OR ARMS TRANSFERS.—The term ''military assistance or arms transfers'' means—

(A) assistance under chapter 2 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2311 et seq.) (relating to military assistance), including the transfer of excess defense articles under section 516 of that Act (22 U.S.C. 2321j);

(B) assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2347 et seq.) (relating to international military education and training);

(C) assistance under the ''Foreign Military Financing Program'' under section 23 of the Arms Export Control Act (22 U.S.C. 2763); or

(D) the transfer of defense articles, defense services, or design and construction services under the Arms Export Control Act (22 U.S.C. 2751 et seq.), including defense articles and defense services licensed or approved for export under section 38 of that Act (22 U.S.C. 2778).

(c) REQUIREMENT TO OPPOSE MULTILATERAL ASSISTANCE.—

(1) IN GENERAL.—The Secretary of the Treasury shall instruct the United States executive director to each of the international financial institutions described in paragraph (2) to use the voice and vote of the United States to oppose any assistance to the Government of Nigeria.

(2) INTERNATIONAL FINANCIAL INSTITUTIONS DESCRIBED.—The international financial institutions described in this paragraph are the African Development Bank, the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guaranty Agency, and the International Monetary Fund.

SEC. 6. EXCLUSION FROM ADMISSION INTO THE UNITED STATES OF CERTAIN NIGERIAN NATIONALS.

Notwithstanding any other provision of law, the Secretary of State shall deny a visa to, and the Attorney General shall exclude from the United States, any alien who is—

(1) a current member of the Provisional Ruling Council of Nigeria;

(2) a current civilian minister of Nigeria not on the Provisional Ruling Council;

(3) a military officer currently in the armed forces of Nigeria;

(4) a person in the Foreign Ministry of Nigeria who holds Ambassadorial rank, whether in Nigeria or abroad;

(5) a current civilian head of any agency of the Nigerian government with a rank comparable to the Senior Executive Service in the United States;

(6) a current civilian advisor or financial backer of the head of state of Nigeria;

(7) a high-ranking member of the inner circle of the Babangida regime of Nigeria on June 12, 1993;

(8) a high-ranking member of the inner circle of the Shonekan interim national government of Nigeria;

(9) a civilian who there is reason to believe is traveling to the United States for the purpose of promoting the policies of the military government of Nigeria;

(10) a current head of a parastatal organization in Nigeria; or

(11) a spouse or minor child of any person described in any of the paragraphs (1) through (10).

SEC. 7. ADDITIONAL MEASURES.

(a) IN GENERAL.—Unless the President determines and certifies to the appropriate congressional committees by December 31, 1998, that a free and fair presidential election has occurred in Nigeria during 1998 and so certifies to the appropriate committees of Congress, the President, effective January 1, 1999—

(1) shall exercise his authority under section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1702) to prohibit any financial transaction involving the participation by a Nigerian national as a representative of the Federal Republic of Nigeria in a sporting event in the United States;

(2) shall expand the restrictions in section 6 to include a prohibition on entry into the United States of any employee or military officer of the Nigerian government and their immediate families;

(3) shall submit a report to the appropriate congressional committees listing, by name, senior Nigerian government officials and military officers who are suspended from entry into the United States under section 6; and

(4) shall consider additional economic sanctions against Nigeria.

(b) ACTIONS OF INTERNATIONAL SPORTS ORGANIZATIONS.—It is the sense of Congress that any international sports organization in which the United States is represented should refuse to invite the participation of any national of Nigeria in any sporting event in the United States sponsored by that organization.

SEC. 8. WAIVER OF PROHIBITIONS AGAINST NIGERIA IF CERTAIN REQUIREMENTS MET.

(a) IN GENERAL.—The President may waive any of the prohibitions contained in section 5, 6, or 7 for any fiscal year if the President makes a determination under subsection (b) for that fiscal year and transmits a notification to Congress of that determination under subsection (c).

(b) PRESIDENTIAL DETERMINATION REQUIRED.—A determination under this subsection is a determination that—

(1) the Government of Nigeria—

(A) is not harassing or imprisoning human rights and democracy advocates and individuals who criticize the government's transition program;

(B) has established a new transition process developed in consultation with the prodemocracy forces, including the establishment of a genuinely independent electoral commission and the development of an open and fair process for registration of political parties, candidates, and voters;

(C) is providing increased protection for freedom of speech, assembly, and the media, including cessation of harassment of journalists;

(D) has released individuals who have been imprisoned without due process or for political reasons;

(E) is providing access for independent international human rights monitors;

(F) has repealed all decrees and laws that—

(i) grant undue powers to the military;

(ii) suspend the constitutional protection of fundamental human rights;

(iii) allow indefinite detention without charge, including the State of Security (Detention of Persons) Decree No. 2 of 1984; or

(iv) suspend the right of the courts to rule on the lawfulness of executive action; and

(G) has unconditionally withdrawn the Rivers State internal security task force and other paramilitary units with police functions from regions in which the Ogoni ethnic group lives and from other oil-producing areas where violence has been excessive; or

(2) it is in the national interests of the United States to waive the prohibition in section 5, 6, or 7, as the case may be.

(c) CONGRESSIONAL NOTIFICATION.—Notification under this subsection is written notification of the determination of the President under subsection (b) provided to the appropriate congressional committees not less than 15 days in advance of any waiver of any prohibition in section 5, 6, or 7, subject to the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1).

SEC. 9. PROHIBITION ON UNITED STATES ASSISTANCE OR CONTRIBUTIONS TO SUPPORT OR INFLUENCE ELECTION ACTIVITIES IN NIGERIA.

(a) PROHIBITION.—

(1) IN GENERAL.—No department, agency, or other entity of the United States Government shall provide any assistance or other contribution to any political party, group, organization, or person if the assistance or contribution would have the purpose or effect of supporting or influencing any election or campaign for election in Nigeria.

(2) PERSON DEFINED.—As used in paragraph (1), the term ''person'' means any natural person, any corporation, partnership, or other juridical entity.

(b) WAIVER.—The President may waive the prohibition contained in subsection (a) if the President—

(1) determines that—

(A) the climate exists in Nigeria for a free and fair democratic election that will lead to civilian rule; or

(B) it is in the national interests of the United States to do so; and

(2) notifies the appropriate congressional committees not less than 15 days in advance of the determination under paragraph (1), subject to the procedures applicable to reprogramming notifications under section 634A of the Foreign Assistance Act of 1961 (22 U.S.C. 2394-1).

SEC. 10. REPORT ON CORRUPTION IN NIGERIA.

Not later than 3 months after the date of the enactment of this Act, and annually for the next 5 years thereafter, the Secretary of State shall prepare and submit to the appropriate congressional committees, and make available to the public, a report on governmental corruption in Nigeria. This report shall include—

(1) evidence of corruption by government officials in Nigeria;

(2) the impact of corruption on the delivery of government services in Nigeria;

(3) the impact of corruption on United States business interests in Nigeria;

(4) the impact of advance fee fraud, and other fraudulent business schemes originating in Nigeria, on United States citizens; and

(5) the impact of corruption on Nigeria's foreign policy.

SEC. 11. APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.

Except as provided in section 6, in this Act, the term ''appropriate congressional committees'' means—

(1) the Committee on International Relations of the House of Representatives;

(2) the Committee on Foreign Relations of the Senate; and

(3) the Committees on Appropriations of the House of Representatives and the Senate.●

By Mrs. FEINSTEIN (for herself, Mr. HATCH, and Mrs. BOXER):

S. 2103. A bill to provide protection from personal intrusion for commercial purposes; to the Committee on the Judiciary.

PERSONAL PRIVACY PROTECTION ACT

Mrs. FEINSTEIN. Mr. President, today, along with the Chairman of the

Judiciary Committee, Senator HATCH, and Senators BOXER and KERRY, I am introducing the Personal Privacy Protection Act. This legislation narrowly targets threatening and endangering harassment and privacy abuses undertaken by the stalker press.

Freedom of the press is the bedrock of American Democracy. But there is something wrong when a person cannot visit a loved one in the hospital, walk their child to school, or be secure in the privacy of their own home without being dangerously chased, provoked, or trespassed upon by photographers trying to capture pictures of them to sell to the tabloids.

When people find themselves in the public eye due to a personal tragedy or circumstances beyond their control, they should not be put into personal fear of bodily injury by tabloid media persistently chasing them. And just because a person makes their living on television or in the movies should not mean they forfeit all rights to personal privacy. There is a line between legitimate news gathering and invasion of privacy; between snapping a picture of someone in a public place and chasing them to the point where they fear for their safety; between reporting the news and trespassing on private property. Unfortunately, today that line is crossed more and more frequently by an increasingly aggressive cadre of fortune-seekers with cameras.

I began the process of developing this legislation together with Senator BOXER more than a year ago, after meeting with members of the Screen Actors Guild and hearing about the abuses people suffer every day at the hands of the stalker press—photographers using telephoto lenses to peer into private homes, cars chasing them off the road, having their children stalked and harassed. The tragic death of Princess Diana last August brought the seriousness of the problem home with a blunt force that stunned the world.

This legislation is narrowly drafted. It is not aimed at, nor would it affect, the overwhelming majority of those in the media, but is specifically aimed at abusive, threatening tactics employed by some who do not respect where the line is between what is public and what is private.

The Personal Privacy Protection Act would do two basic things. First, it would make it a crime, punishable by a fine and up to a year in prison, to persistently follow or chase someone in order to photograph, film, or record them for commercial purposes, in a manner that causes a reasonable fear of bodily injury. Cases in which the persistent following or chasing actually caused serious bodily injury would be punishable by up to 5 years in prison, and where the actions caused death, by up to 20 years in prison. The legislation would also allow victims of such actions to bring a civil suit to recover compensatory and punitive damages and for injunctive and declaratory relief.

Second, the legislation would allow civil actions to be brought against those who trespass on private property in order to photograph, film, or record someone for commercial purposes. In such cases, the bill would allow victims to bring suit in Federal court to recover compensatory and punitive damages and to obtain injunctive and declaratory relief.

Furthermore, in certain specified circumstances, the bill would prevent ''technological trespass.'' Specifically, the legislation would allow a civil action where a visual or auditory enhancement device is used to capture images or recordings that could not otherwise have been captured without trespassing. This provision would apply only to images or recordings of a personal or familial activity, captured for commercial purposes, and only where the subject had a reasonable expectation of privacy. In such cases, the victim would be allowed to bring suit in Federal court to recover compensatory and punitive damages and to obtain injunctive and declaratory relief. In the case of trespass or technological trespass, only a civil suit by the victim would be allowed; no criminal penalty would be prescribed.

This legislation is needed because existing laws fail to protect against dangerous and abusive tactics. Although existing laws may cover some instances of abusive harassment or trespass by the stalker press, victims cannot be certain of protection. Existing state laws form at best a patchwork of protection, and courts often make an exception for activity undertaken ostensibly for ''news gathering'' purposes.

For example, state and local harassment law are often not codified and may require exhaustive litigation to enforce. These vary from state to state and from jurisdiction to jurisdiction, and often do not apply in cases involving the media. Some statutes require proof of an intent to harass; and courts in some jurisdictions may allow a broad ''news gathering'' exception.

Similarly, reckless endangerment statutes in some states prohibit recklessly engaging in conduct which creates a substantial risk of serious physical injury to another person. However, these laws are not uniform and their application is very spotty when it comes to dealing with abusive media practices.

Federal, state, and local anti-stalking ordinances often contain loopholes and generally do not apply to activities undertaken for commercial purposes. The Federal anti-stalking ordinance and 28 of the 49 state anti-stalking ordinances—including California's—require proof of the criminal intent to cause fear in order to prosecute.

Existing state trespass laws may be insufficient to protect an owner from an invasion of privacy. For example, an Oregon Court of Appeals upheld a jury verdict for a TV news crew that filmed a police raid in executing a warrant to search the owner's home, despite the fact that the TV crew had entered the property without permission, because the jury found that the intrusion was not ''highly offensive' so as to invade the owner's privacy.

Furthermore, existing trespass laws fail to protect against technological trespass using intrusive technology such as telephoto lenses and parabolic microphones aimed at bedrooms, living rooms, and fenced backyards in which people ought to have an expectation of privacy. Because trespass law requires actual physical invasion, it does not protect against such invasive tactics.

In crafting this legislation, we worked with some of the most renowned Constitutional scholars and First Amendment advocates in the nation, including Erwin Chemerinsky of the University of Southern California Law School, Cass Sunstein of the Chicago School of Law, and Lawrence Lessig of Harvard Law School. At their recommendation, we took the approach of plugging loopholes in existing, long-recognized laws prohibiting harassment and trespassing, rather than creating new provisions out of whole cloth, in order to craft a constitutional bill that fully respects First Amendment and other constitutional rights. This bill does so. The Constitutional scholars concurred unanimously that this legislation is narrowly drafted to withstand constitutional challenge on First Amendment, federalism, or any other grounds.

Mr. President, finally, I should mention that we worked closely with Representative Sonny Bono on this legislation prior to his untimely death, and it was Representative Bono's intention to introduce companion legislation in the House of Representatives. I am deeply saddened that he is not alive today to do so.

I urge my colleagues to support this legislation in order to protect against invasive, harassing, and endangering behavior that can threaten any one of us who, for whatever reason, finds him or herself in the public spotlight. I ask unanimous consent that the text of the bill be included in the RECORD, along with the letters mentioned previously.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2103

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 ''Personal Privacy Protection Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Individuals and their families have been harassed and endangered by being persistently followed or chased in a manner that puts them in reasonable fear of bodily injury, and in danger of serious bodily injury or even death, by photographers, videographers, and audio recorders attempting to capture images or other reproductions of their private lives for commercial purposes.

(2) The legitimate privacy interests of individuals and their families have been violated by photographers, videographers, and audio recorders who physically trespass in order to capture images or other reproductions of their private lives for commercial purposes, or who do so constructively through intrusive modern visual or auditory enhancement devices, such as powerful telephoto lenses and hyperbolic microphones that enable invasion of private areas that would otherwise be impossible without trespassing.

(3) Such harassment and trespass threatens not only professional public persons and their families, but also private persons and their families for whom personal tragedies or circumstances beyond their control create media interest.

(4) Federal legislation is necessary to protect individuals and their families from persistent following or chasing for commercial purposes that causes reasonable fear of bodily injury, because such harassment is not directly regulated by applicable Federal, State, and local statutory or common laws, because those laws provide an uneven patchwork of coverage, and because those laws may not cover such activities when undertaken for commercial purposes.

(5) Federal legislation is necessary to prohibit and provide proper redress in Federal courts for trespass and constructive trespass using intrusive visual or auditory enhancement devices for commercial purposes, because technological advances such as telephoto lenses and hyperbolic microphones render inadequate existing common law and State and local regulation of such trespass and invasion of privacy.

(6) There is no right, under the first amendment to the Constitution of the United States, to persistently follow or chase another in a manner that creates a reasonable fear of bodily injury, to trespass, or to constructively trespass through the use of intrusive visual or auditory enhancement devices.

(7) This Act, and the amendments made by this Act, do not in any way regulate, prohibit, or create liability for publication or broadcast of any image or information, but rather use narrowly tailored means to prohibit and create liability for specific dangerous and intrusive activities that the Federal Government has an important interest in preventing, and ensure a safe and secure private realm for individuals against intrusion, which the Federal Government has an important interest in ensuring.

(8) This Act protects against unwarranted harassment, endangerment, invasion of privacy, and trespass in an appropriately narrowly tailored manner without abridging the exercise of any rights guaranteed under the first amendment to the Constitution of the United States, or any other provision of law.

(9) Congress has the affirmative power under section 8 of article I of the Constitution of the United States to enact this Act.

(10) Because this Act regulates only conduct undertaken in order to create products intended to be and routinely transmitted, bought, or sold in interstate or foreign commerce, or persons who travel in interstate or foreign commerce in order to engage in regulated conduct, the Act is limited properly to regulation of interstate or foreign commerce.

(11) Photographs and other reproductions of the private activities of persons obtained through activities regulated by this Act, and the amendments made by this Act, are routinely reproduced and broadcast in interstate and international commerce.

(12) Photographers, videographers, and audio recorders routinely travel in interstate commerce in order to engage in the activities regulated by this Act, and the amendments made by this Act, with the intent, expectation, and routine result of gaining material that is bought and sold in interstate commerce.

(13) The activities regulated by this Act, and the amendments made by this Act, occur routinely in the channels of interstate commerce, such as the persistent following or chasing of subjects in an inappropriate manner on public streets and thoroughfares or in airports, and the use of public streets and thoroughfares, interstate and international airports, and travel in interstate and international waters in order to physically or constructively trespass for commercial purposes.

(14) The activities regulated by this Act, and the amendments made by this Act, substantially affect interstate commerce by threatening the careers, livelihoods, and rights to publicity of professional public persons in the national and international media, and by thrusting private persons into the national and international media.

(15) The activities regulated by this Act, and the amendments made by this Act, substantially affect interstate commerce by restricting the movement of persons who are targeted by such activities and their families, often forcing them to curtail travel or appearances in public spaces, or, conversely, forcing them to travel in interstate commerce in order to escape from abuses regulated by this Act, and the amendments made by this Act.

(b) PURPOSES.—The purposes of this Act are—

(1) to protect individuals and their families against reasonable fear of bodily injury, endangerment, trespass, and intrusions on their privacy due to activities undertaken in connection with interstate and international commerce in reproduction and broadcast of their private activities;

(2) to protect interstate commerce affected by such activities, including the interstate commerce of individuals who are the subject of such activities; and

(3) to establish the right of private parties injured by such activities, as well as the Attorney General of the United States and State attorneys general in appropriate cases, to bring actions for appropriate relief.

SEC. 3. CRIMINAL OFFENSE.

(a) IN GENERAL.—Chapter 89 of title 18, United States Code, is amended by adding at the end the following:

"§ 1822. Harassment for commercial purposes

''(a) DEFINITIONS.—In this section:

''(1) FOR COMMERCIAL PURPOSES.—

''(A) IN GENERAL.—The term 'for commercial purposes' means with the expectation of sale, financial gain, or other consideration.

''(B) RULE OF CONSTRUCTION.—For purposes of this section, a visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been, captured for commercial purposes unless it was intended to be, or was in fact, sold, published, or transmitted in interstate or foreign commerce, or unless the person attempting to capture such image, recording, or impression moved in interstate or foreign commerce in order to capture such image, recording, or impression.

''(2) HARASSES.—The term 'harasses' means persistently physically follows or chases a person in a manner that causes the person to have a reasonable fear of bodily injury, in order to capture by a visual or auditory recording instrument any type of visual image, sound recording, or other physical impression of the person for commercial purposes.

''(b) PROHIBITION AND PENALTIES.—Whoever harasses any person within the United States or the special maritime and territorial jurisdiction of the United States—

''(1) if death is proximately caused by such harassment, shall be imprisoned not less than 20 years and fined under this title;

''(2) if serious bodily injury is proximately caused by such harassment, shall be imprisoned not less than 5 years and fined under this title; and

''(3) if neither death nor serious bodily injury is proximately caused by such harassment, shall be imprisoned not more than 1 year, fined under this title, or both.

''(c) CAUSE OF ACTION.—Any person who is legally present in the United States and who is subjected to a violation of this section may, in a civil action against the person engaging in the violation, obtain any appropriate relief, including compensatory damages, punitive damages, and injunctive and declaratory relief. In any civil action or proceeding to enforce a provision of this section, the court shall allow the prevailing party reasonable attorney's fees as part of the costs. In awarding attorney's fees, the court shall include expert fees as part of the attorney's fees.

''(d) LIMITATION ON DEFENSES.—It is not a defense to a prosecution or civil action under this section that—

''(1) no image or recording was captured; or

''(2) no image or recording was sold.

''(e) USE OF IMAGES.—Nothing in this section may be construed to make the sale, transmission, publication, broadcast, or use of any image or recording of the type or under the circumstances described in this section in any otherwise lawful manner by any person subject to criminal charge or civil liability.

''(f) LIMITATION.—Only a person physically present at the time of, and engaging or assisting another in engaging in, a violation of this section is subject to criminal charge or civil liability under this section. A person shall not be subject to such charge or liability by reason of the conduct of an agent, employee, or contractor of that person or because images or recordings captured in violation of this section were solicited, bought, used, or sold by that person.

''(g) LAW ENFORCEMENT EXEMPTION.—The prohibitions of this section do not apply with respect to official law enforcement activities.

''(h) SAVINGS.—Nothing in this section shall be taken to preempt any right or remedy otherwise available under Federal, State or local law.''.

(b) TECHNICAL AMENDMENT.—The analysis for chapter 89 of title 18, United States Code, is amended by adding at the end the following:

''1822. Harassment for commercial purposes.''.

SEC. 4. PERSONAL INTRUSION FOR COMMERCIAL PURPOSES.

(a) DEFINITION OF FOR COMMERCIAL PURPOSES.—

(1) IN GENERAL.—In this section, the term 'for commercial purposes' means with the expectation of sale, financial gain, or other consideration.

(2) RULE OF CONSTRUCTION.—For purposes of this section, a visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been, captured for commercial purposes unless it was intended to be, or was in fact, sold, published, or transmitted in interstate or foreign commerce, or unless the person attempting to capture such image, recording, or impression moved in interstate or foreign commerce in order to capture such image, recording, or impression.

(b) TRESPASS FOR COMMERCIAL PURPOSES AND INVASION OF LEGITIMATE INTEREST IN PRIVACY FOR COMMERCIAL PURPOSES.—

(1) TRESPASS FOR COMMERCIAL PURPOSES.—It shall be unlawful to trespass on private property in order to capture any type of visual image, sound recording, or other physical impression of any person for commercial purposes.

(2) INVASION OF LEGITIMATE INTEREST IN PRIVACY FOR COMMERCIAL PURPOSES.—It shall be unlawful to capture any type of visual image, sound recording, or other physical impression for commercial purposes of a personal or familial activity through the use of a visual or auditory enhancement device, even if no physical trespass has occurred, if—

(A) the subject of the image, sound recording, or other physical impression has a reasonable expectation of privacy with respect to the personal or familial activity captured; and

(B) the image, sound recording, or other physical impression could not have been captured without a trespass if not produced by the use of the enhancement device.

(c) CAUSE OF ACTION.—Any person who is legally present in the United States who is subjected to a violation of this section may, in a civil action against the person engaging in the violation, obtain any appropriate relief, including compensatory damages, punitive damages and injunctive and declaratory relief. A person obtaining relief may be either or both the owner of the property or the person whose visual or auditory impression has been captured. In any civil action or proceeding to enforce a provision of this section, the court shall allow the prevailing party reasonable attorney's fees as part of the costs. In awarding attorney's fees, the court shall include expert fees as part of the attorney's fees.

(d) LIMITATION ON DEFENSES.—It is not a defense to an action under this section that—

(1) no image or recording was captured; or

(2) no image or recording was sold.

(e) USE OF IMAGES.—Nothing in this section may be construed to make the sale, transmission, publication, broadcast, or use of any image or recording of the type or under the circumstances described herein in any otherwise lawful manner by any person subject to criminal charge or civil liability.

(f) LIMITATION.—Only a person physically present at the time of, and engaging or assisting another in engaging in, a violation of this section is subject to civil liability under this section. A person shall not be subject to such liability by reason of the conduct of an agent, employee, or contractor of that person, or because images or recordings captured in violation of this section were solicited, bought, used, or sold by that person.

(g) LAW ENFORCEMENT EXEMPTION.—The prohibitions of this section do not apply with respect to official law enforcement activities.

(h) SAVINGS.—Nothing in this section shall be taken to preempt any right or remedy otherwise available under Federal, State, or local law.

SEC. 5. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

UNIVERSITY OF CHICAGO LAW SCHOOL,
Chicago, IL, April 30, 1998.

Hon. DIANNE FEINSTEIN,
Senate Judiciary Committee, Technology, Terrorism, and Government Information Subcommittee, Washington, DC.

DEAR SENATOR FEINSTEIN: This is in response to a request for my views on issues of federalism raised by the current effort to prevent harassment and invasion of privacy by certain photographers and journalists. In brief: From the standpoint of the constitutional structure, I believe that these efforts reflect an entirely legitimate exercise of national power. I spell out those reasons in short compass here.

There can be no doubt that in its current form, the proposal is constitutional under the commerce clause. Each of the provisions is carefully drafted to apply if and only if there is a clear nexus with interstate commerce. Thus under existing law, the constitutional question is a simple one, and there is no plausible basis for legal objection.

The more plausible objection is not about technical law but about the spirit of the federal structure. A critic might claim that state law already protects against certain harassing and invasive behavior, and that state law, statutory or common, can easily be adapted to provide stronger protections. Since the several states are generally in the business of preventing against trespass and threatening behavior, why should the federal government intervene? Isn't this the kind of problem best handled at the state level?

These questions would be good ones if they are taken to suggest that state law could, in theory, take care of many of the underlying problems. But the questions are not good ones if they are taken to suggest that in practice, state law does, or will do, all that should be done. There are three important points here.

First, state law is both highly variable and in many places ill-defined—a complex mixture of statutory and common law, a mixture that does not, in many places, give a clear signal against the kind of conduct that the proposed legislation would ban. For example, the standards for reckless endangerment are extremely variable. Nor is it at all clear that most state trespass law prohibits the use of high-technology methods to get access to people's private enclaves. In state court, the common law of trespass is in a notorious and continuing state of flux. So long as the commerce clause is satisfied, there is an entirely legitimate national interest in giving a clear signal that certain behavior is not to be tolerated amidst uncertain and divergent state practices.

Second, the national government often supplements or builds on state law in order to give stronger deterrence. In many states, for example, there are special laws protecting against racial discrimination, environmental harm, or uncompensated invasions of private property. But by itself, this is not an argument that the national government should not provide such measures as well. Congress often acts in order to provide the kind of deterrence that national law—with the availability of federal prosecutors and federal courts—is uniquely in a position to provide. The simple truth is that harassing and invasive practices have not been adequately deterred by state law and the national government can provide further protection. So long as the commerce clause is satisfied, this is a perfectly ordinary and entirely acceptable exercise of national power.

Third, it is important to see that the commercial incentives for engaging in harassing or invasive behavior are emphatically national incentives. If a photographer employed by the National Enquirer chases a movie star or an ordinary person in California, the potential profits are national, and it is the national nature of the profits that makes such behavior so likely. In addition, the nature of the harm tends to involve interstate activity, with movement of people and products across state lines to procure the relevant photograph (when a photograph is involved). If both profits and harms were limited to a single state, it might make more sense to say that each state can handle the problem on its own. But since both profits and harms are national in character, it is far less likely that states are able to do so, as actual practice has tended to show.

I conclude that there is no legal objection to the bill from the standpoint of federalism. I also conclude that the bill fits well within proper practice from the standpoint of maintaining Congress' limited place in the federal structure. In short, this is a national problem calling for a national response.

Sincerely,

CASS R. SUNSTEIN.

HARVARD LAW SCHOOL,
Cambridge, MA, December 7, 1997.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR FEINSTEIN: I have reviewed the draft legislation entitled ''The Protection From Personal Intrusion for Commercial Purposes Act,'' and wanted to write to express my support for legislation. In my view, the legislation represents a balanced and constitutional approach to an increasingly important problem. It has been drafted, I believe, to avoid jeopardizing First Amendment values, and has a firm constitutional foundation in the Commerce Power, and also, in my view, in Congress' Section Five power under the Fourteenth Amendment.

The draft bill proposes three changes to strengthen privacy protections nationally. First, the statute establishes a criminal penalty for harassing conduct engaged in for commercial purposes. Second, the statute establishes a civil penalty for trespass for commercial purposes. And third, the statute establishes a civil penalty for invasions of legitimate interests in privacy for commercial purposes. I consider each provision briefly below.

1. Harassment for commercial purposes

The aim of this provision is to target the repeated and intentional chasing or following of a person in order to record impressions of that person for commercial purpose. The statute would make such conduct criminal, and prescribes enhanced penalties if death or serious bodily harm is proximately caused by such conduct.

A number of points about this provision are important to consider.

(1) The statute is targeting traditionally prohibited conduct, though more narrowly than might ordinarily be expected. The statute is more narrow first because it addresses conduct engaged in for commercial purposes only, and second because it targets chasing or following only for purposes of recording visual and auditory impressions. Both limitations might be said to raise problems of underinclusiveness. In both cases, however, no constitutional problem is presented.

The first narrowing (to commercial purposes) is jurisdictionally required, as the conduct aimed at here is only that affecting interstate commerce. Even it Congress could regulate more broadly, the choice to narrow the scope of its regulation does not reveal any illegitimate content based purpose in selectively proscribing speech conduct. See generally Elena Kagan, The Changing Faces of First Amendment Neutrality: *R.A.V.* v. *St.*

Paul, Rust v. *Sullivan*, and the Problem of Content-Based Underinclusion, 1992 Sup. Ct. Rev. 29. For the same reason, I do not believe the second narrowing (to visual and auditory impressions) raises any significant First Amendment concern.

(2) This is a criminal statute, so one should expect the courts to read the scope of proscribed conduct narrowly. That means that the statute is likely to be applied only to people who intentionally engage in this form of conduct. I believe the statute makes that clear, since in the definition of ''harasses,'' ''persistently'' modifies ''follows or chases.'' That modifier will give courts adequate room to narrow the statute to conduct that is properly within its scope.

(3) Finally, because the statute only punishes conduct which proximately causes serious harm, the statute will not penalize conduct which results in serious harm, but is actually, or legally, ''caused'' by something else. By using the term ''proximately,'' the statute again invites courts to narrow the application of the statute to cases where the legally relevant cause of the harm is the conduct being regulated.

2. Trespass for commercial purposes

The second protection for privacy added by this bill is a protection against trespass for commercial purposes. While the protection of property has traditionally been a function for state regulation, the proposed statute limits the protection to trespasses engaged in for commercial purposes, and by definition, commercial purposes affecting interstate commerce.

There is a long history of support for a provision such as this, especially in the context of civil rights statutes. Congress can well take note of a weakness in the patchwork of state protection against trespass, and supplement such protections with a federal statute. In my view, this statute would fit that form.

3. Invasions of legitimate interests in privacy for commercial purposes

The final section of this proposed bill protects against the invasion of ''legitimate interests in privacy'' for commercial purposes. While I believe this provision is constitutional, it is the most innovative of the three, and deserves special attention.

The interesting aspect of this statute is its method for specifying the type of invasion that is not permitted. The baseline for the statute's protection is the common law protection against trespass. Historically, trespass law was the foundation of our privacy jurisprudence, and this statute is faithful to that tradition.

The innovation in the statute is to extend trespass law to protect interests that are invaded simply because of technological advances—advances that make it possible to capture visual and auditory impressions that would not have been capturable with older technologies. The statute protects traditional interests against these new technologies.

In a sense, the statute aims at translating our traditional protections of privacy into a context where technology has given eavesdroppers a power that they would not originally have had.

In my view, such an effort by Congress is important, and laudable. It is important because we should not allow constitutional rights to be hostage to technology. If technology advances, jeopardizing our constitutional protections, then it is appropriate to adjust rights to compensate for changes in technology. See Lawrence Lessig, Reading the Constitution in Cyberspace, 45 Emory L. J. 869, 871–75 (1996).

More importantly, it is laudable that Congress take the lead in this process. Of course historically, the Supreme Court has also taken part in keeping the constitution up to date, translating old provisions to take account of current problems. But it has always done so with hesitation, since the act of updating often requires political judgments that it doesn't feel well positioned to make.

Far better if those judgments are made by Congress. And in my view, this proposed statute does just that. It represents an effort by Congress to take the lead in the protection of privacy against the threats that changing technology presents. Whatever one's view about the Court doing the same, it is emphatically the role of Congress to support this tradition of translation.

If there are other questions, I can answer, please don't hesitate to contact me.

With kind regards,

LAWRENCE LESSIG.

USC,
THE LAW SCHOOL,
Los Angeles, CA, Nov. 26, 1997.

Senator DIANE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: At the request of Mr. Richard Pfohl of your staff, I have reviewed the proposed bill to prohibit harassment for commercial purposes and to create a cause of action for personal intrusion for commercial purposes. The bill is narrowly written and does not violate the First Amendment. Moreover, even in light of the Supreme Court's decisions restricting the scope of Congress' commerce power, the bill is likely to be upheld as within the scope of congressional authority.

At the outset, it is important to note that the bill does not prohibit anything from being published or broadcast. Nor does it create any liability for the publication or broadcast of any image or information. Both parts of the bill expressly state: ''Nothing in this section may be construed to make the sale, transmission, publication, broadcast, or use of any image or recording of the type or under the circumstances described in this section in any otherwise lawful manner by any person subject to criminal charge or civil liability.''

These provisions are reinforced by sections in both parts of the bill that limit liability to those ''physically present at the time of, and engaging or assisting another in engaging in violation of this section.'' No liability is allowed ''because images or recordings captured in violation of this section were solicited, bought, used, or sold by that person.''

I emphasize these provisions because they make it clear that the bill does not restrict speech or create liability for any publication or broadcast. Rather, the bill prohibits and creates liability for specific dangerous and intrusive activity. At most, the effect on the press is indirect in limiting certain conduct in the gathering of information.

In general, the Supreme Court has held that content-neutral laws that have the effect of restricting speech must meet intermediate scrutiny; that is, they must be shown to be substantially related to an important government purpose. *Turner Broadcast System* v. *Federal Communication Commission*, 114 S.Ct. 2445, 2458 (1994). Although I think that there is a strong argument that the bill does not restrict speech at all, even if a court found that it did, intermediate scrutiny would be met. The government has an important interest in stopping persistently physically following or chasing a person ''in a manner that causes the person to have a reasonable fear of bodily injury.'' This is simply an extension of the prohibition of assaults; there is no First Amendment right for the media to engage in an assault in gathering information. Similarly, there is an important interest in preventing trespass or intrusion on to private property, physically or with technology. There is no First Amendment right for the media to trespass in gathering information.

Although the Supreme Court has recognized that ''without some protection for seeking out the news, freedom of the press could be eviscerated,'' *Branzburg* v. *Hayes*, 408 U.S. 665, 681 (1972), the Court also consistently has refused to find that the First Amendment provides the press any right to violate the law in gathering information. The Court has explained that ''the First Amendment does not guarantee the press a constitutional right of special access to information not available to the public generally.'' Id. at 684. No member of the public has a right to commit an assault or a trespass; nor can the press in gathering information. As the Court declared in *Associated Press* v. *NLRB*, 301 U.S. 103, 132–33 (1937): ''The business of the Associated Press is not immune from regulation because it is an agency of the press. The publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others. He must answer for libel. He may be punished for contempt of court. He is subject to the anti-trust laws. Like others he must pay equitable and nondiscriminatory taxes on his business. The regulation here in question has no relation whatever to the impartial distribution of news.''

The Supreme Court expressly held that the press is not exempt from general laws in *Cohen* v. *Cowles Media Co.*, 501 U.S. 663 (1991). A newspaper published the identity of a source who had been promised that his name would not be disclosed. The Court rejected the argument that holding the newspaper liable for breach of contract would violate the First Amendment. The Court stressed that the case involved the application of a general law that in no way was motivated by a desire to interfere with the press. The Court said: ''Generally applicable laws do not offend the First Amendment simply because their enforcement against the press has incidental effects on its ability to gather and report the news. [E]nforcement of such general laws against the press is not subject to stricter scrutiny than would be applied to enforcement against other persons or organizations.'' Id. at 669–70.

The bill prohibits anyone from persistently following another in a manner that reasonably creates fear of bodily injury or committing a trespass for purposes of capturing a visual or auditory recording. There is no First Amendment right to engage in such activity and no First Amendment basis for an exemption to such a narrowly tailored law.

The other possible constitutional challenge to the bill would be on the ground that it exceeds the scope of Congress' commerce clause authority. From 1936 until April 26, 1995, the Supreme Court did not find one federal law unconstitutional as exceeding the scope of Congress' commerce power. Then in *United States* v. *Lopez*, 115 S.Ct. 1624 (1995), the Supreme Court declared unconstitutional the Gun-Free School Zones Act of 1990 which made it a federal crime to have a gun within 1,000 feet of a school. After reviewing the history of decisions under the commerce clause, the Court identified three types of activities that Congress can regulate under this power. First, Congress can ''regulate the use of the channels of interstate commerce.'' *Id.* at 1629. Second, the Court said that Congress may regulate persons or things in interstate commerce and ''to protect the instrumentalities of interstate commerce.'' 115 S.Ct. at 1629. Finally, the Court said that

Congress may ''regulate those activities having a substantial relation to interstate commerce.'' Id. at 1629–30.

The bill is limiting to regulating commercial activity in that it prohibits and creates liability for ''harrassment for commercial purposes'' and ''trespass and invasion of legitimate interest in privacy for commercial purposes.'' Commercial purposes is defined as activity ''with the expectation of sale, financial gain, or other consideration.'' In *Lopez*, the Court emphasized the absence of commercial activity in the law or its application.

Moreover, the bill fits within the categories articulated in *Lopez*. Through fact-finding, Congress should be able to document that those who engaged in such activity are engaged in interstate commerce. This, too, is different from *Lopez*, where the Court stress the lack of any evidence linking the prohibited conduct to interstate commerce.

Please let me know if I can be of further assistance.

Sincerely,

ERWIN CHEMERINSKY.

UNIVERSITY OF CHICAGO LAW SCHOOL,
Chicago, IL, Nov. 24, 1997.

Senator DIANNE FEINSTEIN,
Senate Judiciary Committee,
Technology, Terrorism, and Government Information Subcommittee, Washington, DC.

DEAR SENATOR FEINSTEIN: This letter is in response to your request for my views on the constitutionally of the proposed statute designed to protect against harassment and invasion of privacy by exploitative photographers, sound recorders, and film crews. The bill would create a new federal criminal and civil offense and two additional grounds for federal civil liability. I believe that the bill is constitutional as drafted. Here is a brief analysis of the legal issues.

The first question is whether the federal government has the authority to enact a measure of this kind. The most likely candidate is the commerce clause. Under the commerce clause, the federal government does have this authority, especially in light of the fact that the bill, as written, requires a clear connection between the interstate commerce and the harassing and invasive action. See the rules of construction in sections 2 and 4. In fact this connection is stronger than that in several of the cases in which the Court has upheld congressional action under the commerce clause. See Wickard v. Filburn, 317 U.S. 111 (1942); United States v. Darby, 312 U.S. 100 (1941). United States v. Lopez, 115 S. Ct. 1624 (1995), is not to the contrary, for in that case, Congress did not require any connection between interstate commerce and the prohibited possession of firearms on or near school property. It is conceivable that the bill might be challenged in some cases in which a photographer did not move in interstate commerce and did not sell anything in interstate commerce but intended to do so (see the rules of construction). But under the cases cited above, its probably constitutional even under such circumstances, because the photographer would be part of a ''class'' of participants in interstate commerce.

The second question is whether the bill violates the first amendment. Here it is important to distinguish between a constitutional challenge to the bill ''on its face'' and a challenge to the bill ''as applied.'' I believe that a facial challenge would fail. The bill is content neutral, see Turner Broadcasting Inc. v. FCC, 114 S. Ct. 2445 (1994); its prohibitions apply regardless of the particular content of the underlying material. This is especially important, since the Court treats content-neutral restrictions more hospitably than content-based restrictions. See id. Moreover, the bill is directed at action, not at speech itself; speech itself is left unregulated by the bill. In a way the constitutional attack on the bill amounts to a claimed first amendment right of access to private arenas and to information a right that the Court has generally denied. See Pell v. Procunier, 417 U.S. 817 (1974); Houchins v. KQED, 438 U.S. 1 (1978); Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980).

To be sure, this is not the end of the matter: A content-neutral restriction on action may create constitutional problems if the action would result in restrictions on the production of speech, as this bill would undoubtedly do. Imagine, for example, a law that defined ''trespass'' to include any effort to take photographs near the White House or the Supreme Court. Cf. United States v. Kokinda, 497 U.S. 720 (1990). In assessing the validity of such a restriction, some relevant questions are whether the restriction is justified by sufficient government interests, whether there are less restrictive alternatives for protecting those interests, and whether the restriction on the production of speech is small or large. See id. In most cases covered by the bill, the restriction would be amply justified. If a photographer has chased someone in such a way as to produce a reasonable fear of bodily injury, the government has a strong reason to provide protection, and the bill is a narrow tailored means of doing so. Thus section 2, adding the new criminal offense, seems on firm ground.

Section 4 is designed to ensure that photographers do not engage in trespasses, or the equivalent of trespasses, in order to invade people's privacy without their consent. This section is also supported by the strong government interest in ensuring that people have a secure private realm, one into which those using the channels of interstate commerce do not enter without consent. In most of its applications, section 4 is also likely to be constitutional. Assume, for example, that a photographer has trespassed into the private property of a movie star in order to take pictures of a dinner or a romantic encounter. Since the images are themselves unregulated (see section 4(d)), the government almost certainly has sufficient grounds to forbid this kind of behavior, a trespass at common law. Although the Supreme Court has subjected some common law rules to first amendment limitations, it has never held that the law of trespass, even though it restricts activity that would produce speech, generally raises constitutional questions. Thus I conclude that section 4 is constitutional in most of its likely applications.

There are some contexts in which harder questions might be raised. Assume, for example, that a presidential candidate is engaged in unlawful activity on private property, and that a journalist and a photographer have used technological devices in order to obtain a record of that activity. Under section 4(b)(2), there has been a kind of federal tort, giving rise of compensatory and punitive damages. It is possible that the special first amendment liability in such cases. Cf. New York Times v. Sullivan, 376 U.S. 254 (1964). Thus a series of cases might be imagined in which section 4, and conceivably even section 2, would give rise to a reasonable constitutional challenge as applied. This is true, however, of a large range of generally permissible statutes; the question for present purposes is whether the bill would be constitutional on its face. I conclude that it would be.

I hope that these brief remarks are helpful.

Sincerely,

CASS R. SUNSTEIN.

ADDITIONAL COSPONSORS

S. 249

At the request of Mr. D'AMATO, the names of the Senator from Massachusetts [Mr. KERRY] and the Senator from Oregon [Mr. SMITH] were added as cosponsors of S. 249, a bill to require that health plans provide coverage for a minimum hospital stay for mastectomies and lymph node dissection for the treatment of breast cancer, coverage for reconstructive surgery following mastectomies, and coverage for secondary consultations.

S. 472

At the request of Mr. CRAIG, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 472, a bill to provide for referenda in which the residents of Puerto Rico may express democratically their preferences regarding the political status of the territory, and for other purposes.

S. 882

At the request of Mrs. BOXER, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 882, a bill to improve academic and social outcomes for students by providing productive activities during after school hours.

S. 1021

At the request of Mr. HAGEL, the name of the Senator from Tennessee [Mr. FRIST] was added as a cosponsor of S. 1021, a bill to amend title 5, United States Code, to provide that consideration may not be denied to preference eligibles applying for certain positions in the competitive service, and for other purposes.

S. 1194

At the request of Mr. D'AMATO, his name was withdrawn as a cosponsor of S. 1194, a bill to amend title XVIII of the Social Security Act to clarify the right of medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the medicare program.

S. 1252

At the request of Mr. D'AMATO, the name of the Senator from Indiana [Mr. COATS] was added as a cosponsor of S. 1252, a bill to amend the Internal Revenue Code of 1986 to increase the amount of low-income housing credits which may be allocated in each State, and to index such amount for inflation.

S. 1298

At the request of Mr. SHELBY, the name of the Senator from Alabama [Mr. SESSIONS] was added as a cosponsor of S. 1298, a bill to designate a Federal building located in Florence, Alabama, as the ''Justice John McKinley Federal Building.''

S. 1459

At the request of Mr. GRASSLEY, the name of the Senator from Washington [Mrs. MURRAY] was added as a cosponsor of S. 1459, a bill to amend the Internal Revenue Code of 1986 to provide a 5-