

the discovery of, or access to, such information reasonably could be expected to cause.

“(d) STANDARD FOR DISCOVERY OF OR ACCESS TO CLASSIFIED INFORMATION.—Upon the submission of a declaration of the Attorney General under subsection (c), the court may not authorize the defendant’s discovery of, or access to, classified information, or to the substitution submitted by the United States, which the United States seeks to restrict, delete, or withhold, or otherwise obtain relief with respect to, unless the court first determines that such classified information or such substitution would be—

“(1) noncumulative, relevant, and helpful to—

“(A) a legally cognizable defense;

“(B) rebuttal of the prosecution’s case; or

“(C) sentencing; or

“(2) noncumulative and essential to a fair determination of a pretrial proceeding.

“(e) SECURITY CLEARANCE.—Whenever a court determines that the standard for discovery of or access to classified information by the defendant has been met under subsection (d), such discovery or access may only take place after the person to whom discovery or access will be granted has received the necessary security clearances to receive the classified information, and if the classified information has been designated as sensitive compartmented information or special access program information, any additional required authorizations to receive the classified information.”.

#### SEC. 5. NOTICE OF DEFENDANT’S INTENTION TO DISCLOSE CLASSIFIED INFORMATION.

Section 5 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in the section heading, by inserting “USE OR” before “DISCLOSURE”;

(2) in subsection (a)—

(A) in the first sentence—

(i) by inserting “use or” before “disclose”;

(ii) by striking “thirty days prior to trial” and inserting “45 days prior to such proceeding”;

(B) in the second sentence by striking “brief” and inserting “specific”;

(C) in the third sentence—

(i) by inserting “use or” before “disclose”;

(ii) by striking “brief” and inserting “specific”;

(D) in the fourth sentence—

(i) by inserting “use or” before “disclose”;

(ii) by inserting “reasonably” before “believed”;

(3) in subsection (b), by inserting “the use or” before “disclosure”.

#### SEC. 6. PROCEDURE FOR CASES INVOLVING CLASSIFIED INFORMATION.

Section 6 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in subsection (a)—

(A) in the second sentence, by striking “such a hearing.” and inserting “a hearing and shall make all such determinations prior to proceeding under any alternative procedure set out in subsection (d).”;

(B) in the third sentence, by striking “petition” and inserting “request”;

(2) in subsection (b)(2) by striking “trial” and inserting “the trial or pretrial proceeding”;

(3) by redesignating subsections (c), (d), (e), and (f), as subsections (d), (e), (f), and (g), respectively;

(4) by inserting after subsection (b) the following:

“(c) STANDARD FOR ADMISSIBILITY, USE AND DISCLOSURE AT TRIAL.—Classified information which is the subject of a notice by the

United States pursuant to subsection (b) is not admissible at trial and subject to the alternative procedures set out in subsection (d), unless a court first determines that such information is noncumulative, relevant, and necessary to an element of the offense or a legally cognizable defense, and is otherwise admissible in evidence. Classified information may not be used or disclosed at trial by the defendant unless a court first determines that exclusion of the classified information from such use or disclosure would deprive the defendant of a fair trial or violate the defendant’s right to due process.”;

(5) in subsection (d), as so redesignated—

(A) in the subsection heading, by inserting “USE OR” before “DISCLOSURE”;

(B) in paragraph (1), by inserting “use or” before “disclosure” both places that term appears;

(C) in the flush paragraph following paragraph (1)(B), by inserting “use or” before “disclosure”;

(D) in paragraph (2)—

(i) by striking “an affidavit of” and inserting “a declaration by”;

(ii) by striking “such affidavit” and inserting “such declaration”;

(iii) by inserting “the use or” before “disclosure”;

(6) in subsection (e), as so redesignated, in the first sentence, by striking “disclosed or elicited” and inserting “used or disclosed”;

(7) in subsection (f), as so redesignated—

(A) in the subsection heading, by inserting “USE OR” before “DISCLOSURE” both places that term appears;

(B) in paragraph (1)—

(i) by striking “(c)” and inserting “(d)”;

(ii) by striking “an affidavit of” and inserting “a declaration by”;

(iii) by inserting “the use or” before “disclosure”;

(iv) by striking “disclose” and inserting “use, disclose,”;

(C) in paragraph (2), by striking “disclosing” and inserting “using, disclosing,”;

(8) in the first sentence of subsection (g), as so redesignated—

(A) by inserting “used or” before “disclosed”;

(B) by inserting “or disclose” before “to rebut the”.

#### SEC. 7. INTERLOCUTORY APPEAL.

Section 7(a) of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) by striking “disclosure of” both times that places that term appears and inserting “use, disclosure, discovery of, or access to”;

(2) by adding at the end the following:

“The right of the United States to appeal pursuant to this Act applies without regard to whether the order or ruling appealed from was entered under this Act, another provision of law, a rule, or otherwise. Any such appeal may embrace any preceding order, ruling, or reasoning constituting the basis of the order or ruling that would authorize such use, disclosure, or access. Whenever practicable, appeals pursuant to this section shall be consolidated to expedite the proceedings.”.

#### SEC. 8. INTRODUCTION OF CLASSIFIED INFORMATION.

Section 8 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(1) in subsection (b), by adding at the end “The court may fashion alternative procedures in order to prevent such unnecessary disclosure, provided that such alternative procedures do not deprive the defendant of a

fair trial or violate the defendant’s due process rights.”; and

(2) by adding at the end the following:

“(d) ADMISSION OF EVIDENCE.—(1) No classified information offered by the United States and admitted into evidence shall be presented to the jury unless such evidence is provided to the defendant.

“(2) Any classified information admitted into evidence shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.”.

#### SEC. 9. APPLICATION TO PROCEEDINGS.

The amendments made by this Act shall take effect on the date of the enactment of this Act and shall apply to any prosecution pending in any United States district court.

### AMENDMENTS SUBMITTED AND PROPOSED

SA 4892. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table.

SA 4893. Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4894. Mr. ALEXANDER submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4895. Mr. WICKER (for himself and Mr. KYL) submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4896. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4897. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4898. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4899. Mr. ENSIGN submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4900. Mr. MCCAIN (for himself and Mr. CORKER) submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4901. Mr. DEMINT submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4902. Mr. DEMINT submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4903. Mr. DEMINT submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4904. Mr. CORKER submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra.

SA 4905. Mr. CORKER submitted an amendment intended to be proposed by him to

Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4906. Mr. CORKER submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4907. Mr. BARRASSO submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4908. Mr. LEMIEUX submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4909. Mr. THUNE (for himself and Mr. WICKER) submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4910. Mr. DEMINT submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4911. Mr. DEMINT submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4912. Mr. KIRK submitted an amendment intended to be proposed to amendment SA 4900 submitted by Mr. MCCAIN (for himself and Mr. CORKER) and intended to be proposed to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4913. Mr. LIEBERMAN (for himself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, supra; which was ordered to lie on the table.

SA 4914. Mr. REID (for Mr. KERRY (for himself and Ms. SNOWE)) proposed an amendment to the bill H.R. 81, to amend the High Seas Driftnet Fishing Moratorium Protection Act and the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of sharks.

SA 4915. Mr. KERRY (for Mr. SCHUMER (for himself, Ms. COLLINS, Mrs. GILLIBRAND, and Mr. CONRAD)) proposed an amendment to the bill H.R. 4748, to amend the Office of National Drug Control Policy Reauthorization Act of 2006 to require a northern border counternarcotics strategy, and for other purposes.

SA 4916. Mr. LIEBERMAN (for Mr. KERRY (for himself and Ms. COLLINS)) proposed an amendment to the bill H.R. 1746, to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to reauthorize the pre-disaster mitigation program of the Federal Emergency Management Agency.

#### TEXT OF AMENDMENTS

**SA 4892.** Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

At the end of condition (9) of subsection (a), of the Resolution of Ratification add the following new subparagraph:

(C) Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that—

(i) the President will submit on an annual basis the report required under section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84);

(ii) each such report will include, in addition to the elements required under subsection (a)(2) of such section—

(I) a detailed description of the plan to modernize and maintain the delivery platforms for nuclear weapons; and

(II) a detailed description of the steps taken to implement the plan submitted in the previous year;

(iii) in preparing each report, the President will consult with the Secretary of Defense and with the Secretary of Energy, who will consult with the directors of the nuclear weapons enterprise facilities and laboratories, including the Pantex Plant, the Nevada National Security Site, the Kansas City Plant, the Savannah River Site, Y-12 National Security Complex, Lawrence Livermore National Laboratory, Sandia National Laboratories, and Los Alamos National Laboratory on the implementation of and funding for the plans outlined under subparagraphs (A) and (B) of subsection (a)(2) of such section;

(iv) the written judgments received from the directors of the national nuclear weapons enterprise facilities and laboratories pursuant to clause (iii) will be included, unchanged, together with each report submitted under clause (i).

At the end of subsection (a), add the following:

(11) STRATEGIC NUCLEAR DELIVERY VEHICLES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the President intends to—

(A) modernize or replace the triad of strategic nuclear delivery systems: a heavy bomber and air-launched cruise missile, an ICBM, and an SSBN and SLBM; and

(B) maintain the United States rocket motor industrial base.

(12) DESIGN AND FUNDING OF CERTAIN FACILITIES.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the President intends to—

(A) accelerate the design and engineering phase of the Chemistry and Metallurgy Research Replacement (CMRR) building and the Uranium Processing Facility (UPF); and

(B) request full funding for the Chemistry and Metallurgy Research Replacement building and the Uranium Processing Facility upon completion of the design and engineering phase for such facilities.

At the end of subsection (b), add the following:

(4) MODERNIZATION.—It is the understanding of the United States that failure to fund the nuclear modernization plan would constitute a basis for United States withdrawal from the New START Treaty.

At the end of subsection (c), add the following:

(14) MODERNIZATION OF WARHEADS.—It is the sense of the Senate that modernization of warheads must be undertaken on a case-by-case basis using the full spectrum of life extension options available based on the best technical advice of the United States military and the national nuclear weapons laboratories.

**SA 4893.** Mr. KYL submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010,

with Protocol; which was ordered to lie on the table; as follows:

At the end of subsection (a) of the Resolution of Ratification, add the following:

(11) COVERS.—Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the President has reached an agreement with the Government of the Russian Federation on the non-use of covers by the Russian Federation that tend to interfere with Type One inspections and accurate warhead counting.

(12) TELEMETRY.—Prior to entry into force of the New START Treaty, the President shall certify to the Senate that the United States has reached a legally-binding agreement with the Russian Federation that each party to the Treaty is obliged to provide the other full and unimpeded access to its telemetry from all flight-test of strategic missiles limited by the Treaty;

(13) TELEMETRIC EXCHANGES ON BALLISTIC MISSILES DEPLOYED BY THE RUSSIAN FEDERATION.—Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that the Russian Federation has agreed that it will not deny telemetric exchanges on new ballistic missile systems it deploys during the duration of the Treaty.

At the end of subsection (b), add the following:

(4) TYPE ONE INSPECTIONS.—The United States would consider as a violation of the deployed warhead limit in section 1(b) of Article II of the Treaty and as a material breach of the Treaty either of the following actions:

(A) Any Type One inspection that revealed the Russian Federation had deployed a number of warheads on any one missile in excess of the number they declared for that missile.

(B) Any action by the Russian Federation that impedes the ability of the United States to determine the number of warheads deployed on any one missile prior to or during a Type One inspection.

**SA 4894.** Mr. ALEXANDER submitted an amendment intended to be proposed by him to Treaty Doc. 111-5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol; which was ordered to lie on the table; as follows:

In subsection (a) of the Resolution of Ratification, add at the end of paragraph (9) the following:

“(C) Prior to the entry into force of the New START Treaty, the President shall certify to the Senate that—

“(i) the President will submit on an annual basis the report required under section 1251 of the National Defense Authorization Act for Fiscal Year 2010 (Public Law 111-84);

“(ii) each such report will include, in addition to the elements required under subsection (a)(2) of such section —

“(I) a detailed description of the plan to modernize and maintain the delivery platforms for nuclear weapons; and

“(II) a detailed description of the steps taken to implement the plan submitted in the previous year;

“(iii) in preparing each report, the President will consult with the Secretary of Defense and with the Secretary of Energy, who