

Nonresident Hunting and Fishing Act of 2005”.

SEC. 2. DECLARATION OF POLICY AND CONSTRUCTION OF CONGRESSIONAL SILENCE.

(a) IN GENERAL.—It is the policy of Congress that it is in the public interest for each State to continue to regulate the taking for any purpose of fish and wildlife within its boundaries, including by means of laws or regulations that differentiate between residents and nonresidents of such State with respect to the availability of licenses or permits for taking of particular species of fish or wildlife, the kind and numbers of fish and wildlife that may be taken, or the fees charged in connection with issuance of licenses or permits for hunting or fishing.

(b) CONSTRUCTION OF CONGRESSIONAL SILENCE.—Silence on the part of Congress shall not be construed to impose any barrier under clause 3 of Section 8 of Article I of the Constitution (commonly referred to as the “commerce clause”) to the regulation of hunting or fishing by a State or Indian tribe.

SEC. 3. LIMITATIONS.

Nothing in this Act shall be construed—

(1) to limit the applicability or effect of any Federal law related to the protection or management of fish or wildlife or to the regulation of commerce;

(2) to limit the authority of the United States to prohibit hunting or fishing on any portion of the lands owned by the United States; or

(3) to abrogate, abridge, affect, modify, supersede or alter any treaty-reserved right or other right of any Indian tribe as recognized by any other means, including, but not limited to, agreements with the United States, Executive Orders, statutes, and judicial decrees, and by Federal law.

SEC. 4. STATE DEFINED.

For purposes of this Act, the term “State” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

By Mr. LUGAR:

S. 340. A bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media; to the Committee on the Judiciary.

Mr. LUGAR. Mr. President, I rise today to introduce the Free Flow of Information Act of 2005. This bill was originally introduced in the House of Representatives by my friend and colleague, Congressman MIKE PENCE. I applaud the initiative by my colleague to address this important issue and I am pleased to have this opportunity to be the Senate sponsor.

Last year, Congress passed legislation I proposed that directed the State Department to increase and add greater focus to international initiatives to support the development of free, fair, legally protected and sustainable media in developing countries.

I am pleased to announce that the State Department and the National Endowment for Democracy have embraced this initiative and are now proceeding with implementing this initiative.

Our Founders understood that free press is a cornerstone of democracy. To

embrace and implement President Bush’s bold and visionary call for the spread of democracy and freedom in the world, it is incumbent upon us to ensure that foreign assistance programs focus on the development of all the institutions that help democracies work and protect basic human rights.

While we focus on those needs abroad, we cannot let those basic freedoms erode at home. The Constitution makes very clear that freedom of the press should not be infringed. A cornerstone of our society is the open market of information which can be shared through ever expanding mediums. The media serves as a conduit of information between our governments and communities across the country.

It is important that we ensure reporters certain rights and abilities to seek sources and report appropriate information without fear of intimidation or imprisonment. This includes the right to refuse to reveal confidential sources. Without such protection, many whistleblowers will refuse to step forward and reporters will be disinclined to provide our constituents with the information that they have a right to know. Promises of confidentiality are essential to the flow of information the public needs about its government.

The Free Flow of Information Act closely follows existing Department of Justice guidelines for issuing subpoenas to members of the news media. These guidelines were adopted in 1973 and have been in continuous operation for more than 30 years. The legislation codifies the conditions that must be met by the government to compel the identity of confidential sources.

I am hopeful that my colleagues will give careful consideration to the merits of this legislation. It provides an appropriate approach and careful balance to protect our freedom of information while still enabling legitimate law enforcement access to information.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4. Mrs. FEINSTEIN (for herself and Mr. BINGAMAN) submitted an amendment intended to be proposed by her to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

SA 5. Mr. PRYOR (for himself, Mr. SALAZAR, Mr. BINGAMAN, and Ms. CANTWELL) proposed an amendment to the bill S. 5, supra.

SA 6. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 7. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 8. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 9. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 10. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 11. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, supra; which was ordered to lie on the table.

SA 12. Mr. FEINGOLD proposed an amendment to the bill S. 5, supra.

TEXT OF AMENDMENTS

SA 4. Mrs. FEINSTEIN (for herself and Mr. BINGAMAN) submitted an amendment intended to be proposed by her to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; as follows:

On page 24, before line 22, insert the following:

(C) CHOICE OF STATE LAW IN INTERSTATE CLASS ACTIONS.—Notwithstanding any other choice of law rule, in any class action, over which the district courts have jurisdiction, asserting claims arising under State law concerning products or services marketed, sold, or provided in more than 1 State on behalf of a proposed class, which includes citizens of more than 1 such State, as to each such claim and any defense to such claim—

(1) the district court shall not deny class certification, in whole or in part, on the ground that the law of more than 1 State will be applied;

(2) the district court shall require each party to submit their recommendations for subclassifications among the plaintiff class based on substantially similar State law; and

(3) the district court shall—

(A) issue subclassifications, as determined necessary, to permit the action to proceed; or

(B) if the district court determines such subclassifications are an impracticable method of managing the action, the district court shall attempt to ensure that plaintiffs’ State laws are applied to the extent practical.

SA 5. Mr. PRYOR (for himself, Mr. BINGAMAN, and Ms. CANTWELL) proposed an amendment to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; as follows:

On page 5, between lines 2 and 3, insert the following:

“(1) ATTORNEY GENERAL.—The term ‘attorney general’ means the chief legal officer of a State.

On page 5, line 3, strike “(1)” and insert “(2)”.

On page 5, line 5, strike “(2)” and insert “(3)”.

On page 5, line 12, strike the period at the end and insert the following: “, but does not include any civil action brought by, or on behalf of, any attorney general.”

On page 5, line 13, strike “(3)” and insert “(4)”.

On page 5, line 17, strike “(4)” and insert “(5)”.

On page 5, line 21, strike “(5)” and insert “(6)”.

On page 6, line 1, strike “(6)” and insert “(7)”.

On page 6, between lines 5 and 6, insert the following:

“(8) STATE.—The term ‘State’ means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.

On page 14, strike lines 20 and 21, and insert the following:

(1) by striking subsection (d) and inserting the following:

“(e) As used in this section—

“(1) the term ‘attorney general’ means the chief legal officer of a State; and

“(2) the term ‘State’ means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States.”; and

On page 15, line 7, insert “, but does not include any civil action brought by, or on behalf of, any attorney general” before the semicolon at the end.

SA 6. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 26, strike line 21, and insert the following:

SEC. 9. CLASS COUNSEL FEES.

Rule 23(h) of the Federal Rules of Civil Procedure is amended—

(1) in paragraph (1), by inserting “The claim shall include the number of hours worked on the case each day by each attorney, paralegal, or other individual, a description of the activities performed each day by each individual, and the standard hourly rate charged for each individual.” after “time set by the court.”; and

(2) by adding at the end the following:

“(5) LIMITATION.—

“(A) DEFINITION.—For purposes of this paragraph, the term ‘lodestar value’ means the amount equal to the number of hours worked on a class action case multiplied by the actual hourly rates customarily charged by lawyers of comparable experience.

“(B) IN GENERAL.—The court may not award attorney fees in a class action under this subsection in an amount in excess of 400 percent of the lodestar value for such class action.”.

SEC. 10. EFFECTIVE DATE.

SA 7. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 14, strike line 12 and insert the following:

“§ 1716. Opt-in class

“(a) IN GENERAL.—Notwithstanding any other provision of law, upon the motion of a party in a class action under this chapter, a court may refuse to certify a class under rule 23 of the Federal Rules of Civil Procedure unless each member of the class has affirmatively requested to be included in the class.

“(b) NOTICE.—If the court imposes the requirement described in subsection (a), the court shall direct the best notice practicable

to all eligible class members regarding the effect of the class action suit on their rights to seek redress in another manner if they do not affirmatively request to be included in the class.”.

SA 8. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 26, between lines 5 and 6, insert the following:

(d) REPORTING OF CLASS ACTION SETTLEMENTS.—

(1) INITIAL REPORT.—Not later than 10 days after court approval of a class action settlement under rule 23(e) of the Federal Rules of Civil Procedure, the attorney for the certified class shall submit a report to the Administrative Office of the United States Courts, which contains—

(A) the title of the case;

(B) the jurisdiction of the court;

(C) the name of the presiding judge;

(D) the date on which the case was filed;

(E) a definition of the putative class, including the number of persons in the certified class;

(F) the name of the defendants, attorneys for the defendants, and the nature of the business of each defendant;

(G) a description of the claim action by court certification;

(H) the name of the firms and attorneys for the certified class;

(I) the amount of the attorneys’ fees sought and the amount of such fees approved by the court;

(J) the number of persons in the certified class determined to be eligible for benefits;

(K) the total amount of monetary damages awarded, including the value of any cy pres or similar pay out; and

(L) a specific description of injunctive or similar relief approved by the court.

(2) SUBSEQUENT REPORT.—Not later than the earliest of the date of the final distribution of payments to class members, the date of the reversion of any uncollected benefit to the defendants, or 360 days after the date on which the court approves a class action settlement under rule 23(e) of the Federal Rules of Civil Procedure, the attorney for the certified class shall submit a report to the Administrative Office of the United States Courts, which contains—

(A) the total amount of the attorneys’ fees paid, a description of the method used to calculate such fees, and a detailed report of all billing records;

(B) the number of persons in the certified class determined eligible to receive benefits, the number of such persons who received benefits, and the amount of benefits paid to such persons;

(C) an accounting of the total value transferred, including the value of any cy pres or similar pay out, and the value paid by the defendants in noncash benefits; and

(D) if any benefit remains uncollected or has reverted to the defendants, the total value of such benefit.

(3) RULEMAKING.—The Administrative Office of the United States Courts shall promulgate regulations regarding the content, format, and timing of the reports required to be submitted under paragraphs (1) and (2).

(4) PUBLICATION.—The Administrative Office of the United States Courts shall make the information contained in the report submitted under paragraphs (1) and (2) publicly

accessible by posting such information on its website.

SA 9. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 26, strike line 21, and insert the following:

SEC. 9. RIGHT OF INTERLOCUTORY APPEAL.

(a) IN GENERAL.—Section 1292(a) is amended by adding at the end the following:

“(4) Orders of the district courts of the United States granting or denying class certification under rule 23 of the Federal Rules of Civil Procedure, if notice of appeal is filed within 10 days after entry of the order. An appeal under this paragraph shall stay all discovery and other proceedings in the district court unless the court finds, upon the motion of any party, that specific discovery is necessary to preserve evidence or to prevent undue prejudice to that party.”.

(b) CONFORMING AMENDMENT.—Rule 23(f) of the Federal Rules of Civil Procedure is amended by striking “An appeal” and inserting “Except as provided under section 1292(a)(4) of title 28, United States Code, an appeal”.

SEC. 10. EFFECTIVE DATE.

SA 10. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 8, beginning on line 7, strike “The court” and all that follows through line 13.

SA 11. Mr. CORNYN submitted an amendment intended to be proposed by him to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; which was ordered to lie on the table; as follows:

On page 21, line 3, strike “all of the claims” and all that follows through “(IV)” on page 21, line 8.

SA 12. Mr. FEINGOLD proposed an amendment to the bill S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes; as follows:

On page 22, strike line 22 and all that follows through page 23, line 4, and insert the following:

“(1) IN GENERAL.—Section 1447 shall apply to any removal of a case under this section, except that—

“(A) not later than 60 days after the date on which a motion to remand is made, the district court shall—

“(i) complete all action on the motion; or

“(ii) issue an order explaining the court’s reasons for not ruling on the motion within the 60 day period;

“(B) not later than 180 days after the date on which a motion to remand is made, the

district court shall complete all action on the motion unless all parties to the proceeding agree to an extension; and

“(C) notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

NOTICES OF HEARINGS/MEETINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. COLEMAN. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs will hold a hearing entitled “The United Nations’ Management and Oversight of the Oil-for-Food Program.” This is the second of several hearings the Subcommittee intends to hold on this matter. The Subcommittee’s first hearing on the Oil-for-Food Program (“OFF Program”) laid the foundation for future hearings by describing how the OFF Program was exploited by Saddam Hussein. This second hearing will examine the operations of the independent inspection agents retained by the United Nations and their role within the OFF Program. The administration of the OFF Program by the U.N. Office of the Iraq Program and the findings of the U.N. Office of Internal Oversight Services will also be examined.

The Subcommittee hearing is scheduled for Tuesday, February 15, 2004, at 9:30 a.m. in Room 342 of the Dirksen Senate Office Building. For further information, please contact Raymond V. Shepherd, III, Staff Director and Chief Counsel to the Permanent Subcommittee on Investigations, at 224-3721.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Wednesday, February 9 at 11:30 a.m. to consider pending calendar business.

Agenda:

Agenda Item 1: S. 47—A bill to provide for the exchange of certain Federal land in the Santa Fe National Forest and certain non-Federal land in the Pecos National Historical Park in the State of New Mexico.

Agenda Item 8: S. 63—A bill to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes.

Agenda Item 9: S. 74—A bill to designate a portion of the White Salmon River as a component of the National Wild and Scenic Rivers System.

Agenda Item 14: S. 134—A bill to adjust the boundary of Redwood National Park in the State of California.

Agenda Item 17: S. 153—A bill to direct the Secretary of the Interior to conduct a resource study of the Rim of the Valley Corridor in the State of California to evaluate alternatives for protecting the resources of the Corridor, and for other purposes.

Agenda Item 18: S. 156—A bill to designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes.

Agenda Item 20: S. 163—A bill to establish the National Mormon Pioneer Heritage Area in the State of Utah, and for other purposes.

Agenda Item 22: S. 176—A bill to extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska.

Agenda Item 23: S. 177—A bill to further the purpose of the Reclamation Projects Authorization and Adjustment Act of 1992 by directing the Secretary of the Interior, acting through the Commissioner of Reclamation, to carry out an assessment of demonstration programs to control salt cedar and Russian olive, and for other purposes.

Agenda Item 24: S. 178—A bill to provide assistance to the State of New Mexico for the development of comprehensive State water plans, and for other purposes.

Agenda Item 26: S. 200—A bill to establish the Arabia Mountain National Heritage Area in the State of Georgia, and for other purposes.

Agenda Item 27: S. 203—A bill to reduce temporarily the royalty required to be paid for sodium produced on Federal lands, and for other purposes.

Agenda Item 28: S. 204—A bill to establish the Atchafalaya National Heritage Area in the State of Louisiana.

Agenda Item 29: S. 205—A bill to authorize the American Battle Monuments Commission to establish in the State of Louisiana a memorial to honor the Buffalo Soldiers.

Agenda Item 30: S. 207—A bill to adjust the boundary of the Barataria Preserve Unit of the Jean Lafitte National Historical Park and Preserve in the State of Louisiana, and for other purposes.

Agenda Item 31: S. 212—A bill to amend the Valles Caldera Preservation Act to improve the preservation of the Valles Caldera, and for other purposes, to the Committee on Foreign Relations.

Agenda Item 32: S. 214—A bill to authorize the Secretary of the Interior to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers, and for other purposes.

Agenda Item 33: S. 225—A bill to direct the Secretary of the Interior to undertake a program to reduce the risks from and mitigate the effects of avalanches on recreational users of public land.

Agenda Item 34: S. 229—A bill to clear title to certain real property in

New Mexico associated with the Middle Rio Grande Project, and for other purposes.

Agenda Item 35: S. 231—Mr. Smith, et al.—a bill to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon, and for other purposes.

Agenda Item 36: S. 232—A bill to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to assist in the implementation of fish passage and screening facilities at non-Federal water projects, and for other purposes.

Agenda Item 37: S. 243—A bill to establish a program and criteria for National Heritage Areas in the United States, and for other purposes.

Agenda Item 38: S. 244—Mr. Thomas—a bill to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming.

Agenda Item 39: S. 249—Mr. Reid, et al.—a bill to establish the Great Basin National Heritage Route in the States of Nevada and Utah.

Agenda Item 40: S. 252—A bill to direct the Secretary of the Interior to convey certain land in Washoe County, Nevada, to the Board of Regents of the University and Community College System of Nevada.

Agenda Item 41: S. 253—A bill to direct the Secretary of the Interior to convey certain land to the land to the Edward H. McDaniel American Legion Post No. 22 in Pahrump, Nevada, for the construction of a post building and memorial park for use by the American Legion, other veterans’ groups, and the local community.

Agenda Item 42: S. 254—A bill to direct the Secretary of the Interior to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka.

Agenda Item 43: S. 263—A bill to provide for the protection of paleontological resources on Federal lands, and for other purposes.

Agenda Item 44: S. 264—A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize certain projects in the State of Hawaii.

In addition, the Committee may turn to any other measures that are ready for consideration.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, February 9, 2005 at 2:30 p.m. to conduct a hearing to receive testimony on EPA’s proposed budget for fiscal year 2006.

The hearing will be held in SD 406.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the