supporting democracy, human rights, and civil liberties in Egypt.

AMENDMENT NO. 4596

At the request of Mr. JOHANNS, the names of the Senator from Arkansas (Mrs. LINCOLN), the Senator from Wyoming (Mr. BARRASSO), the Senator from Kansas (Mr. ROBERTS), the Senator from Wyoming (Mr. ENZI), the Senator from North Carolina (Mr. BURR), the Senator from South Carolina (Mr. GRAHAM), the Senator from South Dakota (Mr. THUNE) and the Senator from Georgia (Mr. ISAKSON) were added as cosponsors of amendment No. 4596 proposed to H.R. 5297, an act to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SPECTER (for himself, Mrs. BOXER, and Mrs. FEINSTEIN):

S. 3766. A bill to amend the Public Health Service Act to provide for human stem cell research, including human embryonic stem cell research, and for other purposes, to the Committee on Health, Education, Labor, and Pensions.

Mr. SPECTER. Mr. President, I have sought recognition to introduce the Stem Cell Research Advancement Act of 2010 on behalf of Senator BOXER, Senator FEINSTEIN, and myself.

Some 21 days ago, in the United States District Court for the District of Columbia, in an opinion by Chief Judge Lamberth, the expenditures made by the National Institutes of Health for embryonic stem cell research under an Executive order issued by President Obama on March 9, 2009, was overturned under a declaration that the Executive order violated the Dickey-Wicker amendment enacted by Congress.

Even though on its face it is pretty clear-cut that the embryonic stem cell research was not precluded by that amendment, that has had the effect of tying up very important ongoing research. For example, some $546 million has already been spent on human embryonic stem cell research and some very noteworthy progress has been made. For example, the Food and Drug Administration has approved a clinical trial for patients with spinal cord injury, and human embryonic stem cell research has been successfully used to develop new therapeutic drugs for a number of diseases including amyotrophic lateral sclerosis and muscular dystrophy, and those are just a couple of the illustrations.

The Court of Appeals for the District of Columbia has stayed the lower court's order until September 20, but there is very substantial doubt as what the future will be. Meanwhile, although the district court order has been stayed, there is great uncertainty in the research community as to what will happen. This research is vital for moving against the maladies of our society.

The background on this issue is that in November of 1998, the disclosure was made about the potential for embryonic stem cell research. At the time I chaired the appropriations subcommittee which funded Health and Human Services. It seemed to me that was a tremendous opportunity and I scheduled a hearing within a few days, held on December 2 of 1998. Since that time, there have been some 20 hearings.

As we all know, the funding for the National Institutes of Health has had a tremendous increase. When I joined the committee after my election in 1980, the funding was $3.6 billion. When I became chairman of the committee in the mid-1990s, the funding was $12 billion. With the concurrence of the then-ranking member, Senator HARKIN, we took the lead in increasing funding from some $12 billion to $30 billion. Regrettably, with budget constraints, the funding did not keep pace, starting in the year 2003. But in the stimulus package there was an additional $10 billion added which has reawakened a whole generation of research scientists, with that $10 billion providing funding for some 15,000 grants.

The results for health have been really overwhelming. Here are a few illustrations. In the 1950s, cardiovascular disease caused half of the United States deaths. Today, the rate for coronary heart disease is more than 60 percent lower. Over the past 25 years, the 5-year survival rate for prostate cancer has increased from 69 percent to almost 99 percent for diagnosed patients. For childhood cancers, the 5-year survival rate has improved markedly over the past 3 decades, from less than 50 percent before the 1970s to 80 percent today. Those are only illustrative statistics. The opportunities for embryonic stem cell research are overwhelming.

The Specter-Harkin bill was passed by the Senate in 2006 by a vote of 63 to 37, a very healthy margin for an issue which has raised some controversy. The House of Representatives passed the legislation but regrettably President Bush vetoed it in 2006, and the effort to override the veto in the House failed. There was a vote of 235 to 193, short of the two-thirds necessary to override the veto. But that shows enormous Congressional support.

Then President Obama issued the Executive order that Federal funds could be used on embryonic stem cell research on lines where the embryo had been donated. This is in line with the policy adopted by President Bush in August of 2001, when he allowed the use of quite a number of stem cell lines where the embryos had been donated. Later it was found there were only 21 lines, and those were insufficient, which has led to the effort for legislation and then led to President Obama's Executive order. The fact is, there are some 400,000 of these embryos which are frozen and which will ultimately be discarded. So it is use them for medical research to save lives or throw them away. Some have contended that we are destroying lives but the reality is they will not be utilized.

In response to the issue as to whether there might be adoption of these embryos, the subcommittee took the lead in appropriating substantial funds, which is more than $4 million a year, actually $4.2 million, but relatively few people have come forward for its use on adopting the embryos to turn them into life. If these embryos could be turned into human life I would not under any circumstance advocate scientific research on these embryos—if they could produce life. But they cannot. The facts are plain. The adoption line has been in effect now since 2002. Only a few hundred have been adopted. President Bush invited the ''snowflake'' children to the White House during his tenure, about 150 of them.

Now we have a situation where the court has intervened, even though more than a year and a half had elapsed since President Obama issued the Executive order, a clear indication of congressional intent not to deal with it or not to overturn it. I think it is a fair legal analysis that the order issued by the district court is not a sound order. Some indication of that is found in the fact that the circuit court stayed the order—not conclusive, but when they stay an order it looks as though they are not favorably inclined toward it. But who knows what the circuit court will do? Who knows what the Supreme Court of the United States, with their ideological bent, would do? This has become a theological issue in part, very emotional, with people arguing that it is akin to abortion. Of course it is nowhere near that kind.

It seems to me Congress ought to act. That is why on the first order of business after we convened here this afternoon, our first day back and our first hour in the Senate session, I am introducing this legislation. I have discussed it with sponsors on the House side and I think we are in a position to move rapidly. Certainly the previous vote of 63 to 37 in 2006 shows substantial support in this body, and the 235-to-193 vote to override President Bush's veto shows the same in the House of Representatives. I hope my colleagues will join me in this effort so this important scientific research may be continued.

I ask unanimous consent that the full text of my printed statement be printed in the RECORD.

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

THE STEM CELL RESEARCH ADVANCEMENT ACT

Mr. SPECTER. Mr. President, I have sought recognition today to introduce the

''Stem Cell Research Advancement Act'' to codify the provisions set out in President Obama's executive order on embryonic stem cell research.

I believe medical research should be pursued with all possible haste to cure the diseases and maladies affecting Americans. As former Chairman and Ranking Member of the Labor, Health and Human Services, and Education Appropriations Subcommittee, I backed up this belief by supporting increases in funding for the National Institutes of Health. When I came to the Senate in 1981, NIH spending totaled $3.6 billion. In fiscal year 2010, NIH will receive approximately $31 billion to fund its pursuit of lifesaving research. Regrettably, increases in Federal funding for NIH have steadily declined since 2003. The $10 billion for the National Institutes of Health that was included in the stimulus package provided an immediate infusion of new research dollars for medical research to make up for a portion of what was lost since 2003 and has had tremendous influence on the biomedical research community. The successes realized by this investment in NIH have spawned revolutionary advances in our knowledge and treatment for diseases such as cancer, Alzheimer's disease, Parkinson's disease, mental illnesses, diabetes, osteoporosis, heart disease, ALS, and many others. For example, in the 1950's, cardiovascular disease caused half of U.S. deaths. Today, the death rate for coronary heart disease is more than 60 percent lower. Over the past 25 years, the 5-year survival rate for prostate cancer has increased from 69 percent to almost 99 percent for diagnosed patients. For all childhood cancers combined, 5-year relative survival has improved markedly over the past 30 years, from less than 50 percent before the 1970s to 80 percent today. It is clear to me that Congress's commitment to the NIH is paying off. This is the time to seize the scientific opportunities that lie before us and to ensure that all avenues of research toward cures—including stem cell research—remain open for investigation.

I first learned of the potential of human embryonic stem cells in November of 1998 upon the announcement of the work by Dr. Jamie Thomson at the University of Wisconsin and Dr. John Gearhart at Johns Hopkins University. I took an immediate interest and held the first congressional hearing on the subject of stem cells less than one month later on December 2, 1998. These cells are pluripotent, meaning they have the ability to become any type of cell in the human body. The consequences of this unique property of stem cells are far reaching and are key to their potential use in therapies. Scientists and doctors with whom I have spoken—and that have since testified before the Labor-HHS Appropriations Subcommittee at 20 stem cell-related hearings—were excited by this discovery. They believed that these cells could be used to replace damaged or malfunctioning cells in patients with a wide range of diseases. This could lead to cures and treatments for maladies such as juvenile diabetes, Parkinson's disease, Alzheimer's disease, cardiovascular diseases, and spinal cord injury.

Embryonic stem cells are derived from embryos that would otherwise have been discarded. During the course of in vitro fertilization therapies, 4 to 16 embryos are created for a couple having difficulty becoming pregnant. The embryos grow for 5 to 7 days until they contain approximately 100 cells. To maximize the chances of success, several embryos are implanted into the woman. The remaining embryos are frozen for future use. If the woman becomes pregnant after the first implantation, and does not want to have more pregnancies, the remaining frozen embryos are in excess of clinical need and can be donated for research. Embryonic stem cells are derived from these embryos. The stem cells form what are called ''lines'' and continue to divide indefinitely in a laboratory dish. The stem cells contained in these lines can then be made into almost any type of cell in the body—with the potential to replace cells damaged by disease or accident. At no point in the derivation process are the embryos or the derived cells implanted in a woman, which would be required for them to develop further. The process of deriving stem cell lines results in the disruption of the embryo and I know that this raises some concerns.

More than 400,000 embryos are stored in fertility clinics around the country. If these frozen embryos were going to be used for in vitro fertilization, I would be the first to support it. In fact, I have included funding in the HHS budget each year since 2002 to create and continue an embryo adoption awareness campaign. For fiscal year 2010, this campaign is funded at $4.2 million. But the truth is that most of these embryos will be discarded, while they hold the key to curing and treating diseases that cause suffering for millions of people.

President Bush opened the door to stem cell research on August 9, 2001. His policy statement allowed limited Federal funding of human embryonic stem cell research for the first time. A key statement by the President related to the existence of approximately 60 eligible stem cell lines—then expanded to 78. In the intervening years, it became apparent that many of the lines cited were not really viable, robust, or available to federally funded researchers. During that time, there were only 21 lines available for research.

On July 18, 2006, the Senate passed H.R. 810, the Stem Cell Research Enhancement Act by a vote of 63 to 37. This was the House companion to S. 471, which I introduced, and would lift the federal date restriction and allow federally-funded scientists to research a greater number of stem cell lines derived from human embryos that have been donated from in vitro fertilization clinics. It also included stronger ethical requirements on stem cell lines eligible for funding including: donor consent, certification that embryos donated are in excess of clinical need, and certification that the embryos would be otherwise discarded. Unfortunately, on July 19, 2006, President Bush vetoed H.R. 810 and the House failed to override the veto by a vote of 235–193, 48 votes short of the two-thirds needed.

On March 19, 2007, Dr. Elias Zerhouni, President Bush's appointee to lead the National Institutes of Health, testified before the Senate Labor, Health and Human Services and Education Appropriations Subcommittee regarding the NIH budget and stem cells. At that time he stated, ''It is clear today that American science would be better served and the nation would be better served if we let our scientists have access to more cell lines. . .To sideline NIH in such an issue of importance, in my view, is shortsighted. I think it wouldn't serve the nation well in the long run.''

On March 9, 2009, President Obama issued an executive order removing restrictions on federal research on human embryonic research. On July 7, 2009, NIH issued the National Institutes of Health Guidelines for Research Using Human Stem Cells specifying the requirements that must be met for an embryonic stem cell line to be eligible for use in NIH-funded research. Embryonic stem cell lines must be derived from donated human embryos created using in vitro fertilization for reproductive purposes, but no longer needed for that purpose, and donated with voluntary informed consent. This action and research advancement resulted in 75 stem cell lines available for NIH research.

Regrettably, on August 23, 2010, Chief Judge Lamberth of the Federal District Court for the District of Columbia ruled that such research violates the Dickey-Wicker amendment. Since fiscal year 1996, the Dickey-Wicker amendment has been added to each year's Labor, Health and Human Services and Education appropriations legislation to prohibit the use of federal funds for research that destroys human embryo. This policy precludes the use of federal funding to derive stem cells from embryos, which typically are produced via in vitro fertilization. However, it has always been interpreted as allowing federal funds for research that utilizes human embryonic stem cells as long as no federal funds were used for their derivation.

According to a legal opinion issued by the HHS General Council Harriet Rabb in 1999, federal funding for research performed with embryonic stem cells themselves, which does not itself involve embryos or the extraction of stem cells from embryos, is not proscribed by the Dickey amendment. The opinion states: ''Pluripotent stem cells are not organisms and do not have the capacity to develop into an organism that could perform all the life functions of a human being. They are, rather, human cells that have the potential to evolve into different types of cells such as blood cells or insulin producing cells. Pluripotent stem cells do not have the capacity to develop into a human being, even if transferred to a uterus. Based on an analysis of the relevant law and scientific facts, federally funded research that utilizes human pluripotent stem cells would not be prohibited by the HHS appropriations law prohibiting human embryo research, because such stem cells are not human embryos.''

In their memorandum in support of dismissing the case before Judge Lamberth, the Department of Justice argued that ''Congress has expressly interpreted Dickey-Wicker to permit federal funding for stem cell research that is 'dependent upon' the destruction of human embryos.'' As part of this argument, they cited a floor statement I gave in 1999, in regard to the NIH's fiscal year 2000 budget. In that statement, I explained that the budget for NIH maintained the Dickey-Wicker amendment by permitting research to go forward now with private funding extracting the stem cells from embryos, and then the federal funding coming in on the stem cells which have been extracted.

Judge Lamberth's ruling has jeopardized NIH grants that are in various stages of research. In response to this court order, the NIH suspended funding new human embryonic stem cell research and all experiments already underway will be cut off when they come up for renewal. Even a temporary suspension of funding will disrupt the work on these important research projects in the areas of heart disease, sickle cell anemia, liver failure, muscular dystrophy and other maladies. According to the National Institutes of Health, to date, $546 million has been spent on human embryonic stem cell research and phenomenal progress has already been made in realizing the possible benefits. For example, the Food and Drug Administration has approved a clinical trial for patients with spinal cord injury and human embryonic stem cell research is successfully being used to develop new therapeutic drugs for a number of diseases, including amyotrophic lateral sclerosis and spinal muscular atrophy. The research, some of which has been ongoing since 2002, could be gone forever or take years to recreate.

Though the U.S. Court of Appeals for the D.C. Circuit has granted a stay of Judge

Lamberth's temporary injunction while the Obama administration appeals the decision, the uncertainty created by the ruling slows the progress of science. Young scientists rightly void fields of science for which funding may come and go due to political whim rather than scientific and medical merit. A temporary end to the current restrictions is an incomplete and ultimately self-defeating solution.

The Stem Cell Research Advancement Act would codify federal funding of embryonic stem cell research. The bill requires the Secretary of HHS and Director of NIH to maintain guidelines on human stem cell research as set out by President Obama's Executive Order. The NIH must review the guidelines at least every three years and shall update them as scientifically warranted. The bill also establishes eligibility criteria for federal funding of human stem cell research:

The stem cells were derived from human embryos donated from in vitro fertilization clinics, were created for reproductive purposes, and are in excess of clinical need.

The embryos to be donated would never be implanted in a woman and would otherwise be discarded.

The individuals seeking reproductive treatment donated the embryos with written informed consent and without any financial or other inducements.

Importantly, the bill does not allow Federal funds to be used for the derivation of stem cell lines—the step in the process where the embryo is destroyed.

I strongly believe that the funding provided by Congress should be invested in the best research to address diseases based on medical need and scientific opportunity. Politics has no place in the equation. I urge this body to support the Stem Cell Research Advancement Act so that scientists can continue important research without concerns that federal policy on stem cells will change with each new administration.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, first let me salute my colleague from the Commonwealth of Pennsylvania, Mr. SPECTER. He will be leaving the Senate at the end of this year. He has done many things throughout his senatorial career, but I am glad he brought the attention of the Senate this afternoon to his extraordinary effort when it comes to the field of medical research. When the record is written on his service to our country and to the Senate, I think the list will begin with his commitment to dramatic increases in medical research at the National Institutes of Health.

Senator SPECTER is leaving the floor now, but I can tell you, during the course of his remarks I was reminded of how many times he came to the Appropriations Committee and challenged us to raise more money for medical research. His challenges were met with cooperation on a bipartisan basis in the Senate. I don't know that anyone can even measure how many lives have been saved by that extraordinary investment. But he made that commitment as a Senator and he continues to make it in the field of stem cell research.

The point he makes is irrefutable. If these stem cells are not used for research to find cures for deadly, crippling diseases, they will be discarded—thrown away. It is not a question of whether they will be human lives at some point, human embryos. They are going to be thrown away, discarded because they were not used during the course of efforts of young couples to enlarge their families. I think it is only appropriate that we use these stem cells to save lives, to spare misery and spare suffering, and I certainly agree with Senator SPECTER's conclusion.

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By Mr. LEAHY (for himself, Ms. KLOBUCHAR, and Mr. FRANKEN):

S. 3767. A bill to establish appropriate criminal penalties for certain knowing violations relating to food that is misbranded or adulterated; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today, I am pleased to introduce the Food Safety Accountability Act with Senators KLOBUCHAR and FRANKEN. This common sense bill will hold criminals who poison our food supply accountable for their crimes. It introduces a new criminal provision and increases the sentences that prosecutors can seek for people who knowingly violate our food safety laws. If it is passed, those who knowingly contaminate our food supply and endanger Americans could receive up to 10 years in jail.

This summer, a salmonella outbreak causing hundreds of people to fall ill triggered a national egg recall. The cause of the outbreak is still under investigation, but salmonella poisoning is all too common and sometimes results from inexcusable knowing conduct. Just last year, a mother from Vermont, Gabrielle Meunier, testified before the Senate Agriculture Committee about her 7-year-old son, Christopher, who became severely ill and was hospitalized for 6 days after he developed salmonella poisoning from peanut crackers. Thankfully, Christopher recovered, and Mrs. Meunier was able to share her story, which highlighted for the Committee and for the Senate improvements that are needed in our food safety system. No parent should have to go through what Mrs. Meunier experienced. The American people should be confident that the food they buy for their families is safe.

Current statutes do not provide sufficient criminal sanctions for those who knowingly violate our food safety laws. The fines and recalls that usually result from criminal violations under current law fall short in protecting the public from harmful products. Too often, those who are willing to endanger our children in pursuit of profits view such fines or recalls as merely the cost of doing business. Indeed, the company responsible for the eggs at the root of the current salmonella crisis has a long history of environmental, immigration, labor and food safety violations. It is clear that civil and criminal fines are not enough to protect the public and effectively deter this unacceptable conduct. We need to make sure that those who knowingly poison the food supply will go to jail. The bill I introduce today will add a new criminal provision and increase sentences for people who put profits above safety by knowingly contaminating the food supply.

After hearing Mrs. Meunier's account, I called on the Department of Justice to conduct a criminal investigation into the outbreak of salmonella that made Christopher and many others so sick. The outbreak was traced to the Peanut Corporation of America. The president of that company, Stewart Parnell, came before Congress and invoked his right against self-incrimination, refusing to answer questions about his role in distributing contaminated peanut products. These products were linked to the deaths of nine people and have sickened more than 600 others. It appears that Parnell knew that peanut products from his company had tested positive for deadly salmonella, but rather than immediately disposing of the products, he sought ways to sell them anyway. The evidence suggests that he knowingly put profit above the public's safety. Our laws must be strengthened to ensure this does not happen again. This bill significantly increases the chances that those who commit food safety crimes will face jail time, rather than a slap on the wrist, for their criminal conduct.

I hope Senators of both parties will act quickly to pass this bill. On behalf of Mrs. Meunier and her son, Christopher, as well as the hundreds of individuals sickened by this summer's and last year's salmonella outbreaks, we must repair our broken food safety system. The Justice Department must be given the tools it needs to investigate, prosecute, and truly deter crime involving food safety. If Congress acts to pass it, this bill will be an important step toward making our food supply safer.

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 printed in the RECORD, as follows:

S. 3767

*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 ''Food Safety Accountability Act of 2010''.

**SEC. 2. CRIMINAL PENALTIES.**

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following:

**''§ 1041. Misbranded and adulterated food**

''(a) IN GENERAL.—It shall be unlawful for any person to knowingly—

''(1) introduce or deliver for introduction into interstate commerce any food that is adulterated or misbranded; or

''(2) adulterate or misbrand any food in interstate commerce.

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

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 47 of

title 18, United States Code, is amended by adding at the end the following:

''1041. Misbranded and adulterated food.''.

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By Mrs. HUTCHISON (for herself and Mr. CORNYN):

S. 3768. A bill to eliminate certain provisions relating to Texas and the Education Jobs Fund; to the Committee on Health, Education, Labor, and Pensions.

Mrs. HUTCHISON. Mr. President, I rise to talk about a bill I introduced today with Senator CORNYN as a cosponsor. It is S. 3768. When Congress passed and the President signed the education jobs fund bill in August, every State in America had the same requirements and every State in America was treated fairly—or equally, anyway—except for one and that State is Texas. That is why Senator CORNYN and I are introducing a bill that would only allow Texas to be equal with every other State in the Federal funding opportunity in this education bill.

The House of Representatives—not the Senate but the House—put in an amendment that singled out Texas in two ways. It said that Texas, unlike every other State in the bill, would have to guarantee 3 years of a commitment for education funding to be level in order to get the funds for 1 year that were allocated in the bill. Every other State in America is required to make such a commitment for 1 year.

Our constitution in Texas, similar to many State constitutions, does not allow one legislature to pass legislation that will require acts of another legislature, so appropriations cannot go over a 3-year period. Our legislature can only appropriate and spend Texas money for itself. It cannot obligate future legislatures. So the House provision would require Texas to violate its Constitution in order to receive the Federal money that every other State has as an allocation.

The second thing that only Texas is required to do under this bill is to distribute the funds under the title I distribution formula. Every other State gives its Governor and its State Department of Education the discretion for the money to be used where it is most needed within its State. After all, education is generally a State and local issue. In this case, you do have Federal funding, and it is provided for every State by giving it to the Governor for the distribution within the State. Only in Texas, however, under the legislation that was passed, would the requirement be that title I provides the formula, not the State of Texas and its appropriations, Governor and Lieutenant Governor.

It is puzzling, to say the least, that Texas was singled out in this way. But I am going to do everything I can to assure that does not continue. The Commissioner of Education asked for the Texas allocation of $830 million in the normal way, met all the Federal requirements and the time guidelines for submitting the grant request for an estimated $830 million. The request was turned down because, of course, the Governor could not certify 3 years of level spending because the legislature cannot obligate future legislatures in our Constitution. So Texas has just been turned down.

If we can pass the legislation Senator CORNYN and I are introducing today or if we can amend the bill that is before us, which we are going to try to do—we perfected the process today by offering this as an amendment on the bill that is before this body, and I am going to try to get this as an amendment on every bill that is going through—that will just create a level playing field.

We are certainly not asking for special favors, but again we are also asking that we not be penalized just because a House Member decided Texas should have a different standard.

We all understand politics in the usual sense. But having an argument between a Member of the House and the Governor is not a reason to penalize every schoolchild in Texas, every school district in Texas, every teacher in Texas, every administrator in Texas. It is not right. I think any person who puts the politics aside would agree that reasonableness would dictate that every State should be treated the same. In the bill that was passed, we are spending Texas tax dollars just like we are spending the tax dollars of every taxpayer in America. Texas would be putting the dollars into the Federal coffers but being penalized from receiving its fair share, as we certainly described happens in the bill.

The Hutchison-Cornyn bill is now going through the processes, and we are going to ask for support from all our colleagues to have that level playing field. Senator CORNYN and I have been working, along with Congressman MICHAEL BURGESS on the House side and the Texas delegation in the House. Many in the House delegation are certainly going to want to see this corrected, I hope. I do hope we can get prompt action. We need to do it before the end of this fiscal year in order to qualify in our rightful way.

We are not asking for special favors, most certainly. We expect to meet all the tests any State would meet. We expect to have our grant application looked at and scrutinized and determined if it is eligible in every way. But we do not expect to have a different standard from every other State in America.

Senator CORNYN and I are very hopeful we can get prompt action from the Senate to send this to the House. I hope the House will also see that was not meant to be—at least I am sure every Member voting on this bill did not know Texas was being treated differently. I do not think this is a time for any State to start a war with another State. That is not the way we ought to do business. I do not wish to be starting that kind of precedent even—I wouldn't do it to any other State, and I certainly do not expect it to be done to mine.

Senator CORNYN and I have introduced the Hutchison-Cornyn legislation. We hope we can level the playing field. All we ask is that we be judged like every State, that we have the requirement of 1 year of level funding, just as every other State is required to do and which I know our Texas Education Agency will certainly agree to do; then, second, that we be able to distribute according to the State requirements and the State priorities rather than a Federal funding formula done when no one has come to Texas to look at our formula and our needs for this particular bill. If we can correct those two things and put Texas on a level playing field with any other State, then I think it will be the right thing to do.

Sometimes we have little tiffs here, politically, but I don't think anyone can argue that a retribution against one person in Texas by one Member of Congress is a good reason to make a public policy decision that is disastrous for our State—that is hurting, just like every State, in not having enough dollars. We have a deficit right now of about $20 billion facing the next legislature in Texas.

If we can have what has passed, what is going through this Congress and what has been signed by the President, it would help alleviate some of the concerns our educators and education leaders in Texas are now saddled with; that is, a lot more expenses than revenue coming in. I hope we can right this wrong.

Mr. CORNYN. Mr. President, today my colleague Senator HUTCHISON and I have introduced legislation to repeal a House provision in the Education Jobs Bill that discriminates solely against the state of Texas. As a result of the House language, Texas will be denied over $800 million in federal funding.

The Hutchison-Cornyn bill will strip the language requiring Texas to make a commitment for three years of funding in order to be eligible for any of the $10 billion in the Education Jobs Fund. To be in compliance with the provision, the state would have to violate its own constitution. The Texas Legislature has sole authority to determine state appropriations—they cannot be dictated by the federal government. Additionally, one legislature cannot bind a future legislature. Moreover, this provision singles out Texas because all other states must only commit to one year of funding in order to receive Education Jobs Program funding.

The House language also stipulates that Texas must distribute funds through Title I funding formula, rather than allowing the governor to determine the funding distribution, as is the case in the other states and territories. In Texas this would preclude 31 districts from receiving any funds, and will result in less funding for 66 percent of the state's school districts.

Unfortunately, on September 9, 2010 the U.S. Department of Education denied an application from Texas Education Commissioner Robert Scott for

$830 million from the Education Jobs Fund.

The real impact of the House language, however, is felt in school districts across our state. Recently, for example, I received a letter from the Superintendent of the Hamlin Independent School District informing me that the West Texas school district was forced to cut more than $80,000 from the district's budget to cover rising salary costs. If Texas is prohibited from applying for the Education Jobs Fund, Hamlin ISD stands to lose over $90,000 in federal dollars, an amount that could compensate for the district's current budget cuts.

Our bill would put a stop to Texas Democrats' efforts to play politics with much-needed funding for Texas schools and teachers. Texas taxpayer dollars belong in Texas schools—not in California or New York, as the Doggett Amendment would have it. I urge my colleagues to pass our bill so we can remove this partisan roadblock and move quickly to restore critical Federal funding to Texas schools.

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By Mr. REID (for himself, Mrs. BOXER, Ms. CANTWELL, Mr. DODD, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. HARKIN, Ms. KLOBUCHAR, Ms. LANDRIEU, Mrs. MCCASKILL, Ms. MIKULSKI, Mrs. MURRAY, Mrs. SHAHEEN, and Ms. STABENOW):

S. 3772. A bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes; read the first time.

Mr. REID. 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 printed in the RECORD, as follows:

S. 3772

*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 ''Paycheck Fairness Act''.

**SEC. 2. FINDINGS.**

Congress finds the following:

(1) Women have entered the workforce in record numbers over the past 50 years.

(2) Despite the enactment of the Equal Pay Act of 1963, many women continue to earn significantly lower pay than men for equal work. These pay disparities exist in both the private and governmental sectors. In many instances, the pay disparities can only be due to continued intentional discrimination or the lingering effects of past discrimination.

(3) The existence of such pay disparities—

(A) depresses the wages of working families who rely on the wages of all members of the family to make ends meet;

(B) undermines women's retirement security, which is often based on earnings while in the workforce;

(C) prevents the optimum utilization of available labor resources;

(D) has been spread and perpetuated, through commerce and the channels and instrumentalities of commerce, among the workers of the several States;

(E) burdens commerce and the free flow of goods in commerce;

(F) constitutes an unfair method of competition in commerce;

(G) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce;

(H) interferes with the orderly and fair marketing of goods in commerce; and

(I) in many instances, may deprive workers of equal protection on the basis of sex in violation of the 5th and 14th amendments.

(4)(A) Artificial barriers to the elimination of discrimination in the payment of wages on the basis of sex continue to exist decades after the enactment of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Civil Rights Act of 1964 (42 U.S.C. 2000a et seq.).

(B) These barriers have resulted, in significant part, because the Equal Pay Act of 1963 has not worked as Congress originally intended. Improvements and modifications to the provisions added by the Act are necessary to ensure that the provisions provide effective protection to those subject to pay discrimination on the basis of their sex.

(C) Elimination of such barriers would have positive effects, including—

(i) providing a solution to problems in the economy created by unfair pay disparities;

(ii) substantially reducing the number of working women earning unfairly low wages, thereby reducing the dependence on public assistance;

(iii) promoting stable families by enabling all family members to earn a fair rate of pay;

(iv) remedying the effects of past discrimination on the basis of sex and ensuring that in the future workers are afforded equal protection on the basis of sex; and

(v) ensuring equal protection pursuant to Congress's power to enforce the 5th and 14th amendments.

(5) The Department of Labor and the Equal Employment Opportunity Commission have important and unique responsibilities to help ensure that women receive equal pay for equal work.

(6) The Department of Labor is responsible for—

(A) collecting and making publicly available information about women's pay;

(B) ensuring that companies receiving Federal contracts comply with anti-discrimination affirmative action requirements of Executive Order 11246 (relating to equal employment opportunity);

(C) disseminating information about women's rights in the workplace;

(D) helping women who have been victims of pay discrimination obtain a remedy; and

(E) being proactive in investigating and prosecuting equal pay violations, especially systemic violations, and in enforcing all of its mandates.

(7) The Equal Employment Opportunity Commission is the primary enforcement agency for claims made under the provisions added by the Equal Pay Act of 1963, and issues regulations and guidance on appropriate interpretations of the law.

(8) With a stronger commitment by the Department of Labor and the Equal Employment Opportunity Commission to their responsibilities, increased information about the provisions added by the Equal Pay Act of 1963, wage data, and more effective remedies, women will be better able to recognize and enforce their rights.

(9) Certain employers have already made great strides in eradicating unfair pay disparities in the workplace and their achievements should be recognized.

**SEC. 3. ENHANCED ENFORCEMENT OF EQUAL PAY REQUIREMENTS.**

(a) BONA FIDE FACTOR DEFENSE AND MODIFICATION OF SAME ESTABLISHMENT REQUIREMENT.—Section 6(d)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(1)) is amended—

(1) by striking ''No employer having'' and inserting ''(A) No employer having'';

(2) by striking ''any other factor other than sex'' and inserting ''a bona fide factor other than sex, such as education, training, or experience''; and

(3) by inserting at the end the following:

''(B) The bona fide factor defense described in subparagraph (A)(iv) shall apply only if the employer demonstrates that such factor (i) is not based upon or derived from a sex-based differential in compensation; (ii) is job-related with respect to the position in question; and (iii) is consistent with business necessity. Such defense shall not apply where the employee demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice.

''(C) For purposes of subparagraph (A), employees shall be deemed to work in the same establishment if the employees work for the same employer at workplaces located in the same county or similar political subdivision of a State. The preceding sentence shall not be construed as limiting broader applications of the term 'establishment' consistent with rules prescribed or guidance issued by the Equal Opportunity Employment Commission.''.

(b) NONRETALIATION PROVISION.—Section 15 of the Fair Labor Standards Act of 1938 (29 U.S.C. 215) is amended—

(1) in subsection (a)(3), by striking ''employee has filed'' and all that follows through ''committee;'' and inserting ''employee—

''(A) has made a charge or filed any complaint or instituted or caused to be instituted any investigation, proceeding, hearing, or action under or related to this Act, including an investigation conducted by the employer, or has testified or is planning to testify or has assisted or participated in any manner in any such investigation, proceeding, hearing, or action, or has served or is planning to serve on an industry committee; or

''(B) has inquired about, discussed, or disclosed the wages of the employee or another employee;''; and

(2) by adding at the end the following:

''(c) Subsection (a)(3)(B) shall not apply to instances in which an employee who has access to the wage information of other employees as a part of such employee's essential job functions discloses the wages of such other employees to an individual who does not otherwise have access to such information, unless such disclosure is in response to a charge or complaint or in furtherance of an investigation, proceeding, hearing, or action under section 6(d), including an investigation conducted by the employer. Nothing in this subsection shall be construed to limit the rights of an employee provided under any other provision of law.''.

(c) ENHANCED PENALTIES.—Section 16(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(b)) is amended—

(1) by inserting after the first sentence the following: ''Any employer who violates section 6(d) shall additionally be liable for such compensatory damages, or, where the employee demonstrates that the employer acted with malice or reckless indifference, punitive damages as may be appropriate, except that the United States shall not be liable for punitive damages.'';

(2) in the sentence beginning ''An action to'', by striking ''either of the preceding sentences'' and inserting ''any of the preceding sentences of this subsection'';

(3) in the sentence beginning ''No employees shall'', by striking ''No employees'' and inserting ''Except with respect to class actions brought to enforce section 6(d), no employee'';

(4) by inserting after the sentence referred to in paragraph (3), the following: ''Notwithstanding any other provision of Federal law, any action brought to enforce section 6(d) may be maintained as a class action as provided by the Federal Rules of Civil Procedure.''; and

(5) in the sentence beginning ''The court in''—

(A) by striking ''in such action'' and inserting ''in any action brought to recover the liability prescribed in any of the preceding sentences of this subsection''; and

(B) by inserting before the period the following: '', including expert fees''.

(d) ACTION BY SECRETARY.—Section 16(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 216(c)) is amended—

(1) in the first sentence—

(A) by inserting ''or, in the case of a violation of section 6(d), additional compensatory or punitive damages, as described in subsection (b),'' before ''and the agreement''; and

(B) by inserting before the period the following: '', or such compensatory or punitive damages, as appropriate'';

(2) in the second sentence, by inserting before the period the following: ''and, in the case of a violation of section 6(d), additional compensatory or punitive damages, as described in subsection (b)'';

(3) in the third sentence, by striking ''the first sentence'' and inserting ''the first or second sentence''; and

(4) in the last sentence—

(A) by striking ''commenced in the case'' and inserting ''commenced—

''(1) in the case'';

(B) by striking the period and inserting ''; or''; and

(C) by adding at the end the following:

''(2) in the case of a class action brought to enforce section 6(d), on the date on which the individual becomes a party plaintiff to the class action.''.

**SEC. 4. TRAINING.**

The Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs, subject to the availability of funds appropriated under section 10, shall provide training to Commission employees and affected individuals and entities on matters involving discrimination in the payment of wages.

**SEC. 5. NEGOTIATION SKILLS TRAINING FOR GIRLS AND WOMEN.**

(a) PROGRAM AUTHORIZED.—

(1) IN GENERAL.—The Secretary of Labor, after consultation with the Secretary of Education, is authorized to establish and carry out a grant program.

(2) GRANTS.—In carrying out the program, the Secretary of Labor may make grants on a competitive basis to eligible entities, to carry out negotiation skills training programs for girls and women.

(3) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this subsection, an entity shall be a public agency, such as a State, a local government in a metropolitan statistical area (as defined by the Office of Management and Budget), a State educational agency, or a local educational agency, a private nonprofit organization, or a community-based organization.

(4) APPLICATION.—To be eligible to receive a grant under this subsection, an entity shall submit an application to the Secretary of Labor at such time, in such manner, and containing such information as the Secretary of Labor may require.

(5) USE OF FUNDS.—An entity that receives a grant under this subsection shall use the funds made available through the grant to carry out an effective negotiation skills training program that empowers girls and women. The training provided through the program shall help girls and women strengthen their negotiation skills to allow the girls and women to obtain higher salaries and rates of compensation that are equal to those paid to similarly-situated male employees.

(b) INCORPORATING TRAINING INTO EXISTING PROGRAMS.—The Secretary of Labor and the Secretary of Education shall issue regulations or policy guidance that provides for integrating the negotiation skills training, to the extent practicable, into programs authorized under—

(1) in the case of the Secretary of Education, the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.), the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), and other programs carried out by the Department of Education that the Secretary of Education determines to be appropriate; and

(2) in the case of the Secretary of Labor, the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), and other programs carried out by the Department of Labor that the Secretary of Labor determines to be appropriate.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Labor and the Secretary of Education shall prepare and submit to Congress a report describing the activities conducted under this section and evaluating the effectiveness of such activities in achieving the purposes of this Act.

**SEC. 6. RESEARCH, EDUCATION, AND OUTREACH.**

The Secretary of Labor shall conduct studies and provide information to employers, labor organizations, and the general public concerning the means available to eliminate pay disparities between men and women, including—

(1) conducting and promoting research to develop the means to correct expeditiously the conditions leading to the pay disparities;

(2) publishing and otherwise making available to employers, labor organizations, professional associations, educational institutions, the media, and the general public the findings resulting from studies and other materials, relating to eliminating the pay disparities;

(3) sponsoring and assisting State and community informational and educational programs;

(4) providing information to employers, labor organizations, professional associations, and other interested persons on the means of eliminating the pay disparities;

(5) recognizing and promoting the achievements of employers, labor organizations, and professional associations that have worked to eliminate the pay disparities; and

(6) convening a national summit to discuss, and consider approaches for rectifying, the pay disparities.

**SEC. 7. ESTABLISHMENT OF THE NATIONAL AWARD FOR PAY EQUITY IN THE WORKPLACE.**

(a) IN GENERAL.—There is established the Secretary of Labor's National Award for Pay Equity in the Workplace, which shall be awarded, as appropriate, to encourage proactive efforts to comply with section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)).

(b) CRITERIA FOR QUALIFICATION.—The Secretary of Labor shall set criteria for receipt of the award, including a requirement that an employer has made substantial effort to eliminate pay disparities between men and women, and deserves special recognition as a consequence of such effort. The Secretary shall establish procedures for the application for and presentation of the award.

(c) EMPLOYER.—In this section, the term ''employer'' includes—

(1)(A) a corporation, including a nonprofit corporation;

(B) a partnership;

(C) a professional association;

(D) a labor organization; and

(E) a business entity similar to an entity described in any of subparagraphs (A) through (D);

(2) an entity carrying out an education referral program, a training program, such as an apprenticeship or management training program, or a similar program; and

(3) an entity carrying out a joint program, formed by a combination of any entities described in paragraph (1) or (2).

**SEC. 8. COLLECTION OF PAY INFORMATION BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.**

Section 709 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–8) is amended by adding at the end the following:

''(f)(1) Not later than 18 months after the date of enactment of this subsection, the Commission shall—

''(A) complete a survey of the data that is currently available to the Federal Government relating to employee pay information for use in the enforcement of Federal laws prohibiting pay discrimination and, in consultation with other relevant Federal agencies, identify additional data collections that will enhance the enforcement of such laws; and

''(B) based on the results of the survey and consultations under subparagraph (A), issue regulations to provide for the collection of pay information data from employers as described by the sex, race, and national origin of employees.

''(2) In implementing paragraph (1), the Commission shall have as its primary consideration the most effective and efficient means for enhancing the enforcement of Federal laws prohibiting pay discrimination. For this purpose, the Commission shall consider factors including the imposition of burdens on employers, the frequency of required data collection reports (including which employers should be required to prepare reports), appropriate protections for maintaining data confidentiality, and the most effective format for the data collection reports.''.

**SEC. 9. REINSTATEMENT OF PAY EQUITY PROGRAMS AND PAY EQUITY DATA COLLECTION.**

(a) BUREAU OF LABOR STATISTICS DATA COLLECTION.—The Commissioner of Labor Statistics shall continue to collect data on women workers in the Current Employment Statistics survey.

(b) OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS INITIATIVES.—The Director of the Office of Federal Contract Compliance Programs shall ensure that employees of the Office—

(1)(A) shall use the full range of investigatory tools at the Office's disposal, including pay grade methodology;

(B) in considering evidence of possible compensation discrimination—

(i) shall not limit its consideration to a small number of types of evidence; and

(ii) shall not limit its evaluation of the evidence to a small number of methods of evaluating the evidence; and

(C) shall not require a multiple regression analysis or anecdotal evidence for a compensation discrimination case;

(2) for purposes of its investigative, compliance, and enforcement activities, shall define ''similarly situated employees'' in a way

that is consistent with and not more stringent than the definition provided in item 1 of subsection A of section 10–III of the Equal Employment Opportunity Commission Compliance Manual (2000), and shall consider only factors that the Office's investigation reveals were used in making compensation decisions; and

(3) shall reinstate the Equal Opportunity Survey, as required by section 60–2.18 of title 41, Code of Federal Regulations (as in effect on September 7, 2006), designating not less than half of all nonconstruction contractor establishments each year to prepare and file such survey, and shall review and utilize the responses to such survey to identify contractor establishments for further evaluation and for other enforcement purposes as appropriate.

(c) DEPARTMENT OF LABOR DISTRIBUTION OF WAGE DISCRIMINATION INFORMATION.—The Secretary of Labor shall make readily available (in print, on the Department of Labor website, and through any other forum that the Department may use to distribute compensation discrimination information), accurate information on compensation discrimination, including statistics, explanations of employee rights, historical analyses of such discrimination, instructions for employers on compliance, and any other information that will assist the public in understanding and addressing such discrimination.

**SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $15,000,000 to carry out this Act.

(b) PROHIBITION ON EARMARKS.—None of the funds appropriated pursuant to subsection (a) for purposes of the grant program in section 5 of this Act may be used for a congressional earmark as defined in clause 9(e) of rule XXI of the Rules of the House of Representatives.

**SEC. 11. SMALL BUSINESS ASSISTANCE.**

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall take effect on the date that is 6 months after the date of enactment of this Act.

(b) TECHNICAL ASSISTANCE MATERIALS.—The Secretary of Labor and the Commissioner of the Equal Employment Opportunity Commission shall jointly develop technical assistance material to assist small businesses in complying with the requirements of this Act and the amendments made by this Act.

(c) SMALL BUSINESSES.—A small business shall be exempt from the provisions of this Act to the same extent that such business is exempt from the requirements of the Fair Labor Standards Act of 1938 pursuant to clauses (i) and (ii) of section 3(s)(1)(A) of such Act (29 U.S.C. 203(s)(1)(A)).

**SEC. 12. RULE OF CONSTRUCTION.**

Nothing in this Act, or in any amendment made by this Act, shall affect the obligation of employers and employees to fully comply with all applicable immigration laws, including any penalties, fines, or other sanctions.

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By Mr. MCCONNELL (for himself, Mr. GRASSLEY, Mr. KYL, Mr. MCCAIN, Mr. COCHRAN, Mr. GRAHAM, Mr. ROBERTS, Mr. CORNYN, Mr. INHOFE, Mr. ENSIGN, Mr. ISAKSON, Mr. BROWNBACK, Mr. ENZI, Mr. CRAPO, Mr. BURR, Mr. VITTER, Mr. WICKER, Mr. CHAMBLISS, Mr. BOND, Mrs. HUTCHISON, and Mr. HATCH):

S. 3773. A bill to permanently extend the 2001 and 2003 tax relief provisions and to provide permanent AMT relief and estate tax relief, and for other purposes; read the first time.

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 printed in the RECORD, as follows:

S. 3773

*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 ''Tax Hike Prevention Act of 2010''.

**TITLE I—PERMANENT TAX RELIEF**

**SEC. 101. 2001 TAX RELIEF MADE PERMANENT.**

Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 is repealed.

**SEC. 102. 2003 TAX RELIEF MADE PERMANENT.**

Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is repealed.

**SEC. 103. TECHNICAL AND CONFORMING AMENDMENTS.**

The Secretary of the Treasury or the Secretary's delegate shall not later than 90 days after the date of the enactment of this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a draft of any technical and conforming changes in the Internal Revenue Code of 1986 which are necessary to reflect throughout such Code the purposes of the provisions of, and amendments made by, this Act.

**TITLE II—PERMANENT INDIVIDUAL AMT RELIEF**

**SEC. 201. PERMANENT INDIVIDUAL AMT RELIEF.**

(a) MODIFICATION OF ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT.—

(1) IN GENERAL.—Paragraph (1) of section 55(d) of the Internal Revenue Code of 1986 (relating to exemption amount) is amended to read as follows:

''(1) EXEMPTION AMOUNT FOR TAXPAYERS OTHER THAN CORPORATIONS.—In the case of a taxpayer other than a corporation, the term 'exemption amount' means—

''(A) the dollar amount for taxable years beginning in the calendar year as specified in the table contained in paragraph (4)(A) in the case of—

''(i) a joint return, or

''(ii) a surviving spouse,

''(B) the dollar amount for taxable years beginning in the calendar year as specified in the table contained in paragraph (4)(B) in the case of an individual who—

''(i) is not a married individual, and

''(ii) is not a surviving spouse,

''(C) 50 percent of the dollar amount applicable under paragraph (1)(A) in the case of a married individual who files a separate return, and

''(D) $22,500 in the case of an estate or trust.

For purposes of this paragraph, the term 'surviving spouse' has the meaning given to such term by section 2(a), and marital status shall be determined under section 7703.''.

(2) SPECIFIED EXEMPTION AMOUNTS.—Section 55(d) of such Code is amended by adding at the end the following new paragraph:

''(4) SPECIFIED EXEMPTION AMOUNTS.—

''(A) TAXPAYERS DESCRIBED IN PARAGRAPH (1)(A).—For purposes of paragraph (1)(A)—

| ''For taxable years beginning in— | The exemption amount is: |
|---|---|
| 2010 | $72,450 |
| 2011 | $74,450 |
| 2012 | $78,250 |
| 2013 | $81,450 |
| 2014 | $85,050 |
| 2015 | $88,650 |
| 2016 | $92,650 |
| 2017 | $96,550 |
| 2018 | $100,950 |
| 2019 | $105,150 |
| 2020 | $109,950. |

''(B) TAXPAYERS DESCRIBED IN PARAGRAPH (1)(B).—For purposes of paragraph (1)(B)—

| ''For taxable years beginning in— | The exemption amount is: |
|---|---|
| 2010 | $47,450 |
| 2011 | $48,450 |
| 2012 | $50,350 |
| 2013 | $51,950 |
| 2014 | $53,750 |
| 2015 | $55,550 |
| 2016 | $57,550 |
| 2017 | $59,500 |
| 2018 | $61,700 |
| 2019 | $63,800 |
| 2020 | $66,200.''. |

(b) ALTERNATIVE MINIMUM TAX RELIEF FOR NONREFUNDABLE CREDITS.—

(1) IN GENERAL.—Subsection (a) of section 26 of the Internal Revenue Code of 1986 is amended to read as follows:

''(a) LIMITATION BASED ON AMOUNT OF TAX.—The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the sum of—

''(1) the taxpayer's regular tax liability for the taxable year reduced by the foreign tax credit allowable under section 27(a), and

''(2) the tax imposed by section 55(a) for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) ADOPTION CREDIT.—

(i) Section 23(b) of such Code is amended by striking paragraph (4).

(ii) Section 23(c) of such Code is amended by striking paragraphs (1) and (2) and inserting the following:

''(1) IN GENERAL.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 25D and 1400C), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.''.

(iii) Section 23(c) of such Code is amended by redesignating paragraph (3) as paragraph (2).

(B) CHILD TAX CREDIT.—

(i) Section 24(b) of such Code is amended by striking paragraph (3).

(ii) Section 24(d)(1) of such Code is amended—

(I) by striking ''section 26(a)(2) or subsection (b)(3), as the case may be,'' each place it appears in subparagraphs (A) and (B) and inserting ''section 26(a)'', and

(II) by striking ''section 26(a)(2) or subsection (b)(3), as the case may be'' in the second last sentence and inserting ''section 26(a)''.

(C) CREDIT FOR INTEREST ON CERTAIN HOME MORTGAGES.—Section 25(e)(1)(C) of such Code is amended to read as follows:

''(C) APPLICABLE TAX LIMIT.—For purposes of this paragraph, the term 'applicable tax

limit' means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section and sections 23, 25D, and 1400C).''.

(D) SAVERS' CREDIT.—Section 25B of such Code is amended by striking subsection (g).

(E) RESIDENTIAL ENERGY EFFICIENT PROPERTY.—Section 25D(c) of such Code is amended to read as follows:

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.''.

(F) CERTAIN PLUG-IN ELECTRIC VEHICLES.—Section 30(c)(2) of such Code is amended to read as follows:

''(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.''.

(G) ALTERNATIVE MOTOR VEHICLE CREDIT.—Section 30B(g)(2) of such Code is amended to read as follows:

''(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.''.

(H) NEW QUALIFIED PLUG-IN ELECTRIC VEHICLE CREDIT.—Section 30D(c)(2) of such Code is amended to read as follows:

''(2) PERSONAL CREDIT.—For purposes of this title, the credit allowed under subsection (a) for any taxable year (determined after application of paragraph (1)) shall be treated as a credit allowable under subpart A for such taxable year.''.

(I) CROSS REFERENCES.—Section 55(c)(3) of such Code is amended by striking ''26(a), 30C(d)(2),'' and inserting ''30C(d)(2)''.

(J) FOREIGN TAX CREDIT.—Section 904 of such Code is amended by striking subsection (i) and by redesignating subsections (j) , (k), and (l) as subsections (i), (j), and (k), respectively.

(K) FIRST-TIME HOME BUYER CREDIT FOR THE DISTRICT OF COLUMBIA.—Section 1400C(d) of such Code is amended to read as follows:

''(d) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and section 25D), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

## TITLE III—PERMANENT ESTATE TAX RELIEF

### SEC. 301. APPLICATION OF ESTATE, GENERATION-SKIPPING TRANSFER, AND GIFT TAXES AFTER 2009.

(a) IN GENERAL.—The following provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, and the amendments made by such provisions, are repealed on and after January 1, 2010, with respect to decedents dying on and after such date, and on and after January 1, 2011, with respect to gifts made and generation-skipping transfers on and after such date:

(1) Subtitles A and E of title V.

(2) Subsection (d), and so much of subsection (f)(3) as relates to subsection (d), of section 511.

(3) Paragraph (2) of subsection (b), and paragraph (2) of subsection (e), of section 521. Except in the case of an election under section 404, the Internal Revenue Code of 1986 shall be applied as if such provisions and amendments had never been enacted.

(b) CONFORMING AMENDMENT.—Subsection (c) of section 2511 of the Internal Revenue Code of 1986 is repealed on and after January 1, 2011, with respect to gifts made on and after such date.

### SEC. 302. TREATMENT OF UNIFIED CREDIT AND MAXIMUM ESTATE TAX RATE AFTER 2009.

(a) RESTORATION OF UNIFIED CREDIT AGAINST GIFT TAX.—Paragraph (1) of section 2505(a) of the Internal Revenue Code of 1986 (relating to general rule for unified credit against gift tax), after the application of section __01, is amended by striking ''(determined as if the applicable exclusion amount were $1,000,000)''.

(b) EXCLUSION EQUIVALENT OF UNIFIED CREDIT EQUAL TO $5,000,000.—Subsection (c) of section 2010 of the Internal Revenue Code of 1986 (relating to unified credit against estate tax) is amended to read as follows:

''(c) APPLICABLE CREDIT AMOUNT.—

''(1) IN GENERAL.—For purposes of this section, the applicable credit amount is the amount of the tentative tax which would be determined under section 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount.

''(2) APPLICABLE EXCLUSION AMOUNT.—

''(A) IN GENERAL.—For purposes of this subsection, the applicable exclusion amount is $5,000,000.

''(B) INFLATION ADJUSTMENT.—In the case of any decedent dying in a calendar year after 2010, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2009' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.''.

(c) MAXIMUM ESTATE TAX RATE EQUAL TO 35 PERCENT.—

(1) IN GENERAL.—Subsection (c) of section 2001 of the Internal Revenue Code of 1986 (relating to imposition and rate of tax) is amended—

(A) by striking ''Over $500,000'' and all that follows in the table contained in paragraph (1) and insert the following:

| | |
|---|---|
| ''Over $500,000 | $79,300, plus 35 percent of the excess of such amount over $500,000.'', |

(B) by striking ''(1) IN GENERAL.—'', and

(C) by striking paragraph (2).

(2) CONFORMING AMENDMENT.—Paragraphs (1) and (2) of section 2102(b) of such Code are amended to read as follows:

''(1) IN GENERAL.—A credit in an amount that would be determined under section 2010 as the applicable credit amount if the applicable exclusion amount were $60,000 shall be allowed against the tax imposed by section 2101.

''(2) RESIDENTS OF POSSESSIONS OF THE UNITED STATES.—In the case of a decedent who is considered to be a 'nonresident not a citizen of the United States' under section 2209, the credit allowed under this subsection shall not be less than the proportion of the amount that would be determined under section 2010 as the applicable credit amount if the applicable exclusion amount were $175,000 which the value of that part of the decedent's gross estate which at the time of the decedent's death is situated in the United States bears to the value of the decedent's entire gross estate, wherever situated.''.

(d) MODIFICATIONS OF ESTATE AND GIFT TAXES TO REFLECT DIFFERENCES IN UNIFIED CREDIT RESULTING FROM DIFFERENT TAX RATES.—

(1) ESTATE TAX.—

(A) IN GENERAL.—Section 2001(b)(2) of the Internal Revenue Code of 1986 (relating to computation of tax) is amended by striking ''if the provisions of subsection (c) (as in effect at the decedent's death)'' and inserting ''if the modifications described in subsection (g)''.

(B) MODIFICATIONS.—Section 2001 of such Code is amended by adding at the end the following new subsection:

''(g) MODIFICATIONS TO GIFT TAX PAYABLE TO REFLECT DIFFERENT TAX RATES.—For purposes of applying subsection (b)(2) with respect to 1 or more gifts, the rates of tax under subsection (c) in effect at the decedent's death shall, in lieu of the rates of tax in effect at the time of such gifts, be used both to compute—

''(1) the tax imposed by chapter 12 with respect to such gifts, and

''(2) the credit allowed against such tax under section 2505, including in computing—

''(A) the applicable credit amount under section 2505(a)(1), and

''(B) the sum of the amounts allowed as a credit for all preceding periods under section 2505(a)(2).

For purposes of paragraph (2)(A), the applicable credit amount for any calendar year before 1998 is the amount which would be determined under section 2010(c) if the applicable exclusion amount were the dollar amount under section 6018(a)(1) for such year.''.

(2) GIFT TAX.—Section 2505(a) of such Code (relating to unified credit against gift tax) is amended by adding at the end the following new flush sentence:

''For purposes of applying paragraph (2) for any calendar year, the rates of tax in effect under section 2502(a)(2) for such calendar year shall, in lieu of the rates of tax in effect for preceding calendar periods, be used in determining the amounts allowable as a credit under this section for all preceding calendar periods.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009.

### SEC. 303. UNIFIED CREDIT INCREASED BY UNUSED UNIFIED CREDIT OF DECEASED SPOUSE.

(a) IN GENERAL.—Section 2010(c) of the Internal Revenue Code of 1986, as amended by section 302(b), is amended by striking paragraph (2) and inserting the following new paragraphs:

''(2) APPLICABLE EXCLUSION AMOUNT.—For purposes of this subsection, the applicable exclusion amount is the sum of—

''(A) the basic exclusion amount, and

''(B) in the case of a surviving spouse, the aggregate deceased spousal unused exclusion amount.

''(3) BASIC EXCLUSION AMOUNT.—

''(A) IN GENERAL.—For purposes of this subsection, the basic exclusion amount is $5,000,000.

''(B) INFLATION ADJUSTMENT.—In the case of any decedent dying in a calendar year after 2010, the dollar amount in subparagraph (A) shall be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2009' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of $10,000, such amount shall be rounded to the nearest multiple of $10,000.

''(4) AGGREGATE DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.—For purposes of this subsection, the term 'aggregate deceased spousal unused exclusion amount' means the lesser of—

''(A) the basic exclusion amount, or

''(B) the sum of the deceased spousal unused exclusion amounts computed with respect to each deceased spouse of the surviving spouse.

''(5) DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.—For purposes of this subsection, the term 'deceased spousal unused exclusion amount' means, with respect to the surviving spouse of any deceased spouse dying after December 31, 2009, the excess (if any) of—

''(A) the basic exclusion amount of the deceased spouse, over

''(B) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse.

''(6) SPECIAL RULES.—

''(A) ELECTION REQUIRED.—A deceased spousal unused exclusion amount may not be taken into account by a surviving spouse under paragraph (5) unless the executor of the estate of the deceased spouse files an estate tax return on which such amount is computed and makes an election on such return that such amount may be so taken into account. Such election, once made, shall be irrevocable. No election may be made under this subparagraph if such return is filed after the time prescribed by law (including extensions) for filing such return.

''(B) EXAMINATION OF PRIOR RETURNS AFTER EXPIRATION OF PERIOD OF LIMITATIONS WITH RESPECT TO DECEASED SPOUSAL UNUSED EXCLUSION AMOUNT.—Notwithstanding any period of limitation in section 6501, after the time has expired under section 6501 within which a tax may be assessed under chapter 11 or 12 with respect to a deceased spousal unused exclusion amount, the Secretary may examine a return of the deceased spouse to make determinations with respect to such amount for purposes of carrying out this subsection.

''(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this subsection.''.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 2505(a) of the Internal Revenue Code of 1986, as amended by section 302(a), is amended to read as follows:

''(1) the applicable credit amount in effect under section 2010(c) which would apply if the donor died as of the end of the calendar year, reduced by''.

(2) Section 2631(c) of such Code is amended by striking ''the applicable exclusion amount'' and inserting ''the basic exclusion amount''.

(3) Section 6018(a)(1) of such Code is amended by striking ''applicable exclusion amount'' and inserting ''basic exclusion amount''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying, generation-skipping transfers, and gifts made, after December 31, 2009.

**SEC. 304. SPECIAL ELECTION FOR DECEDENTS DYING IN 2010.**

In the case of any decedent dying in 2010, the executor of the estate of such decedent may elect to apply the Internal Revenue Code of 1986 without regard to the provisions of, and the amendments made by, this title (other than this section). Such election shall be made at such time and in such manner as the Secretary of the Treasury shall provide.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 4606. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table.

SA 4607. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4608. Mr. BEGICH (for himself and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed by him to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4609. Mr. UDALL of Colorado (for himself, Ms. COLLINS, Mr. REID, Mr. SCHUMER, Mr. LIEBERMAN, Mrs. BOXER, Mrs. GILLIBRAND, Mr. SANDERS, Mr. INOUYE, and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4610. Mr. THUNE submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4611. Mr. NELSON of Florida submitted an amendment intended to be proposed by him to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4612. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4613. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4614. Mr. THUNE submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H .R. 5297, supra; which was ordered to lie on the table.

SA 4615. Mr. ENSIGN submitted an amendment intended to be proposed by him to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4616. Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

SA 4617. Mr. FRANKEN submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, supra; which was ordered to lie on the table.

## TEXT OF AMENDMENTS

**SA 4606.** Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

On page 243, line 21, strike ''The Secretary'' and insert ''Not later than 1 year after the date of enactment of this Act, and every year thereafter for 5 years, the Secretary''.

On page 243, line 25, insert ''and every year thereafter for 5 years,'' before ''the Secretary shall submit''.

On page 244, between lines 8 and 9, insert the following:

(d) APPROPRIATE ACTION.—If the Secretary determines that the Program has not effectively served women-owned businesses, veteran-owned businesses, or minority-owned businesses, the Secretary may formulate a plan to redress the needs of the affected businesses.

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**SA 4607.** Mr. UDALL of New Mexico submitted an amendment intended to be proposed to amendment SA 4594 proposed by Mr. REID (for Mr. BAUCUS (for himself, Ms. LANDRIEU, and Mr. REID)) to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

On page 220, line 20, insert ''and planned outreach efforts to women-owned businesses, veteran-owned businesses, and minority-owned businesses'' before '', where appropriate''.

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**SA 4608.** Mr. BEGICH (for himself and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed by him to the bill H.R. 5297, to create the Small Business Lending Fund Program to direct the Secretary of the Treasury to make capital investments in eligible institutions in order to increase the availability of credit for small businesses, to amend the Internal Revenue Code of 1986 to provide tax incentives for small business job creation, and for other purposes; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following: