

112TH CONGRESS
1ST SESSION

S. 815

To guarantee that military funerals are conducted with dignity and respect.

IN THE SENATE OF THE UNITED STATES

APRIL 13, 2011

Ms. SNOWE (for herself, Mr. CONRAD, Mr. KIRK, Mr. PRYOR, Mrs. GILLIBRAND, Mr. COATS, Mr. RUBIO, Mrs. HUTCHISON, Mr. JOHANNNS, Mr. HOEVEN, Mr. CARDIN, Mrs. SHAHEEN, Mr. REID, and Mr. ROCKEFELLER) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To guarantee that military funerals are conducted with
dignity and respect.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sanctity of Eternal
5 Rest for Veterans Act of 2011” or the “SERVE Act of
6 2011”.

7 **SEC. 2. PURPOSE AND AUTHORITY.**

8 (a) **PURPOSE.**—The purpose of this Act is to provide
9 necessary and proper support for the recruitment and re-

1 tention of the Armed Forces and militia employed in the
2 service of the United States by protecting the dignity of
3 the service of the members of such Forces and militia, and
4 by protecting the privacy of their immediate family mem-
5 bers and other attendees during funeral services for such
6 members.

7 (b) CONSTITUTIONAL AUTHORITY.—Congress finds
8 that this Act is a necessary and proper exercise of its pow-
9 ers under the Constitution, article I, section 8, paragraphs
10 1, 12, 13, 14, 16 and 18, to provide for the common de-
11 fense, raise and support armies, provide and maintain a
12 navy, make rules for the government and regulation of the
13 land and naval forces, and provide for organizing and gov-
14 erning such part of the militia as may be employed in the
15 service of the United States.

16 **SEC. 3. AMEND TO TITLE 18.**

17 Section 1388 of title 18, United States Code is
18 amended to read as follows:

19 **“§ 1388. Prohibition on disruptions of funerals of**
20 **members or former members of the**
21 **armed forces**

22 “(a) PROHIBITION.—For any funeral of a member or
23 former member of the Armed Forces that is not located
24 at a cemetery under the control of the National Cemetery
25 Administration or part of Arlington National Cemetery,

1 it shall be unlawful for any person to engage in an activity
2 during the period beginning 120 minutes before and end-
3 ing 120 minutes after such funeral, any part of which ac-
4 tivity—

5 “(1)(A) takes place within the boundaries of the
6 location of such funeral or takes place within 300
7 feet of the point of the intersection between—

8 “(i) the boundary of the location of such
9 funeral; and

10 “(ii) a road, pathway, or other route of in-
11 gress to or egress from the location of such fu-
12 neral; and

13 “(B) includes any individual willfully making or
14 assisting in the making of any noise or diversion
15 that is not part of such funeral and that disturbs or
16 tends to disturb the peace or good order of such fu-
17 neral;

18 “(2)(A) is within 500 feet of the boundary of
19 the location of such funeral; and

20 “(B) includes any individual willfully and with-
21 out proper authorization impeding or tending to im-
22 pede the access to or egress from such location or
23 disrupting or tending to disrupt a funeral proces-
24 sion; or

1 “(3) is within 500 feet of the boundary of the
2 residence, home or domicile of any surviving member
3 of the deceased person’s immediate family and in-
4 cludes any individual willfully making or assisting in
5 the making of any noise or diversion that disturbs
6 or tends to disturb the peace of the persons located
7 at such location.

8 “(b) PENALTY.—Any person who violates subsection
9 (a) shall be fined under this title or imprisoned not more
10 than 2 years, or both.

11 “(c) CIVIL REMEDIES.—

12 “(1) DISTRICT COURTS.—The district courts of
13 the United States shall have jurisdiction—

14 “(A) to prevent and restrain violations of
15 this section; and

16 “(B) for the adjudication of any claims for
17 relief under this section.

18 “(2) ATTORNEY GENERAL.—The Attorney Gen-
19 eral may institute proceedings under this section.

20 “(3) CLAIMS.—Any person, including a sur-
21 viving member of the deceased person’s immediate
22 family, who suffers injury as a result of conduct that
23 violates this section may—

1 “(A) sue therefor in any appropriate
2 United States district court or in any court of
3 competent jurisdiction; and

4 “(B) recover damages as provided in sub-
5 section (d) and the cost of the suit, including
6 reasonable attorneys’ fees.

7 “(4) ESTOPPEL.—A final judgment or decree
8 rendered in favor of the United States in any crimi-
9 nal proceeding brought by the United States under
10 this section shall estop the defendant from denying
11 the essential allegations of the criminal offense in
12 any subsequent civil proceeding brought by a person
13 or by the United States.

14 “(d) ACTUAL AND STATUTORY DAMAGES.—

15 “(1) IN GENERAL.—In addition to any penalty
16 imposed under subsection (b), a violator of this sec-
17 tion is liable in an action under subsection (c) for
18 actual or statutory damages as provided in this sub-
19 section.

20 “(2) ACTIONS BY PRIVATE PERSONS.—A person
21 bringing an action under subsection (c)(3) may elect,
22 at any time before final judgment is rendered, to re-
23 cover the actual damages suffered by him or her as
24 a result of the violation or, instead of actual dam-

1 ages, an award of statutory damages for each viola-
2 tion involved in the action.

3 “(3) ACTIONS BY ATTORNEY GENERAL.—The
4 Attorney General under subsection (c)(2) is entitled
5 to recover an award of statutory damages for each
6 violation involved in the action notwithstanding any
7 recovery under subsection (c)(3).

8 “(4) STATUTORY DAMAGES.—A court may
9 award, as the court considers just, statutory dam-
10 ages in a sum of not less than \$25,000 or more than
11 \$50,000 per violation.

12 “(e) REBUTTABLE PRESUMPTION.—It shall be a re-
13 buttable presumption that the violation was committed
14 willfully for purposes of determining relief under this sec-
15 tion if the violator, or a person acting in concert with the
16 violator, did not have reasonable grounds to believe, either
17 from the attention or publicity sought by the violator or
18 other circumstance, that the conduct of such violator or
19 person would not disturb or tend to disturb the peace or
20 good order of such funeral, impede or tend to impede the
21 access to or egress from such funeral, disrupt or tend dis-
22 rupt to a funeral procession, or disturb or tend to disturb
23 the peace of any surviving member of the deceased per-
24 son’s immediate family who may be found at the residence,

1 home or domicile of the deceased person’s immediate fam-
 2 ily on the date of the service or ceremony.

3 “(f) DEFINITIONS.—In this section—

4 “(1) the term ‘Armed Forces’ has the meaning
 5 given the term in section 101 of title 10 and in-
 6 cludes members and former members of the Na-
 7 tional Guard who were employed in the service of
 8 the United States; and

9 “(2) the term ‘immediate family’ shall have the
 10 same meaning given such term in section 115 of this
 11 title.”.

12 **SEC. 4. AMENDMENT TO TITLE 38.**

13 (a) IN GENERAL.—Section 2413 of title 38, United
 14 States Code, is amended to read as follows:

15 **“§ 2413. Prohibition on certain demonstrations and**
 16 **disruptions at cemeteries under control**
 17 **of the National Cemetery Administration**
 18 **and at Arlington National Cemetery**

19 “(a) PROHIBITION.—It shall be unlawful for any per-
 20 son—

21 “(1) to carry out a demonstration on the prop-
 22 erty of a cemetery under the control of the National
 23 Cemetery Administration or on the property of Ar-
 24 lington National Cemetery unless the demonstration
 25 has been approved by the cemetery superintendent

1 or the director of the property on which the ceme-
 2 tery is located; or

3 “(2) with respect to such a cemetery, to engage
 4 in an activity during the period beginning 120 min-
 5 utes before and ending 120 minutes after a funeral,
 6 memorial service, or ceremony is held, any part of
 7 which activity—

8 “(A)(i) takes place within the boundaries
 9 of such cemetery or takes place within 300 feet
 10 of the point of the intersection between—

11 “(I) the boundary of such cemetery;

12 and

13 “(II) a road, pathway, or other route
 14 of ingress to or egress from such cemetery;

15 and

16 “(ii) includes any individual willfully mak-
 17 ing or assisting in the making of any noise or
 18 diversion that is not part of such funeral, me-
 19 morial service, or ceremony and that disturbs or
 20 tends to disturb the peace or good order of such
 21 funeral, memorial service, or ceremony; or

22 “(B)(i) is within 500 feet of the boundary
 23 of such cemetery; and

24 “(ii) includes any individual willfully and
 25 without proper authorization impeding or tend-

1 ing to impede the access to or egress from such
2 cemetery or disrupting or tending to disrupt a
3 funeral procession.

4 “(b) PENALTY.—Any person who violates subsection
5 (a) shall be fined under title 18 or imprisoned not more
6 than 2 years, or both.

7 “(c) CIVIL REMEDIES.—(1) The district courts of the
8 United States shall have jurisdiction—

9 “(A) to prevent and restrain violations of this
10 section; and

11 “(B) for the adjudication of any claims for re-
12 lief under this section.

13 “(2) The Attorney General of the United States may
14 institute proceedings under this section.

15 “(3) Any person, including a surviving member of the
16 deceased person’s immediate family, who suffers injury as
17 a result of conduct that violates this section may—

18 “(A) sue therefor in any appropriate United
19 States district court or in any court of competent ju-
20 risdiction; and

21 “(B) recover damages as provided in subsection
22 (d) and the cost of the suit, including reasonable at-
23 torneys’ fees.

24 “(4) A final judgment or decree rendered in favor of
25 the United States in any criminal proceeding brought by

1 the United States under this section shall estop the de-
2 fendant from denying the essential allegations of the
3 criminal offense in any subsequent civil proceeding
4 brought by a person or by the United States.

5 “(d) ACTUAL AND STATUTORY DAMAGES.—(1) In
6 addition to any penalty imposed under subsection (b), a
7 violator of this section is liable in an action under sub-
8 section (c) for actual or statutory damages as provided
9 in this subsection.

10 “(2) A person bringing an action under subsection
11 (c)(3) may elect, at any time before final judgment is ren-
12 dered, to recover the actual damages suffered by him or
13 her as a result of the violation or, instead of actual dam-
14 ages, an award of statutory damages for each violation
15 involved in the action.

16 “(3) The Attorney General under subsection (c)(2)
17 is entitled to recover an award of statutory damages for
18 each violation involved in the action notwithstanding any
19 recovery under subsection (c)(3).

20 “(4) A court may award, as the court considers just,
21 statutory damages in a sum of not less than \$25,000 or
22 more than \$50,000 per violation.

23 “(e) REBUTTABLE PRESUMPTION.—It shall be a re-
24 buttable presumption that the violation of subsection
25 (a)(2) was committed willfully for purposes of determining

1 relief under this section if the violator, or a person acting
2 in concert with the violator, did not have reasonable
3 grounds to believe, either from the attention or publicity
4 sought by the violator or other circumstance, that the con-
5 duct of such violator or person would not—

6 “(1) disturb or tend to disturb the peace or
7 good order of such funeral, memorial service, or
8 ceremony; or

9 “(2) impede or tend to impede the access to or
10 egress from such funeral, memorial service, or cere-
11 mony; or

12 “(3) disrupt or tend to disrupt a funeral proces-
13 sion.

14 “(f) DEFINITIONS.—In this section—

15 “(1) the term ‘demonstration’ includes—

16 “(A) any picketing or similar conduct;

17 “(B) any oration, speech, use of sound am-
18 plification equipment or device, or similar con-
19 duct that is not part of a funeral, memorial
20 service, or ceremony;

21 “(C) the display of any placard, banner,
22 flag, or similar device, unless such a display is
23 part of a funeral, memorial service, or cere-
24 mony; and

