

Title I — Healthcare

S. 1382 — The ALS Registry Act

SUMMARY

S. 1382 would mandate the Centers for Disease Control and Prevention (CDC) to establish a national patient registry for the collection and storage of data on amyotrophic lateral sclerosis (ALS) and other motor neuron disorders. The bill also creates a new advisory committee to advise CDC about the development and maintenance of the ALS registry. Opponents of the bill contend that public health dollars are better spent on actual research for patients rather than on keeping lists of patients. Opponents further believe that qualified scientists—rather than career politicians—should be determining research priorities.

ESTIMATED COST

S. 1382 would authorize \$75 million over the next five years at the Centers for Disease Control and Prevention. The Congressional Budget Office estimates that implementing S. 1382 would cost \$71 million over the next five years.

UNNECESSARY AND DUPLICATIVE

The CDC already has the authority to create a registry under the Public Health Service Act—S. 1382 is not necessary to achieve the purpose of the bill. The goal of a registry is to create lists of patients with ALS so that 1) the government has records of incidence and prevalence and 2) researchers have lists to find patients for research.

The goals of a registry can be achieved without a registry. The National Institutes of Health already reports on the prevalence of ALS, “As many as 20,000 Americans have ALS, and an estimated 5,000 people in the United States are diagnosed with the disease each year. ALS is one of the most common neuromuscular diseases worldwide, and people of all races and ethnic backgrounds are affected. ALS most commonly strikes people between 40 and 60 years of age, but younger and older people also can develop the disease. Men are affected more often than women.”¹

Scientific experts think a registry for ALS is a misguided use of resources. According to the CDC, “Putting patients in contact with medical researchers is a worthwhile goal but a registry is not the means to accomplish it.” There are better ways of putting patients in contact with researchers. For example, a quick search on www.clinicaltrials.gov reveals many ongoing clinical trials related to ALS and a new recruitment effort called “ALS Connection.” Health and Human Service (HHS) has stated, “The latest Food and Drug Administration bill dramatically expanded the role of www.clinicaltrials.gov to include many of the items that you have this ALS registry [S. 1382] doing.”²

¹ National Institute on Neurological Disorders and Stroke:
http://www.ninds.nih.gov/disorders/amyotrophiclateralsclerosis/detail_amyotrophiclateralsclerosis.htm

² HHS Comments on S. 1382, ALS Registry Act of 2007, November 2, 2007.

The CDC has repeatedly expressed concerns regarding the feasibility of a registry and the amount of resources that would be consumed to create an accurate registry. If the goal of S. 1382 is to stimulate research, there are far better ways of accomplishing that goal. For example, instead of spending \$75 million on a registry, that money would nearly triple the \$39 million that NIH is currently investing in actual ALS research in order to find cures.³

The federal government already has several ALS registries. The Veterans Administration has already conducted an ALS registry for returning certain Gulf War veterans, but is now closed because the VA believes they have enough patients enrolled to be able to answer their questions.⁴ The CDC is also currently conducting registry pilot projects in South Carolina, Minnesota, and through Emory University in Georgia.

S. 1382 shifts money to new bureaucracy instead of actual research for patients. In addition to setting up the registry, S. 1382 would require the CDC to set up a new 27-member advisory committee for the ALS registry.

OTHER POLICY CONCERNS

The federal government should not be in the business of collecting and disseminating private medical information. While the registry is intended to be consistent with the Health Insurance Portability and Accountability Act (HIPAA) privacy requirements, privacy is still a major issue. HHS has stated, “It would be difficult to comply with some of the language regarding public access to data because of privacy concerns. In response to the comment that the interest was only in de-identified data, we explained that removing identifiers does not necessarily protect someone from being identified (for example, with a rare disease like ALS, even if you leave off the name, if you know the age, location, and existence of a diagnosis, the person could still be identified).”⁵

S. 1382 politicizes science. Senator Coburn has previously noted that “There are 2,036 categories of diagnoses and 12,161 subcategories of diagnoses. It would be impossible and ridiculous for Congress to pass legislation on each and every disease. Politicians should not pick winners and losers with patients’ lives. These decisions should be made by medical experts and scientists, in close collaboration with the patient and provider communities, not by politicians.”⁶

NEGOTIATIONS

Because the CDC has concerns about the effectiveness of registries, Senator Coburn offered a substitute amendment in the Health, Education, Labor, and Pensions Committee

³ National Institute on Neurological Diseases and Stroke:

<http://www.ninds.nih.gov/disorders/amyotrophiclateralsclerosis/amyotrophiclateralsclerosis.htm>

⁴ October 31, 2007: Health, Education, Labor, and Pensions Committee staff conference call with David Ballenger; Joel Kupersmith, MD, Chief Research and Development Officer; Timothy O’Leary, MD, Director, Biomedical Laboratory Research & Development Service and Director, Clinical Science Research & Development Service; and Eugene Oddone, MD, Director, Center for Health Services Research in Primary Care.

⁵ HHS Comments on S. 1382, ALS Registry Act of 2007, November 2, 2007.

⁶Dear Colleague from Senator Tom Coburn, October 30, 2007,

<http://coburn.senate.gov/public/index.cfm?FuseAction=HealthCareReform.Home>.

requiring a report from the CDC outlining whether or not registries are an effective use of resources for patients, when they are appropriate, and their privacy concerns. Congress could have used that information to guide policy formulation. The amendment would have required the report from the CDC in six months. It has now been eight months since the amendment failed, and Congress still does not have the answers it needs.

S. 1183 — Christopher and Dana Reeve Paralysis Act

SUMMARY

S. 1183 authorizes the director of the National Institutes of Health (NIH) to coordinate paralysis research and establish consortia in honor of Christopher and Dana Reeve. The bill also authorizes the NIH to make grants for multicenter networks of clinical sites for rehabilitation intervention protocols and outcomes, and creates a new program to carry out projects and interventions to improve the quality of life and health status of persons with paralysis and other physical disabilities.

ESTIMATED COST

S. 1183 authorizes \$100 million over the next five years. The Congressional Budget Office estimates that the bill will cost \$103 million over the next five years.

UNNECESSARY AND DUPLICATIVE

Under its broad public health authorizations, the Department of Health and Human Services (HHS) already has the authority to carry out the activities of S. 1183.

S. 1183's NIH provisions are unnecessary and potentially constraining on scientific researchers seeking treatments for paralysis. Official HHS comments to the Senate Health, Education, Labor, and Pensions (HELP) Committee state “The NIH already has the authority to carry out all the activities of the bill (except, perhaps, designating entities in honor of Christopher and Dana Reeve).”⁷ HHS further states about S. 1183 that “In fact, NINDS would be constrained to divert funds from other paralysis research activities toward consortia.”⁸

The NIH and the National Institute for Neurological Disorders and Stroke (NINDS) already support extensive research on paralysis, investing \$4.8 billion annually on neurosciences.⁹ According to HHS official comments on S. 1183, “it is important to note that the NIH provides several effective mechanisms that encourage and enable researchers to work together within and across institutions. Collaboration within the U.S. and international research community is evident in the many scientific research publications that arise from cooperation among laboratories and in other broadly cooperative efforts, such as recent international consensus guidelines on spinal cord injury clinical trials (<http://www.icord.org/iccp.html>).” Existing NIH activities, activities at the Veterans' Administration, Department of Education, and many private groups already support consortia-like paralysis research activities.

S. 1183 authorizes a new grant program to improve the quality of life and health status of persons with paralysis. Various agencies of HHS are already working to do exactly that—without the passage of S. 1183. The Health Resources and Services Administration (HRSA), through the Children with Special Health Needs Program, has for generations provided grants for the services delivery and coordination, consumer education, and

⁷ HHS Comments on S. 1183, the Christopher and Dana Reeve Paralysis Act, July 2007.

⁸ HHS Comments on S. 1183, the Christopher and Dana Reeve Paralysis Act, July 2007.

⁹ Estimates of Funding for Various Diseases, <http://www.nih.gov/news/fundingresearchareas.htm>

quality of life issues outlined in S. 1183. The Maternal Child Health Block Grants have also addressed similar issues in adults and children with traumatic brain injuries. The CDC has already established the State-based Disability and Health Program, which “administers awards to implement effective state-based programs to improve the health of state residents with disabilities.”¹⁰

S. 1183 would authorize a population-based database to be used for longitudinal research on paralysis. HHS has stated that “The focus on paralysis is overly narrow and inconsistent with a cross-cutting approach. It would be extremely difficult to conduct population based research using a hospital-based data system.”¹¹

Finally, both the Medicare program and every state’s Medicaid program offer health benefits to persons with disabilities, including paralysis.

OTHER POLICY CONCERNS

S. 1183 politicizes scientific public health efforts. Senator Coburn has previously noted that “there are 2,036 categories of diagnoses and 12,161 subcategories of diagnoses. It would be impossible and ridiculous for Congress to pass legislation on each and every disease. Politicians should not pick winners and losers with patients’ lives. These decisions should be made by medical experts and scientists, in close collaboration with the patient and provider communities, not by politicians.”¹²

NEGOTIATIONS

Since this bill was approved by the HELP Committee before Senator Coburn formalized his position against disease-specific bills, Senator Coburn agreed in good faith to let it go by UC if Senator Harkin would agree to find an offset for the program’s \$25 million authorization. While staff were still in the middle of negotiating an offset, the bill was live UC’d on the Senate floor without warning from Senator Harkin’s office. Senator Coburn objected at the time. Senator Harkin’s staff have made no attempts to re-start the negotiations.

¹⁰ Disability and Health, <http://www.cdc.gov/ncbddd/dh/DHactivities.htm>

¹¹ HHS Comments on S. 1183, the Christopher and Dana Reeve Paralysis Act, July 2007.

¹² Dear Colleague from Senator Tom Coburn, October 30, 2007, <http://coburn.senate.gov/public/index.cfm?FuseAction=HealthCareReform.Home>.

S. 999 — Stroke Treatment and Ongoing Prevention Act

Note: this is based on the senate version, however, the Reid Omni has the House language of this bill, not the Senate bill.

SUMMARY

S. 999 authorizes the Centers for Disease Control and Prevention (CDC) to establish a new grant program to states to develop stroke care systems, provide technical assistance to states, foster the development of systems of stroke care, and collaborate with medical and health professionals to disseminate evidence-based practices on stroke systems of care. The bill mandates a stroke registry at CDC. The bill's sponsor, Senator Cochran, seeks to improve the provision of stroke care in every state and increase public awareness about stroke. Opponents of the bill contend that the CDC does not need new authority to carry out the goals of the bill, and that S. 999 duplicates existing CDC programs addressing stroke needs. Opponents further believe that qualified scientists—rather than career politicians—should determine research priorities.

ESTIMATED COSTS

The bill authorizes “such sums as may be necessary” to carry out its activities, which gives unlimited authority to the Appropriations Committee, of which the bill's sponsor is the Ranking Member, to send money to the states.

UNNECESSARY AND DUPLICATIVE

The CDC already has the authority to make grants to states for public health purposes, including stroke prevention, under the Public Health Service Act—S. 999 is not necessary to achieve the purpose of the bill.

The stated purpose of S. 999 is to authorize the CDC to send money to states for the establishment of stroke care systems that provide “high-quality prevention, diagnosis, treatment, and rehabilitation.” S.999 would allow money to be used for developing hospital and provider “support networks,” medical professional development in advanced stroke treatment and prevention, and technical assistance.

The CDC already has the State Heart Disease and Stroke Prevention Program that sends money to 32 states for the same purposes of S. 999: developing effective strategies to reduce the burden of heart disease and stroke and their risk factors. The program also provides funding for “training and technical assistance to public health and health care professionals and partners to support primary and secondary heart disease and stroke prevention.” Some states, like Oklahoma, have used their money for the specific purposes outlined in S. 999. “Oklahoma Statewide Stroke Systems Committee is partnering to change policy and systems to increase awareness of stroke signs and the need for action among the public, and improved stroke recognition by health care professionals through ‘Get with Guidelines’ seminars for hospitals.”¹³

S. 999's goal, according to Section 2 of the bill, is “to increase public awareness about the prevention, detection, and treatment of stroke,” is already the goal of the scientific

¹³ State Program: Oklahoma Capacity Program, http://www.cdc.gov/DHDSP/state_program/ok.htm

experts at the CDC. According to CDC’s website, the purpose of their “Stroke Networks is to increase stroke awareness and enhance the role of public health in stroke prevention and quality of care. Networks include public health and medical professionals, policy makers, and community health advocates. Networks increase health collaboration across states and combine efforts to promote partnerships, education, training, policy, and environmental/systems–change strategies.”¹⁴ If the CDC is already working to achieve the stated goals of S. 999, it appears that the only thing S. 999 will change is the ability of its sponsors to claim credit for the work of the CDC.

S. 999 creates a grant program for residency training programs in emergency medicine to improve stroke and traumatic injury prevention, diagnosis, treatment, and rehabilitation. The federal government already has numerous programs available to assist in medical training programs (e.g. Graduate Medical Education funding under Medicare and Medicaid). Furthermore, this is a role for the states—not the federal government.

The CDC supports numerous other initiatives to address stroke across the United States.¹⁵ CDC experts have collaborated on publicly available material such as “The Public Health Action Plan to Prevent Heart Disease and Stroke” and “Healthy People 2010.” WISE-WOMAN is a CDC–funded program that helps women without adequate health insurance gain access to screening and lifestyle interventions that can reduce their risk for heart disease, stroke and other chronic diseases.¹⁶

Since 2001, the “CDC has funded four state–based Paul Coverdell National Acute Stroke Registries (Georgia, Illinois, Massachusetts, and North Carolina). Their mission is to monitor, promote, and improve the quality of acute stroke care.”¹⁷

In addition to the prevention work at CDC, the National Institutes of Health invests \$340 million a year in stroke research. Research on the causes, prevention, diagnosis, and treatment of stroke is part of the core mission of the National Institute on Neurological Diseases and Stroke.

OTHER POLICY CONSIDERATIONS

The primary purpose of S. 999 is to send money to the states. According to the National Association of State Budget Officers, every single state had either budget neutrality or a budget surplus in 2006. By way of contrast, the federal budget deficit for just the first eight months of 2008 was \$317 billion—adding to a national debt of \$9.5 trillion.¹⁸ Perhaps the states should be giving grants to the federal government instead of the other way around.

S. 999 politicizes scientific public health efforts. Senator Coburn has noted that “there are 2,036 categories of diagnoses and 12,161 subcategories of diagnoses. It would be

¹⁴ http://www.cdc.gov/stroke/cdc_addresses.htm

¹⁵ The Centers for Disease Control and Prevention: http://www.cdc.gov/stroke/cdc_addresses.htm

¹⁶ <http://www.cdc.gov/wisewoman/>

¹⁷ http://www.cdc.gov/DHDSP/stroke_registry.htm

¹⁸ The Congressional Budget Office

impossible and ridiculous for Congress to pass legislation on each and every disease. Politicians should not pick winners and losers with patients' lives. These decisions should be made by medical experts and scientists, in close collaboration with the patient and provider communities, not by politicians.”¹⁹

¹⁹ Dear Colleague from Senator Tom Coburn, October 30, 2007,
<http://coburn.senate.gov/public/index.cfm?FuseAction=HealthCareReform.Home>.

S. 1375 — MOTHERS Act

SUMMARY

S. 1375 encourages research at the National Institutes of Health (NIH) on postpartum depression (PPD), encourages creation of a national awareness campaign on PPD, and establishes a grant program for essential services for individuals with PPD. Senator Menendez seeks to raise awareness about PPD, particularly because New Jersey's former first lady suffered from PPD. Opponents note that significant work is already being done across the federal government on PPD and believe that qualified scientists—rather than career politicians—should be determining research priorities.

ESTIMATED COST

According to the Congressional Budget Office, S. 1375's estimated authorization level is \$19 million over the next five years.

UNNECESSARY AND DUPLICATIVE

S. 1375 tells the NIH to continue doing what it is already doing. The bill encourages the NIH to its “continue aggressive work” on PPD. NIH is already doing extensive PPD research under its existing authorities—without the passage of this bill. The only thing that would change with regard to NIH's PPD research with the passage of this bill is the ability of the bill's sponsors to take credit for the work of NIH scientists. Furthermore, the bill tells NIH it should coordinate research between Institutes. The National Institutes of Health Reform Act of 2006 already addressed this for all research, not just PPD research.

S. 1375 encourages NIH and the Health Resources and Services Administration (HRSA) to conduct a national awareness campaign on PPD. Without the passage of S. 1375, significant work is already being done on this:

- Famous supermodel **Brooke Shields'** book “*Down Came the Rain*” has done a great deal to raise awareness about PPD—more than any government-sponsored program could do. Would the American people rather listen to a supermodel or a bureaucrat at HRSA?
- The National Institute of Mental Health already has a program in each of the 50 states to “increase public awareness about the importance of basic and clinical research in improving treatments for...mental illness and addiction disorders through advancing knowledge about the brain and behavior.”
- CBS has conducted awareness campaigns on PPD with “Cold Case” star Kathryn Morris.
- National Institute on Mental Health has funded a newly launched website for patients and providers, MedEd, that educates both about PPD.
- Finally, CDC and HRSA have fact sheets and other educational materials about PPD.

S. 1375 establishes a new grant program for “effective and cost-efficient systems for the delivery of essential services to individuals with PPD or postpartum psychosis and their families.” Grants could go to a broad range of recipients: state/local governments, public

or nonprofit private hospitals, community-based organizations, hospice, ambulatory care facilities, community health centers, etc...Grants could be used for a broad set of purposes: education and services, case management and comprehensive treatment, inpatient care management services, transportation services, homemaker services, day or respite care, counseling for financial assistance and insurance, etc...**Federal grant funding is already available for the majority of these purposes:**

- The Substance Abuse and Mental Health Services Administration includes funding for services for pregnant women, specifically including “services to pregnant and postpartum women.”
- The Health Resources and Services Administration is currently soliciting grantees to “develop, implement, evaluate, and disseminate novel approaches that concurrently address the relationship between women’s healthy eating and mental health during the perinatal period.” Additionally, HRSA has a glossy 20-page brochure on PPD for distribution and education purposes. It also has a website linking those with PPD to support services and resources.
- The Maternal Child Health Block Grant Program includes funding specifically for “comprehensive care for women before, during, and after pregnancy and childbirth.”
- The Centers for Disease Control and Prevention has a brochure specifically on PPD as part of its Pregnancy Risk Assessment Monitoring System (PRAMS).
- The Agency for HealthCare Research and Quality has recently completed an evidence report/technology assessment on “Perinatal Depression: Prevalence, Screening Accuracy, and Screening Outcomes.”

OTHER POLICY CONCERNS

S. 1375 politicizes science. Senator Coburn has previously noted that “There are 2,036 categories of diagnoses and 12,161 subcategories of diagnoses. It would be impossible and ridiculous for Congress to pass legislation on each and every disease. Politicians should not pick winners and losers with patients’ lives. These decisions should be made by medical experts and scientists, in close collaboration with the patient and provider communities, not by politicians.”²⁰

STATUS OF NEGOTIATIONS

S. 1375 has not been marked up by the Senate Health, Education, Labor, and Pensions Committee. The Committee scheduled the bill for markup, but did not have time to consider all of the amendments to the bill. Senator Coburn does **not** have a hold on S. 1375 at this time as the bill has not yet been approved by its Committee of jurisdiction.

²⁰Dear Colleague from Senator Tom Coburn, October 30, 2007, <http://coburn.senate.gov/public/index.cfm?FuseAction=HealthCareReform.Home>.

H.R. 507/S. 1117 — Vision Care for Kids Act

SUMMARY

H.R. 507 creates a new program at the Centers for Disease Control and Prevention to provide grants to states for 1) comprehensive vision exams and treatment for children, and 2) educational materials for providers, teachers, and parents. H.R. 507 has passed the House, but no action has been taken by the Senate. Opponents point out that airdropping this legislation in the omnibus bill completely circumvents the Senate committee process where proper evaluation of the legislative language could take place. Opponents may also point to other existing children's health programs such as the State Children's Health Insurance Program.

ESTIMATED COST

The House bill authorizes \$65 million over the next four years.

POTENTIAL CONCERNS

This program is not means-tested to ensure that scarce dollars go to low-income children first. This is especially important since this is a discretionary program subject to annual appropriations.

This program does not contain provisions to ensure that it does not crowd-out private insurance coverage of vision benefits. This could ultimately shift the financial costs of vision benefits from insurance companies to American taxpayers.

Funding is already available to states for the purpose of providing vision care to children. States may use their Maternal-Child Health Block grant funding to pay for vision care programs for children. The Health Resources and Services Administration (HRSA) website specifically states that funds may be awarded to states for the purpose of "Providing preventive and primary care services for children and adolescents."²¹

Other federal and state programs (e.g. the Medicaid program and the State Children's Health Insurance Program) already provide comprehensive health benefits, including vision care, to low-income children.

PROCESS

This bill has been passed by the House of Representatives, but no action has been taken in the Senate. No staff briefings have been held, no oversight has been conducted, no examinations have been done to ensure that this program is not duplicative of other federal programs, etc...

Dr. Coburn is not currently holding this legislation.

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https://perfdata.hrsa.gov/mchb/mchreports/LEARN_More/Block_Grant_Program/block_grant_program.asp

**S. 1810/H.R. 3112 — Parentally and Postnatally Diagnosed Conditions
Awareness Act**

S. 1810 would create a new federal grant program for the dissemination of evidence-based information and support services regarding Down Syndrome and other prenatally or postnatally diagnosed conditions.

Dr. Coburn is not holding this legislation and does not object to the bill.

Title II — Judiciary

S. 535 — Emmett Till Unsolved Civil Rights Crime Act

SUMMARY

Requires the Attorney General to designate two officials — a deputy chief in the Criminal Section of the Civil Rights Division of the Department of Justice (DOJ) and a supervisory special agent in the Civil Rights Unit of the FBI — to investigate, prosecute, and coordinate efforts in cases involving an alleged violation of a criminal civil rights statute that occurred no later than December 31, 1969, and resulted in a death.

ESTIMATED COST

Authorizes \$13.5 million a year for 10 years, for a total of \$135 million. Of that \$13.5 million, \$10 million is for DOJ to investigate and prosecute these crimes, and \$3.5 million is for technical assistance to state and local law enforcement agencies, as well as grants to those agencies for expenses related to the investigation and prosecution of such crimes.

SIMILAR FEDERAL PROGRAMS AND OTHER INITIATIVES

The federal government is already investigating and prosecuting civil rights cold cases. In 2006, the FBI established “cold case initiative,” by which it has a partnership with the NAACP, Southern Poverty Law Center, and the National Urban League to investigate these crimes. As of February 2007, it had identified more than 100 cold cases meriting further investigation, but had only prioritized “the top dozen or so.” Previous successful prosecutions include: the 2001 conviction of Thomas Blanton and Bobby Frank Cherry for a 1963 church bombing in Birmingham; the 2003 conviction of Ernest Avants for the 1966 murder of Ben Chester White; and the 2005 conviction of Edgar Ray Killen for his role in the deaths of three civil rights workers in Mississippi in 1964.

OTHER POLICY CONCERNS

- Two of the most important federal statutes for prosecuting racially motivated homicides (interference with federally protected activities and interference with housing rights) were not enacted until 1968, and the Constitution bars retroactively conferring federal jurisdiction to prosecute crimes.
- For crimes committed prior to December 31, 1969, virtually all federal criminal civil rights statutes carried a five-year statute of limitations, even where death resulted.
- In other words, the Ex Post Facto Clause not only bars use of important federal statutes for crimes that occurred before 1968, but strict statutes of limitation bar “virtually all federal civil-rights era murder prosecutions covered by [the bill].”
- In contrast, state laws prohibiting murder typically have no statute of limitations. Yet, this bill provides almost all of its resources exclusively to the federal government.

NEGOTIATIONS STATUS

We worked with former Senator Talent's office in the 109th Congress and agreed upon an offset that was rejected by Democrat sponsors. After the bill passed the Senate Judiciary Committee, but before it was hotlined, Senator Coburn sent Senator Dodd a letter explaining his objections. Senator Dodd held a press conference with Congressman Lewis and other sponsors, where he accused Senator Coburn of holding the bill "under false pretenses." He ended with:

"I'll let Senator Coburn speak for himself, I'm not going to try and [assume?] various motivations here, but the reason he's given is a totally false one — that much I do know. So there must be some other reason, which I'll leave for him to explain, but don't tell me it's because there's not an authorization offset here....that is just false, absolutely, on its face. And I'm angry about it. I'm angry about it. This has been a bipartisan effort, we've fought long and hard to get this done and every day that goes by, there are people who may leave us who should be brought to justice and held accountable. It may be people who can provide very important evidence that would allow people to be brought to justice. We waste another day, another week, another month, then someone may go scott-free who deserves to be brought to justice. He's contributing to that by doing what he's doing today."

In the press conference, Senator Dodd committed to doing "everything he [could] in the coming hours to see if he could get the hold lifted," but Coburn staff spoke with Dodd's staff just prior to the press conference and made clear our willingness to lift the hold if offsets were provided. After that press conference, we have not heard from a single bill sponsor seeking to move this bill. We have, however, been in almost constant contact with Alvin Sykes, of the Emmett Till Justice Campaign, and affirmatively reached out to Reid seeking a UC for floor consideration. Our efforts have been rejected.

S. 3992/S. 2304 — Mentally Ill Offender Treatment and Crime Reduction Reauthorization and Improvement Act

SUMMARY

This bill amends the Omnibus Crime Control and Safe Streets Act of 1968 to provide grants for the improved mental health treatment and services provided to offenders with mental illness. It establishes through FY 2014 grant programs for: (1) *reauthorization* of adult and juvenile collaboration for access to adequate mental health treatment; (2) *authorization* of training, technology, receiving centers, cooperative programs and campus security personnel training for law enforcement response to mentally ill offenders; (3) *reauthorization* of the mental health court grant program; and (4) *authorization* of a new, one-time DOJ study on the rate of serious mental illness in offenders

ESTIMATED COST

The bill would authorize a total of \$572 million from FY 2009 - FY 2014. It provides for the following grant programs:

- Section 3: Adult and Juvenile Collaboration Program Grants: \$75 million annually (**Total: \$450 million**)
- Section 4: New Law Enforcement Response to Mentally Ill Offenders Improvement Grant: \$10 million annually (**Total: \$60 million**);
- Section 5: Mental Health Courts Grant Program: \$10 million annually (**Total: \$60 million**)
- Section 6: authorizes a new, one-time DOJ study (**Total: \$2 million**)

The CBO estimate only analyzes the first 5 years, and thus the estimate is lower than the above number: \$565 million.

DUPLICATIVE AND UNNECESSARY

This bill authorizes a new Law Enforcement Response to Mentally Ill Offenders grant program without offsetting the program by reductions in real spending elsewhere. Although the Mental Health Courts Grant Program is being reauthorized at the same funding level, the program already receives significant earmarks (see below) such that this authorization would duplicate existing sources of funding for the program.

OTHER POLICY CONCERNS

The Adult and Juvenile Collaboration Program Grants were previously authorized at \$50 million annually. However, *actual past appropriations were only the following:* FY 2006-\$5 million, FY 2007-\$4.9 million and FY 2008- \$6.5 million.

The Mental Health Courts Grant Program has been heavily *earmarked* in the past. In FY 2002, 2003 and 2005, the courts were funded via a Byrne earmark at \$4 million, \$3 million and \$400,000 respectively. None were received in FY 2004. In FY 2006-FY 2008, Congress authorized this program through the Justice & Mental Health

Collaboration Program (JMHCP). Appropriations through JMHCP were \$5 million in both FY 2006 and 2007 and \$6.5 million in FY 2008.

An independent group, Policy Research Associates, Inc., authored a 2006 study of seven mental health courts. The study noted that “the data reported here and the limited amount of other available research suggests there is a lack of standardization, no assurances that the people targeted for diversion are the optimum candidates, and great uncertainty about best models for supervision and monitoring. It may be advisable for communities to slow the tide of new mental health courts until the specified effectiveness of current ones can be demonstrated.”²²

NEGOTIATIONS

No bill sponsors have contacted us for negotiations.

²²Henry J. Steadman, Ph.D. & Allison D. Redlich, Ph.D., *An Evaluation of the Bureau of Justice Assistance Mental Health Court Initiative*, December 12, 2005, at p. 9 <http://www.ncjrs.gov/pdffiles1/nij/grants/213136.pdf>

H.R. 1199/S. 1210 — Drug Endangered Children Act of 2007

SUMMARY

Amends the USA PATRIOT Improvement and Reauthorization Act of 2005 to extend the grant program for drug-endangered children through FY2009.

Dr. Coburn is not holding this bill and has no objections to the legislation.

S. 2982 - Runaway & Homeless Youth Protection Act

SUMMARY

This bill amends the Runaway and Homeless Youth Act to revise requirements for services provided under grants from the Department of Health and Human Services (HHS) for centers for runaway and homeless youth and their families (*detailed below*). The bill also requires HHS to report to Congress: (1) estimates of the incidence and prevalence of runaway and homeless individuals between 13 and 26 years of age; and (2) an assessment of the individual's characteristics.

*The bill creates a *new program* for a national homeless youth awareness campaign, to be conducted directly or through grants or contracts to increase awareness about the issues facing runaway and homeless youth.

CURRENT LAW & BILL CHANGES

Current federal programs that assist homeless or runaway youth fall into three basic categories. Each is designed to meet different needs of runaway and/or homeless children, and is modified in this bill.

- **Basic Center Program (BCP):** Under current law, BCP provides outreach, crisis intervention, temporary shelter (maximum 15 days), counseling, family unification, and other immediate needs to runaway and homeless youth under age 18 and their families through a formula grant to each state (based on the jurisdiction's proportion of the nation's youth under age 18), which is then distributed on a competitive basis to community-based organizations. States receive a minimum of \$100,000 and territories \$45,000.
 - **S.2982: Raises the minimum allocation** to \$200,000 for states and \$70,000 for territories. It would enable HHS to re-allot any funds not obligated before the end of a fiscal year from one state to another. *It will increase the temporary shelter provided by BCP to 21 days (from 15).*
- **Transitional Living Program (TLP):** Under current law, TLP supports projects providing homeless youth ages 16 to 21 with longer-term residential services up to 18 months (if under age 18, youth may stay an additional 6 months or until the youth turns 18, whichever comes first), including counseling in various areas. The grants are distributed competitively to community-based public and private organizations for 5 year periods.
 - **S. 2982:** Allows the youth to stay in the program *continuously* for up to 635 days (1 yr, 9 mo.), but a youth under age 18 can stay for an *extra* 180 days (6 mo.) or until the youth reaches age 18, whichever comes first. The bill also extends the definition of "homeless youth" for the TLP as a person between the ages of 16 and 22, stating that if the person enters the program prior to reaching age 22, they are still eligible for a continuous 635 day stay. *Thus, if the person enters just prior to his 22nd birthday, he may stay until he is almost 24 years old.*
- **Street Outreach Program (SOP):** Under current law, SOP provides street-based outreach and education, including treatment, counseling, provision of information, and referrals youth who have been subjected to or are at risk of being subjected to

sexual abuse and exploitation. Grants are awarded for a three-year period via an application process. Grantees may receive a maximum of \$100,000 per year.

- S. 2982: The bill will require HHS to give priority to **public and**, as under current law, **nonprofit private agencies** under the SOP.

ESTIMATED COST

The bill would authorize \$955 million over the FY 2009 – FY 2013 period.

- Total *appropriations* for all programs increased from \$103 million in FY 2001 to \$113.3 million in FY 2008. However, GAO reports that funding remained stagnant for *individual grantees* at the capped amount of \$200,000. Costs of each program are divided into 90% federal and 10% state funds.

SIMILAR FEDERAL PROGRAMS & OTHER INITIATIVES:

- “Multiple federal agencies play a role in providing funding and assistance to local programs that serve disconnected youth. The White House Task Force for Disadvantaged Youth identified 12 federal agencies that fund over 300 programs that assist local communities in serving *disadvantaged youth* in some capacity. However, four agencies—the Departments of Labor, HHS, Education, and Justice—play a primary role and contain some of the largest youth-serving grant programs in terms of funding.”²³
- Not all of the programs in the federal government that target *disadvantaged youth* specifically direct funding at *runaway and homeless youth*. However, there are numerous programs in agencies such as the Departments of Labor, HHS, Education and others (some of which were included in the \$3.7 billion above) which either specifically target runaway and homeless youth, or the target youth population is broad enough to potentially include these youth. In 2006, appropriations for the programs at these agencies totaled \$3.7 billion.²⁴

OTHER POLICY CONCERNS

- Funding runaway and homeless youth programs is better addressed by states or at least by a significant state matching requirement. Currently, grantees only contribute 10% of the funds for an RHYA program.
 - *GAO*: “Program directors also stressed that the unpredictability of federal grant money has made it difficult to run their programs. In particular, most of the program directors who received Transitional Living Program funds told us that one of their greatest concerns for this grant source was its unpredictability and a perception that HHS does not take into consideration enough the experience of current grantees.”²⁵

²³ U.S. Government Accountability Office, *Disconnected Youth: Federal Action Could Address Some of the Challenges Faced by Local Programs That Reconnect Youth to Education and Employment*, GAO-08-313, February 2008, p. 7.

²⁴ All figures obtained from Fernandes, Adrienne L., Congressional Research Service, *Vulnerable Youth: Background & Policies*, May 28, 2008.

²⁵ GAO Report, *supra* note 1, at 30.

- *GAO*: “While overall Transitional Living Program funding increased in FY02 to support a greater number of programs, the amount available to individual local programs – capped at \$200,000 – has not changed since 1992.”²⁶

HEARINGS AND CO-SPONSOR NEGOTIATIONS

The Senate held a hearing on April 29th. The bill was introduced on May 6th, and the Judiciary Committee held markup on May 22nd. Bill sponsors contacted us for negotiations on July 9th.

FRAUD, MISMANAGEMENT AND ABUSE

- *Congressional Research Service*: “Little is known about the outcomes of youth after they exit programs for runaway and homeless youth. Local grantee organizations have limited information about youth after they leave care, and research on whether youth experience homelessness as adults is dated....Further, knowledge about effective strategies for serving these youth is limited and few, if any, studies appear to have been conducted to determine the costs and benefits of these interventions.”²⁷
- *U.S. Department of Health & Human Services*: “However, data on long term outcomes evaluating the effectiveness of interventions specifically addressing youth homelessness are limited. While some homeless youth programs track data to measure the effectiveness of their work, often these are not based on rigorous experimental or quasi-experimental research design.”²⁸

²⁶ GAO Report, *supra* note 1, at 29.

²⁷ Fernandes, Adrienne L., Congressional Research Service, *Runaway & Homeless Youth: Reauthorization Legislation and Issues in the 100th Congress*, June 19, 2008, at p. 11.

²⁸ U.S. Department of Health and Human Services, *Promising Strategies to End Youth Homelessness, Report to Congress*, 2007, at p. 7. Available at http://www.acf.hhs.gov/programs/gysb/content/docs/reporttocongress_youthhomelessness.pdf

H.R. 4120 — Effective Child Pornography Prosecution Act

SUMMARY

Amends the federal criminal code to expand the definitions of the crimes of child sexual exploitation and child pornography to include activities constituting such crimes that merely affect interstate or foreign commerce.

Dr. Coburn is not holding this bill and has no objections to the legislation.

S. 2869/H.R. 4136 — Enhancing the Effective Prosecution of child Pornography

SUMMARY

Amends the federal criminal code to: (1) include child pornography activities and the production of such pornography for importation into the United States as predicate crimes for money laundering prosecutions; and (2) define "possess" with respect to crimes of child sexual exploitation and child pornography to include accessing by computer visual depictions of child pornography with the intent to view.

Dr. Coburn is not holding this bill and has no objections to the legislation.

H.R. 3845/S. 1738 — PROTECT Our Children Act of 2007

SUMMARY

This bill makes significant changes to the structure of the Department of Justice (DOJ) and creates new grant programs to combat child exploitation in the United States. **Title I** of the bill provides resources, officers and technology to eradicate cyber threats to children and includes the following: (1) establishes a new special counsel position in the Office of the Deputy Attorney General; (2) establishes Internet Crimes Against Children (ICAC) Task Forces, setting forth their purposes, duties and functions; (3) establishes a National ICAC Data Network Center to assist the ICAC Task Forces; (4) establishes an ICAC Data Network Steering Committee; (5) authorizes the Office of Justice Programs (OJP) to award grants to ICAC Task Forces; (5) sets forth criteria for distribution of the ICAC grant funds; and (6) requires the AG to report to Congress on the progress of ICAC Task Forces.

Title II of the bill provides additional measures to combat child exploitation. These include: (1) establishing additional computer forensic capacity for both the current backlog and to further child exploitation investigations; (2) reporting to Congress on the use of these funds; (3) hiring additional FBI, ICE and U.S. Postal Service agents to solely work on child exploitation cases; and (4) requiring the AG to report annually to Congress on the resources used by federal agencies to investigate and prosecute child exploitation cases.

ESTIMATED COST

The bill authorizes **\$1.1 billion** over eight years from FY 2009 – FY 2016.

SIMILAR EXISTING FEDERAL PROGRAMS

- **Special Counsel:** The DOJ asserts that “virtually all of the duties the Special Counsel would perform are currently being handled, without special authorization, by other Department components....DOJ strongly believes that establishing a new position to conduct these tasks would be unnecessary and could lead to duplication of effort....Most of the duties set out [for the Special Counsel] are carried out ably by the affected components [i.e. DOJ sub-agencies] without leadership assistance.”²⁹
- **National ICAC Data Network Center:** DOJ notes that “the need for a network is increasingly and effectively filled by RISS (Regional Information Sharing Systems), a national program of regionally oriented services designed to enhance the ability of local, state, federal and tribal criminal justice agencies to exchange information.”³⁰ RISS could likely incorporate Wyoming Special Agent Flint Waters’ Operation Fairplay, which “gives law enforcement the tools they need to leverage the latest technologies to identify and track those who prey on children.”³¹

²⁹ DOJ Views Letter to Senator Leahy on S. 1738, January 11, 2008 (although this letter addresses the Senate bill, the original version of S. 1738 was substantially similar to H.R. 3845, such that the views of the DOJ remain relevant since the House bill has not been amended).

³⁰ *Id.*

³¹ Testimony of Special Agent Flint Waters, Senate Committee on the Judiciary, Subcommittee on Crime and Drugs, April 16, 2008.

ICAC Task Force Grant Program: The allowable uses for grants awarded under this program are broad enough to overlap existing efforts to combat child exploitation.

- ICAC Task Forces have already received double the funding allocated in the past. **On June 19, 2008, the U.S. Senate Appropriations Committee voted to nearly double funding for ICAC Task Forces, from \$15.9 million in 2008 to \$30 million next year.**

- Additional Computer Forensic Capacity: The bill authorizes \$56 million for additional regional computer forensic labs. DOJ stated it is currently working on the backlog of information needed for child exploitation cases. However, it requests Congress defer a decision on additional resources until DOJ has reviewed its new framework

OTHER POLICY CONCERNS

- Additional Agents for FBI, ICE and U.S. Postal Service: The bill adds \$400 million for new agents in the FBI, ICE and U.S. Postal Service. Although this is not duplicative per se, the *additional funding is many times what has been received in the past.*

NEGOTIATIONS

The House Judiciary Committee held a general hearing on “Sex Crimes and the Internet” in October 2007. No bill sponsors have contacted us for negotiations on this bill.

FRAUD, MISMANAGEMENT AND ABUSE

- *Washington Post:* [OJJDP administers the ICAC Task Force Grant Program as a juvenile justice program.] “Scrutiny of J. Robert Flores, leader of a Justice Department office that dispenses juvenile justice and crime prevention grants, intensified yesterday as lawmakers called him to Capitol Hill to explain why he brushed aside recommendations from career staff members to hand out more than \$8 million in awards last year....Non-profit groups that focus on child protection complained that they failed to win funding last year even though they had higher rankings from independent peer reviewers and career staff members in [OJJDP].”³²
- *DOJ Press Release:* In October 2007, DOJ established 13 new ICAC Task Forces with \$3 million. In FY07 alone, “OJP’s OJJDP awarded approximately \$17 million to fund ICAC task forces, including the new task forces announced today.”³³
- *Office of the Inspector General:* Cybercrime is listed as one of the DOJ’s Top 10 Management Challenges for 2006 and 2007. The DOJ’s Criminal Division’s efforts to fight cybercrime are centered in the Child Exploitation and Obscenity Section. This includes initiatives involving ICAC Task Forces and combating child pornography in general.³⁴

³² Johnson, Carrie, *Justice Dept. Grant Overseer Subject of Criminal Probe*, June 20, 2008.

³³ DOJ Press Release, Department of Justice Announces Internet Crimes Against Children Task Forces in All 50 States, October 15, 2007 at http://www.usdoj.gov/opa/pr/2007/October/07_ojp_061.html (accessed July 1, 2008).

³⁴ Top Management Challenges in the Department of Justice, Office of the Inspector General at <http://www.usdoj.gov/oig/challenges/index.htm> (accessed July 1, 2008).

S. 1079 — The Star-Spangled Banner and War of 1812 Bicentennial Commission Act

SUMMARY

S. 1079 would establish a new federal commission to commemorate the bicentennial of the writing of the Star-Spangled Banner and the War of 1812. The commission's purpose is to ensure a "suitable national observance of the War of 1812 by complementing, cooperating with, and providing assistance" to States' programs and activities.³⁵ The commission will also support and "facilitate marketing efforts for a commemorative coin, stamp," and "facilitate international involvement."³⁶ Finally, the commission would be tasked with promoting and assisting the "development of heritage tourism and economic benefits" for the nation, while encouraging "War of 1812 observances that provide an excellent visitor experience and beneficial interaction between visitors and the natural and cultural resources of the various War of 1812 sites."³⁷ The bill sponsor, Sen. Ben Cardin (D-MD), believes this commission is a priority because the War of 1812 is referred to by many historians as America's "Second War of Independence" and that commemorating the War of 1812 "will help all Americans gain a better appreciation of what it took to preserve our nation."³⁸ Opponents of the bill argue the commission is unnecessary, a low priority for federal spending, and duplicative of state commemorative efforts already being implemented. The Omnibus bill filed by Reid adds a provision to S. 675 requiring the Inspector General of the Department of Interior to perform an annual audit of the Commission, make the results available to the public and to the appropriate Congressional committees.

ESTIMATED COST

The bill authorizes \$4 million: \$500,000 per year for fiscal years FY2008 through FY2015. The Congressional Budget Office (CBO) estimates that the commission would likely spend the entire \$4 million.³⁹ The commission would consist of 22 members, who would serve without pay, but be reimbursed for their travel expenses through 2015. The commission could hire an executive director and other staff as needed to accomplish its duties. The commission staff would receive salaries up to \$139,600 each.⁴⁰ The commission may also solicit, accept and use gifts or donations, including in-kind services from other federal agencies.⁴¹ Appropriated funds or donations may be used to make grants to communities or organizations "to develop programs and products to assist in

³⁵ S. 1079, Sect. 1(b)(2), p. 3. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1079rs.txt.pdf

³⁶ S. 1079, Sect. 1(b)(4-5), p. 3. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1079rs.txt.pdf

³⁷ S. 1079, Sect. 1(b)(3, 6), p. 3-4. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1079rs.txt.pdf

³⁸ Senator Cardin op-ed "The Star Spangled Trail Would Help Commemorate the War of 1812" in "Southern Maryland Online," March 20, 2007, <http://somid.com/news/headlines/2007/5604.shtml>

³⁹ CBO Cost Estimate, <http://www.cbo.gov/ftpdocs/81xx/doc8134/s1079.pdf>

⁴⁰ S. 1079, Sect. 7(b)(1) and (b)(4)(B), p. 13-15. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1079rs.txt.pdf. OPM Executive Schedule for Calendar 2008 <http://www.opm.gov/oca/08tables/pdf/ex.pdf>

⁴¹ S. 1079, Sect. 6(a)(1), p. 10. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1079rs.txt.pdf

researching, publishing, marketing and distributing information relating to the commemoration.”⁴²

DUPLICATIVE AND UNNECESSARY

Spending federal taxpayer dollars for this commission is unnecessary since it can receive privately raised gifts and donations to fund all its activities and events. Spending federal taxpayer dollars for this commission is also duplicative, given the states of Maryland, Virginia and Michigan have already established state commissions to commemorate the events surrounding the War of 1812. Other states are also considering creating their own commissions.

Through executive order, the governor of Maryland created the Maryland War of 1812 Bicentennial Commission in September 2007.⁴³ The Maryland Commission expects to spend roughly \$200,000 in funding in FY2008 with funding likely to increase as the bicentennial draws nearer.⁴⁴

The Virginia legislature enacted the Virginia Bicentennial of the American War of 1812 Commission, and appropriated \$8,640 for reimbursement of the Commission Members’ expenses.⁴⁵

Michigan established its own Michigan Commission on the Commemoration of the Bicentennial of the War of 1812 by executive order of the governor, and will rely on “donations of labor, services, or other things of value from any public or private agency or person.”⁴⁶ Both Kentucky and Georgia are considering legislation to establish their own similar commissions.⁴⁷

Additionally, Congress has already passed S. 797 which established the Star-Spangled Banner National Historic Trail as part of the National Trails System.⁴⁸ CBO estimates that it will cost \$2 million to develop the historic trail over 300 miles of Maryland, D.C. and Virginia.⁴⁹

⁴² S. 1079, Sect. 6(a)(5), p. 11. http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1079rs.txt.pdf

⁴³ Executive Order 01.01.2007.17 of Maryland Governor O’Malley, <http://www.gov.state.md.us/executiveorders/01.07.17War1812.pdf>

⁴⁴ Information provided by Congressional Research Service.

⁴⁵ Title 30, Chapter 45, Sect. 30-293 of the Virginia Code to establish the Virginia Bicentennial of the American War of 1812 Commission. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC3000000004500000000000>. See also funding information <http://leg1.state.va.us/cgi-bin/legp504.exe?081+bud+21-A867> and <http://leg1.state.va.us/cgi-bin/legp504.exe?081+oth+HB1391F122+PDF>

⁴⁶ Executive Order No. 2007-51 of Michigan Governor Granholm, <http://michigan.gov/gov/0,1607,7-168-21975-182611--,00.html>

⁴⁷ Kentucky Senate Bill 197, <http://www.lrc.ky.gov/record/07RS/SB197/bill.doc>, Georgia House Bill H.R. 988, <http://www.lrc.ky.gov/record/07RS/SB197/bill.doc>

⁴⁸ Public Law 110-229, Sec. 341

⁴⁹ CBO Cost Estimate, <http://www.cbo.gov/ftpdocs/81xx/doc8186/s797.pdf>

With the myriad of state and federal activity already underway to commemorate these events, and the commission's ability to raise its own funds, the federal taxpayer should not be further burdened by this history lesson.

Title III — Environment and Public Works

S. 1498 — Captive Primate Safety Act

SUMMARY

S. 1498 would make it illegal to import, export, transport, sell, receive, acquire, or purchase nonhuman primates (such as monkeys and apes). Violators of S. 1498 would be subject to federal criminal penalties up to \$20,000 and/or five years in jail and civil penalties up to \$10,000. The bill sponsor, Sen. Boxer (D-CA), argues that nonhuman primates kept as pets pose serious risks to public health and safety, such as spreading life-threatening diseases. Opponents of the bill argue the risks are exaggerated and that the bill is duplicative and is not a federal priority.

ESTIMATED COST

The Congressional Budget Office (CBO) estimates S. 1498 would cost approximately \$4 million annually and \$17 million over the next five years. According to CBO, these costs come from the Fish and Wildlife Service (FWS) needing to hire four additional employees to conduct inspections and investigations and from the costs of storage, transport and boarding of the confiscated primates.⁵⁰

DUPLICATIVE AND UNNECESSARY

It is currently, and has been for over 30 years, illegal to import non-human primates (NHP), such as monkeys, for pets.⁵¹ The Senate Environment and Public Works (EPW) Committee acknowledges that the bill is about pets by adding “monkeys, apes, and other nonhuman primates to the list of animals that cannot be transported across state lines for the pet trade.”⁵²

Although it currently is illegal to import primates for pets, animal welfare groups estimate there are 15,000 in private hands in the U.S.⁵³ The EPW and the Humane Society of the United States (HSUS) cite 132 reported incidents of human injury from captive or escaped captive primates over a 10-year period (which averages out to 13 a year) as a justification for a new federal law.

“Nonhuman primates can be dangerous,” HSUS writes, “and can spread life-threatening diseases. ... They can inflict serious harm by biting and scratching.” In contrast, the CDC reports that 4.7 million Americans are bitten by dogs each year, with some of these incidents resulting in death, yet Congress is not adding interstate dog transport to the lists

⁵⁰ CBO Cost Estimate, <http://www.cbo.gov/ftpdocs/85xx/doc8576/s1498SEPW.pdf>; Phone contact with Coburn staff and CBO analyst.

⁵¹ According to the Centers for Disease Control and Prevention, “Since 1975, the Federal Quarantine Regulations (42CFR71.53) have restricted the importation of NHP. ...Importation of NHP for use as pets is not permitted under any circumstances”

⁵² Senate Committee on Environment and Public Works Report No. 110-210, “Objectives of the Legislation.”

⁵³ Humane Society of the United States, 2007 “Fact Sheet: Support The Captive Primate Safety Act S. 1498 / H.R. 2964,” http://www.hsus.org/web-files/PDF/legislation/110_captiveprimatesafetyact_s1498_hr2964.pdf

of federal wildlife responsibilities.⁵⁴ In addition, one primate expert testified before Congress that, “Pet primates are not a documented source of disease for humans. There is no documentation or scientific evidence to support these claims.”⁵⁵

Supporters of S. 1498 hope that creating a new federal law to prohibit transporting pet primates across state lines (on top of the federal laws and regulations that already make it illegal to import them) and requiring the FWS to enforce this law with no additional authorized funds and no additional manpower, will make Americans safer. It is rare that an agency takes on additional law enforcement requirements and enforces them properly without any cost to the taxpayer or any detriment to the enforcement of laws currently under its purview.

The chief of the FWS’s Office of Law Enforcement testified before Congress that “The Administration does not support this change, and cannot support [this bill].”⁵⁶ He noted that the bill’s focus on private pets expands the wildlife agency “into an area that has historically been a responsibility of state agencies and which we do not consider to be a wildlife conservation issue.”⁵⁷ He also raised a new concern that individuals with disabilities using trained non-human primates as service animals would be prohibited “from traveling out of state with their service animals” should the bill become law. Additional objections were raised due to the very real possibility that legal animal owners who move out of state would be prohibited from bringing their animals across state lines with them, thus creating even more burden on shelters or sanctuaries if the primates are left behind.

In a letter to Congress, the Department of the Interior expressed concern that the bill could jeopardize the agency’s ability to enforce similar laws concerning higher priority captive animals, such as live lions and also that many of the increased regulations in the bill would be duplicative, as many monkeys and apes in the U.S. are protected by the Animal Welfare Act (AWA) and the Endangered Species Act.⁵⁸

OTHER POLICY CONCERNS

In his hold letter stating his desire to debate and offset S. 1498, Senator Coburn noted, “It is important that we not overburden the Fish and Wildlife Service with matters that might best be and can be handled through a state legal or regulatory framework. There is even a

⁵⁴ “National Dog Bite Prevention Week,” CDC website, <http://www.cdc.gov/ncipc/duip/biteprevention.htm>;

⁵⁵ Testimony of Sian Evans, Ph.D., Director DuMond Conservancy for Primates and Tropical Forests, Miami, Florida Before the Subcommittee on Fisheries, Wildlife and Oceans of the United States House of Representatives Committee on Natural Resources, March 11, 2008.

⁵⁶ Testimony of Benito Perez, Chief of the FWS’ Office of Law Enforcement before the House Natural Resources Subcommittee on Fisheries and Wildlife and Oceans, March 11, 2008, <http://www.fws.gov/laws/Testimony/110th/2008/PerezBearProtection&CaptivePrimate.html>; The Senate was not able to move S. 1498 under unanimous consent in December 2007, and Sen. Coburn made his hold public in a letter dated January 3, 2008 that was sent to Sen. Boxer and to Sen. McConnell. On March 11, 2008, the House of Representatives held the first-ever hearing on The Captive Primate Safety Act.

⁵⁷ *Ibid.*, testimony.

⁵⁸ June 16, 2008, letter to the Committee on Natural Resources’ Chairman Nick Rahall from the Assistant Secretary for Fish, Wildlife and Parks at the Department of the Interior.

more basic question if a federal *wildlife* agency should be dealing with interstate *pet* transport at all.” He also stated that “Last year, the Senate voted to increase the federal government’s debt limit to \$9.815 trillion. We should not add to this debt that will be inherited by our children and grandchildren. Even our best intentions need to be paid for with offsets from lower priorities or wasteful spending.”

Bill supporters, who take issue with CBO’s cost estimate, have been unwilling to write provisions into the bill prohibiting S. 1498 from imposing additional costs on taxpayers. Bill supporters offered instead a non-binding Senate floor colloquy to explain how FWS will not need to hire additional staff and how housing up to 15,000 additional primates somehow will not cost taxpayers any additional funds. Bill supporters did acknowledge that pet owners who move across state lines would be affected by the bill, but indicated that exceptions in the bill for veterinarians, health care and research facilities to transport the animals could help owners find “ways around” abandoning their primate due to the move. No indication was given as to how many of the owners of the estimated 15,000 pets might afford such “ways around” this new law when they move, nor how the exempted entities would go about legally transporting these pets for their owners.⁵⁹

⁵⁹ Communication between the Office of Sen. Tom Coburn and the EPW Committee staff, December 2007.

S. 2707 – Chesapeake Bay Gateways and Water-trails Network Continuing Authorizations Act

SUMMARY

Originally authorized in 1998, and allowed to lapse last year (though it still operates), this bill will create a permanent authorization for the Chesapeake Bay Gateways program and eliminate the spending authorization ceiling (\$3 million annually).

The program is designed to link “gateway” sites around the Chesapeake Bay and offer grants and technical assistance (via the National Park Service) to these sites. These sites include parks, wildlife refuges, and trails that promote and educate visitors on the Bay, and promote access.

The primary concern with this reauthorization is the lack of a sunset provision. The bill had no Senate hearings, and it appears that program oversight is lacking. By removing the typical five or ten year authorization and authorizing the program in perpetuity, Congress is sending a message that the program is functioning at peak efficiency and it expects it always will even without further Congressional oversight.

Additionally, the bill removes the previous \$3 million annual authorization and replaces it with “such sums,” allowing unspecified increases in the program. The program typically receives annual appropriations closer to \$1 million, so it would make more sense to specifically lower the authorizations ceiling, rather than leaving the door open for a blank check.

COST

According to CBO, the bill will cost taxpayers \$5 million through 2013, and \$1 million annually thereafter. However, CBO does not account for the new "such sums" language.

CONCERNS

The \$3 million annually authorization is replaced by “such sums,” yet the program receives an estimated \$1 million annually. Specific authorization level should be lowered to more closely reflect actual appropriations.

Additionally, unlike its previous authorization the bill removes any specific sunset date, transforming the program into a permanent authorization. This will discourage oversight, which is especially important given the large number of federal programs benefiting the Chesapeake Bay.

Tourism is not a federal responsibility, as outlined in the Constitution. Furthermore, it is duplicative of other federal, state, local, and non-profit efforts. A list of groups participating in these efforts includes:

- Alliance for the Chesapeake Bay
- Chesapeake Bay Commission
- Chesapeake Bay Foundation
- Chesapeake Bay Trust
- Maryland Department of Natural Resources

Maryland Historical Trust
Maryland Office of Tourism Development
Pennsylvania Department of Conservation & Natural Resources
Pennsylvania Fish & Boat Commission
U.S. Environmental Protection Agency (Chesapeake Bay Program Office)
U.S. Fish & Wildlife Service(Chesapeake Bay Field Office)
U.S. National Park Service
Virginia Department of Conservation & Recreation
Virginia Department of Historic Resources
Virginia Tourism Corporation

NEGOTIATIONS

Senator Ben Cardin's office was notified of the objection in early July 2008 and we hope to outline detailed concerns for his office soon.

S. 2844 — Beach Protection Act of 2008

SUMMARY

S. 2844 is a reintroduction of the Beach Protection Act of 2007 (S. 1506). A GAO study requested by Sen. Voinovich (R-OH) on the effect of the BEACH Act on the Great Lakes states led to the introduction of a revised version.

S. 2844 reauthorizes and amends an Environmental Protection Agency (EPA) grant program to help states monitor beachwater pollution. The Beach Act expands the authorized uses of these grants, allowing them to be used for “[pollution] source tracking, sanitary surveys, and prevention efforts to address the identified sources of beachwater pollution.” It also allows grants to be used for remediation efforts. The GAO report suggested that the current grant program be amended to allow states to use the awarded funds more flexibly.

An additional section authorizes a new GAO study to recreate the current grant distribution formula to ensure that states with a shorter beach season are considered more equally with states that have a longer beach season for grant funding. The original GAO report requested by Senator Voinovich found that the current grant formula puts cold-weather states at a disadvantage for receiving awarded grants.

The bill also requires states that are not in compliance with grant preconditions to address these deficiencies within 1 year. If a state does not address these identified deficiencies within a year, the federal government cannot pay for more than 50% of costs associated with this program.

S. 2844 also updates the testing methods currently used in monitoring and detecting beach pollution, by requiring the use of rapid testing methods. Rapid testing methods are defined as those that require two hours--from the commencement of the test--for completion.

S. 2844 was reported out of the Senate Committee on Environment and Public Works on July 10, 2008, and has been placed on the legislative calendar. An effort to pass this bill by Unanimous Consent was made July 14, 2008.

The provisions expanding the grant program are not in the recently-passed House bill with the same name, H.R. 2537. H.R. 2537 also includes a provision successfully added by Rep. Flake, requiring these grant funds to be spent based on a current formula – not via the earmarking process. The vote was successful by a 263-117 margin. A similar provision is not included in S. 2844.

ESTIMATED COST

This bill was reviewed by the Congressional Budget Office (CBO), which concluded that enacting S. 2844 would authorize \$305 million over five years.

**INCREASING AUTHORIZATIONS WITHOUT OFFSETTING NEW SPENDING INCREASES
OUR NATIONAL DEBT AND HANDICAPS OUR GRANDCHILDREN**

This bill does not include any offsets to pay for the doubling of authorized funding. Recent appropriations have only totaled \$10 million, despite the \$30 million authorization level.⁶⁰

S. 2844 also expands federal involvement in local beach maintenance efforts by enlarging the scope of the current EPA grant program to include remediation and other pollution monitoring efforts. This increase may also duplicate other federal programs, as Congress already provides funding for both remediation through a variety of grants including state revolving funds, as well as, water discharge and pollution tracking through the Environmental Protection Agencies annual enforcement budget.⁶¹

Proponents of S. 2844 argue the increase in authorizations is necessary to account for the increase in state activities eligible for grant funding. However; the fact that previous authorization levels were three times greater than appropriations, casts doubt on this assertion. No efforts were made to address these fiscal concerns by providing full offsets for these new costs.

⁶⁰ Senate Report, BEACH ACT OF 2008, Additional Views of Senator Inhofe

⁶¹ Senate Report, BEACH ACT OF 2008, Additional Views of Senator Inhofe

S. 496— Appalachian Regional Development Act Amendments of 2007

SUMMARY

S. 496, sponsored by Senator Voinovich (R-OH), would authorize increased appropriations for the Appalachian Regional Commission (ARC) and create a new federal grant program to promote energy efficiency and renewable energy in the Appalachian region. S. 496 also would allow the ARC to increase the government's share of the cost of projects in counties most at risk of becoming economically distressed.

ESTIMATED COST

CBO estimates implementing this bill would cost \$294 million in new spending over the 2007-2012 period.⁶² In total, the bill would authorize \$575 million over five years.

DUPLICATIVE AND UNNECESSARY

The funding authorized by S. 496 includes \$95 million for FY 2007, of which \$12 million would be for a new federal grant program to promote energy efficiency and renewable energy in the Appalachian region. Thus far, the ARC has received funding of \$65 million for FY 2007 under Public Law 110-5, the Revised Continuing Appropriations Resolution, 2007. Thus, enacting this legislation would authorize the appropriation of an additional \$30 million for the ARC in 2007. For this estimate, CBO assumes that the added amount would be provided in a supplemental appropriation. This program is already adequately funded and does not need more money for FY 2007.

The bill also would specify funding levels for FY 2008 through 2011, authorizing the appropriation of \$416 million over those four years. That total includes \$364 million for ARC's existing grant programs, of which \$23 million would be allocated for the commission's Telecommunications and Technology Initiative. The remaining \$52 million would be authorized for the new energy grant program. There are already numerous energy grant programs that the 13 states in this bill are eligible for.

POLICY CONCERNS

The bill includes a federal/non-federal fund matching grant program to provide assistance for economic development, demonstration health projects, assistance for proposed low- and middle-income housing projects, a telecommunications and technology initiative, an entrepreneurship initiative, a regional skills partnership, and supplements to federal grant programs. This bill would increase the federal share of these programs. The federal government should not take on more than half of the cost share as it creates an excessive and unnecessary burden on the indebted federal government.

NEGOTIATION ATTEMPTS

This bill was hotlined on July 17, 2008.

⁶² <http://www.cbo.gov/ftpdocs/80xx/doc8016/s496.pdf>

Title IV — Foreign Relations

H.R. 1469 — The Senator Paul Simon Study Abroad Foundation Act

SUMMARY

The bill would authorize the establishment of the Senator Paul Simon Study Abroad Foundation to encourage U.S. students to study overseas, particularly in nontraditional destinations. The purpose of the foundation is to enhance the global competitiveness and international knowledge base of the US, enhance our foreign policy capacity, and create greater cultural understanding.

Over 200,000 American students currently study overseas every year, and one of the foundation's objectives would be to increase this number to at least one million within 10 years. The foundation would make grants to students, nongovernmental organizations and educational institutions. The foundation would be named after Senator Paul Simon, a Democrat from Illinois who served until 1997.

ESTIMATED COST

The bill authorizes \$400 million over five years. CBO estimates a cost of \$40 million in 2008 and \$345 million over the 2008 - 2012 period.

DUPLICATION OF SIMILAR EXISTING PROGRAMS

There are many current programs administered by the U.S. Department of Education aimed at increasing opportunities for students to study abroad. An entire section of the Department, the International Education Programs Service (IEPS), is charged with the planning, policy development, and grant administration functions for international education programs.⁶³

There are currently more than 15 programs already administered by the Department to achieve the same goals associated with the Senator Paul Simon Study Abroad Foundation, including:⁶⁴

- American Overseas Research Centers
- Business and International Education
- Centers for International Business Education
- Foreign Language and Area Studies Fellowships
- Fulbright-Hays Training Grants--Doctoral Dissertation Research Abroad
- Fulbright-Hays Training Grants--Faculty Research Abroad
- Fulbright-Hays Training Grants--Group Projects Abroad
- Fulbright-Hays Seminars Abroad--Bilateral Projects
- Institute for International Public Policy
- International Research and Studies
- Language Resource Centers

⁶³ <http://www.ed.gov/about/offices/list/ope/iegps/index.html>

⁶⁴ [Id.](#)

National Resource Centers
Technological Innovation and Cooperation for Foreign Information Access
Undergraduate International Studies and Foreign Language Program

The Department of State also offers a program to expand opportunities to study abroad. The Benjamin A. Gilman International Scholarship Program offers eligible U.S. undergraduates \$5,000 to pursue overseas study for college credit. The Gilman Scholarships also provide students studying critical need languages up to \$3,000 in additional funding as part of the new Critical Need Language Supplement program.⁶⁵

According to the Institute of International Education, there are countless other public and private scholarships available for U.S. students who wish to study abroad, including the following:⁶⁶

Freeman-Asia Scholarships
Blakemore Asian Language Fellowships
Bridging Scholarships for Study in Japan
British Council - Funding Your Study in the UK
CIEE Student Scholarship Programs for Education Abroad
Critical Language Scholarships for Intensive Summer Institutes
IIE-Midwest Study Abroad Grants
Institute for International Public Policy - For underrepresented minority students
NSEP David L. Boren Undergraduate Scholarships – For study outside of W. Europe, Australia, New Zealand & Canada
Monbukagakusho Scholarships for Study in Japan
Rotary Ambassadorial Scholarships – For undergraduate, graduate & vocational study
Scholarships for Multicultural Students - Hosted by Michigan State University
UK 9/11 Scholarship Fund – For those who lost a parent or guardian in the 9/11 attacks
Woodrow Wilson National Fellowship Foundation

NEGOTIATIONS

The bill sponsors have not contacted us to discuss our concerns.

⁶⁵ <http://exchanges.state.gov/education/educationusa/abroadgilman.htm>

⁶⁶ <http://www.iie.org/programs/gilman/resources.html>

S. 613 – Reconstruction and Stabilization Civilian Management Act of 2007

SUMMARY

S. 613 creates a Response Readiness Corps within the Department of State to conduct stabilization and reconstruction activities in foreign countries or regions that are in transition from conflict or civil strife.

ESTIMATED COST

The bill authorizes \$80 million annually in new federal spending for personnel, education and training, equipment, and travel costs. The bill also authorizes the creation of a new emergency fund and authorizes an initial \$75 million in 2008 for the fund and “such sums as may be necessary” for each year to replenish the fund. Both of these authorizations have no sunset date. In total, the bill would authorize \$775 million over five years.

The Congressional Budget Office estimates the cost of implementing S. 613 is \$85 million in 2008 and \$629 million over the 2008-2012 period. CBO also stated that, considering the costs of Afghanistan and Iraq reconstruction, the activities authorized in this bill will likely require much higher funding levels than the amounts authorized.⁶⁷

NEEDLESSLY EXPANDS THE SIZE OF GOVERNMENT

S. 613 would create a Response Readiness Corps with 250 fulltime, federal personnel and 2,000 standby, federal personnel. It would also create a Civilian Reserve with at least 500 non-government personnel including individuals from the retired NGO, contractor, and USAID community.

Contractors are currently conducting reconstruction and security for reconstruction in places like Iraq and Afghanistan. USAID and the State Department should be planning reconstruction efforts, contracting effectively, and supervising their contracts. Adding to the size of government and the federal bureaucracy is not the answer. Requiring the Department of State and USAID to do a better job overseeing and managing contractors would be a better way to address this issue.

LACKS FLEXIBILITY

This bill creates a permanent structure for all reconstruction and stabilization without regard for the fact that each country where the U.S. may undertake stabilization and reconstruction efforts is different. For example, there may be different language requirements, different cultures, and different baseline infrastructures.

The same people are probably not the best group for every situation. There is nothing wrong with taking an inventory of all federal workers, noting their skills, and documenting their willingness to be deployed from their regular job to reconstruction

⁶⁷ CBO Cost Estimate, “S. 613, Reconstruction and Stabilization Civilian Management Act of 2007,” 2 April 2007.

efforts if necessary. This, however, does not require spending over \$80 million annually with no end date.

EXPANDS FAILING PROGRAMS

S.613 expands failed programs and rewards mismanagement without first fixing the cause of the problems. The Department of State and USAID have a poor record for their reconstruction and stabilization programs in Afghanistan.

For example, USAID's health clinic and school reconstruction program in Afghanistan was undermined by mismanagement and fraud. USAID claimed it provided 140 medical clinics to Afghanistan in 2003.⁶⁸ When the government of Afghanistan heard this claim in 2005, the Afghanistan Minister of Health wrote to USAID indicating he had no record of receiving the clinics from USAID.⁶⁹ In 2006, Senator Coburn requested documentation proving USAID's claim, and six months later, USAID could only document 39 of the 140 clinics.⁷⁰

USAID's clinic and school program suffered from other problems as well. Many buildings were built in flood zones, inaccessible locations, or communities that did not have trained personnel to staff them. Many of the original schools and clinics were poorly built with roofs that buckled after the first snowfall or walls that easily fell apart. In one instance, USAID's top contractor filed false progress reports and was paid for work on several clinics that was not actually carried out.⁷¹

LACKS PROTECTIONS FROM MISUSE OF FUNDING

Supporters of S. 613 say these reconstruction and stabilization activities will help prevent the need for greater U.S. military deployment. However, the bill fails to insure the Department of Defense has a voice in the decision process for when and where to deploy the Response Readiness Corps. Without the added accountability from the Department of Defense, the State Department could easily divert its new authority to duplicate existing diplomatic or foreign aid programs rather than accomplish the higher-priority military and national security objectives of S.613 such as decreasing the strain on U.S. forces.

DUPLICATES EXISTING AUTHORITY

⁶⁸ According to a July 2004 interagency cable from USAID obtained by the minority staff of the Federal Financial Management, Government Information, Federal Services, and International Security Subcommittee in the Senate.

⁶⁹ Letter from S.M. Amin Fatemie to James Sarn, "Primary Health Care Facilities," 10 November 2005.

⁷⁰ See "USAID's response to Senator Tom Coburn's request for documentation of 140 clinics handed over to the Afghanistan government by 2003" as submitted for the record at Senate Homeland Security and Governmental Affairs Committee hearing, "Deconstructing Reconstruction: Problems, Challenges, and the Way Forward in Iraq and Afghanistan" on 21 March 2007.

⁷¹ See Stephens, Joe and David Ottaway, "Rebuilding Plan Full of Cracks," *Washington Post*, 20 November 2005 and "Example of USAID and IRD's failure to properly monitor the performance of Louis Berger Group" as submitted for the record at Senate Homeland Security and Governmental Affairs Committee hearing on 21 March 2007.

The State Department already has the authority to hire civilians and accept details from other U.S. agencies through 5 USC 3161. The “3161” authority, like the authorities duplicated in S. 613, permits the Department of State or any other U.S. agency to hire civilians and mobilize federal personnel on a temporary basis for any reason, including reconstruction and stabilization activities.

During reconstruction of Iraq, the Departments of State and Defense used 3161 authority to hire civilians and mobilize federal personnel for the Provincial Reconstruction Teams (PRTs). The Department of Defense successfully utilized this authority to hire about 3,200 civilians for the PRTs, while the Department of State only managed to hire around 100 civilians. According to federal personnel working on Iraq reconstruction, the Department of Defense quickly mobilized its civilians by giving them priority for health screenings, security clearances, and deployment.

On the other hand, the State Department failed to prioritize and forced its recruits to wait at the back of its queue for State Department vetting. According to reports from Iraq, this resulted in the PRTs being severely under-represented by State Department recruits that would trickle into the PRTs a few at a time over a period of months.

The Secretary of State recently announced intentions to create a 4,250 member Civilian Response Corps utilizing authorities, like 3161 authority, already available and \$30 million already appropriated by Congress for this purpose.⁷² In other words, the State Department is able to create a corps twice as big for twice as less funding as authorized by S. 613 without making S. 613 law.

ATTEMPTS TO IMPROVE THE BILL

Despite lengthy negotiations with officials from the Department of State and the National Security Advisor to the President, the sponsor of S. 613 has not accepted the improvements that were agreed upon and the negotiations unexpectedly stopped.

⁷² Good, Chris. “State Dept. Launches Civilian Response Corps,” The Hill’s Blog Briefing Room, *The Hill*, 17 July 2007.

H.R. 2798 – Overseas Private Investment Corporation Reauthorization

SUMMARY

H.R. 2798 extends through September 30, 2011 the Overseas Private Investment Corporation's (OPIC) authority to make loans and issue investment insurance and investment guarantees. The bill also requires OPIC projects to comply with so-called "climate change" mitigation policies and goals.

ESTIMATED COST

Although this legislation would authorize \$131 million over five years for certain administrative functions at OPIC, CBO estimates that, in total, this bill will result in a net decrease of discretionary spending because OPIC profits are higher than its administrative costs.⁷³

NOT TARGETED TO LEAST DEVELOPED COUNTRIES

OPIC services are not targeted to least developed countries. While OPIC claims to give strong emphasis on least developed countries, only one (Zambia⁷⁴) of the top ten countries with the greatest value of OPIC-supported projects is actually a least developed country.⁷⁵

Country	OPIC-supported Investments (millions U.S. \$)
Russia	198.8
Peru	149.3
Turkey	70.0
Mexico	64.5
Honduras	61.1
Kazakhstan	49.0
Nicaragua	34.7
Ghana	33.1
Zambia	28.4
Brazil	25.5

The purpose of the program is to encourage U.S. companies to operate in unstable countries and developing markets that find it difficult to attract private investment. However, OPIC operates in many countries with no credible threat of instability and have a variety of private market options for insurance and financing. These include South Korea, Singapore, Russia, Greece, Brazil, and Portugal.⁷⁶

NOT INDEPENDENTLY REVIEWED

⁷³ CBO Cost Estimate, "H.R. 2798, Overseas Private Investment Corporation," 16 July 2007.

⁷⁴ Data from "Comparison between the Overseas Private Investment Corporation and the Multilateral Investment Guarantee Agency of the World Bank," Congressional Research Service, 1 April 2008.

⁷⁵ According to internationally recognized criteria used by the United Nations based on low income, human resource weakness, and economic vulnerability.

⁷⁶ 2006 OPIC Annual Report.

OPIC is not independently reviewed or assessed. According to the OMB, the last independent evaluation of sufficient scope and quality was completed in 2003. The study indicated that reforms are needed at OPIC for the “program to be effective in achieving results. There have been no substantial changes in OPIC’s mission, markets authorities, or operations since that evaluation.”⁷⁷ When recently asked for independent evaluations, OPIC sent a letter of support from the Small Business Exporters Association (SBEA). The SBEA is a lobbying group that represents clients of OPIC. This clearly does not meet any standard of independence.

CORPORATE WELFARE

OPIC gives 13% of its projects to large enterprises. According to OPIC, in 1997, OPIC projects for small and medium sized businesses were 24% of the total, but in 2006, this grew to 87%. OPIC should not give financing to *any* companies that are wealthy enough to afford their own financing.

BASED ON FAULTY ECONOMIC MODEL

OPIC puts the investment “horse” before the growth “cart.” Economic research and data conclude that growth spurs investment.⁷⁸ OPIC places investments related to politically-favored causes, projects, or companies into unstable markets, hoping more inputs will spur economic growth. Economic freedoms, not government intervention, provide incentives for investment leading to long-term growth. At best, governments can lay the foundation for economic prosperity by creating a healthy, free-market climate for growth to occur.

Much like corporate welfare, OPIC transfers resources from productive quarters of the U.S. economy to politically favored ones. Beneficiary companies have an unfair competitive advantage against other companies in the global market.

REQUIRES ANTI-GROWTH “CLIMATE CHANGE” POLICIES

H.R. 2798 expands OPIC’s mandate to include a vigorous climate change mitigation agenda. These policies are unproven remedies for an unproven problem. The U.S. taxpayer already spends up to \$5 billion annually on “global warming” even though peer reviewed research continues to contradict the theory that human activities have a significant impact on cyclical climate patterns. Regardless of the diverse views about the weather, policy options to respond to alleged warming usually involve government measures such as increased taxation and reduced liberty that indisputably slow or reverse economic growth, a result antithetical to OPIC’s stated mission.

NEGOTIATIONS

The sponsors of H.R. 2798 have not attempted to negotiate improvements to the bill. The National Security Advisor to the President has negotiated with Senator Coburn to make improvements to the bill, and after conceding on all other requests, Senator Coburn has

⁷⁷ 2006 OPIC “Program Assessment Survey,” Office of Management and Budget.

⁷⁸ Magnus Blomstrom, Robert E. Lipsey, and Mario Zejan, “Is Fixed Investment the Key to Economic Growth?,” *The Quarterly Journal of Economics*, Vol. 111, No. 1 (Feb. 1996), pp. 269–276

requested that the bill improves in two key things: (1) remove the section on “climate change” mitigation and (2) prohibit OPIC from assisting large corporations.

S. 2020 — The Tropical Forest and Coral Conservation Reauthorization Act of 2007

SUMMARY AND ESTIMATED COST

S. 2020, sponsored by Senator Lugar, would authorize the appropriation of \$139 million over the 2008-2010 period to restructure debt owed to the United States in exchange for agreements that the indebted countries would conserve tropical forests, coral reefs, and coastal marine ecosystems.⁷⁹

DUPLICATIVE AND UNNECESSARY

There are no compelling arguments that nature conservation efforts in foreign countries are more important than paying down our national debt.

Additionally, it is unconscionable for Congress to support aid for foreign conservation efforts while our own domestic conservation efforts are unmet. Recently, it has been reported that the National Mall, a treasured relic of the country, is in dire need of maintenance repairs. While the Park Service has done the best it can with limited resources, the Mall has accumulated about \$350 million in deferred maintenance. Given that the Mall's budget this year was about \$31 million, it is utterly impossible to sufficiently maintain this national treasure that millions of tourists visit each year.⁸⁰ As for the agency as a whole, the National Park Service currently has as much as a \$12 billion maintenance backlog. Included in this backlog, the National Park Service currently has 2,217 property assets that have been slated for disposal, but cannot solely due to a lack of funding. Finally, the elimination of the program will not erode any foreign relationships or partnerships as the countries currently in the Tropical Forest Conservation Act program already receives, in totality, over a billion dollars in development assistance from the United States.

OTHER POLICY CONCERNS

Since this bill is being considered by the Foreign Affairs Committee, it is worth noting the national security implications our national debt imposes. For example, China now holds more than \$1 trillion of our debt. According to the Congressional Research Service, "China's accumulation of hard currency assets will allow it to undertake activities in the foreign affairs and military realms that are not in the U.S. interest." This provides China tremendous leverage over the United States in our diplomatic relations as they could, at any point, drop their holdings of our Treasury securities. The mere threat of this occurrence could destabilize our economy, significantly devalue our dollar further, and lead to skyrocketing interest rates.

NEGOTIATIONS

Staff met with the Department of Treasury in January, who supports the legislation. In addition to articulating Senator Coburn's concerns to Treasury, staff also met with Senator Lugar's staff in February. Finally, Senator Coburn responded personally to a

⁷⁹ CBO Cost Estimate, <http://www.cbo.gov/ftpdocs/86xx/doc8639/s2020.pdf>.

⁸⁰ "Makeover of Mall Urged at Hearing, Washington Post 5/21/2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/05/20/AR2008052001840.html>.

letter Senator Lugar sent requesting we release our hold. We stated we cannot release our hold at this time, but we are more than happy to meet to further discuss the legislation. We have not heard back from the bill sponsor.

H.R. 1678 — The Torture Victims Relief Reauthorization Act of 2007

SUMMARY

H.R. 1678 reauthorizes the Torture Victims Relief Act of 1998, which authorizes funding for grants to U.S. and international entities that provide services to victims of torture

ESTIMATED COST

The bill authorizes over two years \$50 million for domestic treatment centers, \$24 million for foreign treatment centers, and a \$24 million earmark for the United Nations Voluntary Fund for Victims of Torture. This represents a \$9 million increase in authorized spending compared to the last reauthorization of the Torture Victims Relief Act.

The Congressional Budget Office estimates that implementing the act would cost \$22 million in 2008 and \$97 million over the 2008-2012 period, “assuming that the authorized amounts are appropriated and that outlays will follow historic spending patterns for those programs.”⁸¹

LACKS PROTECTIONS AGAINST ABUSE OF FUNDS

The bill does not include a definition of torture with limitations to focus funds on direct assistance to victims rather than making accusations against human rights-protecting democracies or undermining U.S. immigration laws.

In the past, some of the funding authorized in the bill has been given to the Minnesota Advocates for Human Rights.⁸² While the organization claims to provide legal services to asylum seekers, it also conducts partisan activities like a recent lecture on alleged detainee treatment featuring lawyers of Guantanamo detainees explaining how their clients can bring suit against the United States Government.⁸³

Other funding provided by this bill went to organizations like the Greater Boston Legal Services and the Legal Aid Foundation of Los Angeles. These groups provide legal services to illegal aliens that continue violating U.S. immigration laws and exploit federal, state, and local entitlement programs.⁸⁴

INCLUDES EARMARK FOR UNITED NATIONS

H.R. 1678 contains a \$24 million earmark to the United Nations. The U.N. has a poor record for adequately addressing the topic of torture. The U.N. spends too much time and

⁸¹ CBO Cost Estimate, “H.R. 1678, Torture Victims Relief Reauthorization Act of 2007,” 19 September 2007.

⁸² 2005 recipients of UN Fund money found at <http://www.ohchr.org/english/about/funds/torture/docs/listofprojects2005.doc>

⁸³ For more information visit <http://www.tcdailyplanet.net/event/2007/10/22/guantanamo-bay-challenge-finding-balance-between-our-nation-s-security-and-our-nati> and http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Guantanamo_Bay.doc

⁸⁴ Jordan, Miriam, “Boston Financier Steps in To Bail Out Illegal Immigration,” *Wall Street Journal*, 19 March 2008; Terrence, Jeffery, “You’re Suing Los Angeles,” *Human Events*, 19 May 2003.

taxpayer contributions lodging accusations against democracies like Israel and the United States and almost no time sanctioning regimes that regularly use torture as a form of social control, such as China, North Korea, Egypt, and Burma.⁸⁵

In addition, many of the organizations that support illegal aliens or provide training on how to sue the U.S. government receive funding through this U.N. earmark.

The U.N. also has a poor record on protecting U.S. contributions from fraud and mismanagement. United Nations auditors recently found that 43% of U.N. procurement is tainted by fraud. Out of \$1.4 billion in U.N. contracts internally investigated, \$610 million was tainted by ten “significant fraud and corruption schemes.”⁸⁶ Since 43% of the procurement contracts are tainted and the U.S. taxpayer contributes up to 25% of all U.N. funding, it is safe to say the entire U.S. contribution in this case has been lost to corruption and waste.

Given what we know of its track record, the U.N. does not merit an additional investment from Americans who already contributes over \$5 billion annually. The U.N. should be required to demonstrate results and compete for grants like any other organization.

NEGOTIATIONS

Senator Coburn has discussed his concerns with the bill’s sponsor, Representative Chris Smith, and outlined the improvements necessary for Senator Coburn to support the bill. These include (1) offsetting the increased authorization for appropriations, (2) including a definition of torture and limitations that prevent funding from being misused, and (3) removing the earmark for the United Nations.

⁸⁵ U.S. State Department’s “2006 Country Reports on Human Rights Practices”; for more information, visit “Eye on the U.N.” at <http://www.eyeontheun.org/>

⁸⁶ “Report of the Office of Internal Oversight Services on the activities of the Procurement Task Force for the 18-month period ended 30 June 2007,” U.N. Office of Internal Oversight Services, 5 October 2007.

H.R. 3320 — Support for the Museum of the History of Polish Jews Act of 2007

SUMMARY AND ESTIMATED COST

H.R. 3320, sponsored by Congressman Chris Smith, would authorize the appropriation of \$5 million to develop and maintain a permanent collection at the Museum of the History of Polish Jews in Warsaw, Poland.⁸⁷

DUPLICATIVE AND UNNECESSARY

This bill represents an earmark for a museum in a foreign country. While it is debatable whether it is the proper federal role to fund cultural centers in the United States, it is clear there is any role for subsidizing museums in foreign countries.

This museum duplicates numerous museums and cultural centers that are already in existence in Poland. Most notably, in 2006, the Polish government sanctioned and established the National Museum of Polish History.

Additionally, the current unemployment rate in Poland is a staggering 18.2%. If we are going to contribute money to a country that is struggling economically such as Poland, it should not go to cultural centers that provide no economic benefit to its citizens.⁸⁸

Finally, Poland already receives, in totality, over \$4 million in development assistance from the United States for unrelated activities.⁸⁹

NEGOTIATIONS

Senator Coburn placed a hold on this legislation last month. Staff has been in contact with Congressman Chris Smith's office since then, and is still in the information gathering stages at this point.

⁸⁷ CBO Cost Estimate, <http://www.cbo.gov/ftpdocs/91xx/doc9163/hr3320.pdf>.

⁸⁸ 2008 Index of Economic Freedom Website, <http://www.heritage.org/Index/country.cfm?id=Poland>.

⁸⁹ 2008 Index of Economic Freedom Website, <http://www.heritage.org/Index/country.cfm?id=Poland>.

Title V — Commerce, Science, and Transportation

S. 1492 – The Broadband Data Improvement Act

SUMMARY

The Broadband Data Improvement Act is designed to improve the federal government's efforts regarding the surveying of broadband Internet deployment. Specifically the bill has three objectives: 1) requiring the FCC to update their broadband definition and broadband deployment information; 2) using the Census Bureau's America Community Survey to gather information on computer use and Internet connectivity in households; and 3) creating a new federal grant program to provide funding for non-profit organizations to work with states to evaluate broadband deployment and to promote greater broadband consumer adoption.

COST

The Broadband Data Improvement Act authorizes \$202 million over five years for the establishment of the State Broadband Data and Development Grant Program. The \$202 million authorized for this grant program is new spending that is not offset by a reduction in spending elsewhere in the federal government.

The bill requires that the Census Bureau's American Community Survey to include questions regarding computer use and Internet connectivity. There is no authorization in the bill related to this requirement, making it an unfunded mandate on the Census Bureau. In July, the cash strapped Census Bureau received \$210 million of emergency appropriated funds in the war supplemental funding bill. Commerce Department Secretary Gutierrez said that without the \$210 million emergency appropriation the 2010 decennial would be in jeopardy.⁹⁰ The cost of this unfunded mandate is unclear, but it is clear the agency does not have extra funds to take on new initiatives and this would certainly force the agency further in the red.

DUPLICATIVE AND UNNECESSARY CENSUS REQUIREMENT

Since May 2000, the FCC has collected broadband deployment information from broadband Internet providers. In the 1996 Telecommunications Act, Congress required the FCC to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion."⁹¹ The FCC's work towards completing this Congress mandate has been highly criticized by industry and government organizations. The Government Accountability Office reported that the FCC's broadband data "may not provide a highly accurate depiction of local deployment of broadband infrastructure for residential service, especially in rural areas."⁹²

⁹⁰ Census Receives \$210 million in Emergency Funding for 2010 count http://www.nextgov.com/nextgov/ng_20080702_9517.php

⁹¹ The Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56.

⁹² GAO - Broadband Deployment ins extensive throughout the US, but it is difficult to asses the extent of deployment gaps in rural areas. <http://www.gao.gov/new.items/d06426.pdf>

Based on government and private sector oversight, this bill proposes good policy that requires the FCC to improve their reporting accuracy of broadband deployment information. However, the policy provision in this bill requiring the Census Bureau to include questions about Internet use creates a redundancy of the objective that Congress has already assigned to the FCC.

There is no data that can be collected through the American Community Survey that can not be collected through the FCC's survey of broadband telecommunication providers. Instead of duplicating the collection of broadband data through the FCC and the Census Bureau, this legislation should be written to perfect the objectives of only one federal agency.

DUPLICATIVE GRANT PROGRAMS TO IMPROVE BROADBAND DATA AND ACCESS

The state broadband data and the development grant program have the laudable goal of identifying underserved areas increase broadband deployment in those areas. However, this goal is also pursued by the Department of Agriculture's Rural Utility Service through the Rural Broadband Access Loan and Broadband Loan Guarantee Program. According to the Congress Research Service, these two Rural Utility Service Programs have spent over \$4 billion since 2002 on direct subsidies and loans to provide greater broadband connectivity in rural areas.⁹³

In addition to the broadband connectivity programs in the Rural Utility Service, the Department of Agriculture also has a program called the Community-Oriented Connectivity Broadband Grant Program. Since 2001, this program has spent over \$76 million to furnish broadband service in rural, economically-challenged communities where such service does not currently exist.⁹⁴

OTHER POLICY CONCERNS

Broadband Internet service, unlike other telecommunication services, has managed to remain untaxed by federal, state, and local governments. This is in large part due to Congress passing the Internet Access Tax Moratorium in 1998, which is still in tact today. This moratorium prevents state and locals governments from taxing Internet access. This moratorium does not apply to the federal taxation of Internet access, but thankfully to this point no federal taxes on Internet access have been imposed.

Because of the lack of taxes and regulations on broadband Internet service, the expansion access across the country has been phenomenal. In December of 1999, there were 2.5 million broadband connections in the US. By June 2007, there was a 4000 percent increase in broadband connections from the 1999 level, with over 100 million connections in the U.S. alone. This historic distribution of a telecommunication service was done almost entirely without taxes, fees, or subsidization from all levels of government. The more the federal government becomes involved in subsidizing, regulating, or taxing broadband Internet service, the more it will contribution to reduction in the competitiveness and ingenuity of an industry that has brought high speed

⁹³ Congressional Research Service - <http://www.congress.gov/erp/rl/pdf/RL33816.pdf>

⁹⁴ <http://www.usda.gov/rus/telecom/commconnect/docs/2008commconnectAppGuide.doc>

broadband Internet to over 100 million households and businesses in less than eight years.

S. 675 — The Training for Realtime Writers Act of 2007

SUMMARY

The bill creates a new federal program to train more people to provide closed captioning for TV programming. S. 675 authorizes \$100 million to make competitive grants of \$1.5 million each for up to two years to promote recruitment, training, and placement of individuals, including court reporters, to provide closed captioning in TV programming. According to the bill sponsor, Senator Harkin (D-IA), the legislation is needed because currently there are not enough trained captioners or “realtime writers” to meet the requirements of the Telecommunications Act of 1996, which mandates that all television programming be captioned by 2006, and that all Spanish-language programming be captioned by 2010. Opponents of the bill argue the bill is unnecessary since market demand will drive entities to provide the training, and the program is duplicative of already existing federal job training programs.

ESTIMATED COST

The bill authorizes a total of \$100 million for fiscal years-FY 2008 through FY 2012. The Congressional Budget Office (CBO) estimates S. 675 would cost \$69 million over the next five years.

The Senate Commerce Committee Report does not provide alternative funding offsets for the new spending.

DUPLICATIVE AND UNNECESSARY

In a letter to Congress expressing opposition to S. 675, the U.S. Department of Commerce, which the bill tasks with administering the new grant program, states that it “does not believe a special federal grant program is needed to facilitate job training in this field” since it is an “inefficient use of funds and duplicates existing programs, like the Department of Labor’s High Growth Job Training Initiative, that prepare workers for jobs in high-growth industries.” The letter goes on to assert that the Department of Commerce does not possess the “subject-matter expertise necessary to administer the program” created in S. 675.

The Department of Labor’s High Growth Job Training Initiative (HGJTI) has identified 14 sectors where solid career paths are left open due to a lack of people qualified to fill them. The HGJTI targets education and skills development resources toward helping workers gain the skills they need to build successful careers in growing industries like health care, information technology and advanced manufacturing.

The HGJTI has not identified realtime writers as one of the country’s 14 high growth job sectors. Likely, this is due to the fact that 1,500 realtime writers have already been trained, leaving only another 1,500 still in need of training to meet the national demand for captioners which is just “over 3,000.” Using CBO’s cost estimate of \$69 million, S. 675 would allocate \$46,000 to train each of the 1,500 needed real time writers.

OTHER POLICY CONCERNS

Senator Harkin argues that the bill has built-in “fiscal accountability provisions” such as a hard “sunset date,” a hard authorization level, mandated Inspector General reviews, and reporting requirements on grantees. Senator Harkin argues further that earmarks are currently funding such training programs as proposed in S. 675, and thus passage of the bill would introduce a competitive bidding process into the current national captioner training efforts. However, Senator Harkin rejected offsetting this new program from the \$79 million in leftover funding for the Advanced Technology Program, which was abolished because of its lack of demonstrated need.

S. 1582 — Hydrographic Services Improvement Act Amendments of 2007

SUMMARY

S. 1582, sponsored by Senator Daniel Inouye (D-HI), would reauthorize hydrographic activities carried out by the National Oceanic and Atmospheric Administration (NOAA).

ESTIMATED COST

The bill would authorize the appropriation of whatever amounts are necessary for fiscal years 2008 through 2012 for hydrographic activities carried out by the National Oceanic and Atmospheric Administration (NOAA). According to CBO, the bill would authorize \$1.05 billion over six years.

DUPLICATIVE AND UNNECESSARY

The U.S. national debt has recently topped \$9 trillion for the first time in history. This bill reauthorizes a program in government with no ceiling for spending or a sunset date to hold the program accountable.

NEGOTIATION ATTEMPTS

Senator Coburn met with Senator Stevens in December 2007 in a good faith effort to negotiate a number of bills in order to find offsets or ceiling caps on spending. Senator Stevens was unwilling to negotiate to address Senator Coburn's concerns.

S. 39— The Ocean and Coastal Exploration and NOAA Act

SUMMARY

S.39, sponsored by Senator Stevens, would direct the National Oceanic and Atmospheric Administration (NOAA) to establish an integrated mapping program encompassing the Great Lakes, coastal state waters, the territorial sea, the exclusive economic zone, and the continental shelf of the United States. The bill also would establish an interagency committee to coordinate federal mapping of ocean and coastal areas, require an integrated mapping plan to identify and describe all mapping programs, and authorize up to three joint centers for ocean and coastal mapping to be located at colleges or universities. Finally, the bill would establish two programs, one for ocean exploration and another for undersea research. In total, there are 5 new initiatives that are authorized in this bill.

COST

The bill would authorize the appropriation of \$872 million over the 2008-2015 period.⁹⁵

DUPLICATIVE AND UNNECESSARY

All the initiatives in this bill would duplicate, in its entirety, ongoing efforts of NOAA's National Ocean Service. The Mapping and Charting component funded by the FY 2008 Omnibus at \$44 million, (of the National Ocean Service), fulfills NOAA's efforts to improve navigation products and services. Not one new initiative authorized by this bill for the National Ocean Research Leadership Council is out of the purview of NOAA's National Ocean Service, and the implementation of this bill would not garner any results that NOAA is not already capable of producing.

Additionally, the new interagency council would duplicate the ongoing efforts of the Federal Geographic Data Committee (FGDA). The FGDA's Marine and Coastal Spatial Data subcommittee's mission is to ensure "that current and accurate geospatial coastal and ocean data will be readily available to contribute locally, nationally, and globally to economic growth, environment quality and stability, and social progress."⁹⁶ This mirrors the intent of the additional responsibilities set forth in H.R. 2400 for the Interagency Committee on Ocean and Coastal Mapping.

The bill also authorizes up to three joint centers for ocean and coastal mapping to be located at colleges or universities. Again, all of the activities authorized in this particular section duplicate the roles and activities of NOAA's National Ocean Service. Furthermore, the National Ocean Service already funds a Joint Hydrographic Center, as it received \$7 million in the FY 2008 Omnibus.

Both the new ocean exploration and undersea research duplicate ongoing efforts within the public and private sector. The ongoing NOAA Undersea Research Program provides knowledge needed to wisely use the nation's oceanic, coastal, and large lake resources. NOAA Undersea Research Program provides scientists explore, sample and live beneath

⁹⁵ CBO Cost Estimate, <http://www.cbo.gov/ftpdocs/83xx/doc8387/hr2400.pdf>.

⁹⁶ "FGDC Marine & Coastal Spatial Data Subcommittee", NOAA Coastal Services Center Website, <http://www.csc.noaa.gov/mcsd/>.

the sea using advanced technologies and techniques. Additionally, organizations, such as the multi-billion dollar National Geographic, are already providing state-of-the-art ocean research that provides great benefits to taxpayers without costing them a single penny.

Finally, there is a component in the new ocean exploration program that's purpose is to "conduct scientific voyages to locate, define, and document historic shipwrecks." Certainly, this is not a priority for our federal government at this time, and furthermore, similar research is ongoing by numerous private sector organizations and academic institutions.

NEGOTIATIONS

Senator Coburn met with Senator Stevens in December 2007 in a good faith effort to negotiate the bills in order to find offsets. Senator Stevens refused to negotiate offsets and threatened Senator Coburn that he would block any bill that he tried to pass, regardless of content, substance, or merit.

S. 3160/H.R. 5618 — National Sea Grant College Program Amendments Act

SUMMARY

S. 3160 would authorize funding for the National Sea Grant Program, which is administered by the National Oceanic and Atmospheric Administration (NOAA). Sea Grant is a nationwide network of 30 university-based programs that conducts research, education, training, and extension projects designed to foster science-based decisions about the use and conservation of aquatic resources.

COST

CBO estimates that spending for the program would total \$445 million over the 2009-2013 period. An additional \$230 million would be spent after 2013, including \$125 million authorized for 2014.⁹⁷ In total, the bill would authorize \$550 million over five years.

DUPLICATIVE AND UNNECESSARY

There are a number of private institutions that are dedicated to furthering research, education, and scientific understanding of the use and conservation of aquatic resources.

The Sea Grant Association (SGA) is a non-profit organization dedicated to furthering the Sea Grant program concept. This private, non-profit organization mirrors the mission of the federal agency and the SGA's regular members are the academic institutions that participate in the National Sea Grant College Program. SGA “provides the mechanism for these institutions to coordinate their activities, to set program priorities at both the regional and national level, and to provide a unified voice for these institutions on issues of importance to the oceans and coasts. The SGA advocates for greater understanding, use, and conservation of marine, coastal and Great Lakes resources.”⁹⁸

The Consortium for Ocean Leadership is another nonprofit organization that represents 95 of the leading public and private ocean research education institutions, aquaria and industry with the mission to advance research, education and sound ocean policy. The organization also manages ocean research and education programs in areas of scientific ocean drilling, ocean observing, ocean exploration, and ocean partnerships.⁹⁹

⁹⁷ CBO cost estimate, <http://www.cbo.gov/ftpdocs/95xx/doc9522/s3160.pdf>

⁹⁸ Sea Grant Association website, <http://www.sga.seagrant.org/about.htm>

⁹⁹ The Consortium for Ocean Leadership, <http://www.oceanleadership.org/about/mission>

NEGOTIATIONS

Senator Coburn does not have a hold on this bill at this time.

S. 950 — The Coastal and Ocean Observation Act of 2007

SUMMARY

S. 950, sponsored by Senators Snowe and Stevens, would direct the National Ocean Research Leadership Council to develop and operate an integrated coastal and ocean observation system.

ESTIMATED COST

The bill would authorize the appropriation of \$800 million over the 2008-2012 period.¹⁰⁰

DUPLICATIVE AND UNNECESSARY

All the initiatives in this bill would duplicate, in its entirety, the ongoing efforts of NOAA's National Ocean Service. The National Ocean Service, funded by the FY 2008 omnibus at \$468 million, primary mission is "to measure and predicts coastal and ocean phenomena, protects large areas of the oceans, works to ensure safe navigation, and provides tools and information to protect and restore coastal and marine resources."¹⁰¹ Not one new initiative that would be authorized by this bill for the National Ocean Research Leadership Council is out of the purview of NOAA's National Ocean Service, and the implementation of this bill would not garner any results that NOAA is not currently authorized to explore.

Another function of this bill is to establish an interagency tasked with establishing an integrated system of coastal and ocean observations with includes agencies such as NASA, the U.S. Coast Guard, Navy, and the National Science Foundation among other federal entities. Since NOAA's National Ocean Service is the only federal agency specifically designated to fulfill the role of conducting coastal and ocean observation, the involvement of other agencies in fulfilling this federal role duplicates NOAA's role.

Finally, the bill would divert resources from fulfilling the other agencies unique roles in the federal government. For example, the U.S. Coast Guard core roles are to protect the public, the environment, and U.S. economic and security interests in any maritime region in which those interests may be at risk. Any resource, whether it may be fiscal or human capital, that is spent on coastal or ocean observation is diverted away from protecting the United States maritime interests.

NEGOTIATIONS

Senator Coburn met with Senator Stevens in December 2007 in a good faith effort to negotiate the bills in order to find offsets. Senator Stevens indicated he was not willing to negotiate offsets.

¹⁰⁰ CBO Cost Estimate, <http://www.cbo.gov/ftpdocs/85xx/doc8512/s950.pdf>.

¹⁰¹ "About National Ocean Service", NOAA's National Ocean Service Website, <http://oceanservice.noaa.gov/about/welcome.html>.

S. 1581— Federal Ocean Acidification Research and Monitoring Act of 2007

SUMMARY

S. 1581, sponsored by Senator Frank Lautenberg (D-NJ), would establish a new federal program within the National Oceanic and Atmospheric Administration (NOAA) to conduct research and public outreach on ocean acidification.

ESTIMATED COST

S. 1581 would authorize appropriations totaling \$100 million over the 2009-2013 period.¹⁰²

DUPLICATIVE AND UNNECESSARY

The U.S. national debt has recently topped \$9 trillion for the first time in history. This bill authorizes a growth in government without any repeal in other, lower priority authority to offset the new costs.

NEGOTIATION ATTEMPTS

Senator Coburn does not have a hold on this bill at this time.

¹⁰² <http://www.cbo.gov/ftpdocs/90xx/doc9036/s1581.pdf>

Title VI — Homeland Security and Government Affairs

S. 1446 – National Capital Transportation Amendments Act of 2007

SUMMARY

S. 1446, introduced by Sen. Ben Cardin (D-MD), would provide grant funding to the D.C. Metrorail system (Metro) through the Washington Metropolitan Area Transit Authority, for capital improvements such as repairs to platforms and segments of track. Under current law, the federal government provides annual subsidies to all major rail systems nationwide, including the Metro. S. 1446 would provide additional funding for the Metro by creating a new federal grant program dedicated exclusively to the system. Supporters of the bill argue the repairs are necessary, but opponents note that the rail system has been plagued by bad management making the bill little more than an expensive bailout.

ESTIMATED COST

The Congressional Budget Office (CBO) estimates S. 1446 would cost approximately **\$1.5 billion** over the next ten years. Funding would be provided in the form of a matching grant for any funds made available for the Metro by Maryland, Virginia and the District of Columbia. There is no annual limit for the amount to be provided by the federal government, though the ten-year limit is \$1.5 billion. CBO expects that matching grants would be made in the amounts of \$150 million per year.

WASTEFUL AND UNNECESSARY

The Heritage Foundation called this bill “the biggest earmark in history,” noting it was seven times more expensive than the Bridge to Nowhere.¹⁰³ Its status as an earmark is demonstrated by the fact that funding for the Metro is through a non-competitive grant, of which the benefit accrues only to a local jurisdiction. Such a large expenditure for a distinctly local project raises several concerns for the vast majority of American taxpayers who will never use Metro services.

First, the bill does not provide an offset for its cost, meaning that it will require increased deficit spending to simply continue operating the federal government at current levels in addition to funding the new Metro grant program. It also creates a new government program but does not eliminate any existing programs, representing an unwarranted expansion of government.

Second, longstanding mismanagement of the Metro has been well-documented by its local newspaper, the *Washington Post*, which has written a series of reports on its wasteful actions. In an April 27, 2007, report from the *Washington Post* uncovered that Metro headquarters could be moved to an alternate downtown location for a savings to taxpayers of \$40 million – it has thus far failed to act on the proposal.¹⁰⁴ On June 5,

¹⁰³ Utt, Ronald D., *H.R. 3496: The Biggest Pork Barrel Earmark in History?*, Web Memo no. 1163, Heritage Foundation, July 17, 2006. http://www.heritage.org/research/budget/upload/wm_1163.pdf

¹⁰⁴ Sun, Lena H., “City Proposes a Move to Anacostia,” *Washington Post*, April 27, 2007.

<http://www.washingtonpost.com/wp-dyn/content/article/2007/04/26/AR2007042602472.html>

2007, the *Washington Post* reported that mismanagement of overtime had caused a 56% increase in costs since 2002, costing \$91 million in 2006 alone.¹⁰⁵ Finally, on September 14, 2007, the *Washington Post* reported that the Metro was unable to manage its finances to contain costs, prompting calls for the largest fare hike in its history, which went into effect during January 2008.¹⁰⁶

Third, the federal government has provided significant funding for the D.C. Metro system, raising a question of why additional funding is needed. According to the Federal Transportation Administration, between 2003 and 2007, Metro received over \$1 billion in federal grants, which was more than San Francisco, Boston or Atlanta received over the same time period for the respective rail transit systems. Additionally, because the D.C. Metro system is used heavily by federal employees, the government provides large subsidies for transportation that result in a windfall for the transit agency. The Government Accountability Office reports that in 2006, the Metro received \$140 million to provide rail passes for federal employees.¹⁰⁷

OTHER POLICY CONCERNS

Local transportation systems that primarily serve the needs of local residents are often the responsibility of state and local governments. With over 50,000 government jurisdictions throughout the nation, this makes not only practical sense, but provides a beneficial service to residents who use the transit systems by enabling better accountability. Instead of pushing decisions about transit systems down to the most local level, increases in federal funding pulls those decisions up to the central government. This bill would require taxpayers from around the nation to fund a system used primarily by residents of Maryland, the District of Columbia, and Virginia. These taxpayers are unlikely to use the Metro very often, if ever, yet will be required to provide additional funding beyond that which is provided to any other transit system in the nation.

Citizens across the nation are required every day to pay the costs of their commutes to work, which is especially trying considering the price of gas has risen from \$2.38 a gallon in January 2007 to \$4.16 today.¹⁰⁸ It is unfair for taxpayers struggling to keep up with energy costs to be required to pay additional taxes to support a rail system for the District of Columbia. Any additional costs should be the responsibility of riders and the local governments that benefit from the D.C. Metrorail system.

KEY CHANGES MADE TO THE BILL:

The bill language included in the Reid Omnibus made several changes to the version of S. 1446 as passed by the Senate Committee on Homeland Security and Governmental Affairs:

¹⁰⁵ Sun, Lena H., "Metro Costs for Overtime Are Up 56% Since 2002," *Washington Post*, June 5, 2007.

http://www.washingtonpost.com/wp-dyn/content/article/2007/06/04/AR2007060401966_pf.html

¹⁰⁶ Sun, Lena H., and Mummolo, Jonathan, "Discussion of Metro Fare Hike Postponed," *Washington Post*, September 14, 2007. <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/13/AR2007091300599.html>

¹⁰⁷ Kutz, Gregory D., *Federal Transit Benefits Program: Ineffective Controls Result in Fraud and Abuse by Federal Workers*, Government Accountability Office, April 24, 2007. <http://www.gao.gov/new.items/d07724t.pdf>

¹⁰⁸ Energy Information Administration, Table: Weekly Retail Gasoline and Diesel Prices. http://tonto.eia.doe.gov/dnav/pet/pet_pri_gnd_dcus_nus_w.htm

- Strips out a requirement that the Washington Metropolitan Area Transit Authority (WMATA) Inspector General conduct annual audits of the financial statements;
- Strips out a requirement that the WMATA Inspector General provide reports to Congress on its investigations;
- Strips out a requirement for the WMATA Inspector General to investigate employee complaints;
- Strips out a prohibition on retaliation against whistleblower complaints from WMATA employees;
- Strips out a requirement that the WMATA Inspector General be independent from agency management; and
- Strips out a provision that the Government Accountability Office (GAO) conduct an investigation into the use of taxpayer funds by WMATA.

H.R. 390 – Preservation of Records of Servitude, Emancipation, and Post-Civil War Reconstruction Act

SUMMARY

H.R. 390, introduced by former Rep. Tom Lantos (D-CA), would authorize the creation of an electronic database at the National Archives for records related to servitude, emancipation and post-Civil War reconstruction. The bill would also authorize the National Archives to make grants to states, universities and research organizations for the creation of similar databases around the nation. Supporters rightly argue these records are important and should be not only preserved, but also easily accessible. Opponents are concerned that the bill creates a new federal program without eliminating an existing one, as well as authorizes new spending without providing for cost offsets.

ESTIMATED COST

The Congressional Budget Office (CBO) estimates H.R. 390 would cost \$13 million over five years. This stems from the \$5 million authorized for the creation of the database and \$5 million for the National Archives to make grants to states for similar purposes. It is also estimated that the database would cost \$1 million per year to maintain and operate.

FISCAL CONCERNS

Concerns over this bill stem not from its policy but from its cost. Preserving government records related to slavery and emancipation are vitally important to the history of this nation, as well as the personal family history of those affected. Americans from all over would benefit from the creation of an electronic database to make these records more easily accessible than they are today. Unfortunately, in a time of record deficits and a national debt that increases by more than a billion dollars a day, every new dollar of authorized spending requires extensive scrutiny.

First, the bill would cost \$13 million over five years, but provides no offsetting reductions to other existing programs. Rather, it authorizes the government to provide funding through the budget of the National Archives and Records Administration (NARA) for the new program. For FY 2008, the entire budget of NARA was an estimated \$319 million, with a request for 2009 of \$327 million.¹⁰⁹ This means the \$10 million required for implementing H.R. 390 in FY 2009 would require an additional three percent increase over the agency's entire FY 2008 budget – a significant increase.

Second, H.R. 390 would create a program that would be duplicative of an existing program administered by NARA. The National Historical Publications and Records Commission was created in 1934 to “encourage the use of documentary sources, created in every medium ranging from quill pen to computer, relating to the history of the United States.”¹¹⁰ This program already provides funding each year to researchers and universities to develop and enhance record-keeping throughout the nation, making an

¹⁰⁹ President's Proposed Budget for Fiscal Year 2009, p. 1193, National Archives and Records Administration. <http://www.whitehouse.gov/omb/budget/fy2009/pdf/appendix.pdf>

¹¹⁰ National Archives and Records Administration website on the National Historical Publications and Records Commission. <http://www.archives.gov/nhprc/about/>

additional program to do so unnecessary. Perhaps a more appropriate policy alternative would be to combine the program created under H.R. 390 with the existing program. Sen. Tom Coburn attempted to negotiate such a change into the bill while it was still under consideration by the Senate Homeland Security and Governmental Affairs Committee, but the offer was rebuffed by the office of Sen. Joe Lieberman.

Third, it is possible private funding could be made available for all or part of this project, making taxpayer contributions minimal or even unnecessary. Genealogical research has become increasingly popular in recent years, spawning the development of a wide variety of inexpensive software packages for use by interested citizens. Avenues should be sought to obtain funding through private means before federal resources are dedicated to this project.

OTHER POLICY CONCERNS

H.R. 390 is reflective of a broken authorizations process within Congress, which often adds authorization to authorization without reflection of true priorities. As stated, the federal government has accumulated nearly \$9 trillion in debt due to out of control congressional spending. In a time such as this, priorities need to be made and funding decisions should reflect these choices. In the case of this bill, while it may be an acceptable use of taxpayer dollars and an important vehicle for making historical records available, it does not contribute to the process of making tough choices regarding the use of taxpayer dollars. If it is a high priority, it ultimately needs to come at the expense of another program and that choice should be reflected in the bill.

S. 3175 — Pre-Disaster Mitigation Act of 2008

SUMMARY

S. 3175 would re-authorize FEMA's Pre-disaster Mitigation (PDM) Program through 2013. Currently, FEMA is authorized through 2008 to provide Pre-Disaster Mitigation grants to states and localities frequented by disasters for programs such as relocating homes from flood-prone areas and retrofitting buildings in areas prone to earthquakes.

ESTIMATED COST

The Congressional Budget Office (CBO) has not scored this bill. However, according to the text of the legislation, the bill provides \$1.15 billion for FY 2009 through FY 2013.

DUPLICATIVE AND UNNECESSARY

In addition to the Pre-Disaster Mitigation (PDM) grants, FEMA administers the Hazard Mitigation Grant Program, the Flood Mitigation Assistance Program, and the Repetitive Flood Claims Program. In 2007, these programs (including the Pre-disaster Mitigation Grants Program) combined to provide more than \$566 million to more than 1,200 mitigation projects and plans nationwide in 2007 alone.

S. 3175 would also make structural flood control projects eligible for funding under the PDM program. Structural flood control projects are already carried out by the U.S. Army Corps of Engineers (USACE) and the Natural Resources Conservation Service (NRCS). Congress has authorized billions of dollars to be spent on these USACE and NRCS projects, some of which are more expensive than the entire annual appropriation for the PDM program.

Additionally, the non-structural flood control measures currently eligible under FEMA's PDM program, such as buy-outs, land-and-use planning, and building codes, play an important role in ensuring the effectiveness and actuarial soundness of FEMA's National Flood Insurance Program (NFIP). Encouraging FEMA to carry out structural flood projects will siphon away funds that previously were used to help both homeowners and federal taxpayers who insure them through NFIP avoid future costs.

OTHER POLICY CONCERNS

In 2008, the House filled this program with 95 congressional earmarks. Of the \$114 million appropriated to the program that year, roughly \$25 million went to state minimums and \$51 million went to earmarks. That left only \$39 million for the competitive program.

The FY'09 DHS Appropriations bill contains even more earmarks for the PDM program. The National Journal reported earlier this month that the House included over 100 earmarks totaling \$200 million and that most of these earmarks were placed in the pre-disaster mitigation grant program.

In addition, these grants have proven slow to trickle out of FEMA. A 2004 GAO report noted that FEMA allocated just over \$131 million of the \$150 million in PDM funds for

project grants. From that total, approximately \$98 million (or about 75%) was awarded at the time of the report.

The perception of slow distribution of PDM funds has continued in later years as evidenced in the pace of awards made. According to FEMA listings, in FY2006 when \$50 million was made available, only \$39 million was awarded. Similarly, for FY2007 \$100 million was appropriated, but only \$52.3 million had been awarded according to totals on the FEMA website.

Title VII — Rules and Administration

H.R. 5492 — To authorize the Board of Regents of the Smithsonian Institution to construct a greenhouse facility

SUMMARY

H.R. 5492, sponsored by Representative Doris Matsui, would authorize the construction of a greenhouse facility in Suitland, Maryland to assist in the maintenance and preservation of the national orchid collection.

ESTIMATED COST

The bill would authorize the appropriation of \$12 million over the 2009-2013 period.¹¹¹

DUPLICATIVE AND UNNECESSARY

The U.S. national debt has recently topped \$9 trillion for the first time in history. This bill authorizes a growth in government without any repeal in other, lower priority authority to offset the new costs.

NEGOTIATIONS

On May 21st, Senator Coburn had a telephone conversation with Representative Sam Johnson(R-TX), one of the bills cosponsors. Senator Coburn pledged to find offsets to the new authorization in spending. Staff followed up that day and sent two items to Congressman Johnson's office that could be used to offset H.R. 5492:

1. The Smithsonian Tropical Research Institute in Panama- This program has an annual budget of a little more than \$12 million.
2. Smithsonian "outreach" and "communication" programs- The two separate programs combined budget is equivalent to about \$12 million.

We have not heard back from the sponsor's office.

¹¹¹ <http://www.cbo.gov/ftpdocs/90xx/doc9019/hr5492.pdf>