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S. 333. A bill to direct the Secretary of Energy to institute certain procedures in the performance of risk assessments in connection with environmental restoration activities, and for other purposes (Rept. No. 104–87).

By Mr. ROTH, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 291. A bill to reform the regulatory process, to make government more efficient and effective, and for other purposes (Rept. No. 104–88).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. D'AMATO, from the Committee on Banking, Housing, and Urban Affairs:

Bruce A. Morrison, of Connecticut, to be a Director of the Federal Housing Finance Board for a term expiring February 27, 2000.

J. Timothy O'Neill, of Virginia, to be a Director of the Federal Housing Finance Board for the remainder of the term expiring February 27, 1997.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. ROTH, from the Committee on Governmental Affairs:

Ronna Lee Beck, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

John W. Carlin, of Kansas, to be Archivist of the United States.

G. Edward DeSeve, of Pennsylvania, to be Controller, Office of Federal Financial Management, Office of Management and Budget.

Linda Kay Davis, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

Eric T. Washington, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

Inez Smith Reid, of the District of Columbia, to be an Associate Judge of the District of Columbia Court of Appeals for the term of fifteen years.

Robert F. Rider, of Delaware, to be a Governor of the United States Postal Service for the remainder of the term expiring December 8, 1995.

S. David Fineman, of Pennsylvania, to be a Governor of the United States Postal Service for the term expiring December 8, 2003.

(The above nominations were reported with the recommendation that they be confirmed.)

Mr. THURMOND, from the Committee on Armed Services:

Mr. THURMOND. Mr. President, from the Committee on Armed Services, I report favorably the attached listing of nominations.

These nominations are to lie on the Secretary's desk for the information of any Senator since these names have already appeared in the Records of May 23, and 24, 1995 and to save the expense of printing again.

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

(The nominations ordered to lie on the Secretary's desk were printed in the Records of May 23 and 24, 1995 at the end of the Senate proceedings).

In the Army there are 2,538 promotions to the grade of second lieutenant (list begins with Thomas H. Aarsen) Reference No. 406.

In the Marine Corps there are 5 promotions to the grade of second lieutenant (list begins with Christian R. Fitzpatrick) Reference No. 409.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. JOHNSTON (for himself, Mr. FAIRCLOTH, Mr. BREAUX, Mr. PRESSLER, Mr. DORGAN, Mr. LOTT, Mr. DOLE, Mr. MURKOWSKI, and Mr. HEFLIN):

S. 851. A bill to amend the Federal Water Pollution Control Act to reform the wetlands regulatory program, and for other purposes; to the Committee on Environment and Public Works.

By Mr. DOMENICI (for himself, Mr. CRAIG, Mr. BROWN, Mr. CAMPBELL, Mr. HATCH, Mr. BENNETT, Mr. BURNS, Mr. SIMPSON, Mr. THOMAS, Mr. KYL, Mr. PRESSLER, Mr. KEMPTHORNE, Mr. CONRAD, Mr. DORGAN, Mr. DOLE, and Mr. GRAMM):

S. 852. A bill to provide for uniform management of livestock grazing on Federal land, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. GORTON (for himself, Mr. BURNS, Mr. MURKOWSKI, Mr. STEVENS, Mr. KEMPTHORNE, Mr. CRAIG, Mr. BAUCUS, Mr. PACKWOOD, and Mr. HATFIELD):

S. 853. A bill to amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes; to the Committee on the Judiciary.

By Mr. LUGAR (for himself and Mr. LEAHY):

S. 854. A bill to amend the Food Security Act of 1985 to improve the agricultural resources conservation program, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 855. A bill to amend title 10, United States Code, to revise the authorization for long-term leasing of military family housing to be constructed; to the Committee on Armed Services.

By Mr. JEFFORDS (for himself, Mrs. KASSEBAUM, Mr. KENNEDY, Mr. PELL, Mr. SIMPSON, and Mr. DODD):

S. 856. A bill to amend the National Foundation on the Arts and the Humanities Act of 1965, the Museum Services Act, and the Acts and Artifacts Indemnity Act to improve and extend the Acts, and for other purposes; to the Committee on Labor and Human Resources.

By Ms. SNOWE:

S. 857. A bill to amend the Immigration and Nationality Act to provide waiver authority for the requirement to provide a written justification for the exact grounds for the denial of a visa, except in cases of intent to immigrate; to the Committee on the Judiciary.

By Ms. SNOWE:

S. 858. A bill to restrict intelligence sharing with the United Nations; to the Committee on Foreign Relations.

By Ms. SNOWE:

S. 859. A bill to establish terrorist lookout committees in each United States embassy; to the Committee on Foreign Relations.

By Ms. SNOWE:

S. 860. A bill to require a General Accounting Office study of activities of the North/South Center in support of the North American Free Trade Agreement; to the Committee on Governmental Affairs.

By Ms. SNOWE:

S. 861. A bill to require a General Accounting Office study of duplication among certain international affairs grantees; to the Committee on Foreign Relations.

By Mr. HATFIELD:

S. 862. A bill to authorize the Administrator of the Small Business Administration to make urban university business initiative grants, and for other purposes; to the Committee on Small Business.

By Mr. GRASSLEY (for himself and Mr. CONRAD):

S. 863. A bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for physician assistants, to increase the delivery of health services in health professional shortage areas, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY (for himself and Mr. CONRAD):

S. 864. A bill to amend title XVIII of the Social Security Act to provide for increased medicare reimbursement for nurse practitioners and clinical nurse specialists to increase the delivery of health services in health professional shortage areas, and for other purposes; to the Committee on Finance.

By Mr. BENNETT:

S. 865. A bill entitled the "Securities Act Amendment of 1995"; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DOLE (for himself, Mr. KYL, and Mr. HATCH):

S. 866. A bill to reform prison litigation, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. AKAKA (for himself, Mr. INOUYE, Mr. DASCHLE, Mr. KENNEDY, Mr. SIMON, and Mr. MURKOWSKI):

S. Res. 125. A bill honoring the contributions of Father Joseph Damien de Veuster for his service to humanity, and for other purposes; considered and agreed to.

By Mr. MCCONNELL:

S. Res. 126. A resolution to amend the Senate gift rule; to the Committee on Rules and Administration.

By Ms. SNOWE:

S. Res. 127. A resolution to express the sense of the Senate on border crossing fees; to the Committee on the Judiciary.

By Ms. SNOWE:

S. Con. Res. 15. A concurrent resolution expressing the sense of Congress regarding the escalating costs of international peacekeeping activities; to the Committee on Foreign Relations.

By Ms. SNOWE:

S. Con. Res. 16. A concurrent resolution expressing the sense of Congress that the Russian Federation should be strongly condemned for its plan to provide nuclear technology to Iran, and that such nuclear transfer would make Russia ineligible under terms of the Freedom Support Act; to the Committee on Foreign Relations.

school health, and occupational health. Nurse practitioners generally perform services like assessment and diagnosis, and provide basic primary care treatment.

Almost half of the 25,000 nurse practitioners across the Nation have master's degrees. Clinical nurse specialists, on the other hand, are required to have master's degrees and are found more frequently in tertiary care settings in specialties like cardiac care. However, many also practice in primary care settings.

Physician assistants on average receive 2 years of physician-supervised clinical training and classroom instruction. Unlike nurse practitioners, they are educated using the medical model of care, rather than the nursing process. Physician assistants work in all settings providing diagnostic, therapeutic, and preventive care services.

Members of each of these provider groups work with physicians to varying degrees. They generally work in consultation with physicians, and are being relied upon more and more. In States like North Dakota, nurse practitioners or physician assistants often staff clinics where no physician is present or available. Without their presence, many communities would have no ready access to the health care system.

Within their areas of competence, nurse practitioners, clinical nurse specialists, and physician's assistants furnish care of exceptional quality. Numerous studies have demonstrated that they do a particularly effective job of providing preventive care, supportive care, and health promotion services. They also emphasize communication with patients and provide effective followup with patients. These qualities will continue to grow in importance as primary care receives increasing emphasis throughout our health care system.

Medicare currently provides for reimbursement of nurse practitioners, physicians' assistants, and clinical nurse specialists working with physicians. But the ad hoc fashion in which the various payment mechanisms have been established results in wide reimbursement variations in different settings and among different providers.

Our national budget situation requires that we approach Medicare reimbursement policies in a sensible way. This legislation is one example of how Medicare can and should promote the use of cost-effective providers to a much higher degree, without compromising the quality of care that older Americans receive.

Today's Medicare requirements can hinder the ability of practices to set up satellite clinics that are staffed by providers other than physicians. For example, although the State of North Dakota allows for broad use of such providers, the reimbursement levels provided by Medicare can create difficulty both for the providers and the practices themselves.

In rural North Dakota, and in rural communities throughout the Nation, one or two doctors might rotate between a series of clinics. The clinics might also be staffed by physician's assistants, nurse practitioners, or other providers. If a Medicare patient requires care when a doctor is conducting business away from the clinic, and the only provider present is a physician assistant, the clinic can not be reimbursed by Medicare for care he or she provides to that individual—the same care that would be reimbursed if the physician were in the next room. The State of North Dakota allows that same physician's assistant to provide the care without a physician present, but Medicare provides no reimbursement.

The Office of Technology Assessment, the Physician Payment Review Commission and these providers themselves have all expressed the need for consistency, and for a reimbursement scheme that acknowledges reality of today's medial marketplace.

Greater use of nurse practitioners, physician assistants, and clinical nurse specialists can improve our ability to provide health care services in areas where access to providers can be difficult. These providers have historically been willing to move to both rural and inner-city areas that are underserved by health care providers. In fact, they are located in about 50 communities throughout North Dakota.

Many communities that cannot support a physician can support a full-time nurse practitioner or physician assistant. As I have already discussed, some towns already utilize these providers to some extent. North Dakotans and residents of many other States recognize the value of each of these health care professionals, and appreciate the access to quality care they provide.

Although North Dakota maximizes access to health care for our rural residents by allowing for relatively broad utilization of these providers, our efforts are impeded by an irrational Federal reimbursement scheme. But no matter what the State of North Dakota does, unless changes are made in Federal reimbursement, we will never encourage use of this group of health care professionals to the extent that rural Americans need.

The bills Senator GRASSLEY and I are introducing would help eliminate the existing barriers to using these important primary care providers. The bills provide each of these provider groups with reimbursement at 85 percent of the physician fee schedule for the services they provide. The 85 percent level represents a compromise relative to the legislation we introduced in the 103d Congress. It is consistent with a provision that was included in all of the major health reform legislation before the Senate last year—the Mainstream coalition proposal as well as the health reform proposals made by Senators Mitchell and DOLE.

Our proposals also allow for a bonus payment to these providers if they elect the practice in Health Professional Shortage Areas [HPSAs]. All but six counties in North Dakota are completely or partially designated as HPSAs. The health care access problems residents of those counties experience could be substantially alleviated by the presence of this special class of primary care providers. Finally, our legislation ensure that a nurse practitioner from a rural area who follows a patient into an inpatient setting will get paid for doing so.

The improvements that Senator GRASSLEY and I advocate will pay dividends in improved access to health care for Americans living in rural and urban areas alike. They were items about which Democrats and Republicans had a great deal of agreement during health care reform last year. I urge my colleagues to support this bipartisan effort to improve health care access for rural Americans.

By Mr. DOLE (for himself, Mr. KYL, and Mr. HATCH):

S. 866. A bill to reform prison litigation, and for other purposes; to the Committee on the Judiciary.

PRISON LITIGATION REFORM ACT

Mr. DOLE. Mr. President, I am pleased to join today with my distinguished colleague from Arizona, Senator KYL, in introducing the Prison Litigation Reform Act of 1995.

Over the past two decades, we have witnessed an alarming explosion in the number of lawsuits filed by State and Federal prisoners. According to enterprise institute scholar Walter Berns, the number of "due-process and cruel and unusual punishment" complaints filed by prisoners has grown astronomically—from 6,600 in 1975 to more than 39,000 in 1994. As Chief Justice William Rehnquist has pointed out, prisoners will now "litigate at the drop of a hat," simply because they have little to lose and everything to gain. Prisoners have filed lawsuits claiming such grievances as insufficient storage locker space, being prohibited from attending a wedding anniversary party, and yes, being served creamy peanut butter instead of the chunky variety they had ordered.

Unfortunately, prisoner litigation does not operate in a vacuum. Frivolous lawsuits filed by prisoners tie up the courts, waste valuable judicial and legal resources, and affect the quality of justice enjoyed by the law-abiding population.

According to Arizona Attorney General Grant Woods, 45 percent of the civil cases filed in Arizona's Federal courts last year were filed by State prisoners. That means that 20,000 prisoners in Arizona filed almost as many cases as Arizona's 3.5 million law-abiding citizens. The time and money spent defending most of these cases are clearly time and money that could be better spent prosecuting criminals, fighting

illegal drugs, or cracking down on consumer fraud.

GARNISHMENT

The bottom line is that prisons should be prisons, not law firms. That's why the Prison Litigation Reform Act would require prisoners who file lawsuits to pay the full amount of their court fees and other costs.

Many prisoners filing lawsuits today in Federal court claim indigent status. As indigents, prisoners are generally not required to pay the fees that normally accompany the filing of a lawsuit. In other words, there is no economic disincentive to going to court.

The Prison Litigation Reform Act would change this by establishing a garnishment procedure: If a prisoner is unable to fully pay court fees and other costs at the time of filing a lawsuit, 20 percent of the funds in his account would be garnished for this purpose. Every month thereafter, an additional 20 percent of the income credited to the prisoner's account would be garnished, until the full amount of the court fees and costs are paid-off.

When average law-abiding citizens file a lawsuit, they recognize that there could be an economic downside to going to court. Convicted criminals shouldn't get preferential treatment: If a law-abiding citizen has to pay the costs associated with a lawsuit, so too should a convicted criminal.

In addition, when prisoners know that they will have to pay these costs—perhaps not at the time of filing, but eventually—they will be less inclined to file a lawsuit in the first place.

JUDICIAL SCREENING

Another provision of the Prison Litigation Reform Act would require judicial screening, before docketing, of any civil complaint filed by a prisoner seeking relief from the Government under section 1983 of title 42, a reconstruction-era statute that permits actions against State officials who deprive "any citizen of the United States * * * of the rights, privileges, or immunities guaranteed by the constitution." This provision would allow a Federal judge to immediately dismiss a complaint under section 1983 if either of two conditions is met: First, the complaint does not state a claim upon which relief may be granted, or second, the defendant is immune from suit.

OTHER REFORMS

The Prison Litigation Reform Act would also punish Federal prisoners who file frivolous lawsuits by requiring them to forfeit any good-time credits they may have accumulated. Why should we provide "good-time" credits to Federal prisoners who waste taxpayer dollars and valuable judicial resources with unnecessary lawsuits?

The act also requires State prisoners to exhaust all administrative remedies before filing a lawsuit in Federal court.

In addition, the act amends both the Civil Rights of Institutionalized Persons Act and the Federal Tort Claims Act to prohibit prisoners from suing for mental or emotional injury while in custody, absent a showing of physical injury.

If enacted, all of these provisions would go a long way to curtail frivolous prisoner litigation.

CONCLUSION

Finally, Mr. President, I want to express my thanks to Arizona Attorney General Grant Woods. In many respects, the Prison Litigation Reform Act is modeled after the attorney general's own State initiative in Arizona. Without the invaluable input of Attorney General Woods and his staff, Senator Kyl and I would not be here today introducing this important piece of legislation.

Mr. President, I ask unanimous consent that the full text of the Prison Litigation Reform Act be reprinted in the RECORD.

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

S. 866

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 "Prison Litigation Reform Act of 1995".

SEC. 2. PROCEEDINGS IN FORMA PAUPERIS.

(a) FILING FEES.—Section 1915 of title 28, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "(a) Any" and inserting "(a)(1) Subject to subsection (b), any";

(B) by striking "fees and";

(C) by striking "makes affidavit" and inserting "submits an affidavit";

(D) by striking "such costs" and inserting "such fees";

(E) by striking "he" each place it appears and inserting "the person";

(F) by adding immediately after paragraph (1), the following new paragraph:

"(2) A prisoner of a Federal, State, or local institution seeking to bring a civil action or appeal a judgment in a civil action or proceeding, without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each institution at which the prisoner is or was confined."; and

(E) by striking "An appeal" and inserting "(3) An appeal";

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively;

(3) by inserting after subsection (a) the following new subsection:

"(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess, and when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

"(A) the average monthly deposits to the prisoner's account; or

"(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

"(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

"(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or a appeal of a civil action or criminal judgment.

"(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner is unable to pay the initial partial filing fee.";

(4) in subsection (c), as redesignated by paragraph (2), by striking "subsection (a) of this section" and inserting "subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b)"; and

(5) by amending subsection (e), as redesignated by paragraph (2), to read as follows:

"(e) The court may request an attorney to represent any person unable to employ counsel, and shall dismiss the case at any time if the allegation of poverty is untrue, or if the court determines that the action or appeal is frivolous or malicious, or fails to state a claim on which relief may be granted.".

(b) COSTS.—Section 1915(e) of title 28, United States Code (as redesignated by subsection (a)(2)), is amended—

(1) by striking "(f) Judgment" and inserting "(f)(1) Judgment";

(2) by striking "such cases" and inserting "proceedings under this section";

(3) by striking "cases" and inserting "proceedings"; and

(4) by adding at the end the following new paragraph:

"(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

"(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

"(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.".

SEC. 3. JUDICIAL SCREENING.

(a) IN GENERAL.—Chapter 123 of title 28, United States Code, is amended by inserting after section 1915 the following new section:

"§ 1915A. Screening

"(a) SCREENING.—The court shall review, before docketing if feasible or, in any event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.

"(b) GROUNDS FOR DISMISSAL.—On review, the court shall dismiss the complaint, or any portion of the complaint, if the complaint—

"(1) fails to state a claim upon which relief may be granted; or

"(2) seeks monetary relief from a defendant that is immune from such relief.

"(c) DEFINITION.—As used in this section, the term 'prisoner' means a person that is serving a sentence following conviction of a crime or is being held in custody pending trial or sentencing.".

(b) TECHNICAL AMENDMENT.—The analysis for chapter 123 of title 28, United States Code, is amended by inserting after the item relating to section 1915 the following new item:

"1915A. Screening.".

SEC. 4. FEDERAL TORT CLAIMS.

Section 1346(b) of title 28, United States Code, is amended—

(1) by striking "(b)" and inserting "(b)(1)"; and

(2) by adding at the end the following:

"(2) No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury.".

SEC. 5. CIVIL RIGHTS CLAIMS.

The Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997 et seq.) is amended by inserting after section 7 the following new section:

"SEC. 7A. LIMITATION ON RECOVERY.

"No civil action may be brought against the United States by an adult convicted of a crime confined in a jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury.".

SEC. 6. EARNED RELEASE CREDIT OR GOOD TIME CREDIT REVOCATION.

(a) IN GENERAL.—Chapter 123 of title 28, United States Code, is amended by adding at the end the following new section:

"§ 1932. Revocation of earned release credit

"In a civil action brought by an adult convicted of a crime and confined in a Federal correctional facility, the court may order the revocation of earned good time credit (or the institutional equivalent) if—

"(1) the court finds that—

"(A) the claim was filed for a malicious purpose;

"(B) the claim was filed solely to harass the party against which it was filed; or

"(C) the claimant testifies falsely or otherwise knowingly presents false evidence or information to the court; or

"(2) if the Attorney General determines that subparagraph (A), (B), or (C) of paragraph (1) has been met and recommends revocation of earned good time credit to the court.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 123 of title 28, United States Code, is amended by inserting after the item relating to section 1931 the following:

"1931. Revocation of earned release credit.".

SEC. 7. EXHAUSTION REQUIREMENT.

Section 7(a)(1) of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997e(a)(1)) is amended—

(1) by striking "in any action brought" and inserting "no action shall be brought";

(2) by striking "the court shall" and all that follows through "require exhaustion of" and insert "until"; and

(3) by inserting "and exhausted" after "available".

Mr. KYL. Mr. President, I join Senator DOLE in introducing the Prison Litigation Reform Act of 1995. This bill will deter frivolous inmate lawsuits. Statistics complied by the Administrative Office of the U.S. Courts show that inmate suits are clogging the courts and draining precious judicial resources. Nationally, in 1994, a total of 238,590 civil cases were brought in U.S. district court. More than one-fourth of these cases—60,086—were brought by prisoners.

Most inmate lawsuits are meritless. Courts have complained about the abundance of such cases. Filing frivolous civil rights lawsuits has become a recreational activity for long-term residents of our prisons. *James* v. *Quinlan*, 886 F.2d 37, 40 n. 5 (3rd Cir. 1989) quoting *Gabel* v. *Lynaugh*, 835 F.2d 124, 125 n. 1 (5th Cir. 1988) (per curiam). Indeed, in Gabel, the fifth circuit expressed frustration with the glut of "frivolous or malicious appeals by disgruntled state prisoners." *Gabel* v. *Lynaugh*, 835 F.2d 124, 125 (per curiam). The court wrote:

About one appeal in every six which came to our docket (17.3%) the last four months was a state prisoner's pro se civil rights case. A high percentage of these are meritless, and many are transparently frivolous. So far in the current year (July 1–October 31, 1987), for example, the percentage of such appeals in which reversal occurred was 5.08. Partial reversal occurred in another 2.54%, for a total of 7.62% in which any relief was granted. . . . Over 92% were either dismissed or affirmed in full.

For the same period section 1983 prisoner appeals prosecuted without counsel were our largest single category of cases which survived long enough to be briefed and enter our screening process so as to require full panel consideration. The number of these stands at almost 22%, with the next largest category—diversity cases—coming in at 16%, federal question appeals at 14.5%, and both general civil rights cases and criminal appeals coming in at something over 11% each. Such figures suggest that pro se civil rights litigation has become a recreational activity for state prisoners in our Circuit . . . *Id.*

As Walter Berns recently wrote in the Wall Street Journal, "Nowhere is [the] problem [of frivolous lawsuits] more pressing than in our prison system." (April 24, 1995) Legislation is needed because of the large and growing number of prisoner civil rights complaints, the burden that disposing of meritless complaints imposes on efficient judicial administration, and the need to discourage prisoners from filing frivolous complaints as a means of gaining a "short sabbatical in the nearest Federal courthouse." *Cruz* v. *Beto*, 405 U.S. 319, 327 (1972) (Rehnquist, J., dissenting).

The Dole-Kyl "Prisoner Litigation Reform Act" will:

Remove the ability of prisoners to file free lawsuits, instead making them pay full filing fees and court costs.

Require judges to dismiss frivolous cases before they bog down the court system.

Prohibit inmate lawsuits for mental and emotional distress.

Retract good-time credit earned by inmates if they file lawsuits deemed frivolous.

Require the exhaustion of administrative remedies.

The Dole-Kyl bill is based on similar provisions that were enacted in Arizona. Arizona's recent reforms have already reduced State prisoner cases by 50 percent. Now is the time to reproduce these commonsense reforms in Federal law. If we achieve a 50-percent reduction in bogus Federal prisoner claims, we will free up judicial resources for claims with merit by both prisoners and nonprisoners.

Section 2 of the bill covers proceedings in forma pauperis. It adds a new subsection to 28 U.S.C. section 1915. The subsection provides that whenever a Federal, State, or local prisoner seeks to commence an action or proceeding in Federal court as a poor person, the prisoner must pay a partial filing fee of 20 percent of the larger of the average monthly balance in, or the average monthly deposits to, his inmate account. The fee may not exceed the full statutory fee. If the inmate can show that circumstances render him unable to make payment of even the partial fee, the court has the power to waive the entire filing fee.

Section 2 will require prisoners to pay a very small share of the large burden they place on the Federal judicial system by paying a small filing fee upon commencement of lawsuits. In doing so, the provision will deter frivolous inmate lawsuits. The modest monetary outlay will force prisoners to think twice about the case and not just file reflexively. *Lumbert* v. *Illinois Department of Correction*, 837 F.2d 257, 259 (7th Cir. 1987) (Posner, J.). Prisoners will have to make the same decision that law-abiding Americans must make: Is the lawsuit worth the price? Criminals should not be given a special privilege that other Americans do not have. The only thing different about a criminal is that he has raped, robbed, or killed. A criminal should not be rewarded for these actions.

The volume of prisoner litigation represents a large burden on the judicial system, which is already overburdened by increases in nonprisoner litigation. Yet prisoners have very little incentive not to file nonmeritorious lawsuits. Unlike other prospective litigants who seek poor person status, prisoners have all the necessities of life supplied, including the materials required to bring their lawsuits. For a prisoner who qualifies for poor person status, there is no cost to bring a suit and, therefore, no incentive to limit suits to cases that have some chance of success.

The filing fee is small enough not to deter a prisoner with a meritorious claim, yet large enough to deter frivolous claims and multiple filings. As noted above, the bill contains a provision to waive even the partial filing fee. This provision assures that prisoners with meritorious claims will not be shut out from court for lack of sufficient money to pay even the partial fee.

Finally, section 2 of the Dole-Kyl bill also imposes the same payment system for court costs as it does for filing fees. This provision, like the filing fee provision, will ensure that inmates evaluate the merits of their claims.

Section 3 of this bill creates a new statute that requires judicial screening of a complaint, or any portion of the complaint, in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. The bill establishes two standards a prisoner must meet. Under the first standard, the court must dismiss the complaint if satisfied that the complaint fails to state a claim on which relief may be

granted. Under the second standard, the court must dismiss claims for monetary relief from a defendant who is immune from such relief.

Sections 4 and 5 of the bill will bar inmate lawsuits for mental or emotional injury suffered while in custody unless they can show physical injury. Of the 60,086 prisoner petitions in 1994 about two-thirds were prisoner civil rights petitions, according to the Administrative Office of the U.S. courts. Prisoner civil rights petitions are brought under 42 U.S.C. 1983. Section 1983 petitions are claims brought in Federal court by State inmates seeking redress for a violation of their civil rights. "The volume of section 1983 litigation is substantial by any standard," according to the Justice Department's report on section 1983 litigation, "Challenging the Conditions of Prisons and Jails." Indeed, the Administrative Office [AO] of the U.S. courts counted only 218 cases in 1966, the first year that State prisoners' rights cases were recorded as a specific category of litigation. The number climbed to 26,824 by 1992. When compared to the total number of all civil cases filed in the Nation's U.S. district courts, more than 1 in every 10 civil filings is now a section 1983 lawsuit, according to the AO.

Section 6 of the bill will deter frivolous suits by adding to the U.S.C. a sanction to revoke good-time credits when a frivolous suit is filed. Specifically, the bill would require that in a civil action brought by an adult convicted of a crime and confined in a Federal correctional facility, the court may order the revocation of earned good-time credit if the court finds that: First, the claim was filed for a malicious purpose, second, the claim was filed solely to harass the party against which it was filed, or third, the claimant testifies falsely or otherwise knowingly presents false evidence or information to the court. Additionally, if the Attorney General determines that any of these criteria have been met, the Attorney General may recommend the revocation of earned good-time credit to the court.

Section 7 will make the exhaustion of administrative remedies mandatory. Many prisoner cases seek relief for matters that are relatively minor and for which the prison grievance system would provide an adequate remedy. Section 7 of this bill would require an inmate, prior to filing a complaint under 42 U.S.C. section 1983, to exhaust all available administrative remedies certified as adequate by the U.S. attorney general. An exhaustion requirement is appropriate for prisoners given the burden that their cases place on the Federal court system, the availability of administrative remedies, and the lack of merit of many of the claims filed under 42 U.S.C. section 1983.

Mr. President, in a dissenting opinion in *Cleavinger* v. *Saxner*, 474 U.S. 193, 211 (1985), then-Justice Rehnquist wrote, "With less to profitably occupy their time than potential litigants on the outside, and with a justified feeling that they have much to gain and virtually nothing to lose, prisoners appear to be far more prolific litigants than other groups in the population." The Dole-Kyl bill will stem the tide of meritless prisoner cases.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

[From the Wall Street Journal, Apr. 24, 1995]

SUE THE WARDEN, SUE THE CHEF, SUE THE GARDENER . . .

(By Walter Berns)

The Senate's debate this week on tort reform will focus the public spotlight on frivolous lawsuits. Nowhere is this problem more pressing than in our prison system. As one federal appeals court judge said recently, filing civil rights suits has become a "recreational activity" for long-term inmates. Among his examples of "excessive filings": more than 100 by Harry Franklin (who, in one of them, sued a prison official for "overwatering the lawn"), 184 in three years by John Robert Demos, and—so far the winning score—more than 700 by the "Reverend" Clovis Carl Green Jr.

Disenting in a case that reached the Supreme Court in 1985, Chief Justice William Rehnquist noted that prisoners are not subject to many of the constraints that deter litigiousness among the population at large. Most prisoners qualify for in forma pauperis status, which entitles them to commence an action "without prepayment of fees and costs or security therefor," and all of them are entitled to free access to law books or some other legal assistance. As the chief justice said, with time on their hands, and with much to gain and virtually nothing to lose, prisoners "litigate at the drop of a hat."

Chief Justice Rehnquist was not referring to appeals by defendants protesting their innocence, but to the suits initiated by people claiming a deprivation of their rights while in prison. Since almost any disciplinary or administrative action taken by prison officials now can give rise to a due process or cruel-and-unusual-punishment complaint, the number of these suits is growing at a rate that goes far to explain the "litigation explosion": from 6,606 in 1975 to 39,065 in 1994 (of which "only" 1,100 reached the Supreme Court).

Of the 1994 total, 37,925 were filed by state prisoners under a section of the so-called Ku Klux Klan Act of 1871, which permits actions for damages against state officials who deprive "any citizen of the United States or other person under the jurisdiction thereof, [of] any rights, privileges, or immunities secured by the Constitution and laws." This statute came into its own in 1961 when the Supreme Court permitted a damage action filed by members of a black family who (with good reason) claimed that Chicago police officers had deprived them of the Fourth Amendment right "to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures." Today, the statute is used mostly by prisoners who, invoking one or another constitutional right, complain of just about anything and everything.

They invoke the cruel-and-unusual-punishment provision of the Eighth Amendment not only when beaten or raped by prison guards, but when shot during a prison riot, or when required to share a cell with a heavy smoker, or when given insufficient storage locker space, or when given creamy peanut butter instead of the chunky variety they ordered.

They involve the First Amendment when forbidden to enter into marriage, or to correspond with inmates in other state prisons. John Robert Demos sued one prison official for not addressing him by his Islamic name.

And there is probably not a prison regulation whose enforcement does not, or at least may not, give rise to a 14th Amendment (or, in the case of federal prisoners, a Fifth amendment) due process complaint. Requiring elaborate trials or evidentiary proceedings, these especially, are the cases that try the patience of the judges. Still, reviewing these complaints imposes a particular burden on administrative officials who, unlike the judges, can be sued for damages.

Consider a recent due process case involving a New York state inmate.

In five separate hearings, prison officers found inmate Jerry Young guilty of violating various prison rules and sentenced him to punitive segregation and deprived him of inmate privileges. Appeals from the disciplinary decisions in the 66 state prisons are directed to Donald Selsky, a Department of Correctional Services official who, in a typical year, hears more than 5,000 such appeals. Young sued the prison hearing officers, claiming that they had denied his request to call 31 inmates and two staff officers as witnesses, and that they failed to provide him with adequate legal assistance; he also sued Mr. Selsky, claiming he had violated his due process rights by affirming the decisions made by the hearing officers. From Mr. Selsky he demanded $200 in punitive damages, $200, in compensatory damages, and $200 in exemplary damages for each day of his segregated confinement.

Mr. Selsky is currently the defendant in 156 such suits, but the state provides him with legal representation, and, if he is found liable, will indemnity him unless the damages "resulted from [his] intentional wrongdoing." Since he bears the burden of providing that it was "objectively reasonable to conclude that the prisoners' constitutional rights were not violated." he may or may not find this reassuring.

The Republican crime bill passed by the House in the first 100 days aims to reduce the number of such suits—first, by prohibiting the filing of an action in Federal court by adult state prisoners until they have exhausted all the remedies available to them in the states, and, second, by permitting federal judges to dismiss an in forma pauperis case "if the allegation of poverty is untrue, or if satisfied that the action fails to state a claim upon which relief may be granted or is frivolous or malicious, even if the partial filing fees have been imposed by the court."

These provisions seem reasonable, but it remains to be seen whether the Senate and the president will find them so. And only time will tell whether they are adequate.

[From the Tucson Citizen, Feb. 2, 1995]

COST OF INMATES' FRIVOLOUS SUITS IS HIGH

Almost 400 times last year, inmates in Arizona prison sued the state. Some of their claims:

An inmate wasn't allowed to go to his parents' wedding anniversary party; another said he was subject to cruel and unusual punishment because he wasn't allowed to attend his father's funeral.

An inmate claimed that he lost his Reebok tennis shoes because of gross negligence by the state. Another said the state lost his sunglasses.

A woman inmate said the jeans she was issued didn't fit properly.

An inmate sued because he wasn't allowed to hang a tapestry in his cell.