

Mr. CAMPBELL. Mr. President, as Co-Chairman of the Helsinki Commission, I submit today a resolution urging the Government of Ukraine to ensure a democratic, transparent and fair election process for the presidential elections scheduled to be held in late October. An identical resolution is being submitted by Chairman of the House International Relations Committee HENRY HYDE and my colleague and Chairman of the Helsinki Commission, Representative CHRIS SMITH. I am pleased to note that the Commission's Ranking Member, Mr. DODD, and the Ranking Member of the Committee on Foreign Relations, Mr. BIDEN, are original cosponsors of the resolution.

The Helsinki Commission, which has long monitored and encouraged human rights, rule of law and democracy in Ukraine, continues to be a stalwart supporter of Ukraine's development as an independent, democratic and market-oriented state. There is a genuine desire in the United States for Ukraine to succeed in this process and for the long-suffering Ukrainian people to fully realize their dreams and aspirations. This resolution, by encouraging fair, open and transparent elections, is a concrete expression of the commitment of the U.S. Congress to the Ukrainian people.

The resolution underscores that an election process and the establishment of a genuinely democratic political system consistent with Ukraine's freely-undertaken OSCE commitments is a prerequisite for Ukraine's full integration into the Western community of nations as an equal member, including into NATO. The October elections will be vital in determining Ukraine's course for years to come and they present the Ukrainian authorities with a real opportunity to demonstrate their commitment to OSCE principles and values.

Unfortunately, Ukraine's pre-election environment has already been decidedly problematic and of increasing concern to the United States and the international community. During the course of this year I have shared specific concerns with Senate colleagues, particularly in terms of the media. The resolution submitted today focuses squarely on key problem areas, including increasing control and manipulation of the media and attempts by national authorities to limit access to international broadcasting, including Radio Liberty and Voice of America. Among other concerns are the blatant obstacles to free assembly and a free and fair political campaign as well as substantial irregularities in several recent elections.

An egregious example of how not to conduct elections was the mayoral election held two weeks ago in the western Ukrainian city of Mukacheve. This election was marred by intimidation, violence, fraud and manipulation of the vote count, electoral disruptions and irregularities. Despite strong evidence indicating that a candidate from

the democratic opposition "Our Ukraine" bloc had won, the territorial elections commission announced as winner the candidate of a party led by the head of Presidential Administration, Viktor Medvedchuk. That some of the abuses and violence took place in front of OSCE observers, and that some of the victims of violence were members of the Ukrainian parliament, only underscores the brazenness of these actions. The outlandish conduct of the Mukacheve elections not only casts doubt over their outcome, but when coupled with other recent problematic elections, including in Constituency No. 61 in Donetsk, could be a barometer for the October presidential elections.

The resolution I submit today outlines those measures the Ukrainian authorities need to take—consistent with their own laws and international agreements—for a free, fair, open and transparent election process. The Ukrainian authorities at all levels, including the executive, legislative and judicial branches, need to ensure an election process that enables all of the candidates to compete on a level playing field. This includes the various institutions and agencies involved directly or indirectly in the elections process, such as the Central Election Commission, the Ministry of Internal Affairs, Procuracy, the State Security Service (SBU), Tax Administration, as well as the Constitutional and Supreme Courts.

Ukraine's October presidential elections should be a watershed for the future direction of that country of great potential. It is abundantly clear that a small clique have a vested interest in perpetuating the outmoded status quo. Ukrainian authorities need to radically improve the election environment if there is to be hope for these elections to meet OSCE standards. The question is whether their perceived self-interest will trump the interest of the people of Ukraine. Having restored the independence of their proud land, the Ukrainian people deserve an opportunity to overcome the legacy of the past, and consolidate democracy, human rights and the rule of law.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3117. Mr. BREAUX (for himself and Mrs. FEINSTEIN) proposed an amendment to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes.

SA 3118. Mr. ALLARD (for himself, Mr. SCHUMER, Mr. MILLER, Mrs. CLINTON, Mr. CHAMBLISS, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 1637, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3117. Mr. BREAUX (for himself and Mrs. FEINSTEIN) proposed an amendment to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; as follows:

On page 88, between lines 17 and 18, insert:

“(4) DOLLAR LIMITATION.—

“(A) IN GENERAL.—Notwithstanding paragraph (1), the excess qualified foreign distribution amount shall not exceed the lesser of—

“(i) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

“(ii) the excess (if any) of—

“(I) the estimated aggregate qualified expenditures of the corporation for taxable years ending in 2005, 2006, and 2007, over

“(II) the aggregate qualified expenditures of the corporation for taxable years ending in 2001, 2002, and 2003.

“(B) EARNINGS PERMANENTLY REINVESTED OUTSIDE THE UNITED STATES.—

“(i) IN GENERAL.—If an amount on an applicable financial statement is shown as Federal income taxes not required to be reserved by reason of the permanent reinvestment of earnings outside the United States, subparagraph (A)(i) shall be applied by reference to the earnings to which such taxes relate.

“(ii) NO STATEMENT OR STATED AMOUNT.—If there is no applicable financial statement or such a statement fails to show a specific amount described in subparagraph (A)(i) or clause (i), such amount shall be treated as being zero.

“(iii) APPLICABLE FINANCIAL STATEMENT.—For purposes of this paragraph, the term ‘applicable financial statement’ means the most recently audited financial statement (including notes and other documents which accompany such statement)—

“(I) which is certified on or before March 31, 2004, as being prepared in accordance with generally accepted accounting principles, and

“(II) which is used for the purposes of a statement or report to creditors, to shareholders, or for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before March 31, 2004.

“(C) QUALIFIED EXPENDITURES.—For purposes of this paragraph, the term ‘qualified expenditures’ means—

“(i) wages (as defined in section 3121(a)),

“(ii) additions to capital accounts for property located within the United States (including any amount which would be so added but for a provision of this title providing for the expensing of such amount),

“(iii) qualified research expenses (as defined in section 41(b)) and basic research payments (as defined in section 41(e)(2)), and

“(iv) irrevocable contributions to a qualified employer plan (as defined in section 72(p)(4)) but only if no deduction is allowed under this chapter with respect to such contributions.

“(D) RECAPTURE.—If the taxpayer's estimate of qualified expenditures under subparagraph (A)(ii)(I) is greater than the actual expenditures, then the tax imposed by this chapter for the taxpayer's last taxable

year ending in 2007 shall be increased by the sum of—

“(i) the increase (if any) in tax which would have resulted in the taxable year for which the deduction under this section was allowed if the actual expenditures were used in lieu of the estimated expenditures, plus

“(ii) interest at the underpayment rate, determined as if the increase in tax described in clause (i) were an underpayment for the taxable year of the deduction.

“(5) LIMITATION ON CONTROLLED FOREIGN CORPORATIONS IN POSSESSIONS.—In computing the excess qualified foreign distribution amount under paragraph (1) and the base dividend amount under paragraph (2), there shall not be taken into account dividends received from any controlled foreign corporation created or organized under the laws of any possession of the United States.

SA 3118. Mr. ALLARD (for himself, Mr. SCHUMER, Mr. MILLER, Mrs. CLINTON, Mr. CHAMBLISS, and Mr. CORZINE) submitted an amendment intended to be proposed by him to the bill S. 1637, to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, to reform and simplify the international taxation rules of the United States, and for other purposes; which was ordered to lie on the table, as follows:

On page 139, between lines 13 and 14, insert the following:

SEC. ____ BROWNFIELDS DEMONSTRATION PROGRAM FOR QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to the definition of exempt facility bond) is amended by striking “or” at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting “, or”, and by inserting at the end the following new paragraph:

“(14) qualified green building and sustainable design projects.”.

(b) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—Section 142 (relating to exempt facility bonds) is amended by adding at the end thereof the following new subsection:

“(1) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—

“(I) IN GENERAL.—For purposes of subsection (a)(14), the term ‘qualified green building and sustainable design project’ means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

“(2) DESIGNATIONS.—

“(A) IN GENERAL.—Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

“(B) MINIMUM CONSERVATION AND TECHNOLOGY INNOVATION OBJECTIVES.—The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

“(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,

“(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

“(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

“(iv) use at least 25 megawatts of fuel cell energy generation.

“(3) LIMITED DESIGNATIONS.—A project may not be designated under this subsection unless—

“(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

“(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

“(4) APPLICATION.—

“(A) IN GENERAL.—A project may not be designated under this subsection unless the application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

“(i) GREEN BUILDING AND SUSTAINABLE DESIGN.—At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council’s LEED certification and is reasonably expected (at the time of the designation) to receive such certification.

“(ii) BROWNFIELD REDEVELOPMENT.—The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

“(iii) STATE AND LOCAL SUPPORT.—The project receives specific State or local government resources which will support the project in an amount equal to at least \$5,000,000. For purposes of the preceding sentence, the term ‘resources’ includes tax abatement benefits and contributions in kind.

“(iv) SIZE.—The project includes at least one of the following:

“(I) At least 1,000,000 square feet of building.

“(II) At least 20 acres.

“(v) USE OF TAX BENEFIT.—The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

“(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

“(II) Compliance with LEED certification standards.

“(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

“(vi) PROHIBITED FACILITIES.—An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

“(vii) EMPLOYMENT.—The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project’s economic impact, including the amount of projected employment.

“(B) PROJECT DESCRIPTION.—Each application described in subparagraph (A) shall contain for each project a description of—

“(i) the amount of electric consumption reduced as compared to conventional construction,

“(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

“(iii) the amount of the gross installed capacity of the project’s solar photovoltaic capacity measured in megawatts, and

“(iv) the amount, in megawatts, of the project’s fuel cell energy generation.

“(5) CERTIFICATION OF USE OF TAX BENEFIT.—No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

“(6) DEFINITIONS.—For purposes of this subsection—

“(A) RURAL STATE.—The term ‘rural State’ means any State which has—

“(i) a population of less than 4,500,000 according to the 2000 census,

“(ii) a population density of less than 150 people per square mile according to the 2000 census, and

“(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

“(B) LOCAL GOVERNMENT.—The term ‘local government’ has the meaning given such term by section 1393(a)(5).

“(C) NET BENEFIT OF TAX-EXEMPT FINANCING.—The term ‘net benefit of tax-exempt financing’ means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

“(7) AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING.—

“(A) IN GENERAL.—An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

“(B) LIMITATION ON AMOUNT OF BONDS.—The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding \$2,000,000,000.

“(8) TERMINATION.—Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2009.

“(9) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2009, if—

“(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

“(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

“(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A)."

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) (relating to exception for certain bonds) is amended—

(1) by striking "or (13)" and inserting "(13), or (14)", and

(2) by striking "and qualified public educational facilities" and inserting "qualified public educational facilities, and qualified green building and sustainable design projects".

(d) ACCOUNTABILITY.—Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued under this section for such project. Not later than 5 years after the date of issuance, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(l)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(l)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 2004.

On page 365, between lines 3 and 4, insert the following:

SEC. 937. SUBSTANTIAL PRESENCE TEST REQUIRED TO DETERMINE BONA FIDE RESIDENCE IN UNITED STATES POSSESSIONS.

(a) SUBSTANTIAL PRESENCE TEST.—

(1) IN GENERAL.—Subpart D of part III of subchapter N of chapter 1 (relating to possessions of the United States) is amended by adding at the end the following new section:

"**SEC. 937. BONA FIDE RESIDENT.**
"For purposes of this subpart, section 865(g)(3), section 876, section 881(b), paragraphs (2) and (3) of section 901(b), section 957(c), section 3401(a)(8)(C), and section 7654(a), the term 'bona fide resident' means a person who satisfies a test, determined by the Secretary, similar to the substantial presence test under section 7701(b)(3) with respect to Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, as the case may be."

(2) CONFORMING AMENDMENTS.—

(A) The following provisions are amended by striking "during the entire taxable year" and inserting "for the taxable year":

(i) Paragraph (3) of section 865(g).

(ii) Subsection (a) of section 876(a).

(iii) Paragraphs (2) and (3) of section 901(b).

(iv) Subsection (a) of section 931.

(v) Paragraphs (1) and (2) of section 933.

(B) Section 931(d) is amended by striking paragraph (3).

(C) Section 932 is amended by striking "at the close of the taxable year" and inserting "for the taxable year" each place it appears.

(3) CLERICAL AMENDMENT.—The table of sections of subpart D of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

"Sec. 937. Bona fide resident."

(b) REPORTING REQUIREMENTS FOR BONA FIDE RESIDENTS OF THE VIRGIN ISLANDS.—

Paragraph (2) of section 932(c) (relating to treatment of Virgin Islands residents) is amended to read as follows:

"(2) FILING REQUIREMENTS.—

"(A) IN GENERAL.—Each individual to whom this subsection applies for the taxable year shall file an income tax return for the taxable year with the Virgin Islands.

"(B) INFORMATION RETURNS FOR CERTAIN TAXPAYERS.—

"(i) IN GENERAL.—Each individual—

"(I) to whom this subsection applies for the taxable year or for any taxable year during the 5-taxable-year period ending before the date of the enactment of the Jumpstart Our Business Strength (JOBS) Act, and

"(II) to whom this subparagraph has not applied for the preceding 2 taxable years, shall file an income tax return with the United States.

"(ii) FILING FEE.—The Secretary shall charge a processing fee with respect to the return filed under this subparagraph of an amount appropriate to cover the administrative costs of the requirements of this subparagraph and the enforcement of the purposes of this subparagraph."

(c) PENALTIES.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 is amended by adding at the end the following new section:

"SEC. 6717. FAILURE OF VIRGIN ISLANDS RESIDENTS TO FILE RETURNS WITH THE UNITED STATES.

"(a) PENALTY AUTHORIZED.—The Secretary may impose a civil money penalty on any person who violates, or causes any violation of, the requirements of section 932(c)(2)(B).

"(b) AMOUNT OF PENALTY.—

"(1) IN GENERAL.—Except as provided in subsection (c), the amount of any civil penalty imposed under subsection (a) shall not exceed \$5,000.

"(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subsection (a) with respect to any violation if such violation was due to reasonable cause.

"(c) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any requirement of section 932(c)(2)(B)—

"(1) the maximum penalty under subsection (b)(1) shall be increased to \$25,000 and

"(2) subsection (b)(2) shall not apply."

(2) CLERICAL AMENDMENT.—The table of sections for Part I of subchapter B of chapter 68 is amended by adding at the end the following new item:

"Sec. 6717. Failure of Virgin Islands residents to file returns with the United States."

(d) EFFECTIVE DATES.—The amendments made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON NATIONAL PARKS

Mr. THOMAS. Mr. President, I would like to announce for the information of the Senate and the public that the following hearing has been scheduled before the Subcommittee on National Parks of the Committee on Energy and Natural Resources:

The hearing will be held on Thursday, May 20, 2004 at 2:30 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on the following bills: S. 1672, to expand the Timucuan Ecological and Historic Preserve, Florida;

S. 1789 and H.R. 1616, to authorize the exchange of certain lands within the Martin Luther King, Junior, National Historic Site for lands owned by the City of Atlanta, GA, and for other purposes; S. 1808, to provide for the preservation and restoration of historic buildings at historically women's public colleges or universities; S. 2167, to establish the Lewis and Clark National Historic Park in the States of Washington and Oregon, and for other purposes; and S. 2173, to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD-364 Dirksen Senate Office Building, Washington, DC 20510-6150.

For further information, please contact Tom Lillie at (202) 224-5161 or Sarah Creachbaum at (202) 224-6293.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, May 5, 2004, at 2:30 p.m., in closed session to mark up the Department of Defense Authorization Act for fiscal year 2005.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, May 5, 2004, at 9:30 a.m., for a closed hearing on steroids.

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

COMMITTEE ON FINANCE

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, May 5, 2004, at 10 a.m., in the 215 Dirksen Senate Office Building, to hear testimony on "The Benefits of Healthy Marriage."

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

COMMITTEE ON THE JUDICIARY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, May 5, 2004 at 10 a.m. on "Oversight Hearing: Aiding Terrorists—An Examination of the Material Support Statute" in the Dirksen Senate Office Building Room 226.

Witness List

Panel I: The Honorable Chris Wray, Assistant Attorney General, Criminal