

legislative history because the CVRA “is unambiguous.” Response of the United States, *In re Antrobus*, No. 08–4002, at 12 n.7 (10th Cir. Feb. 12, 2008).

At the time that the Justice Department filed this brief, no Court of Appeals agreed with the Tenth Circuit. At the time, three other Circuits had all issued unanimous rulings that crime victims were entitled to regular appellate review. See *In re W.R. Huff Asset Mgmt. Co.*, 409 F.3d 555, 562 (2d Cir. 2005); *Kenna v. U.S. Dist. Ct. for the Cent. Dist. of Ca.*, 435 F.3d 1011, 1017 (9th Cir. 2006); *In re Walsh*, 229 Fed.Appx. 58, at 60 (3rd Cir. 2007).

My next question for you is, given that the Justice Department has an obligation to use its “best efforts,” 18 U.S.C. §3771(c)(1), to afford crime victims their rights, how could the Department argue in *Antrobus* (and later cases) that the CVRA “unambiguously” denied crime victims regular appellate protections of their rights when three circuits had reached the opposite conclusion?

GOVERNMENT’S RIGHT TO ASSERT ERROR
DENIAL OF VICTIMS’ RIGHTS

To further bolster protection of crime victims’ rights, Congress also included an additional provision in the CVRA—§3771(d)(4)—allowing the Justice Department to obtain review of crime victims’ rights issues in appeals filed by defendants: “In any appeal in a criminal case, the Government may assert as error the district court’s denial of any crime victim’s right in the proceeding to which the appeal relates.” 18 U.S.C. §3771(d)(4). The intent underlying this provision was to supplement the crime victims’ appeal provision found in §3771(d)(3) by permitting the Department to also help develop a body of case law expanding crime victims’ rights in the many defense appeals that are filed. It was not intended to in any way narrow crime victims’ rights to seek relief under §3771(d)(3). Nor was it intended to bar crime victims from asserting other remedies. For instance, it was not intended to block crime victims from taking an ordinary appeal from an adverse decision affecting their rights (such as a decision denying restitution) under 28 U.S.C. §1291. Crime victims had been allowed to take such appeals in various circuits even before the passage of the CVRA. See, e.g., *United States v. Kones*, 77 F.3d 66 (3rd Cir. 1996) (crime victim allowed to appeal restitution ruling); *United States v. Perry*, 360 F.3d 519 (6th Cir. 2004) (crime victims allowed to appeal restitution lien issue); *Doe v. United States*, 666 F.2d 43, 46 (4th Cir. 1981) (crime victim allowed to appeal rape shield ruling).

As I explained at the time the CVRA was under consideration, this provision supplemented those pre-existing decisions by “allow[ing] the Government to assert a victim’s right on appeal even when it is the defendant who seeks appeal of his or her conviction. This ensures that victims’ rights are protected throughout the criminal justice process and that they do not fall by the wayside during what can often be an extended appeal that the victim is not a party to.” 150 CONG. REC. S4270 (Apr. 22, 2004) (statement of Sen. Kyl).

I have heard from crime victims’ advocates that the Department has not been actively enforcing this provision. Indeed, these advocates tell me that they are unaware of even a single case where the Department has used this supplemental remedy. My final question: Is it true that the Department has never used this provision in even a single case in the more than six years since the CVRA was enacted?

Sincerely,

JON KYL,
U.S. Senator.

HONORING OUR ARMED FORCES

SERGEANT VORASACK T. XAYSANA

Mr. BENNET. Mr. President, it is with a heavy heart that I rise today to honor the life and heroic service of SGT Vorasack T. Xaysana. Sergeant Xaysana, assigned to the Headquarters and Headquarters Company, 2nd Battalion, based in Fort Hood, TX, died on April 10, 2011. Sergeant Xaysana was serving in support of Operation New Dawn in Kirkuk, Iraq. He was 30 years old.

A native of Westminster, CO, Sergeant Xaysana enlisted in the Army in 2005. During over 6 years of service, he distinguished himself through his courage and dedication to duty. Sergeant Xaysana’s exemplary service quickly won the recognition of his commanding officers. He earned, among other decorations, the Iraq Campaign Medal, the Global War on Terrorism Service Medal, and the Army Good Conduct Medal.

Sergeant Xaysana worked on the front lines of battle, serving in the most dangerous areas of Iraq. Mark Twain once said, “The fear of death follows from the fear of life. A man who lives fully is prepared to die at any time.” Sergeant Xaysana’s service was in keeping with this sentiment—by selflessly putting country first, he lived life to the fullest. He lived with a sense of the highest honorable purpose.

At substantial personal risk, he braved the chaos of combat zones throughout Iraq. Though his fate on the battlefield was uncertain, he pushed forward, protecting America’s citizens, her safety, and the freedoms we hold dear. For his service and the lives he touched, Sergeant Xaysana will forever be remembered as one of our country’s bravest.

To Sergeant Xaysana’s parents, Thong Chanh and Manithip, and to his entire family, I cannot imagine the sorrow you must be feeling. I hope that, in time, the pain of your loss will be eased by your pride in Vorasack’s service and by your knowledge that his country will never forget him. We are humbled by his service and his sacrifice.

GRAZING IMPROVEMENT ACT

Mr. BARRASSO. Mr. President, I rise today to submit for the RECORD an article written by Karen Budd-Falen and published May 28, 2011, in the Wyoming Livestock Journal. The article’s title is “Leveling the Playing Field: Support for the Grazing Improvement Act of 2011.”

The title of the article is instructive. Anyone living and working in rural communities knows the playing field is not level. The National Environmental Policy Act has become the preferred tool to delay and litigate grazing permit renewals for American ranchers.

Livestock grazing on public lands has a strong tradition in Wyoming and all Western States. Ranchers are proud

stewards of the land, yet the permitting process to renew their permits is severely backlogged due to litigation aimed at eliminating livestock from public land.

During times of high unemployment and increasing food prices, we need to be encouraging jobs in rural economies. We need to be fostering an environment to raise more high quality, safe, American beef and lamb; not litigating less.

That is why I introduced the Grazing Improvement Act of 2011. This legislation will provide the certainty and stability public grazing permit holders desperately need in order to continue supporting rural jobs, providing healthy food, and maintaining open spaces for recreation and wildlife.

It is time to help level the playing field for hard working ranching families across the West. Their livelihood should not be held hostage by litigation and anti-grazing special interest groups. I thank my colleagues, Senators ENZI, CRAPO, HATCH, HELLER, RISCH, and THUNE, in supporting ranching families and this legislation.

Mr. President, I ask unanimous consent to have printed in the RECORD the article to which I referred.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wyoming Livestock Roundup,
May 28, 2011]

LEVELING THE PLAYING FIELD: SUPPORT FOR
THE GRAZING IMPROVEMENT ACT OF 2011

(By Karen Budd-Falen)

If jobs and the economy are the number one concern for America, why are rural communities and ranchers under attack by radical environmental groups and overzealous federal regulators?

America depends upon the hundreds of products that livestock provide, yet radical groups and oppressive regulations make it almost impossible for ranchers to stay in business. Opposition to these jobs comes in the form of litigation by radical environmental groups to eliminate grazing on public lands, radical environmental group pressure to force “voluntary” grazing permit buy-outs from “willing sellers,” and holding permittees hostage to the court deference given to regulatory “experts.” The playing field is not level and the rancher is on the losing side. The Grazing Improvement Act of 2011 will level the playing field. I urge your support.

The Grazing Improvement Act of 2011 does the following:

1. Term of Grazing Leases and Permits. Both BLM and Forest Service term grazing permits are for a 10-year term. This bill extends that term to 20 years. This extension does not affect either the BLM’s or Forest Service’s ability to make interim management decisions based upon resource or other needs, nor does it impact the preference right of renewal for term grazing permits or leases.

2. Renewal, Transfer and Reissuance of Grazing Leases and Permits. This section codifies the various “appropriation riders” for the BLM and Forest Service requiring that permits being reissued, renewed or transferred continue to follow the existing terms and conditions until the paperwork is complete. Thus, the rancher is not held hostage to the ability of the agency to get its