

(3) to alleviate pressure on employers to hire individuals who seek or gain employment in order to disrupt the workplace of the employer or otherwise inflict economic harm designed to put the employer out of business.

**SEC. 103. PROTECTION OF EMPLOYER RIGHTS.**

Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended by adding after paragraph (5) the following flush sentence:

"Nothing in this subsection shall be construed as requiring an employer to employ any person who is not a bona fide employee applicant, in that such person seeks or has sought employment with the employer with the primary purpose of furthering another employment or agency status: *Provided*, That this sentence shall not affect the rights and responsibilities under this Act of any employee who is or was a bona fide employee applicant, including the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

**TITLE II—FAIR HEARING**

**SEC. 201. FINDINGS.**

Congress makes the following findings:

(1) Bargaining unit determinations by their nature require the type of fact-specific analysis that only case-by-case adjudication allows.

(2) The National Labor Relations Board has for decades held hearings to determine the appropriateness of certifying a single location bargaining unit.

(3) The imprecision of a blanket rule limiting the factors considered material to determining the appropriateness of a single location bargaining unit detracts from the National Labor Relations Act's goal of promoting stability in labor relations.

**SEC. 202. PURPOSE.**

The purpose of this title is to ensure that the National Labor Relations Board conducts a hearing process and specific analysis of whether or not a single location bargaining unit is appropriate, given all of the relevant facts and circumstances of a particular case.

**SEC. 203. REPRESENTATIVES AND ELECTIONS.**

Section 9(c) of the National Labor Relations Act (29 U.S.C. 159(c)) is amended by adding at the end the following:

"(6) If a petition for an election requests the Board to certify a unit which includes the employees employed at one or more facilities of a multi-facility employer, and in the absence of an agreement by the parties (stipulation for certification upon consent election or agreement for consent election) regarding the appropriateness of the bargaining unit at issue for purposes of subsection (b), the Board shall provide for a hearing upon due notice to determine the appropriateness of the bargaining unit. In making its determination, the Board shall consider functional integration, centralized control, common skills, functions and working conditions, permanent and temporary employee interchange, geographical separation, local autonomy, the number of employees, bargaining history, and such other factors as the Board considers appropriate."

**TITLE III—ATTORNEYS FEES**

**SEC. 301. FINDINGS AND PURPOSE.**

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

(1) Certain small businesses and labor organizations are at a great disadvantage in terms of expertise and resources when facing actions brought by the National Labor Relations Board.

(2) The attempt to "level the playing field" for small businesses and labor organizations by means of the Equal Access to Justice Act has proven ineffective and has been underutilized by these small entities in their actions before the National Labor Relations Board.

(3) The greater expertise and resources of the National Labor Relations Board as compared with those of small businesses and labor organizations necessitate a standard that awards fees and costs to certain small entities when they prevail against the National Labor Relations Board.

(b) PURPOSE.—It is the purpose of this title—

(1) to ensure that certain small businesses and labor organizations will not be deterred from seeking review of, or defending against, actions brought against them by the National Labor Relations Board because of the expense involved in securing vindication of their rights;

(2) to reduce the disparity in resources and expertise between certain small businesses and labor organizations and the National Labor Relations Board; and

(3) to make the National Labor Relations Board more accountable for its enforcement actions against certain small businesses and labor organizations by awarding fees and costs to these entities when they prevail against the National Labor Relations Board.

**SEC. 302. AMENDMENT TO NATIONAL LABOR RELATIONS ACT.**

The National Labor Relations Act (29 U.S.C. 151 et seq.) is amended by adding at the end the following new section:

"AWARDS OF ATTORNEYS' FEES AND COSTS

"SEC. 20. (a) ADMINISTRATIVE PROCEEDINGS.—An employer who, or a labor organization that—

"(1) is the prevailing party in an adversary adjudication conducted by the Board under this or any other Act, and

"(2) had not more than 100 employees and a net worth of not more than \$1,400,000 at the time the adversary adjudication was initiated,

shall be awarded fees and other expenses as a prevailing party under section 504 of title 5, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the Board was substantially justified or special circumstances make an award unjust. For purposes of this subsection, the term 'adversary adjudication' has the meaning given that term in section 504(b)(1)(C) of title 5, United States Code.

"(b) COURT PROCEEDINGS.—An employer who, or a labor organization that—

"(1) is the prevailing party in a civil action, including proceedings for judicial review of agency action by the Board, brought by or against the Board, and

"(2) had not more than 100 employees and a net worth of not more than \$1,400,000 at the time the civil action was filed,

shall be awarded fees and other expenses as a prevailing party under section 2412(d) of title 28, United States Code, in accordance with the provisions of that section, but without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust. Any appeal of a determination of fees pursuant to subsection (a) or this subsection shall be determined without regard to whether the position of the United States was substantially justified or special circumstances make an award unjust."

**SEC. 303. APPLICABILITY.**

(a) AGENCY PROCEEDINGS.—Subsection (a) of section 20 of the National Labor Relations Act (as added by section 302) applies to agency proceedings commenced on or after the date of the enactment of this Act.

(b) COURT PROCEEDINGS.—Subsection (b) of section 20 of the National Labor Relations Act (as added by section 302) applies to civil actions commenced on or after the date of the enactment of this Act.

**ADDITIONAL COSPONSORS**

S. 831

At the request of Mr. SHELBY, the names of the Senator from North Carolina [Mr. HELMS], the Senator from Michigan [Mr. ABRAHAM] and the Senator from Oklahoma [Mr. INHOFE] were added as cosponsors of S. 831, a bill to amend chapter 8 of title 5, United States Code, to provide for congressional review of any rule promulgated by the Internal Revenue Service that increases Federal revenue, and for other purposes.

S. 882

At the request of Mrs. BOXER, the name of the Senator from South Carolina [Mr. HOLLINGS] 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. 1252

At the request of Mr. GRAHAM, the names of the Senator from Arkansas [Mr. BUMBERS], the Senator from Louisiana [Mr. BREAUX], the Senator from New Jersey [Mr. LAUTENBERG], and the Senator from Massachusetts [Mr. KENNEDY] were added as cosponsors 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. 1334

At the request of Mr. BOND, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 1334, a bill to amend title 10, United States Code, to establish a demonstration project to evaluate the feasibility of using the Federal Employees Health Benefits program to ensure the availability of adequate health care for Medicare-eligible beneficiaries under the military health care system.

S. 1392

At the request of Mr. BROWNBACK, the name of the Senator from Colorado [Mr. ALLARD] was added as a cosponsor of S. 1392, a bill to provide for offsetting tax cuts whenever there is an elimination of a discretionary spending program.

S. 1677

At the request of Mr. CHAFEE, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of S. 1677, a bill to reauthorize the North American Wetlands Conservation Act and the Partnerships for Wildlife Act.

S. 1924

At the request of Mr. MACK, the names of the Senator from Washington [Mr. GORTON], the Senator from Maryland [Mr. SARBANES], and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of S. 1924, a bill to restore the standards used for determining whether technical workers

are not employees as in effect before the Tax Reform Act of 1986.

S. 2033

At the request of Mr. ABRAHAM, the name of the Senator from Oregon [Mr. SMITH] was added as a cosponsor of S. 2033, a bill to amend the Controlled Substances Act with respect to penalties for crimes involving cocaine, and for other purposes.

S. 2067

At the request of Mr. ASHCROFT, the name of the Senator from Washington [Mr. GORTON] was added as a cosponsor of S. 2067, a bill to protect the privacy and constitutional rights of Americans, to establish standards and procedures regarding law enforcement access to decryption assistance for encrypted communications and stored electronic information, to affirm the rights of Americans to use and sell encryption products, and for other purposes.

SENATE RESOLUTION 189

At the request of Mr. TORRICELLI, the names of the Senator from Nevada [Mr. REID] and the Senator from Connecticut [Mr. DODD] were added as cosponsors of Senate Resolution 189, a resolution honoring the 150th anniversary of the United States Women's Rights Movement that was initiated by the 1848 Women's Rights Convention held in Seneca Falls, New York, and calling for a national celebration of women's rights in 1998.

AMENDMENT NO. 2387

At the request of Mr. HUTCHINSON the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of amendment No. 2387 proposed to S. 2057, an original bill to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 2388

At the request of Mr. HUTCHINSON the name of the Senator from Michigan [Mr. LEVIN] was added as a cosponsor of amendment No. 2388 proposed to S. 2057, an original bill to authorize appropriations for the fiscal year 1999 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

SENATE CONCURRENT RESOLUTION 96—EXPRESSING THE SENSE OF CONGRESS THAT A POSTAGE STAMP SHOULD BE ISSUED HONORING OSKAR SCHINDLER

Mr. LAUTENBERG (for himself and Mr. SPECTER) submitted the following concurrent resolution; which was referred to the Committee on Governmental Affairs:

S. CON. RES. 96

Whereas during the Nazi occupation of Poland, Oskar Schindler personally risked his life and that of his wife to provide food and medical care and saved the lives of over 1,000 Jews from death, many of whom later made their homes in the United States;

Whereas Oskar Schindler also rescued about 100 Jewish men and women from the Golezów concentration camp, who lay trapped and partly frozen in 2 sealed train cars stranded near Brünnlitz;

Whereas millions of Americans have been made aware of the story of Schindler's bravery;

Whereas on April 28, 1962, Oskar Schindler was named a "Righteous Gentile" by Yad Vashem; and

Whereas Oskar Schindler is a true hero and humanitarian deserving of honor by the United States Government: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring),* That it is the sense of Congress that the Postal Service should issue a stamp honoring the life of Oskar Schindler.

Mr. LAUTENBERG. Mr. President, today we celebrate the 50th Anniversary of the establishment of the State of Israel. As we do so, we also remember the tragedy of the Holocaust and the events that culminated in the creation of a Jewish homeland.

I rise today to submit a measure to honor an individual who stands in the highest esteem of the citizens of Israel, and throughout the world. I am pleased to be joined by the senior senator from Pennsylvania, Senator SPECTER, in submitting this measure calling on the Postal Service to issue a stamp commemorating the life of Oskar Schindler.

Millions of people around the world know the story of Oskar Schindler, whose heroism was brought to light by the author Thomas Keneally and the film maker Steven Spielberg. During the Nazi occupation of Poland, Oskar Schindler demonstrated that one person truly could make a difference. He saved the lives of over 1,200 Jewish men, women, and children, while risking his own life and that of his wife. Mr. Schindler also rescued approximately 100 Jewish men and women from the Golezow concentration camp, who were trapped in a sealed and freezing railroad car.

Two of the individuals whose lives were saved by Oskar Schindler are residents of New Jersey. Before the war, Abraham Zuckerman lived in Krakow, Poland. In 1942, he was sent to the Plaszow concentration camp where he faced unspeakable horrors and certain death. While he waited out his days toiling in a coal yard, one day, to his great fortune, Mr. Zuckerman was told that he was one of the fortunate individuals whose name appeared on "Schindler's List." Mr. Zuckerman was relatively safe for a little more than a year, but when Schindler's factory in Krakow was liquidated, he was sent to a concentration camp at Mauthausen and later Gusen II, where he was finally liberated. Meanwhile, Mr. Zuckerman's close friend Murray Pantirer was sent to another con-

centration camp, Gross-Rosen, after Plaszow was shut down. On his third day there, he was chosen as one of 900 workers for Schindler's new factory in Brinnlitz, Czechoslovakia. Both men later emigrated to the United States. They have lived in New Jersey since shortly after the war where they started a home building business. To honor Mr. Schindler, these men are responsible for over 20 Schindler Courts, Terraces and Plazas all over the Garden State.

Mr. President, we recognize that Mr. Schindler was a human being, not infallible like many heroes. But his bravery has truly made him stand out and worthy of honor. There is nothing I can say that could describe him any better than in the words of Mr. Zuckerman.

"I am one of the Survivors and I owe my life to the courage and strength of this great man. He was not a diplomat or a politician, he was a very good manipulator. He had the courage and the knowledge to save over 1200 Jews from death. He managed somehow to fool the Germans into thinking he was on their side when all along he was going behind their backs to save the Jews. His life was always in danger but still he persisted to do what he knew to be the right thing, he saved the Jews anyway he could. He bartered, he lied, he used his own money, he did everything humanly possible to save us. He was very unselfish as his life could have ended at any time but still he did all he could to save the Jews."

Mr. President, Senator SPECTER and I are submitting this resolution today to call on the Postal Service to issue a stamp commemorating the life of Oskar Schindler. Such a stamp would bring the story to millions of people. It would help us all understand that one individual can make a difference in the lives of others.

We understand that we face somewhat of an uphill battle as Mr. Schindler is not a citizen of the United States. The Postal Service tells me that its policy is to issue stamps that depict American subjects. But we say in response that Mr. Schindler's life was largely devoted to the pursuit of freedom, to opposing tyranny, and to humanitarianism. These qualities certainly represent the American ideal and we believe that Mr. Schindler deserves the honor that the Postal Service has bestowed on other individuals who stood for these ideals. I am pleased to sponsor this important measure.

AMENDMENTS SUBMITTED

THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

THURMOND (AND LEVIN)  
AMENDMENT NO. 2399

Mr. THURMOND (himself and Mr. LEVIN) proposed an amendment to the