

necessary component of the nuclear fuel cycle infrastructure. To encourage development of interim storage facilities the SMART Act establishes an economic incentive program for communities and states that wish to host a facility within their jurisdiction. All interim storage facilities would be privately owned and operated and licensed by the Nuclear Regulatory Commission. The SMART Act incentives are designed to encourage the development of two large scale facilities with enough capacity to accommodate our annual domestic used nuclear fuel generation.

As with the used fuel recycling facilities, the SMART act authorizes the Department of Energy to enter into long term contracts with storage facility operators. In addition, the SMART Act allows the Department of Energy to enter into agreements with utilities for the settlement of all future claims against the department for failure to take title to spent nuclear fuel by 1998.

Currently, the Nuclear Waste Fund established by the Nuclear Waste Policy Act of 1982 has a balance of approximately \$20 billion and is growing by nearly \$1.8 billion annually from fees paid by the utilities and interest on the fund. Unfortunately, this fund is currently "on budget" and amounts to little more than an IOU to the U.S. ratepayers. The SMART Act will allow access to a small portion of this fund so that it can begin working to resolve the nuclear waste issue as it was intended.

The SMART Act establishes a revolving fund from \$1 billion of the current waste fund as well as the annual interest on the fund. The remaining 95 percent of the current waste fund, as well as all future fees, would be placed in a legacy fund for the purposes of constructing a geologic repository. Expenditures from the revolving fund for the provisions of the act could be made without further appropriations but would be subject to limitations in appropriations acts. In this way the revolving fund could be put to use without being subject to the uncertainty of the annual appropriations process while still retaining the authority of Congress to oversee the fund.

The resolution of the used nuclear fuel issue has been deadlocked for decades. Fortunately time has been on our side since nuclear energy produces so little waste. For example the nuclear waste generated by a family of four during their entire lives is only a couple of pounds. Some have even said that we do not need to begin recycling used nuclear fuel for 30 or 40 years. I do not believe we can wait that long before we resolve the used nuclear fuel issue, however. We must begin taking steps today that will place us on the path to a secure and sustainable nuclear energy industry in the future. We must demonstrate to industry and financial institutions the Government's commitment to resolving the used nuclear fuel issue. The SMART bill will place us on that path to the future.

By Mr. MCCONNELL:

S. 3216. A bill to provide for the introduction of pay-for-performance compensation mechanisms into contracts of the Department of Veterans Affairs with community-based outpatient clinics for the provision of health care services, and for other purposes; to the Committee on Veterans' Affairs.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be placed in the RECORD, as follows:

S. 3216

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans Health Care Improvement Act of 2008".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Veterans of the Armed Forces have made tremendous sacrifices in the defense of freedom and liberty.

(2) Congress recognizes these great sacrifices and reaffirms America's strong commitment to its veterans.

(3) As part of the on-going congressional effort to recognize the sacrifices made by America's veterans, Congress has dramatically increased funding for the Department of Veterans Affairs for veterans health care in the years since September 11, 2001.

(4) Part of the funding for the Department of Veterans Affairs for veterans health care is allocated toward community-based outpatient clinics (CBOCs).

(5) Many CBOCs are administered by private contractors.

(6) CBOCs administered by private contractors operate on a capitated basis.

(7) Some current contracts for CBOCs may create an incentive for contractors to sign up as many veterans as possible, without ensuring timely access to high quality health care for such veterans.

(8) The top priorities for CBOCs should be to provide quality health care and patient satisfaction for America's veterans.

(9) The Department of Veterans Affairs currently tracks the quality of patient care through its Computerized Patient Record System. However, fees paid to contractors are not currently adjusted automatically to reflect the quality of care provided to patients.

(10) A pay-for-performance payment model offers a promising approach to health care delivery by aligning the payment of fees to contractors with the achievement of better health outcomes for patients.

(11) The Department of Veterans Affairs should begin to emphasize pay-for-performance in its contracts with CBOCs.

SEC. 3. PAY-FOR-PERFORMANCE UNDER DEPARTMENT OF VETERANS AFFAIRS CONTRACTS WITH COMMUNITY-BASED OUTPATIENT HEALTH CARE CLINICS.

(a) PLAN REQUIRED.—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to Congress a plan to introduce pay-for-performance measures into contracts which compensate contractors of the Department of Veterans Affairs for the provision of health care services through community-based outpatient clinics (CBOCs).

(b) ELEMENTS.—The plan required by subsection (a) shall include the following:

(1) Measures to ensure that contracts of the Department for the provision of health

care services through CBOCs begin to utilize pay-for-performance compensation mechanisms for compensating contractors for the provision of such services through such clinics, including mechanisms as follows:

(A) To provide incentives for clinics that provide high-quality health care.

(B) To provide incentives to better assure patient satisfaction.

(C) To impose penalties (including termination of contract) for clinics that provide substandard care.

(2) Mechanisms to collect and evaluate data on the outcomes of the services generally provided by CBOCs in order to provide for an assessment of the quality of health care provided by such clinics.

(3) Mechanisms to eliminate abuses in the provision of health care services by CBOCs under contracts that continue to utilize capitated-basis compensation mechanisms for compensating contractors.

(c) IMPLEMENTATION.—The Secretary shall commence the implementation of the plan required by subsection (a) unless Congress enacts an Act, not later than 60 days after the date of the submittal of the plan, prohibiting or modifying implementation of the plan. In implementing the plan, the Secretary may initially carry out one or more pilot programs to assess the feasibility and advisability of mechanisms under the plan.

(d) REPORTS.—Not later than 180 days after the date of the enactment of this Act and every 180 days thereafter, the Secretary shall submit to Congress a report setting forth the recommendations of the Secretary as to the feasibility and advisability of utilizing pay-for-performance compensation mechanisms in the provision of health care services by the Department by means in addition to CBOCs.

By Mr. SPECTER (for himself, Mr. BIDEN, Mr. GRAHAM, Mr. KERRY, Mr. CORNYN, Mr. PRYOR, Mrs. DOLE, Ms. LANDRIEU, Mr. COCHRAN, Mr. CARPER, Mrs. MCCASKILL, and Mrs. FEINSTEIN):

S. 3217. A bill to provide appropriate protection to attorney-client privileged communications and attorney work product; to the Committee on the Judiciary.

Mr. SPECTER. Mr. President, I seek recognition today to introduce the Attorney-Client Privilege Protection Act of 2008, which is a modified version of my earlier legislation by the same name. This legislation, which adds original cosponsors, continues to address the Department of Justice's corporate prosecution guidelines. Those guidelines, last revised by former Deputy Attorney General Paul McNulty in December 2006, erode the attorney-client relationship by allowing prosecutors to request privileged information backed by the hammer of prosecution if the request is denied.

Like my previous bill, S. 186, this bill will protect the sanctity of the attorney-client relationship by prohibiting federal prosecutors and investigators from requesting waiver of attorney-client privilege and attorney work product protections in corporate investigations. The bill would similarly prohibit the government from conditioning charging decisions or any adverse treatment on an organization's payment of employee legal fees, invocation

of the attorney-client privilege, or agreement to a joint defense agreement.

The new version of the bill makes many subtle improvements, including defining "organization" to make clear that continuing criminal enterprises and terrorist organizations will not benefit from the bill's protections. The bill also clarifies language that the Department of Justice had previously criticized as ambiguous. The bill also makes clear in its findings that its prohibition on informal privilege waiver demands is far from unprecedented. The bill states: "Congress recognized that law enforcement can effectively investigate without attorney-client privileged information when it banned Attorney General demands for privileged materials in the Racketeer Influenced and Corrupt Organizations Act. See 18 U.S.C. §1968(c)(2)."

There is no need to wait to see how the McNulty memorandum will operate in practice. There is similarly no need to wait for another internal Department of Justice reform that will likely fall short and be the fifth policy in the last 10 years. Any such internal reform will not address the privilege waiver policies of other government agencies that refer matters to the Department of Justice and allow in through the window what isn't allowed through the door.

As I said when I introduced S. 186, the right to counsel is too important to be passed over for prosecutorial convenience. It has been engrained in American jurisprudence since the 18th century when the Bill of Rights was adopted. The 6th Amendment is a fundamental right afforded to individuals charged with a crime and guarantees proper representation by counsel throughout a prosecution. However, the right to counsel is largely ineffective unless the confidential communications made by a client to his or her lawyer are protected by law. As the Supreme Court observed in *Upjohn Co. v. United States*, "the attorney-client privilege is the oldest of the privileges for confidential communications known to the common law." When the *Upjohn* Court affirmed that attorney-client privilege protections apply to corporate internal legal dialogue, the Court manifested in the law the importance of the attorney-client privilege in encouraging full and frank communication between attorneys and their clients, as well as the broader public interests the privilege serves in fostering the observance of law and the administration of justice. The *Upjohn* Court also made clear that the value of legal advice and advocacy depends on the lawyer having been fully informed by the client.

In addition to the importance of the right to counsel, it is also fundamental that the Government has the burden of investigating and proving its own case. Privilege waiver tends to transfer this burden to the organization under investigation. As a former prosecutor, I am

well aware of the enormous power and tools a prosecutor has at his or her disposal. The prosecutor has enough power without the coercive tools of the privilege waiver, whether that waiver policy is embodied in the Holder, Thompson, McCallum, McNulty—or a future Filip—memorandum.

As in S. 186, this bill amends title 18 of the United States Code by adding a new section, §3014, that would prohibit any agent or attorney of the U.S. Government in any criminal or civil case to demand or request the disclosure of any communication protected by the attorney-client privilege or attorney work product. The bill would also prohibit government lawyers and agents from basing any charge or adverse treatment on whether an organization pays attorneys' fees for its employees or signs a joint defense agreement.

This legislation is needed to ensure that basic protections of the attorney-client relationship are preserved in Federal prosecutions and investigations.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 603—EX-PRESSING THE SENSE OF THE SENATE ON THE RESTITUTION OF OR COMPENSATION FOR PROPERTY SEIZED DURING THE NAZI AND COMMUNIST ERAS

Mr. NELSON of Florida (for himself, Mr. SMITH, Mr. CARDIN, Mr. COLEMAN, and Mr. MENENDEZ) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 603

Whereas many East European countries were dominated for parts of the last century by Nazi or communist regimes, without the consent of their people;

Whereas victims of Nazi persecution included individuals persecuted or targeted for persecution by the Nazi or Nazi-allied governments based on their religious, ethnic, or cultural identity, political beliefs, sexual orientation, or disability;

Whereas the Nazi regime and the authoritarian and totalitarian regimes that emerged in Eastern Europe after World War II perpetuated the wrongful and unjust confiscation of property belonging to the victims of Nazi persecution, including real property, personal property, and financial assets;

Whereas communal and religious property was an early target of the Nazi regime and, by expropriating churches, synagogues and other community-controlled property, the Nazis denied religious communities the temporal facilities that held those communities together;

Whereas, after World War II, communist regimes expanded the systematic expropriation of communal and religious property in an effort to eliminate the influence of religion;

Whereas many insurance companies that issued policies in pre-World War II Eastern Europe were nationalized or had their subsidiary assets nationalized by communist regimes;

Whereas such nationalized companies and those with nationalized subsidiaries have generally not paid the proceeds or compensa-

tion due on pre-war policies, because control of those companies or their East European subsidiaries had passed to the government;

Whereas East European countries involved in these nationalizations have not participated in a compensation process for Holocaust-era insurance policies for victims of Nazi persecution;

Whereas the protection of and respect for private property rights is a basic principle for all democratic governments that operate according to the rule of law;

Whereas the rule of law and democratic norms require that the activity of governments and their administrative agencies be exercised in accordance with the laws passed by their parliaments or legislatures and such laws themselves must be consistent with international human rights standards;

Whereas the Paris Declaration of the Organization for Security and Cooperation in Europe (OSCE) Parliamentary Assembly in July 2001 noted that the process of restitution, compensation, and material reparation of victims of Nazi persecution has not been pursued with the same degree of comprehensiveness by all of the OSCE participating States;

Whereas the OSCE participating States have agreed to achieve or maintain full recognition and protection of all types of property, including private property and the right to prompt, just, and effective compensation for the private property that is taken for public use;

Whereas the OSCE Parliamentary Assembly has called on the OSCE participating States to ensure that they implement appropriate legislation to secure the restitution of or compensation for property losses of victims of Nazi persecution and property losses of communal organizations and institutions during the Nazi era, irrespective of the current citizenship or place of residence of victims or their heirs or the relevant successor to communal property;

Whereas Congress passed resolutions in the 104th and 105th Congresses that emphasized the longstanding support of the United States for the restitution of or compensation for property wrongly confiscated during the Nazi or communist eras;

Whereas certain post-communist countries in Europe have taken steps toward compensating victims of Nazi persecution whose property was confiscated by the Nazis or their allies or collaborators during World War II or subsequently seized by communist governments after World War II;

Whereas, at the 1998 Washington Conference on Holocaust-Era Assets, 44 countries adopted Principles on Nazi-Confiscated Art to guide the restitution of looted artwork and cultural property;

Whereas the Government of Lithuania has promised to adopt an effective legal framework to provide for the restitution of or compensation for wrongly confiscated communal property, but so far has not done so;

Whereas successive governments in Poland have promised to adopt an effective general property compensation law, but so far the current Government of Poland has not adopted one;

Whereas the legislation providing for the restitution of or compensation for wrongly confiscated property in Europe has, in various instances, not always been implemented in an effective, transparent, and timely manner;

Whereas such legislation is of the utmost importance in returning or compensating property wrongfully seized by totalitarian or authoritarian governments to its rightful owners;

Whereas compensation and restitution programs can never bring back to Holocaust