

contractors; establishing a FOIA hotline service for all Federal agencies; and creating a FOIA Ombudsman to provide FOIA requestors and, federal agencies with a meaningful alternative to costly litigation.

Specifically, the OPEN Government Act will protect the public's right to know, by ensuring that anyone who gathers information to inform the public, including freelance journalists and bloggers, may seek a fee waiver when they request information under FOIA. The bill ensures that Federal agencies will not automatically exclude Internet blogs and other Web-based forms of media when deciding whether to waive FOIA fees. In addition, the bill also clarifies that the definition of news media, for purposes of FOIA fee waivers, includes free newspapers and individuals performing a media function who do not necessarily have a prior history of publication.

The bill also restores meaningful deadlines for agency action, by ensuring that the 20-day statutory clock under FOIA starts when a request is received by the appropriate component of the agency and requiring that agency FOIA offices get FOIA requests to the appropriate agency component within 10 days of the receipt of such requests. To ensure accuracy in FOIA responses, the bill allows federal agencies to toll the 20-day clock while they are awaiting a response to a reasonable request for information from a FOIA requester on one occasion, or while the agency is awaiting clarification regarding a FOIA fee assessment. In addition, to encourage agencies to meet the 20-day time limit the bill requires that an agency refund FOIA search fees—and duplication fees for noncommercial requestors—if it fails to meet the 20-day deadline, except in the case of exceptional circumstances as defined by the FOIA statute.

The bill also addresses a relatively new concern that, under current law, Federal agencies have an incentive to delay compliance with FOIA requests until just before a court decision is made that is favorable to a FOIA requestor. The Supreme Court's decision in *Buckhannon Board and Care Home, Inc. v. West Virginia Dep't of Health and Human Resources*, 532 U.S. 598, 2001, eliminated the "catalyst theory" for attorneys' fees recovery under certain federal civil rights laws. When applied to FOIA cases, *Buckhannon* precludes FOIA requestors from ever being eligible to recover attorneys fees under circumstances where an agency provides the records requested in the litigation just prior to a court decision that would have been favorable to the FOIA requestor. The bill clarifies that *Buckhannon* does not apply to FOIA cases. Under the bill, a FOIA requestor can obtain attorneys' fees when he or she files a lawsuit to obtain records from the Government and the Government releases those records before the court orders them to do so. But, this provision would not allow the re-

quester to recover attorneys' fees if the requester's claim is wholly insubstantial. To address House "pay/go" concerns, the bill also requires that any attorneys' fees assessed under this provision be paid from any annually appropriated agency funds.

To address concerns about the growing costs of FOIA litigation, the bill also creates an Office of Government Information Services in the National Archives and creates an ombudsman to mediate agency-level FOIA disputes. In addition the bill ensures that each federal agency will appoint a Chief FOIA Officer, who will monitor the agency's compliance with FOIA requests, and a FOIA Public Liaison who will be available to resolve FOIA related disputes.

Finally, the bill does several things to enhance the agency reporting and tracking requirements under FOIA. The bill creates a tracking system for FOIA requests to assist members of the public and the media. The bill also establishes a FOIA hotline service for all Federal agencies, either by telephone or on the Internet, to enable requestors to track the status of their FOIA requests. The bill also clarifies that FOIA applies to agency records that are held by outside private contractors, no matter where these records are located.

The Freedom of Information Act is an essential tool to ensure that all Americans can access information about the workings of their government. But, after four decades, this open government law needs to be strengthened. I am pleased that the reforms contained in the OPEN Government Act will ensure that FOIA is reinvigorated—so that it works more effectively for the American people.

Again, I commend Senators CORNYN and KYL and the many other cosponsors of this legislation for their dedication to open government. But, most importantly, I especially want to thank the many concerned citizens who, knowing the importance of this measure to the American people's right to know, have demanded action on this bill. This bill is endorsed by more than 115 business, public interest, and news organizations from across the political and ideological spectrum, including the American Library Association, the U.S. Chamber of Commerce, OpenTheGovernment.org, Public Citizen, the Republican Liberty Caucus, the Sunshine in Government Initiative and the Vermont Press Association. The invaluable support of these and many other organizations is what led the opponents of this bill to come around and support this legislation.

By passing this important FOIA reform legislation, the Senate has reaffirmed the principle that open government is not a Democratic issue or a Republican issue. But, rather, it is an American issue and an American value. I strongly encourage the House of Representatives, which overwhelmingly passed a similar measure earlier this year, to promptly take up and enact this bill before adjourning for the year.

## RELATIVE TO THE HANGING OF NOOSES FOR THE PURPOSE OF INTIMIDATION

Mr. REID. Madam President, I ask unanimous consent that the Senate proceed to Calendar No. 543, S. Res. 396.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 396) expressing the sense of the Senate that the hanging of nooses for the purpose of intimidation should be thoroughly investigated by Federal, State, and local law enforcement authorities and that any criminal violations should be vigorously prosecuted.

There being no objection, the Senate proceeded to consider the resolution which had been reported from the Committee on the Judiciary with an amendment and an amendment to the preamble and an amendment to the title, as follows:

[Strike out all after the resolving clause and insert the part printed in italic.]

[Strike the preamble and insert the part printed in italic.]

S. RES. 396

[Whereas, in the fall of 2007, nooses have been found hanging in or near a high school in North Carolina, a Home Depot store in New Jersey, a school playground in Louisiana, the campus of the University of Maryland, a factory in Houston, Texas, and on the door of a professor's office at Columbia University;

[Whereas the Southern Poverty Law Center has recorded between 40 and 50 suspected hate crimes involving nooses since September 2007;

[Whereas, since 2001, the Equal Employment Opportunity Commission has filed more than 30 lawsuits that involve the displaying of nooses in places of employment;

[Whereas nooses are reviled by many Americans as symbols of racism and of lynchings that were once all too common;

[Whereas, according to Tuskegee Institute, more than 4,700 people were lynched between 1882 and 1959 in a campaign of terror led by the Ku Klux Klan;

[Whereas the number of victims killed by lynching in the history of the United States exceeds the number of people killed in the horrible attack on Pearl Harbor (2,333 dead) and Hurricane Katrina (1,836 dead) combined; and

[Whereas African-Americans, as well as Italian, Jewish, and Mexican-Americans, have comprised the vast majority of lynching victims, and only when we erase the terrible symbols of the past can we finally begin to move forward on issues of race in the United States: Now, therefore, be it]

*Whereas, in the fall of 2007, nooses have been found hanging in or near a high school in North Carolina, a Home Depot store in New Jersey, a school playground in Louisiana, the campus of the University of Maryland, a factory in Houston, Texas, and on the door of a professor's office at Columbia University;*

*Whereas the Southern Poverty Law Center has recorded between 40 and 50 suspected hate crimes involving nooses since September 2007;*

*Whereas, since 2001, the Equal Employment Opportunity Commission has filed more than 30 lawsuits that involve the displaying of nooses in places of employment;*

*Whereas nooses are reviled by many Americans as symbols of racism and of lynchings that were once all too common;*

*Whereas, according to Tuskegee Institute, more than 4,700 people were lynched between*

1882 and 1959 in a campaign of terror led by the Ku Klux Klan;

Whereas the number of victims killed by lynching in the history of the United States exceeds the number of people killed in the horrible attack on Pearl Harbor (2,333 dead) and Hurricane Katrina (1,836 dead) combined; and

Whereas African-Americans, as well as Italian, Jewish, and Mexican-Americans, have comprised the vast majority of lynching victims, and, by erasing the terrible symbols of the past, we can continue to move forward on issues of race in the United States: Now, therefore, be it

Resolved, [That it is the sense of the Senate that—

[(1) the hanging of nooses is a reprehensible act when used for the purpose of intimidation and, under certain circumstances, can be criminal;

[(2) the hanging of nooses for the purpose of intimidation should be investigated thoroughly by Federal, State, and local law enforcement; and

[(3) any criminal violations involving the hanging of nooses should be vigorously prosecuted.]

That it is the sense of the Senate that—

(1) the hanging of nooses is a reprehensible act when used for the purpose of intimidation and, under certain circumstances, can be criminal;

(2) incidents involving the hanging of a noose should be investigated thoroughly by Federal, State, and local law enforcement, and all private entities and individuals should be encouraged to cooperate with any such investigation; and

(3) any criminal violations involving the hanging of nooses should be vigorously prosecuted.

Mr. REID. Madam President, I ask unanimous consent that the committee-reported amendment be considered and agreed to; that the resolution, as amended, be agreed to; that the amendment to the preamble be agreed to; that the title amendment be agreed to; that the motion to reconsider be laid upon the table en bloc; and that any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

The resolution (S. Res. 396), as amended, was agreed to.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The resolution, with its preamble, reads as follows:

(The resolution will be printed in a future edition of the RECORD.)

The title amendment was agreed to, as follows:

“Expressing the sense of the Senate that the hanging of nooses should be thoroughly investigated by Federal, State, and local law enforcement authorities and that any criminal violations should be vigorously prosecuted.”.

#### WOUNDED WARRIOR BONUS EQUITY ACT

Mr. REID. Madam President, I ask unanimous consent that the Committee on Armed Services be dis-

charged from further consideration of S. 2400.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2400) to amend title 37, United States Code, to require the Secretary of Defense to continue to pay a member of the Armed Forces who is retired or separated from the Armed Forces due to combat-related injury certain bonuses that the member was entitled to before the retirement or separation and would continue to be entitled to if the member was not retired or separated, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Madam President, I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2400) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2400

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 “Wounded Warrior Bonus Equity Act”.

#### SEC. 2. CONTINUATION OF CERTAIN BONUS PAYMENTS TO MEMBERS OF THE ARMED FORCES RETIRED OR SEPARATED DUE TO A COMBAT-RELATED INJURY.

(a) PAYMENT REQUIRED.—

(1) IN GENERAL.—Chapter 17 of title 37, United States Code, is amended by inserting after section 903 the following new section:

#### “§904. Continued payment of bonuses to members retired or separated due to combat-related injuries

“(a) PAYMENT REQUIRED.—In the case of a member of the armed forces who is retired or separated for disability under chapter 61 of title 10, due to a combat-related injury, the Secretary of Defense shall require the continued payment to the member of any bonus described in subsection (b) that the member—

“(1) was entitled to immediately before the retirement or separation of the member; and

“(2) would continue to be entitled to if the member was not retired or separated.

“(b) COVERED BONUSES.—The bonuses referred to in subsection (a) are the following (numbers refer to the corresponding section in chapter 5 of this title):

“(1) 301b. Special pay for aviation career officers extending period of active duty.

“(2) 301d. Multiyear retention bonus for medical officers of the armed forces.

“(3) 301e. Multiyear retention bonus for dental officers of the armed forces.

“(4) 302d. Accession bonus for registered nurses.

“(5) 302h. Accession bonus for dental officers.

“(6) 302j. Accession bonus for pharmacy officers.

“(7) 302k. Accession bonus for medical officers in critically short wartime specialties.

“(8) 302l. Accession bonus for dental specialist officers in critically short wartime specialties.

“(9) 308. Reenlistment bonus.

“(10) 308b. Reenlistment bonus for members of the Selected Reserve.

“(11) 308c. Bonus for affiliation or enlistment in the Selected Reserve.

“(12) 308g. Bonus for enlistment in elements of the Ready Reserve other than the Selected Reserve.

“(13) 308h. Bonus for reenlistment, or voluntary extension of enlistment in elements of the Ready Reserve other than the Selected Reserve.

“(14) 308i. Prior service enlistment bonus.

“(15) 308j. Affiliation bonus for officers in the Selected Reserve.

“(16) 309. Enlistment bonus.

“(17) 312. Special pay for nuclear-qualified officers extending period of active duty.

“(18) 312b. Nuclear career accession bonus.

“(19) 312c. Nuclear career annual incentive bonus.

“(20) 315. Engineering and scientific career continuation pay.

“(21) 316. Bonus for members with foreign language proficiency.

“(22) 317. Special pay for officers in critical acquisition positions extending period of active duty.

“(23) 318. Special pay for special warfare officers extending period of active duty.

“(24) 319. Surface warfare officer continuation pay.

“(25) 321. Judge advocate continuation pay.

“(26) 322. 15-year career status bonus for members entering service on or after August 1, 1986.

“(27) 323. Retention incentives for members qualified in critical military skills or assigned to high priority units.

“(28) 324. Accession bonus for new officers in critical skills.

“(29) 326. Incentive bonus for conversion to military occupational specialty to ease personnel shortage.

“(30) 327. Incentive bonus for transfer between armed forces.

“(31) 329. Incentive bonus for retired members and reserve component members volunteering for high-demand, low-density assignments.

“(32) 330. Accession bonus for officer candidates.

“(c) TIME FOR PAYMENT.—A bonus required to be paid to a member under this section shall be paid to the member in a lump sum not later than 90 days after the date of the retirement or separation of the member, notwithstanding any terms to the contrary in the agreement under which the bonus was originally authorized.

“(d) COMBAT-RELATED INJURY DEFINED.—In this section, the term ‘combat-related injury’ means an injury—

“(1) for which the member was awarded the Purple Heart; or

“(2) that was incurred (as determined under criteria prescribed by the Secretary of Defense)—

“(A) as a direct result of armed conflict;

“(B) while engaged in hazardous service;

“(C) in the performance of duty under conditions simulating war; or

“(D) through an instrumentality of war.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 of such title is amended by inserting after the item relating to section 903 the following new item:

“904. Continued payment of bonuses to members retired or separated due to combat-related injuries.”.

(b) CESSATION OF COLLECTION OF PREVIOUSLY PAID BONUSES.—Effective as of the date of the enactment, any collection of bonuses described in subsection (b) of section 904 of title 37, United States Code (as added by subsection (a) of this section), that were paid before the date of the enactment of this Act to members of the Armed Forces retired or separated under chapter 61 of title 10,