

the Congress nor basic common sense. For instance, under *Feres*, a soldier who is the victim of medical malpractice at an army hospital cannot sue the government for compensation. Likewise, his family cannot sue for compensation if the soldier dies from the malpractice. But a civilian who suffers from the same malpractice would be entitled to file suit against the government. Likewise, if a soldier driving home from work on an army base is hit by a negligently driven army truck, he is barred from suing the government for compensation. If the soldier dies in the accident, his family will be barred from suing for compensation. Meanwhile, a civilian hit by the same truck would have a cause of action against the United States. Unfortunately, the individuals hurt by the *Feres* doctrine are the men and women of our armed forces—people whom we should protect and reward, not punish.

The recent decision of the Third Circuit Court of Appeals in *O'Neil v. United States* illustrates the troubling results produced by the *Feres* doctrine. In *O'Neil*, the family of slain Naval officer Kerryn O'Neil was barred from pursuing a wrongful death claim against the government under the *Feres* doctrine. O'Neil was murdered by her former fiance, George Smith, a Navy ensign. The two met at the U.S. Naval Academy and were stationed at the same Naval base in California. After Ms. O'Neil broke off their engagement, Mr. Smith began to stalk her. One night while Ms. O'Neil was sitting in her on-base apartment watching a movie with a friend, Smith came to her building and killed her, her friend, and then himself.

After the murders, Kerryn O'Neil's family learned that Mr. Smith had scored in the 99.99th percentile for aggressive/destructive behavior in Navy psychological tests. Under Naval procedures, these results should have been forwarded to the Department of Psychiatry at the Naval Hospital for a full psychological evaluation. Had their claim not been barred, the O'Neils would have argued that the Navy was negligent in failing to follow up on these extreme test results. I do not know whether the O'Neil's deserved to be compensated under the Act—this depends on the specific facts and the case law in this area. But it does seem clear to me that the O'Neils should not have been barred from pursuing their claim because their daughter's fatal injuries were sustained "incident to service."

Of course, there are situations in which soldiers should not be allowed to sue the government in tort. For example, in a combat situation, countless judgment calls are made which result in death or injuries to soldiers. We cannot have lawyers and juries second guessing the decisions made by field commanders and combatants in the heat of battle. But such considerations do not necessitate that military personnel should lose the right to sue the government in any context.

The bill I introduce today will reverse the court-created *Feres* doctrine and return the law to the way it was originally intended by Congress. My bill is very short and simple. It amends the Federal Tort Claims Act to specifically provide that the Act applies to military personnel on active duty the same as it applies to anyone else. My bill further specifies that military personnel will be limited by the exceptions to government liability already included in the Act, including the bar on liability for injuries sustained by military personnel in combat and the bar on liability for claims which arise in a foreign country. In short, my bill will ensure that members of our armed forces will be entitled to damages they deserve when injured through the negligence or wrongful actions of the Federal government or its agents, except for certain limited cases contemplated by Congress when it originally passed the Act.

Congress passed the Federal Tort Claims Act in 1946 to give the general consent of the government to be sued in tort, subject to several specific restrictions. Under the common law doctrine of sovereign immunity, the United States cannot be sued without such specific consent. The Act provides that the government will be held liable "in the same manner and to the same extent as a private individual under the circumstances." Thus, the Act makes the United States liable for the torts of its employees and agents to the extent that private employers are liable under state law for the torts of their employees and agents.

The Act contains many exceptions to government liability, but it does not contain an explicit exception for injuries sustained by military personnel incident to service. In fact, one of the Act's exceptions prevents "any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard during time of war." By including this exception, Congress clearly contemplated the special case of military personnel and decided that certain limits must be placed on government liability in this context. But by drawing this exception narrowly and limiting it to combat situations, Congress rejected any broad exception for injuries sustained "incident to service." The Supreme Court did far more than interpret our statute when it significantly broadened the limited combat exception provided by Congress. This bill leaves intact the government's exemption for injuries sustained in combat.

The *Feres* doctrine has been the subject of harsh criticism by some of the leading jurists in the nation. In the 1987 case of *United States v. Johnson*, a 5 to 4 majority of the Supreme Court held that the *Feres* doctrine bars suits on behalf of military personnel injured incident to service even in cases of torts committed by employees of civilian agencies. Justice Scalia wrote a scathing dissent in *Johnson*, in which

he was joined by Justices Brennan, Marshall, and Stevens. Scalia wrote that *Feres* was "wrongly decided and heartily deserves the widespread, almost universal criticism it has received."

Judge Edward Becker, the Chief Judge of the Third Circuit Court of Appeals, has also spoken out strongly against the *Feres* doctrine. He has noted that "the scholarly criticism of the doctrine is legion" and has urged the Supreme Court to grant cert. to reconsider *Feres*. Judge Becker has written to me that given the failure of the Court to overturn *Feres* thus far, I should introduce legislation doing so.

Even in the *Feres* opinion itself, the Supreme Court expressed an uncharacteristic doubt about its decision. The justices recognized that they may be misinterpreting the Federal Tort Claims Act. They called upon Congress to correct their mistake if this were the case. The Court wrote:

There are few guiding materials for our task of statutory construction. No committee reports or floor debates disclose what effect the statute was designed to have on the problem before us, or that it even was in mind. Under these circumstances, no conclusion can be above challenge, but if we misinterpret the Act, at least Congress possesses a ready remedy.

Congress does possess a ready remedy, and I call upon my colleagues to exercise it. The bill I introduce today will eliminate the judicially created *Feres* doctrine and revive the original framework of the Federal Tort Claims Act. There is no reason to deny compensation to the men and women of our armed services who are injured or killed in domestic accidents or violence outside the heat of combat. I hope that when we resume our business next year my colleagues will join me in supporting and passing this legislation.

ADDITIONAL COSPONSORS

S. 211

At the request of Mr. MOYNIHAN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 211, a bill to amend the Internal Revenue Code of 1986 to make permanent the exclusion for employer-provided educational assistance programs, and for other purposes.

S. 279

At the request of Mr. MCCAIN, the name of the Senator from Tennessee (Mr. FRIST) was added as a cosponsor of S. 279, a bill to amend title II of the Social Security Act to eliminate the earnings test for individuals who have attained retirement age.

S. 345

At the request of Mr. ALLARD, the names of the Senator from Minnesota (Mr. GRAMS) and the Senator from West Virginia (Mr. BYRD) were added as cosponsors of S. 345, a bill to amend the Animal Welfare Act to remove the limitation that permits interstate movement of live birds, for the purpose of fighting, to States in which animal fighting is lawful.

S. 486

At the request of Mr. EDWARDS, his name was added as a cosponsor of S. 486, a bill to provide for the punishment of methamphetamine laboratory operators, provide additional resources to combat methamphetamine production, trafficking, and abuse in the United States, and for other purposes.

At the request of Mr. HATCH, his name, and the name of the Senator from Delaware (Mr. BIDEN) were added as cosponsors of S. 486, supra.

S. 1020

At the request of Mr. GRASSLEY, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 1020, a bill to amend chapter 1 of title 9, United States Code, to provide for greater fairness in the arbitration process relating to motor vehicle franchise contracts.

S. 1109

At the request of Mr. MCCONNELL, the names of the Senator from Arizona (Mr. KYL) and the Senator from Missouri (Mr. BOND) were added as cosponsors of S. 1109, a bill to conserve global bear populations by prohibiting the importation, exportation, and interstate trade of bear viscera and items, products, or substances containing, or labeled or advertised as containing, bear viscera, and for other purposes.

S. 1197

At the request of Mr. ROTH, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 1197, a bill to prohibit the importation of products made with dog or cat fur, to prohibit the sale, manufacture, offer for sale, transportation, and distribution of products made with dog or cat fur in the United States, and for other purposes.

S. 1257

At the request of Mr. HATCH, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 1257, a bill to amend statutory damages provisions of title 17, United States Code.

S. 1380

At the request of Mr. HATCH, the name of the Senator from Virginia (Mr. ROBB) was added as a cosponsor of S. 1380, a bill to provide for a study of long-term care needs in the 21st century.

S. 1419

At the request of Mr. MCCAIN, the names of the Senator from Oklahoma (Mr. NICKLES), the Senator from Tennessee (Mr. THOMPSON), and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 1419, a bill to amend title 36, United States Code, to designate May as "National Military Appreciation Month."

S. 1447

At the request of Mr. WELLSTONE, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 1447, a bill to amend the Public Health Service Act, Employee Retirement Income Security Act of

1974, and the Internal Revenue Code of 1986 to provide for nondiscriminatory coverage for substance abuse treatment service under private group and individual health coverage.

S. 1500

At the request of Mr. HATCH, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1500, a bill to amend title XVIII of the Social Security Act to provide for an additional payment for services provided to certain high-cost individuals under the prospective payment system for skilled nursing facility services, and for other purposes.

S. 1590

At the request of Mr. CRAPO, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1590, a bill to amend title 49, United States Code, to modify the authority of the Surface Transportation Board, and for other purposes.

S. 1668

At the request of Mr. KERRY, the name of the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 1668, a bill to amend title VII of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes.

S. 1708

At the request of Mr. MOYNIHAN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1708, a bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to require plans which adopt amendments that significantly reduce future benefit accruals to provide participants with adequate notice of the changes made by such amendments.

S. 1812

At the request of Mr. WARNER, the names of the Senator from Nebraska (Mr. HAGEL), the Senator from New York (Mr. MOYNIHAN), the Senator from Maine (Ms. SNOWE), the Senator from Oregon (Mr. SMITH), and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 1812, a bill to establish a commission on a nuclear testing treaty, and for other purposes.

S. 1823

At the request of Mr. DEWINE, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 1823, a bill to revise and extend the Safe and Drug-Free Schools and Communities Act of 1994.

S. 1900

At the request of Mr. LAUTENBERG, the names of the Senator from Nevada (Mr. REID), the Senator from Wisconsin (Mr. FEINGOLD), and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 1900, a bill to amend the Internal Revenue Code of 1986 to allow a credit to holders of qualified bonds issued by Amtrak, and for other purposes.

S. 1954

At the request of Mr. BINGAMAN, the name of the Senator from Tennessee

(Mr. FRIST) was added as a cosponsor of S. 1954, a bill to establish a compensation program for employees of the Department of Energy, its contractors, subcontractors, and beryllium vendors, who sustained beryllium-related illness due to the performance of their duty; to establish a compensation program for certain workers at the Paducah, Kentucky, gaseous diffusion plant; to establish a pilot program for examining the possible relationship between workplace exposure to radiation and hazardous materials and illnesses or health conditions; and for other purposes.

SENATE CONCURRENT RESOLUTION 53

At the request of Mrs. FEINSTEIN, the name of the Senator from Washington (Mr. GORTON) was added as a cosponsor of Senate Concurrent Resolution 53, a concurrent resolution condemning all prejudice against individuals of Asian and Pacific Island ancestry in the United States and supporting political and civic participation by such individuals throughout the United States.

SENATE RESOLUTION 91

At the request of Mr. NICKLES, his name was added as a cosponsor of Senate Resolution 91, a resolution expressing the sense of the Senate that Jim Thorpe should be recognized as the "Athlete of the Century."

SENATE RESOLUTION 118

At the request of Mr. REID, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of Senate Resolution 118, a resolution designating December 12, 1999, as "National Children's Memorial Day."

SENATE RESOLUTION 128

At the request of Mr. COCHRAN, the names of the Senator from Virginia (Mr. ROBB) and the Senator from Nevada (Mr. REID) were added as cosponsors of Senate Resolution 128, a resolution designating March 2000, as "Arts Education Month."

SENATE CONCURRENT RESOLUTION 76—EXPRESSING THE SENSE OF CONGRESS REGARDING A PEACEFUL RESOLUTION OF THE CONFLICT IN THE STATE OF CHIAPAS, MEXICO AND FOR OTHER PURPOSES

Mr. LEAHY (for himself, Mr. KENNEDY, Mrs. FEINSTEIN, Mr. JEFFORDS, Mr. TORRICELLI, Mrs. MURRAY, Mr. DURBIN, Mr. WELLSTONE, Mr. FEINGOLD, Mr. HARKIN, Mr. KERRY, Ms. MIKULSKI, and Mrs. BOXER) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 76

Whereas the United States and Mexico have a long history of close relations and share a wide range of interests;

Whereas a democratic, peaceful and prosperous Mexico is of vital importance to the security of the United States.

Whereas the United States Government provides assistance and licenses exports of military equipment to Mexican security forces for counter-narcotics purposes;