

FOR THE RELIEF OF RETIRED SERGEANT FIRST CLASS
JAMES D. BENOIT AND WAN SOOK BENOIT

JULY 16, 2002.—Referred to the Private Calendar and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany S. 1834]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (S. 1834) for the relief of retired Sergeant First Class James D. Benoit and Wan Sook Benoit, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

S. 1834 would pay the Benois of the State of Michigan \$415,000 to satisfy their equitable claim as recommended by the Court of Federal Claims.

BACKGROUND AND NEED FOR THE LEGISLATION

In June 1983, the Benoit's 3-year-old son died after falling out of seventh floor window of a military apartment because of a faulty screen. An autopsy was performed with the family's proviso that all organs ultimately remain in the son's body for purposes of burial. This proviso was required by the family's religious beliefs. Several of the boy's organs were disposed of in error.

The Department of the Army's admitted fault and awarded the family \$65,000 for their son's wrongful death and an additional \$5,000 for the error made in disposal of his organs. The family appealed those awards to the Secretary of Defense with no resolution. When congressional efforts to resolve the matter with the Department were unsuccessful, the Senate passed a resolution referring the matter to the Court of Federal Claims for a determination of an appropriate award in the case.

In July 2000, the Court of Federal Claims found the case constituted an equitable claim and recommended that the Benois be awarded \$415,000. The \$415,000 total was derived from the hearing officer's recommendation of \$125,000 for the pecuniary loss caused by their son's death, \$100,000 for the boy's pain and suffering, \$100,000 each to Sergeant and Mrs. Benoit for loss of their son's love and companionship, and \$60,000 for the wrongful retention of his remains, less \$70,000 already paid to the Benois.

HEARINGS

No hearings were held on S. 1834.

COMMITTEE CONSIDERATION

On April 17, 2002, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill S. 1834, by voice vote, a quorum being present. On July 10, 2002, the Committee met in open session and ordered favorably reported the bill S. 1834 without amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes on S. 1834.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

S. 1834 authorizes funding from the General Treasury in the amount of \$415,000 to be paid to the claimants.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, S. 1834, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 11, 2002.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1834, an act for the relief of retired Sergeant First Class James D. Benoit and Wan Sook Benoit.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

S. 1834—An act for the relief of retired Sergeant First Class James D. Benoit and Wan Sook Benoit.

S. 1834 would direct the Secretary of the Treasury to pay \$415,000 to James D. Benoit and Wan Sook Benoit, as compensation and damages for the wrongful death of their son, David Benoit, while occupying military family housing supplied by the Army in Seoul, Korea. Because the act would increase direct spending, pay-as-you-go procedures would apply.

The CBO staff contact for this estimate is Matthew Pickford, who can be reached at 226–2860. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

SECTION 1. REQUIREMENT TO PAY CLAIMS

Section 1(a) authorizes the Secretary of the Treasury to pay \$415,000 to the Benois based on the U.S. Court of Federal Claims

determination made pursuant to the congressional referral by Senate Resolution 129 in the 105th Congress.

Section 1(b) indicates that the payment of \$415,000 to the Benoits will be in full satisfaction of all of the Benoits' claims against the United States related to the death of their son and the wrongful retention of his remains.

SECTION 2. LIMITATION ON USE OF FUNDS FOR ATTORNEYS' FEES

Section 2 provides that no more than 10% of the monies received by the Benoits as a result of this legislation may be paid to any agent or attorney for services they provided in connection with the claim. It states that any violation of this section is a misdemeanor punishable by a fine of no more than \$1,000.

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, JULY 10, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:17 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

* * * * *

The next item on the agenda is the consideration of two private bills, H.R. 2245 and S. 1834, which, without objection, will be considered en bloc.

The Chair recognizes the gentleman from Pennsylvania for a motion.

Mr. GEKAS. Mr. Chairman, the Subcommittee on Immigration, Border Security, and Claims reports favorably the bills H.R. 2245 and S. 1834, and moves their favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bills will be considered as read and open for amendment at any point.

[The bill, S. 1834, follows:]

107TH CONGRESS
1ST SESSION

S. 1834

AN ACT

For the relief of retired Sergeant First Class James D.
Benoit and Wan Sook Benoit.

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

1 **SECTION 1. REQUIREMENT TO PAY CLAIMS.**

2 (a) PAYMENT REQUIRED.—The Secretary of the
3 Treasury is authorized and directed to pay, out of any
4 money in the Treasury not otherwise appropriated, to
5 James D. Benoit and Wan Sook Benoit, jointly, the sum
6 of \$415,000, in full satisfaction of all claims described in
7 subsection (b), such amount having been determined by
8 the United States Court of Federal Claims as being equi-
9 tably due the said James D. Benoit and Wan Sook Benoit
10 pursuant to a referral of the matter to that court by Sen-
11 ate Resolution 129, 105th Congress, 1st session, for action
12 in accordance with sections 1492 and 2509 of title 28,
13 United States Code.

14 (b) COVERED CLAIMS.—Subsection (a) applies with
15 respect to all claims of the said James D. Benoit, Wan
16 Sook Benoit, and the estate of David Benoit against the
17 United States for compensation and damages for the
18 wrongful death of David Benoit, the minor child of the
19 said James D. Benoit and Wan Sook Benoit, pain and
20 suffering of the said David Benoit, loss of the love and
21 companionship of the said David Benoit by the said James
22 D. Benoit and Wan Sook Benoit, and the wrongful reten-
23 tion of remains of the said David Benoit, all resulting from
24 a fall sustained by the said David Benoit, on June 28,
25 1983, from an upper level window while occupying military
26 family housing supplied by the Army in Seoul, Korea.

1 **SEC. 2. LIMITATION ON USE OF FUNDS FOR ATTORNEYS'**
2 **FEES.**

3 No part of the amount appropriated by section 1 in
4 excess of 10 percent thereof shall be paid or delivered to
5 or received by any agent or attorney on account of services
6 rendered in connection with this claim, any contract to the
7 contrary notwithstanding. Violation of the provisions of
8 this section is a misdemeanor punishable by a fine not to
9 exceed \$1,000.

Passed the Senate December 20 (legislative day, De-
cember 18), 2001.

Attest:

Secretary.

Chairman SENSENBRENNER. The Chair recognizes the gentleman from Pennsylvania to strike the last word.

Mr. GEKAS. I thank the Chair.

The first bill is for Anisha Foti, the widow of Seth Foti, a State Department diplomatic courier. The Fotis were married on June 3, 2000. On August the 23rd, 2000, Seth Foti was killed in the crash of Gulf Air 072. Although Seth Foti had filled out all the documents to adjust Anisha's status immigration—Anisha's status, immigration regulations concerning the untimely death of a sponsoring spouse allow for a waiver of the 2-year marriage requirement only if the individual's petition had been approved prior to the death. The interview for approval of Anisha's petition had not been scheduled before Mr. Foti was killed. This was a legitimate marriage, and through no fault of her own that Mrs. Foti has not yet met the marriage requirement. This case mirrors several other private laws enacted in the last few years.

The second bill is for the Benoit family. Their 3-year-old son died after falling out of a seventh-floor window of a military apartment

because of a faulty screen. An autopsy was performed, during which several of the boy's organs were disposed of, contrary to the family's religious beliefs. The family appealed. The Army admitted fault and awarded the family a total of \$70,000. After several denied appeals, the Senate passed a resolution referring the matter to the Court of Federal Claims for determination of an appropriate award in the case.

In July 2000, the court found the case constituted an equitable claim and recommended that the Benoits be awarded \$485,000 minus the \$70,000. S. 1834, the second bill here, would pay the claimants \$415,000 to satisfy that equitable claim.

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee?

Ms. JACKSON LEE. I think these are constructive and important actions that will make whole individuals that suffered under the Government's action. Mr. Foti was a diplomatic courier and was tragically killed on the job just 2 months after he married his wife. H.R. 2245 was brought to us by Representative Tom Lantos, and I ask our colleagues to support it. And S. 1834, as the Chairman of the Subcommittee indicated, it's relief for retired Sergeant First Class Benoit. This bill would pay the claimants \$415,000 to satisfy their equitable claim, and this was recommended by the Court of Federal Claims. This was the loss of the family's 3-year-old son who died after falling out of a seventh-floor window of a military apartment because of a faulty screen. I would ask that my colleagues support this legislation unanimously.

I yield back. Thank you.

Chairman SENSENBRENNER. Without objection, Members may include opening statements in the record on either bill at this point.

Are there amendments? If there are no amendments, the question occurs on the motion. The Chair notes the presence of a reporting quorum. The question occurs on the motion to report H.R. 2245 and S. 1834 favorably. Those in favor will say aye. Opposed, no.

The ayes appear to have it. The ayes have it. The motion to report favorably is adopted.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as provided by House rules, in which to submit additional dissenting, supplemental, or minority views.

