

AMENDMENT NO. 2616

At the request of Mr. LIEBERMAN, the names of the Senator from Utah (Mr. HATCH) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of amendment No. 2616 proposed to H.R. 3326, a bill making appropriations for the Department of Defense for the fiscal year ending September 30, 2010, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HARKIN (for himself, Mr. LEAHY, Mr. DURBIN, Mr. SPENCER, Mr. KOHL, Mr. SCHUMER, Mr. FRANKEN, Mr. SANDERS, Mr. BROWN, Mr. CARDIN, Mr. MERKLEY, Mrs. FEINSTEIN, Mr. DODD, Mrs. BOXER, Mr. LAUTENBERG, Mr. KAUFMAN, and Mr. NELSON of Florida):

S. 1756. A bill to amend the Age Discrimination in Employment Act of 1967 to clarify the appropriate standard of proof; to the Committee on Health, Education, Labor, and Pensions.

Mr. LEAHY. Mr. President, today, I am pleased to join Senator HARKIN and other Senators to introduce the Protecting Older Workers Against Discrimination Act. This legislation overturns the Supreme Court's recent decision in *Gross v. FBL Financial Services*, a divided case that thwarted congressional intent, overturned well-established precedent, and delivered a major blow to the ability of older workers to fight age discrimination. This bill restores the intent of Congress to fully empower older workers to seek redress in the courts, and to root out discrimination in the workplace.

I thank Senator HARKIN for introducing this bill, and I commend him for his commitment and dedication over the years to ensure that the promise of equal opportunity is real for all Americans. We worked hard last year to enact into law the ADA Amendments Act, which clarified and expanded protections for Americans with disabilities. I am proud to once again join as an original cosponsor of legislation that will do the same for older workers. I am also pleased that Congressman GEORGE MILLER will introduce a companion bill in the House today as well.

This Nation was founded on the promise of equal rights and equal opportunity for all Americans. To fulfill this promise, Congress has enacted a full slate of civil rights laws to eliminate discrimination in society, including the workplace. In 1967, Congress passed the Age Discrimination and Employment Act, ADEA, with the intent to extend protections against workplace discrimination to older workers. We strengthened those protections in the Civil Rights Act of 1991, which the Senate passed by a vote of 93 to 5.

Last month, Senators from both sides of the aisle joined together to celebrate the life and accomplishments of

Senator Ted Kennedy, whose legacy includes authoring and shepherding these civil rights measures into law. As Senator Kennedy said, "It has long been clear that effective enforcement of civil rights and fair labor practices is possible only if individuals themselves are able to seek relief in court."

However, contrary to the intent of Congress, the Supreme Court's decision in *Gross* will make it more difficult for older workers victimized by age discrimination to seek relief in court, and more difficult for those victims who actually get their day in court to vindicate their rights.

In passing the ADEA, Congress aimed to eliminate all forms of age discrimination in the workplace. Consistent with this goal, courts have for decades interpreted the ADEA to lessen the burdens on older workers victimized by discrimination. Victims of age discrimination were only required to show that age was a "motivating factor" for an employer's adverse action, though other factors may have also motivated a company's firing or termination of an employee.

In *Gross*, however, the Supreme Court misinterpreted the intent of Congress and ignored the longstanding precedent in a way that resulted in weakening core civil rights protections for older workers. In a 5-4 decision, a majority of the Court concluded that under the ADEA an employee must now prove that age was the sole cause of an employer's adverse action. As a result, despite our intent to provide the same protections for older workers in the ADEA as we provided for racial minorities in Title VII of the Civil Rights Act of 1964, today older workers now have less protection against workplace discrimination.

I am concerned that the *Gross* decision will allow employers to discriminate on the basis of age with impunity as long as it is paired with other reasons. Older workers, who make up nearly 50 percent of the American workforce, are particularly vulnerable to suffering discrimination during difficult economic times. In fact, age discrimination complaints filed with the Equal Employment Opportunity Commission jumped nearly 30 percent between 2007 and 2008. I fear that in the wake of *Gross* few, if any, of these victims will attain justice.

The Protecting Older Workers Against Discrimination Act, which is modeled on the Civil Rights Act of 1991, would reverse the *Gross* decision, strengthen the safeguards of the ADEA, and restore fundamental fairness. The bill eliminates the high burden of proof that victims of age discrimination must meet after *Gross*. It clarifies that the standard for proving discrimination under the ADEA and other anti-discrimination and anti-retaliation laws is the same as the standard for proving race discrimination under Title VII. The bill makes clear that when a litigant shows that age was a motivating factor for an adverse

employment action, the burden is on the employer to prove it complied with the law. This bill restores the law to what it was for decades before the Court rewrote the rule.

The bill also ensures that all workers will be treated equally in the workplace. Today, some lower courts have already applied *Gross* to weaken the protections in other anti-discrimination statutes. The legislation clarifies that the "motivating factor" standard applies to all anti-discrimination and anti-retaliation laws, and reflects a broader commitment to address the needs of all persons who suffer discrimination. It reaffirms that Americans' rights will be honored. It also restores the faith of the public that our civil rights laws are just and fair. Those are timeless American values that we can all embrace.

We have drafted this measure after long and thoughtful consideration with the Leadership Conference on Civil Rights, a broad coalition of hundreds of civil rights and workers' rights organizations. The bill also has the support of AARP, the National Senior Citizens Law Center, the National Women's Law Center and the National Employment Lawyers Association. Their support gives me confidence that this legislation will improve the lives of all Americans.

Time has shown that the ADEA has been one of our Nation's most effective tools in combating discrimination. Its continued effectiveness is important to ensure that the great progress we have made in widening the doors of opportunity for all Americans continues in the future. The Protecting Older Workers Against Discrimination Act will restore vital protections that have long secured the promise of equal rights and equal opportunity for older workers. I hope all Senators will support passing this critical civil rights measure this year.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 303—EX-PRESSING THE SENSE OF THE SENATE THAT OCTOBER 17, 1984, THE DATE OF THE RESTORATION BY THE FEDERAL GOVERNMENT OF FEDERAL RECOGNITION TO THE CONFEDERATED TRIBES OF COOS, LOWER UMPQUA, AND SIUSLAW INDIANS, SHOULD BE MEMORIALIZED

Mr. WYDEN (for himself and Mr. MERKLEY) submitted the following resolution; which was referred to the Committee on Indian Affairs:

S. RES. 303

Whereas the Coos, Lower Umpqua, and Siuslaw Restoration Act (25 U.S.C. 714 et seq.), which was signed by President Ronald Reagan on October 17, 1984, restored Federal recognition to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians;

Whereas the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians historically inhabited land now in the State of Oregon, from Fivemile Point in the south to

Tenmile Creek in the north, west to the Pacific Ocean, then east to the crest of the Coast Range, encompassing the watersheds of the Coos River, the Umpqua River to Weatherly Creek, the Siuslaw River, the coastal tributaries between Tenmile Creek and Fivemile Point, and portions of the Coquille watershed;

Whereas in addition to restoring Federal recognition, the Coos, Lower Umpqua, and Siuslaw Restoration Act and other Federal Indian statutes have provided the means for the Confederated Tribes to achieve the goals of cultural restoration, economic self-sufficiency, and the attainment of a standard of living equivalent to that enjoyed by other citizens of the United States;

Whereas by enacting the Coos, Lower Umpqua, and Siuslaw Restoration Act, the Federated Tribes of Coos, Lower Umpqua, and Siuslaw Indians were eligible for all Federal services and benefits provided to federally recognized tribes, provided the means to establish a tribal reservation, and granted the Confederated Tribes self-government for the betterment of tribal members, including the ability to set tribal rolls;

Whereas the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians have embraced Federal recognition and self-sufficiency statutes and are actively working to better the lives of tribal members; and

Whereas economic self-sufficiency, which was the goal of restoring Federal recognition for the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, is being realized through many projects: Now, therefore, be it

Resolved, That it is the sense of the Senate that October 17, 1984, should be memorialized as the date on which the Federal Government restored Federal recognition to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians.

SENATE RESOLUTION 304—COMMEMORATING THE CANONIZATION OF FATHER DAMIEN DE VEUSTER, SS.CC. TO SAINTHOOD

Mr. INOUE (for himself and Mr. AKAKA) submitted the following resolution; which was considered and agreed to:

S. RES. 304

Whereas Father Damien de Veuster, SS.CC. was born Joseph de Veuster in Tremelo, Belgium, on January 3, 1840, and in 1859, at age 19, he entered the Congregation of the Sacred Hearts of Jesus and Mary in Louvain and selected Damien as his religious name;

Whereas in 1863, Father Damien received permission to replace his ill brother, and sailed to the Hawaiian Islands to perform missionary work;

Whereas Father Damien arrived in Honolulu, Hawaii on March 19, 1864, was ordained to the priesthood at the Cathedral of Our Lady of Peace on May 21, 1864, and began his pastoral ministry on the island of Hawaii;

Whereas the Hawaiian Government deported individuals infected with Hansen's disease, also known as leprosy, to a peninsula on the island of Molokai, to prevent further spread of the disease, and Bishop Louis Maigret, SS.CC. sought the help of Father Damien and other priests to provide spiritual assistance for the sufferers of Hansen's disease;

Whereas several priests volunteered to work on Molokai for a few months, but Father Damien requested to remain permanently with the individuals suffering from Hansen's disease, and was among the first to leave for the island of Molokai on May 10, 1873;

Whereas for 16 years, Father Damien served as a voice of hope and a source of consolation and encouragement for the individuals afflicted with Hansen's disease, accomplishing remarkable achievements, including building houses and hospitals, taking care of the patients' spiritual and physical needs, building 6 chapels, constructing a home for boys and a home for girls, and burying the hundreds who died during his years on the island of Molokai;

Whereas Father Damien died on April 15, 1889, after contracting Hansen's disease, and his remains were transferred to Belgium in 1936, where he was interred in the crypt of the church of the Congregation of the Sacred Hearts at Louvain;

Whereas in 1938, the process for beatification for Father Damien was introduced at Malines, Belgium;

Whereas on April 15, 1969, a statue of Father Damien and a statue of King Kamehameha I, gifts from the State of Hawaii, were unveiled at the Capitol Rotunda;

Whereas on July 7, 1977, Pope Paul VI declared Father Damien "venerable", the first of 3 steps that lead to sainthood;

Whereas on June 4, 1995, Pope John Paul II declared Father Damien "Blessed Damien", and his feast is on May 10, the day Father Damien first entered the island of Molokai; and

Whereas Father Damien will be canonized a saint on October 11, 2009, by Pope Benedict XVI: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the canonization of Father Damien to sainthood; and

(2) honors and praises Father Damien for his legacy, work, and service to the Hansen's disease colony on the island of Molokai.

SENATE RESOLUTION 305—EXPRESSING SUPPORT FOR THE VICTIMS OF THE NATURAL DISASTERS IN INDONESIA, SAMOA, AMERICAN SAMOA, TONGA, VIETNAM, CAMBODIA, AND THE PHILIPPINES

Mrs. FEINSTEIN (for herself, Mr. KERRY, and Mr. LUGAR) submitted the following resolution; which was considered and agreed to:

S. RES. 305

Whereas on September 30, 2009, an earthquake measuring 7.6 on the Richter Scale hit Padang, a city of nearly 1,000,000 people on the Indonesian island of Sumatra;

Whereas on October 1, 2009, another earthquake measuring 6.6 on the Richter Scale struck south of Padang;

Whereas the earthquakes have destroyed hundreds of homes, businesses, schools, hospitals, and hotels;

Whereas John Holmes, the United Nations Under-Secretary-General and Emergency Relief Coordinator, has estimated that more than 1,100 people have lost their lives due to the earthquakes;

Whereas the United States has responded to this tragedy by providing \$300,000 in aid, sending a disaster relief team to the area, and setting aside an additional \$3,000,000 in assistance;

Whereas on September 29, 2009, following an earthquake measuring 8.3 on the Richter Scale, a tsunami hit Samoa, American Samoa, and Tonga, killing 177 people and affecting approximately 30,000 people;

Whereas the United States has sent a 245-member disaster response team to American Samoa, as well as 20,000 meals, 13,000 liters of water, and 800 tents that have been provided by the Federal Emergency Management Agency;

Whereas on September 26, 2009, Typhoon Ketsana hit Manila, Philippines, resulting in the worst flooding in 4 decades and leaving the homes of approximately 2,000,000 people under water;

Whereas approximately 700,000 people in the Philippines have sought shelter in emergency relief centers;

Whereas 246 people have died as a result of the flooding, with the number of dead expected to rise;

Whereas the Government of the Philippines has estimated that the typhoon has caused at least \$100,000,000 in damage;

Whereas on September 29, 2009, Typhoon Ketsana hit Vietnam, killing more than 100 people, damaging more than 170,000 homes and forcing 350,000 people to evacuate, and resulting in approximately \$168,000,000 in damage; and

Whereas 11 lives were lost in Cambodia due to Typhoon Ketsana: Now, therefore, be it

Resolved, That the Senate—

(1) mourns the loss of life resulting from the earthquakes in Indonesia, the tsunami in Samoa, American Samoa, and Tonga, and Typhoon Ketsana in the Philippines, Vietnam, and Cambodia;

(2) expresses its deepest condolences to the families of the victims of these tragedies;

(3) expresses its sympathies to the survivors who are still suffering in the aftermath of these natural disasters;

(4) supports the efforts already provided by the United States Government, relief agencies, and private citizens; and

(5) urges the United States Government and the internal community to provide additional humanitarian assistance to aid the survivors of these natural disasters and support reconstruction efforts.

SENATE RESOLUTION 306—DESIGNATING THE WEEK OF OCTOBER 18 THROUGH OCTOBER 24, 2009, AS "NATIONAL CHILDHOOD LEAD POISONING PREVENTION WEEK"

Mr. REED (for himself, Ms. COLLINS, Mr. KERRY, Mr. CARDIN, Mr. WHITEHOUSE, Mr. DODD, Mr. COCHRAN, Mr. ISAKSON, Mr. BROWN, Mr. NELSON of Nebraska, Mrs. BOXER, and Mr. JOHANNIS) submitted the following resolution; which was considered and agreed to:

S. RES. 306

Whereas lead poisoning is one of the leading environmental health hazards facing children in the United States;

Whereas approximately 240,000 children in the United States under the age of 6 have harmful levels of lead in their blood;

Whereas lead poisoning may cause serious, long-term harm to children, including reduced intelligence and attention span, behavior problems, learning disabilities, and impaired growth;

Whereas children from low-income families are significantly more likely to be poisoned by lead than are children from high-income families;

Whereas children may be poisoned by lead in water, soil, housing, or consumable products;

Whereas children most often are poisoned in their homes through exposure to lead particles when lead-based paint deteriorates or is disturbed during home renovation and repainting; and

Whereas lead poisoning crosses all barriers of race, income, and geography: Now, therefore, be it

Resolved, That the Senate—