

**BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON THE CONSTITUTION,
CIVIL RIGHTS, AND CIVIL LIBERTIES**

**HEARING
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“Examining the Need to Expand Eligibility Under the Radiation Exposure Compensation Act”

TESTIMONY OF SENATOR ORRIN G. HATCH

Orrin G. Hatch is chairman emeritus of the Orrin G. Hatch Foundation and the former chairman of the Senate Judiciary Committee. A Utah Republican, he served in the U.S. Senate, 1977-2019.

Chairman Cohen, Vice Chair Ross, Ranking Member Johnson, and Members of the Subcommittee, I am grateful for the opportunity to present my views before the Subcommittee as it begins to consider legislative initiatives with respect to the Radiation Exposure Compensation Act program.

On June 28, 2000, I spoke on the floor of the United States Senate regarding the introduction of the Radiation Exposure Compensation Act Amendments of 2000. On that occasion I said:

“Mr. President, I am pleased that the Congress is approving one of my top Legislative priorities, the Radiation Exposure Compensation Act Amendments of 2000, which will update the compensation program Congress enacted a decade ago (in 1990). The amendments we pass tonight will make certain that more [Americans] who were exposed to radiation during the Cold War can now be granted deserved compensation to recognize the injuries and hardship they and their families have suffered.

Mr. President, our government can never truly make right the unanticipated illness and injury caused by our nation's nuclear testing program. But we should do all we can, and it is my fervent hope these amendments show Congress' commitment to righting a wrong in which the government played such a substantial role.

This legislation is aimed at improving a program which provides a measure of compensation to individuals who have sustained illness due to radiation exposure. These are fellow Americans who have suffered terribly from cancer and other debilitating diseases resulting from exposure to fallout and uranium mining during this narrow period of our history. In meetings with constituents over the past several years, I have heard countless heartrending stories about the devastating effects families have felt due to their exposure to radiation. I recall so vividly one young woman in St. George, Utah, talking about the ‘beautiful sky’ that her mother called all the children outside to view, thus exposing every family member to radiation. Tragically, many of those family members were eventually diagnosed with cancer.

Through advances in science, we now know so much more about the effects of that radiation than we did in the late 1950s and 1960s. In fact, we know so much more today than we did in 1990 when Congress passed the original compensation program, the Radiation Exposure Compensation Act. Our current state of scientific knowledge allows us to pinpoint with more accuracy which diseases are reasonably believed to be related to radiation exposure, and that is what necessitated the legislation we are considering today.” (Congressional Record S6038– June 28,2000)

The Radiation Exposure Compensation Act (the Act) was first passed in 1990. Due to the gathering of additional data and scientific information, the Act was amended in 2000 to include additional geographic areas, to include additional diseases, and to make the filing of claims more streamlined and easier for victims. Additionally, the date of the expiration of the Act was moved to July of 2022. The Act, last amended over 20 years ago, is in urgent need of reauthorization and further amendment.

The Act, as it is currently codified, provides an official apology to Americans exposed to radiation from the United States nuclear weapons development and testing programs. It also provides a one-time payment

designed to give only partial compensation for the wrongs inflicted. These payments can be made to five classifications of exposure victims: uranium miners, uranium ore transporters, uranium mill workers, those who worked on-site in a test involving the atmospheric detonation of a nuclear device, and those who were exposed to radiation by being physically present, during atmospheric nuclear weapons tests, in certain counties located downwind from the Nevada Test Site in Arizona, Nevada, and Utah. Uranium miners, ore transporters, and mill workers who perfect a claim are due a one-time payment of \$100,000. An onsite worker who perfects a claim is due \$75,000, and a perfected Downwinder claim pays \$50,000. It is clear that these one-time payments were never intended as total compensation for all the costs associated with a radiation illness or cancer diagnosis. These costs go well beyond the medical bills for such things as mental health services, lodging near treatment, transportation costs, childcare, job loss, lost income, and caregiver costs. It is only logical to surmise that \$50,000 in 2000 does not equate to the same purchase power in 2021.

It is also clear that some scientific data and some public policy developments dictate that other changes need to be made to the Act. The National Cancer institute report, "Radiation Doses and Cancer Risks Resulting from Exposure to Radioactive Fallout from the Trinity Nuclear Test," dated December 20, 2020, acknowledged that there are likely hundreds of cases of thyroid cancer in a number of New Mexico counties due to fallout from the first weapon test of the nuclear age at the Trinity Site in the Tularosa Basin. Other data suggest there may be additional geographic locations that should be included such as, but not limited to Mojave County, Arizona, and the southern part of Clark County, Nevada.

Uranium mining and processing in the United States began in earnest in the early 1940s and peaked in 1980. The United States purchased uranium, for weapons development, construction, and testing from the inception of the Manhattan Project through 1971. The Act currently does not allow a uranium miner, mill worker, or ore transporter to access compensation if their employment occurred after 1971. This deadline fails to account for the fact that the United States assumed responsibility for the regulation of uranium mine safety as far back as 1936 under the Public Contracts Act. In 1969, the US Department of Labor promulgated a regulation that limited uranium mine workers to 4.0 Working Level Months (WLM) per year as the maximum safe exposure. By 1987 it became clear that 4.0 WLM was still too much exposure and the National Institute for Occupational Safety and Health recommended that the proper standard was, in fact, 1 WLM. This dereliction of duty to provide regulation for the safety of uranium miners makes specious the argument that the federal government has responsibility for the health consequences of mining uranium through the end of 1971 only. Congress should extend this date for the appropriate period of time in acknowledgement of the failure of the federal government to protect the health and safety of uranium miners.

Uranium mill workers and uranium ore transporters were subject to most all of the risks that uranium miners were subject to and should receive the same allowances for their time of exposure within the confines of good science related to the minor differences of their occupational exposure.

The Act, as currently codified, also leaves out a class of workers who were instrumental in the search for uranium called core drillers. Core drillers searched for uranium veins by drilling through rock and dirt and bringing core samples to the surface for inspection and testing. On those occasions when the drillers found uranium veins the raised cores were radioactive. The drillers took no precautions to avoid the radioactive cores as there were no standards or best practices to follow in the drilling for uranium. The environment around the drill rigs was dusty and rife with radioactive contamination and the drillers freely breathed and were exposed to the radiation. This small but important cohort of workers should finally receive their due

and take their place both as important workers in the effort to win the Cold War and as exposure victims in the arms race.

When the Radiation Exposure Compensation Act was passed, in 1990, it had true bipartisan support in both Houses of Congress. There were members of Congress from both sides of the aisle and from all over the Country. There were sponsors as liberal as Senator Ted Kennedy (D-Mass.) and as conservative as Congressman Jim Hansen (R-Utah). There were members of Congress from as far away as Rhode Island and Hawaii and as close to the test site as Nevada, Utah, and Arizona. It was truly a bipartisan effort then as it should be now.

The radiation exposure from the United States nuclear weapons development, construction, and testing program affected the famous and the ordinary. Hollywood director Dick Powell, actors Susan Hayward, Agnes Moorehead, Lee Van Cleef, John Hoyt, and John Wayne, as well as former Utah Governor Scott Matheson, were well known victims of radiation exposure. Equally compelling were the ordinary Americans, some partially compensated and many compensated not at all. Native Americans have been particularly affected by this tragedy—due in large part to their proximity to both the needed natural resources and to the Nevada Test Site itself. Large populations of western Native Americans worked in the mines and the mills, and transported ore. The entire populations of some Native American tribes were exposed to radiation downwind from the Nevada Test Site. Most notably among these has been the country's largest Native American Nation—the Navajo.

Over the course of our nation's history, Native Americans have suffered a long string of injustices. Among the most egregious, however, was the federal government's neglect during the Cold War years when hundreds of the Navajo developed severe forms of cancer and respiratory illness as a result of uranium mining and nearby nuclear testing.

As the original Senate sponsor of the Radiation Exposure Compensation Act, this issue is personal to me. Utah's Navajo families are my friends and former constituents, and I watched as many of them passed away from cancer and respiratory illness as a result of working in uranium mines and living downwind of the military's nuclear testing sites during the Cold War. I knew the federal government could never compensate these families for what they had suffered, but I knew we could at least hold the government accountable for its gross negligence. That's why I authored the Act, which provides compensation for individuals who became ill from the radiation exposure caused by the military's work on nuclear weapons development.

For nearly 30 years, this bipartisan legislation has helped provide a small measure of justice for members of the Navajo Nation whose lives were upended by the federal government's carelessness. Even though these events transpired long ago, many Navajo families are still reeling from the effects of radioactive fallout—and the Act is still helping them. But the law expires in 2022 and is in urgent need of reform.

As of March 15, 2021, 37,881 claims have been approved totaling \$2.4 billion in compensation. To put this in perspective, this program is designed to compensate exposure victims over a 30-year period with a geographical scope that spans at least 12 western states. By contrast, the 9/11 Victim Compensation Fund is authorized to disburse up to \$7.375 billion for a one-time event perpetrated, not by our own government, but by foreign terrorists. The Black Lung Disability Trust Fund, originally designed to pay benefits to coal miners through an excise tax on coal, is facing the need for federal subsidies of up to \$15 billion over the next quarter century. Let me be clear: I fully and unequivocally support the beneficiaries of both the 9/11 Victim Compensation Fund and the Black Lung Disability Trust Fund. I believe, however, that the victims of

radiation exposure from US nuclear programs deserve equal support. The harmful effects of these programs should not be shortchanged or conveniently forgotten because the wrongs committed against them are so far in the past.

The passage of time and the remote locations of the country where radiation exposure occurred have obscured the issues and clouded the fact that many Americans paid a disproportionate price for the victory over tyranny in World War II and the victory over communism in the Cold War. Every American alive today owes some debt to those who sacrificed knowingly and, in the case of radiation exposure victims, unknowingly for the cause of freedom. Congress—armed with new information and determined to do right by these fellow citizens—should make haste to reauthorize and amend the Radiation Exposure Compensation Act to make the Act more just, more helpful, and more in line with what has actually been experienced by so many.

– Orrin G. Hatch