AMENDMENT NO. 3822

At the request of Mr. GREGG, the names of the Senator from Maine (Ms. COLLINS), the Senator from New Hampshire (Mr. SUNUNU) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of amendment No. 3822 proposed to H.R. 2419, a bill to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. ENZI (for himself, Mr. BAUCUS, Mr. TESTER, and Mr. BARRASSO):

S. 2448. A bill to amend the Surface Mining Control and Reclamation Act of 1977 to make certain technical corrections; to the Committee on Energy and Natural Resources.

Mr. ENZI. Mr. President, I rise to introduce legislation that is of great importance to my State. Last year a bipartisan coalition of Senators came together to pass the Surface Mining Control and Reclamation Act Amendments of 2007. Since that time, some lawyers and bureaucrats in Washington have taken it upon themselves to misinterpret the law. We need to fix this. The legislation I am introducing will yet again reiterate congressional intent as to how the program should be run. The bill that passed as part of the Tax Relief and Health Care Act 2006, which was a part originally of the pension reform bill, fixed the abandoned mine land trust fund so it would run as Congress originally intended, which was some 30 years earlier. For the first time in years, States were scheduled to receive funding they were promised that would be used to clean up abandoned coal mines where that was needed.

For States that had been certified by the Office of Surface Mining as having completed their coal cleanup work, funding was expected to go to these States to do whatever the State legislators chose to be a priority for that State.

The language is simple and straightforward. It reads:

Payments shall be made in 7 equal annual installments, beginning in fiscal year 2008.

As we passed the legislation, everyone involved knew what that meant. For years, our State's money has been held hostage to pay for other programs. With the passage of the abandoned mine land bill, the money would flow with no strings attached and no diversions to other programs. Congressional intent was very clear. Unfortunately, last week I was told by lawyers and bureaucrats at the Department of Interior that they have decided to ignore the congressional intent and have chosen to send the money to States such as Wyoming in the form of grants. It seems they don't have enough Federal employees because their plan will create an onerous program that will undoubtedly require more hires.

As one of the lead Senators in passing the original legislation, I know what Congress meant when we wrote:

Payments shall be made in 7 equal and annual installments, beginning in fiscal year 2008.

To ensure that no confusion existed, I met with the Office of Surface Mining and with the Office of Management and Budget on numerous occasions to discuss that particular issue. Congress intended for payments to be made. Congress did not expect the agency to create a new grant program. When I realized this egregious misinterpretation of the law was a possibility, I took immediate action. I asked those same lawyers and bureaucrats who did not read the law to provide me with the legislative language that makes it explicitly clear that they should interpret the law the way Congress intended.

That is the bill I am introducing today with my colleague from Montana and the other Senator from Wyoming. Only in the absurd world that is Washington could an agency believe the word ''payment'' means grant. I look forward to working with my colleagues to swiftly move this forward so the executive branch can finally follow what Congress intended.

I have to tell my colleagues it was quite a shock to find out a whole program was going to be set up so Wyoming could ask for its money piecemeal. We have been begging for 30 years to get this money. The money has been paid in by the coal companies to cover reclamation and then anything that had to do with coal impact. We did the reclamation. We are now handling the coal impact. But the money has been held hostage; $550 million worth of money has been held over that period.

Last year Congress said: Wyoming and Montana—Montana has $58 million—deserve their money. So do several other States. We will give it to them.

Now there was a little question about what that did with debt, but we were able to show them that paying off debt with debt wound up with the same amount of debt but wasn't stealing from the States. So we were able to get that confirmed by this body and put into law. It said we would be paid in seven equal annual payments, beginning in the year 2008. Now we find out it could be millions of payments over a number of years under a grant program. They do realize they can't deny any grant request the State has, but each and every transaction would have to go through somebody. We are not about to hire that many people to do what is explicit in the language.

I will ask the rest of my colleagues to help us on this amendment. We will find a place to put it, and we will get it done this year so the intent of the law we passed last year will get done.

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

S. 2449. A bill to amend chapter 111 of title 28, United States Code, relating to protective orders, sealing of cases, disclosures of discovery information in civil actions, and for other purposes; to the Committee on the Judiciary.

Mr. KOHL. Mr. President, I rise today to introduce the Sunshine in Litigation Act of 2007, a bill to curb the ongoing abuse of secrecy orders in Federal courts. The result of this abuse, which often comes in the form of sealed settlement agreements, is to keep important health and safety information from the public.

This problem has been recurring for decades, and most often arises in product liability cases. Typically, an individual brings a cause of action against a manufacturer for an injury or death that has resulted from a defect in one of its products. The injured party often faces a large corporation that can spend an unlimited amount of money defending the lawsuit and prolong its resolution. Facing a formidable opponent and mounting medical bills, plaintiffs often have no choice but to settle the litigation. In exchange for the award he or she was seeking, the victim is forced to agree to a provision that prohibits him or her from revealing information disclosed during the litigation.

Plaintiffs get a respectable award, and the defendant is able to keep damaging information from getting out. Because they remain unaware of critical public health and safety information that could potentially save lives, the American public incurs the greatest cost.

This concern for excessive secrecy is warranted by the fact that tobacco companies, automobile manufacturers, and pharmaceutical companies have settled with victims and used the legal system to hide information which, if it became public, could protect the American people. Surely, there are appropriate uses for such orders, like protecting trade secrets and other truly confidential company information. This legislation makes sure such information is protected. But, protective orders are certainly not supposed to be used for the sole purpose of hiding damaging information from the public to protect a company's reputation or profit margin.

One of the most famous cases of abuse involved Bridgestone/Firestone tires. From 1992–2000, tread separations of various Bridgestone and Firestone tires were causing accidents across the country, many resulting in serious injuries and even fatalities. Instead of owning up to their mistakes and acting responsibly, Bridgestone/Firestone quietly settled dozens of lawsuits, most of which included secrecy agreements. It wasn't until 1999, when a Houston public television station broke the story, that the company acknowledged its wrongdoing and recalled 6.5 million tires. By then, it was too late. More than 250 people had died, and more than 800 were injured as a result of the defective tires.

If the story ended there, and the Bridgestone/Firestone cases were just

an aberration, one might argue that there is no urgent need for legislation. But, unfortunately, the list goes on. There is the case of General Motors. Although an internal memo demonstrated that GM was aware of the risk of fire deaths from crashes of pickup trucks with ''side saddle'' fuel tanks, an estimated 750 people were killed in fires involving these fuel tanks. When victims sued, GM disclosed documents only under protective orders and settled these cases on the condition that the information in these documents remained secret. This type of fuel tank was installed for 15 years before being discontinued.

Evidence suggests that the dangers posed by protective orders and secret settlements continue. On December 11, 2007, at a hearing before the Senate Judiciary Committee Subcommittee on Antitrust, Competition Policy and Consumer Rights, Johnny Bradley, Jr. described his tragic personal story about the implications of court-endorsed secrecy. In 2002, Mr. Bradley's wife was killed in a rollover accident allegedly caused by tread separation in his Cooper tires. While litigating the case, his attorney uncovered documented evidence of Cooper tire design defects. Through aggressive litigation of protective orders and confidential settlements in cases prior to the Bradleys' accident, Cooper had managed to keep the documents confidential. Prior to the end of Mr. Bradley's trial, Cooper Tires settled with him on the condition that almost all litigation documents would be kept confidential under a broad protective order. With no access to documented evidence of design defects, consumers will continue to remain in the dark.

In 2005, the drug company Eli Lilly settled 8,000 cases related to harmful side effects of its drug Zyprexa. All of those settlements required plaintiffs to agree, ''not to communicate, publish or cause to be published. . .any statement. . .concerning the specific events, facts or circumstances giving rise to [their] claims.'' In that case, the plaintiffs uncovered documents that showed that, through its own research, Lilly knew about the side effects as early as 1999. While the plaintiffs kept quiet, Lilly continued to sell Zyprexa and generated $4.2 billion in sales that year. More than a year later, information about the case was leaked to the New York Times and another 18,000 cases settled. Had the first settlement not included a secrecy agreement, consumers would have been able to make informed choices and avoid the harmful side effects, including enormous weight gain, dangerously elevated blood sugar levels and diabetes.

There are no records kept of the number of confidentiality orders accepted by State or Federal courts. However, anecdotal evidence suggests that court secrecy and confidential settlements are prevalent. Beyond General Motors, Bridgestone/Firestone, Cooper Tires, and Zyprexa, secrecy agreements had real life consequences by allowing Dalkon Shield, Bjork-Shiley heart valves, and numerous other dangerous products and drugs to remain on the market. And those are only the ones we know about.

While some States have already begun to move in the right direction, we still have a long way to go. It is time to initiate a Federal solution for this problem. The Sunshine in Litigation Act is a modest proposal that would require Federal judges to perform a simple balancing test to ensure that the defendant's interest in secrecy truly outweighs the public interest in information related to public health and safety.

Specifically, prior to making any portion of a case confidential or sealed, a judge would have to determine—by making a particularized finding of fact—that doing so would not restrict the disclosure of information relevant to public health and safety. Moreover, all courts, both Federal and State, would be prohibited from issuing protective orders that prevent disclosure to relevant regulatory agencies.

This legislation does not prohibit secrecy agreements across the board. It does not place an undue burden on judges or our courts. It simply states that where the public interest in disclosure outweighs legitimate interests in secrecy, courts should not shield important health and safety information from the public. The time to focus some sunshine on public hazards to prevent future harm is now.

I urge my colleagues to support this important legislation.

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

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

S. 2449

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 ''Sunshine in Litigation Act of 2007''.

SEC. 2. RESTRICTIONS ON PROTECTIVE ORDERS AND SEALING OF CASES AND SETTLEMENTS.

(a) IN GENERAL.—Chapter 111 of title 28, United States Code, is amended by adding at the end the following:

''§ 1660. Restrictions on protective orders and sealing of cases and settlements

''(a)(1) A court shall not enter an order under rule 26(c) of the Federal Rules of Civil Procedure restricting the disclosure of information obtained through discovery, an order approving a settlement agreement that would restrict the disclosure of such information, or an order restricting access to court records in a civil case unless the court has made findings of fact that—

''(A) such order would not restrict the disclosure of information which is relevant to the protection of public health or safety; or

''(B)(i) the public interest in the disclosure of potential health or safety hazards is outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

''(ii) the requested protective order is no broader than necessary to protect the privacy interest asserted.

''(2) No order entered in accordance with paragraph (1), other than an order approving a settlement agreement, shall continue in effect after the entry of final judgment, unless at the time of, or after, such entry the court makes a separate finding of fact that the requirements of paragraph (1) have been met.

''(3) The party who is the proponent for the entry of an order, as provided under this section, shall have the burden of proof in obtaining such an order.

''(4) This section shall apply even if an order under paragraph (1) is requested—

''(A) by motion pursuant to rule 26(c) of the Federal Rules of Civil Procedure; or

''(B) by application pursuant to the stipulation of the parties.

''(5)(A) The provisions of this section shall not constitute grounds for the withholding of information in discovery that is otherwise discoverable under rule 26 of the Federal Rules of Civil Procedure.

''(B) No party shall request, as a condition for the production of discovery, that another party stipulate to an order that would violate this section.

''(b)(1) A court shall not approve or enforce any provision of an agreement between or among parties to a civil action, or approve or enforce an order subject to subsection (a)(1), that prohibits or otherwise restricts a party from disclosing any information relevant to such civil action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

''(2) Any such information disclosed to a Federal or State agency shall be confidential to the extent provided by law.

''(c)(1) Subject to paragraph (2), a court shall not enforce any provision of a settlement agreement between or among parties that prohibits 1 or more parties from—

''(A) disclosing that a settlement was reached or the terms of such settlement, other than the amount of money paid; or

''(B) discussing a case, or evidence produced in the case, that involves matters related to public health or safety.

''(2) Paragraph (1) does not apply if the court has made findings of fact that the public interest in the disclosure of potential health or safety hazards is outweighed by a specific and substantial interest in maintaining the confidentiality of the information.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 111 of title 28, United States Code, is amended by adding after the item relating to section 1659 the following:

''1660. Restrictions on protective orders and sealing of cases and settlements''.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall—

(1) take effect 30 days after the date of enactment of this Act; and

(2) apply only to orders entered in civil actions or agreements entered into on or after such date.

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

S. 2450. A bill to amend the Federal Rules of Evidence to address the waiver of the attorney-client privilege and the work product doctrine; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today I introduce legislation to create Federal Rule of Evidence 502. I am pleased that Senator SPECTER has joined me in this

effort. After much study, several hearings, and significant public comment, the Judicial Conference's Standing Committee on Rules of Practice and Procedure, and the Advisory Committee on Evidence Rules, arrived at a proposed new rule that is intended to provide predictability and uniformity in a discovery process that has been made increasingly difficult with the growing use of email and other electronic media. I commend all of the judges, professors and practitioners who were involved in the rule's drafting and subsequent improvement for their hard work and attention to this issue. The legislation we are introducing today contains the text that the Judicial Conference recommends.

Billions of dollars are spent each year in litigation to protect against the inadvertent disclosure of privileged materials. With the routine use of email and other electronic media in today's business environment, discovery can encompass millions of documents in a given case, vastly expanding the risks of inadvertent disclosure. The rule proposed by the Standing Committee is aimed at adapting to the new realities that accompany today's modes of communication, and reducing the burdens associated with the conduct of diligent electronic discovery.

Our proposed legislation would set clear guidelines regarding the consequences of inadvertent disclosure of privileged material, and provides that so long as reasonable steps are taken in the prevention of such a disclosure, or to assure the prompt retrieval of disclosed information, no waiver will result. Moreover, an inadvertent disclosure of privileged information would not result in a broader subject matter waiver beyond the specific materials disclosed.

If a disclosure of privileged material is made voluntarily, only the privilege associated with the voluntarily disclosed material is waived, and not other undisclosed related materials. But if voluntary disclosure of privileged material is done selectively in an effort to mislead or gain unfair advantage, then where fairness dictates, this will result in a subject matter waiver.

This legislation would also provide that confidentiality agreements entered into by parties to litigation, and approved by the court, will bind all non-parties in other State or Federal litigation. This provision will add meaningful protection to parties entering confidentiality agreements and, along with other components of the proposed rule, will aid in reducing the burdens of excessive pre-production document review.

Unlike other Federal court rules, any proposed rule that modifies an evidentiary privilege must be approved by Congress pursuant to the Rules Enabling Act. The modification of a privilege is an undertaking not to be approached lightly, and the process that resulted in proposed Rule 502 was thorough and thoughtful. It has resulted in widespread approval of the proposed rule from the bench and bar at both the State and Federal level.

I urge all Senators to join Senator SPECTER and me to pass this proposal and take a positive step toward modernizing and improving the Federal Rules of Evidence.

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

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

S. 2450

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

SECTION 1. ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT; LIMITATIONS ON WAIVER.

(a) IN GENERAL.—Article V of the Federal Rules of Evidence is amended by adding at the end the following:

"Rule 502. Attorney-Client Privilege and Work Product; Limitations on Waiver

''The following provisions apply, in the circumstances set out, to disclosure of a communication or information covered by the attorney-client privilege or work-product protection.

''(a) DISCLOSURE MADE IN A FEDERAL PROCEEDING OR TO A FEDERAL OFFICE OR AGENCY; SCOPE OF A WAIVER.—When the disclosure is made in a federal proceeding or to a federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a federal or state proceeding only if:

''(1) the waiver is intentional;

''(2) the disclosed and undisclosed communications or information concern the same subject matter; and

''(3) they ought in fairness to be considered together.

''(b) INADVERTENT DISCLOSURE.—When made in a federal proceeding or to a federal office or agency, the disclosure does not operate as a waiver in a federal or state proceeding if:

''(1) the disclosure is inadvertent;

''(2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and

''(3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B).

''(c) DISCLOSURE MADE IN A STATE PROCEEDING.—When the disclosure is made in a state proceeding and is not the subject of a state-court order concerning waiver, the disclosure does not operate as a waiver in a federal proceeding if the disclosure:

''(1) would not be a waiver under this rule if it had been made in a federal proceeding; or

''(2) is not a waiver under the law of the state where the disclosure occurred.

''(d) CONTROLLING EFFECT OF A COURT ORDER.—A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court—in which event the disclosure is also not a waiver in any other federal or state proceeding.

''(e) CONTROLLING EFFECT OF A PARTY AGREEMENT.—An agreement on the effect of disclosure in a federal proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order.

''(f) CONTROLLING EFFECT OF THIS RULE.—Notwithstanding Rules 101 and 1101, this rule applies to state proceedings and to federal court-annexed and federal court-mandated arbitration proceedings, in the circumstances set out in the rule. And notwithstanding Rule 501, this rule applies even if state law provides the rule of decision.

''(g) DEFINITIONS.—In this rule:

''(1) 'attorney-client privilege' means the protection that applicable law provides for confidential attorney-client communications; and

''(2) 'work-product protection' means the protection that applicable law provides for tangible material (or its intangible equivalent) prepared in anticipation of litigation or for trial.''.

(b) TECHNICAL AND CONFORMING CHANGES.—The table of contents for the Federal Rules of Evidence is amended by inserting after the item relating to rule 501 the following:

''502. Attorney-client privilege and work-product doctrine; limitations on waiver.''.

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply in all proceedings commenced after the date of enactment of this Act and, insofar as is just and practicable, in all proceedings pending on such date of enactment.

Mr. SPECTER. Mr. President, I seek recognition today to introduce legislation, together with Senator LEAHY, to enact Federal Rule of Evidence 502.

Federal Rule of Evidence 502, which was drafted and proposed to Congress by the Judicial Conference of the United States, is a rule to provide heightened protection against inadvertent loss of the attorney-client privilege during the discovery process. At a time when litigation costs are skyrocketing and discovery alone can last for years, this rule is urgently needed. And unlike other Federal rules of procedure, which go into effect unless Congress acts, rules governing evidentiary privilege must be enacted by Congress.

Current law on attorney-client privilege and work product is responsible in large part for the rising costs of discovery—especially electronic discovery. Right now, it is far too easy to inadvertently lose—or ''waive''—the privilege. A single inadvertently disclosed document can result in waiving the privilege not only as to what was produced, but as to all documents on the same subject matter. In some courts, a waiver may be found even if the producing party took reasonable steps to avoid disclosure. Such waivers will not just affect the case in which the accidental disclosure is made, but will also impact other cases filed subsequently in State or Federal courts.

Thus, lawyers must spend significant amounts of time ensuring that documents containing privileged communications and work product are not inadvertently produced. In this day and age when there can be literally millions of electronic files to comb through looking for privileged material, the risk of one slipping through the cracks is very high. The fear of waiver leads to undue expense and to extravagant claims of privilege.

The proposed rule will alleviate these burdens in two primary ways: First, it

protects against undue forfeiture of attorney-client privilege and work product protections when privileged communications are inadvertently produced in discovery—where the party producing the documents took reasonable steps to prevent the disclosure and does not try to use the disclosed information in a misleading way. Second, it permits parties and courts to protect against the consequences of waiver by permitting limited disclosure of privileged information between the parties to litigation. This allows parties and courts to manage the effects of disclosure and provide predictability in current and future litigation.

The proposed rule enjoys wide support from parties on both sides of the ''v.'' Both plaintiffs and defendants want this rule because it makes the litigation more efficient and less costly; it ensures that the wheels of justice will not become bogged down in the mud of discovery.

The Judicial Conference, which is the body responsible for proposing new procedural rules, has undertaken an extensive process in crafting this rule over the last year and a half. The rule was approved by the Judicial Conference's Advisory Committee on Evidence Rules, the Standing Committee on Rules of Practice and Procedure, and the Judicial Conference itself, after a public comment period that included several hearings with supportive comments and testimony from bench and bar. There were more than 70 public comments, and more than 20 witnesses testified.

The time is ripe to move forward and enact this proposed rule into law. Therefore, I have worked with Senator LEAHY to bring this bill to the floor in a timely and bipartisan fashion. This rule is necessary to protect the attorney-client privilege, to bring clarity to the law, and to ensure fairness for all parties. And every day we wait wastes the time and resources of litigants and the courts. I urge my colleagues to join with Senator LEAHY and me in supporting this bill.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 400—TO DESIGNATE FRIDAY, NOVEMBER 23, 2007, AS ''NATIVE AMERICAN HERITAGE DAY'' IN HONOR OF THE ACHIEVEMENTS AND CONTRIBUTIONS OF NATIVE AMERICANS TO THE UNITED STATES

Mr. INOUYE (for himself, Mr. BROWNBACK, Mr. DORGAN, Mr. BINGAMAN, Mrs. CLINTON, Ms. CANTWELL, Mr. COCHRAN, Mr. JOHNSON, Mr. CONRAD, Mr. DOMENICI, Mr. AKAKA, Mrs. BOXER, Mrs. FEINSTEIN, Mr. STEVENS, Mr. BAUCUS, and Mr. TESTER) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 400

Whereas Native Americans are the descendants of the aboriginal, indigenous, native people who were the original inhabitants of and who governed the lands that now constitute the United States;

Whereas Native Americans have volunteered to serve in the United States Armed Forces and have served with valor in all of the Nation's military actions from the Revolutionary War through the present day, and in most of those actions, more Native Americans per capita served in the Armed Forces than any other group of Americans;

Whereas Native American tribal governments developed the fundamental principles of freedom of speech and separation of governmental powers that were a model for those that form the foundation of the United States Constitution;

Whereas the Founding Fathers based the provisions of the Constitution on the unique system of democracy of the Six Nations of the Iroquois Confederacy, which divided powers among the branches of government and provided for a system of checks and balances;

Whereas Native Americans have made distinct and significant contributions to the United States and the rest of the world in many fields, including agriculture, medicine, music, language, and art, and Native Americans have distinguished themselves as inventors, entrepreneurs, spiritual leaders, and scholars;

Whereas Native Americans should be recognized for their contributions to the United States as local and national leaders, artists, athletes, and scholars;

Whereas nationwide recognition of the contributions that Native Americans have made to the fabric of American society will afford an opportunity for all Americans to demonstrate their respect and admiration of Native Americans for their important contributions to the political, cultural, and economic life of the United States;

Whereas nationwide recognition of the contributions that Native Americans have made to the Nation will encourage self-esteem, pride, and self-awareness in Native Americans of all ages;

Whereas designation of the Friday following Thanksgiving as Native American Heritage Day will underscore the government-to-government relationship between the United States and Native American governments; and

Whereas designation of Native American Heritage Day will encourage public elementary and secondary schools in the United States to enhance understanding of Native Americans by providing curricula and classroom instruction focusing on the achievements and contributions of Native Americans to the Nation: Now, therefore, be it

Resolved, that the Senate—

(1) designates Friday, November 23, 2007, as ''Native American Heritage Day''; and

(2) encourages the people of the United States, as well as Federal, State, and local governments and interested groups and organizations to observe Native American Heritage Day with appropriate programs, ceremonies, and activities, including activities related to—

(A) the historical and constitutional status of Native American tribal governments as well as the present day status of Native Americans;

(B) the cultures, traditions, and languages of Native Americans; and

(C) the rich Native American cultural legacy that all Americans enjoy today.

SENATE RESOLUTION 401—TO PROVIDE INTERNET ACCESS TO CERTAIN CONGRESSIONAL RESEARCH SERVICE PUBLICATIONS

Mr. LIEBERMAN (for himself, Mr. MCCAIN, Ms. COLLINS, Mr. LEAHY, Mr. CORNYN and Mr. HARKIN) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 401

Resolved,

SECTION 1. PUBLIC AVAILABILITY OF INFORMATION.

The Sergeant-at-Arms of the Senate shall make information available to the public in accordance with the provisions of this resolution.

SEC. 2. AVAILABILITY OF CERTAIN CONGRESSIONAL RESEARCH SERVICE INFORMATION.

(a) AVAILABILITY OF INFORMATION.—

(1) IN GENERAL.—The Sergeant-at-Arms of the Senate, in consultation with the Director of the Congressional Research Service, shall make available through a centralized electronic system, for purposes of access and retrieval by the public under section 3 of this resolution, all information described in paragraph (2) that is available through the Congressional Research Service website.

(2) INFORMATION TO BE MADE AVAILABLE.—The information to be made available under paragraph (1) is the following:

(A) Congressional Research Service Issue Briefs.

(B) Congressional Research Service Reports that are available to Members of Congress through the Congressional Research Service website.

(C) Congressional Research Service Authorization of Appropriations Products and Appropriations Products.

(b) LIMITATIONS.—

(1) CONFIDENTIAL INFORMATION.—Subsection (a) does not apply to—

(A) any information that is confidential, as determined by—

(i) the Director of the Congressional Research Service; or

(ii) the head of a Federal department or agency that provided the information to the Congressional Research Service; or

(B) any documents that are the product of an individual, office, or committee research request (other than a document described in subsection (a)(2)).

(2) REDACTION AND REVISION.—In carrying out this section, the Sergeant-at-Arms of the Senate, in consultation with the Director of the Congressional Research Service, may—

(A) remove from the information required to be made available under subsection (a) the name and phone number of, and any other information regarding, an employee of the Congressional Research Service;

(B) remove from the information required to be made available under subsection (a) any material for which the Director of the Congressional Research Service, determines that making that material available under subsection (a) may infringe the copyright of a work protected under title 17, United States Code; and

(C) make any changes in the information required to be made available under subsection (a) that the Director of the Congressional Research Service, determines necessary to ensure that the information is accurate and current.

(c) MANNER.—The Sergeant-at-Arms of the Senate, in consultation with the Director of the Congressional Research Service, shall make the information required under this section available in a manner that is practical and reasonable.