

S.J. RES. 50

At the request of Mr. HATCH, the names of the Senator from North Dakota (Mr. HOEVEN), the Senator from Texas (Mrs. HUTCHISON), the Senator from Tennessee (Mr. ALEXANDER), the Senator from Georgia (Mr. ISAKSON) and the Senator from South Carolina (Mr. GRAHAM) were added as cosponsors of S.J. Res. 50, a joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Office of Family Assistance of the Administration for Children and Families of the Department of Health and Human Services relating to waiver and expenditure authority under section 1115 of the Social Security Act (42 U.S.C. 1315) with respect to the Temporary Assistance for Needy Families program.

S. RES. 543

At the request of Mrs. BOXER, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. Res. 543, a resolution to express the sense of the Senate on international parental child abduction.

AMENDMENT NO. 2782

At the request of Mr. MCCONNELL, his name was added as a cosponsor of amendment No. 2782 intended to be proposed to S. 3457, a bill to require the Secretary of Veterans Affairs to establish a veterans jobs corps, and for other purposes.

AMENDMENT NO. 2790

At the request of Mr. BLUMENTHAL, the name of the Senator from Montana (Mr. TESTER) was added as a cosponsor of amendment No. 2790 intended to be proposed to S. 3457, a bill to require the Secretary of Veterans Affairs to establish a veterans jobs corps, and for other purposes.

AMENDMENT NO. 2801

At the request of Ms. SNOWE, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from Minnesota (Ms. KLOBUCHAR) were added as cosponsors of amendment No. 2801 intended to be proposed to S. 3457, a bill to require the Secretary of Veterans Affairs to establish a veterans jobs corps, and for other purposes.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KERRY:

S. 3539. A bill to encourage the adoption and use of certified electronic health record technology by safety net providers and clinics; to the Committee on Finance.

Mr. KERRY. Mr. President, the American Recovery and Reinvestment Act of 2009, ARRA, provided Medicare and Medicaid incentive payments to providers that adopt and meaningfully use electronic health records, EHRs, in their practices. While this program has helped thousands of providers, practices, and hospitals nationwide, many safety net providers and clinics have not been able to benefit from the Medicaid EHR incentives.

Safety net providers serve as a critical entry point into the health care system, and provide essential health care services for millions of low-income, uninsured and underinsured individuals. Given that Medicaid eligibility levels are so low in many States, it is difficult for many safety net providers to meet the 30 percent Medicaid threshold required to participate in the Medicaid EHR incentive program even though their patients are predominantly low-income. Congress addressed this problem only for practitioners working in federally-qualified health centers and rural health centers by creating a 30 percent "needy" threshold in ARRA for those providers. Unfortunately, ARRA fails to provide a similar standard for other providers serving low-income individuals.

The Medicaid Information Technology to Enhance Community Health, MITECH, Act of 2012 seeks to eliminate the barriers that prevent safety net providers from qualifying from Medicaid EHR incentives. Specifically, it would expand eligibility for meaningful use incentives to providers that practice predominantly in a qualified safety net clinic, QSNCL. The act defines a QSNCL as a clinic or network of clinics that is operated by a private non-profit or public entity and that has at least 30 percent of its patient volume attributable to needy individuals. The act also directs the Secretary of Health and Human Services to develop a methodology to allow these clinics to be eligible for meaningful use payments as an entity, similar to the current process that exists for hospitals.

I would like to thank the 13 national organizations who have been integral to the development of this legislation and who have endorsed it today, including the Association of State and Territorial Health Officials, the HIV Medicine Association, Mental Health America, the National Association of Public Hospitals, the National Family Planning and Reproductive Health Association, and the Trust for America's Health.

The MITECH Act will allow safety net clinics to better communicate with patients about necessary screenings, help ensure compliance with prescription drugs, and will strengthen the safety net which provides essential care to so many Americans. It is my hope that we can move forward with this bill in a bipartisan manner. I ask all of my colleagues to support this important legislation.

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

S. 3545. A bill to amend title 11 of the United States Code to clarify the rule allowing discharge as a nonpriority claim of governmental claims arising from the disposition of farm assets under chapter 12 bankruptcies; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I rise today to introduce, along with Senator FRANKEN, the Family Farmer Bank-

ruptcy Tax Clarification Act of 2012. This bill addresses the recent United States Supreme Court case *Hall v. United States*. In a 5-4 decision, the Supreme Court ruled the provision I inserted into the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act did not accomplish what we intended. The Family Farmer Bankruptcy Tax Clarification Act of 2012 corrects this and clarifies that bankrupt family farmers reorganizing their debts are able to treat capital gains taxes owed to a governmental unit, arising from the sale of farm assets during a bankruptcy, as general unsecured claims. This bill will remove the Internal Revenue Service's veto power over a bankruptcy reorganization plan's confirmation, giving the family farmer a chance to reorganize successfully.

In 1986 Congress enacted Chapter 12 of the Bankruptcy Code to provide a specialized bankruptcy process for family farmers. In 2005 Chapter 12 was made permanent. Between 1986 and 2005 we learned what aspects worked and did not work for family farmers reorganizing in bankruptcy. One problematic area was where a family farmer needed to sell assets in order to generate cash for the reorganization. Specifically, a family farmer would have to sell portions of the farm to generate cash to fund a reorganization plan so that the creditors could receive payment. Unfortunately, in situations like this, the family farmer is selling land that has been owned for a very long time, with a very low cost basis. Thus, when the land is sold, the family farmer is hit with a substantial capital gains tax, which is owed to the Internal Revenue Service.

Under the Bankruptcy Code, taxes owed to the Internal Revenue Service receive priority treatment. Holders of priority claims must receive payment in full, unless the claim holder agrees to be treated differently. This creates problems for the family farmer who needs the cash to pay creditors to reorganize. However, since the Internal Revenue Service has the ability to require full payment, they hold veto power over a plan's confirmation, which means in many instances the plan will not be confirmed. This does not make sense if the goal is to give the family farmer a fresh start. Thus, in 2005 Congress said that in these limited situations, the taxes owed to the Internal Revenue Service could be treated as general, unsecured debt. This removed the government's veto power over plan confirmation and paved the way for family farmers to reorganize successfully.

However, in *Hall v. United States*, the Supreme Court ruled that despite Congress's express goal of helping family farmers, the language inserted into the Bankruptcy Code in 2005 conflicted with the Tax Code. The *Hall* case was one of statutory interpretation. There is no question what Congress was trying to do; rather, did Congress use the



correct language? My goal, along with others at the time, was to relieve family farmers from having their reorganization plans fail because of huge tax liabilities to the federal government. Justice Breyer noted this in the dissent: "Congress was concerned about the effect on the farmer of collecting capital gains tax debts that arose during (and were connected with) the Chapter 12 proceedings themselves. . . . The majority does not deny the importance of Congress' objective. Rather, it feels compelled to hold that Congress put the Amendment in the wrong place." *Hall v. United States*, 132 S.Ct. 1882, 1897, 2012, Breyer, J., dissenting, internal citations and quotations omitted.

As a result of the *Hall* case, family farmers facing bankruptcy now find themselves caught in an unfortunate situation. The rules have changed and must be corrected in order to provide certainty and clarity in the law. The Family Farmer Bankruptcy Tax Clarification Act of 2012 will provide the clarity needed to help family farmers reorganize in bankruptcy.

This bill strikes the current language in the Bankruptcy Code, which the Supreme Court said does not work, 11 U.S.C. §1222(a)(2)(A) and inserts a new 11 U.S.C. §1222(a)(5). The new provision transforms all government claims arising as a result of the sale or transfer of post-petition farm assets into unsecured, non-priority claims, notwithstanding any language in the Internal Revenue Code to the contrary. The bill also provides new sections for treatment of these claims during the bankruptcy process. The bill recognizes that some asset sales may occur post-confirmation. As a result, we also provide a mechanism for plan modification as a result of these sales, if used for the specified purpose of reorganization, to assist in reorganization. Finally, we make a technical change to 11 U.S.C. §1228(a), which practitioners and commentators have long argued is needed. This technical change is within the limited scope of this clarification bill, as it provides greater certainty and clarity that has troubled courts and practitioners alike.

I recognize the end of this session of Congress is near and the time to do something is short. However, we have been fine tuning this legislation to ensure it properly corrects the *Hall* case. We will seek to do what we can during the remaining Congressional calendar to fix the problem this year. Should we run out of time, then we will maintain our focus on this problem into the next year. The Family Farmer Bankruptcy Tax Clarification Act of 2012 ensures that what Congress sought to do in 2005 actually occurs. In the wake of the *Hall* decision, clarification is needed to help ensure family farmers facing bankruptcy will have a chance to reorganize successfully.

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. 3545

*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 "Family Farmer Bankruptcy Tax Clarification Act of 2012".

#### SEC. 2. CLARIFICATION OF RULE ALLOWING DISCHARGE TO GOVERNMENTAL CLAIMS ARISING FROM THE DISPOSITION OF FARM ASSETS UNDER CHAPTER 12 BANKRUPTCIES.

(a) IN GENERAL.—Section 1222(a) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "unless—" and all that follows through "the holder" and inserting "unless the holder";

(2) in paragraph (3), by striking "and" at the end;

(3) in paragraph (4), by striking the period at the end and inserting "and"; and

(4) by adding at the end the following:

"(5) notwithstanding the application of the rules under subchapter V of chapter 1 of the Internal Revenue Code of 1986, and without regard to whether the claim arose before or after the filing of the petition, provide for the treatment and payment of any unsecured claim owed to a governmental unit by the debtor or the estate that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation as an unsecured claim that is not entitled to priority under section 507."

(b) POSTPETITION CLAIMS RELATING TO SALE, TRANSFER, EXCHANGE, OR OTHER DISPOSITION OF FARM ASSETS.—

(1) IN GENERAL.—Section 1222 of title 11, United States Code, is amended by adding at the end the following:

"(e)(1) A governmental unit may file a proof of claim for a claim described in subsection (a)(5) that arises after the date on which the petition is filed.

"(2)(A) Except as provided in subparagraph (B), if a governmental unit has not filed a proof of claim under paragraph (1) for a claim described in subsection (a)(5), after the date that is 120 days after the date on which the claim arises, the trustee or the debtor may file proof of such claim.

"(B)(i) For a claim described in subsection (a)(5) that is a tax for which a return is due, if the debtor or trustee has provided notice as described in clause (ii) and the governmental unit has not filed a proof of claim under paragraph (1), after the date that is 180 days after the date on which the debtor or trustee provides the notice, the debtor or the trustee may file proof of such claim.

"(ii) Notice as described in this clause is notice by the debtor or the trustee—

"(I) indicating the intent to file the applicable claim;

"(II) setting forth the amount of the claim;

"(III) that includes a copy of the filed return relating to the claim; and

"(IV) that is delivered to the governmental unit at the address designated for requests made under section 505(b)(1)(A).

"(3) A claim filed under paragraph (1) or (2) shall be allowed or disallowed under section 502, but shall be determined as of the date such claim arises, and shall be allowed under section 502(a), (b), or (c) of this title, or disallowed under section 502(d) or 502(e) of this title the same as if such claim had arisen before the date of the filing of the petition."

(2) MODIFICATION OF PLAN AFTER CONFIRMATION.—Section 1229(a) of title 11, United States Code, is amended—

(A) in paragraph (2), by striking "or" at the end;

(B) in paragraph (3), by striking the period at the end and inserting "or"; and

(C) by adding at the end the following:

"(4) provide for the payment of a claim described in section 1222(a)(5) that arose after the date on which the petition is filed."

(c) TECHNICAL CORRECTION.—Section 1228(a) of title 11, United States Code, is amended in the matter preceding paragraph (1)—

(1) by inserting a comma after "all debts provided for by the plan"; and

(2) by inserting a comma after "allowed under section 503 of this title".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any bankruptcy case that—

(1) is pending on the date of enactment of this Act and relating to which an order of discharge under section 1228 of title 11, United States Code, has not been entered; or

(2) commences on or after the date of enactment of this Act.

By Mr. KERRY (for himself, Mr. LIEBERMAN, Mr. SANDERS, and Mr. BLUMENTHAL):

S. 3547. A bill to amend the Lacey Act Amendments of 1981 to clarify provisions enacted by the Captive Wildlife Safety Act, to further the conservation of certain wildlife species, and for other purposes; to the Committee on Environment and Public Works.

Mr. KERRY. Mr. President, today I am introducing the Big Cats and Public Safety Protection Act to protect public safety, improve animal welfare, assist international big cat conservation, and to help clarify the existing patchwork of current state regulation. This is a companion for legislation previously introduced in the House by Representatives HOWARD MCKEON and LORETTA SANCHEZ. Amazingly, it is unknown even how many big cats such as lions, cougars, leopards, and cheetahs live or are bred in private possession in the United States. This bill would prevent the private possession and breeding of big cats, while still allowing properly accredited zoos and wildlife sanctuaries to continue to operate in the critical conservation and animal welfare roles that they occupy today.

Why is this legislation so important? First, this is a public safety issue, which was made tragically clear almost a year ago in Zanesville, Ohio, when the owner of a backyard zoo opened the cages of his tigers, leopards, lions, wolves, bears, and monkeys before killing himself. Wild animals were literally roaming the streets where children were playing and people were going about their daily lives. Sadly, the situation gave police no choice but to shoot and kill almost 50 animals, including 38 big cats, before they could enter populated areas. Public safety officials were, understandably, not trained or equipped to deal with large exotic animals especially 300 pound tigers. This tragedy should serve as a chilling wakeup call about our lack of safeguards around large, wild species being kept as pets. In the past 11 years in the United States, incidents involving captive big cats have resulted in the deaths of 21 people, 16 adults and 5 children. During the same time period,



there have been 246 mauplings, 253 escapes, 143 big cat deaths, and 128 confiscations.

This is also an animal welfare issue. Research shows that the captive big cat community is characterized by a systemic culture of inhumane mistreatment of the animals. One major reason for this is that once individual big cats have outgrown the infancy stage when they are most profitable, they are often warehoused in terrible conditions. Because private ownership is allowed to continue, many sanctuaries for mistreated or unwanted big cats are at or nearing capacity and lack financial reserves to provide greater assistance. The recent closure of a major sanctuary in Texas that had over 50 big cats has made matters worse.

Third, this is a matter of conservation. Tigers, for example, are extremely endangered by poaching and trade, and illegal tiger products continue to be smuggled into the U.S. from foreign countries. One of the biggest threats to wild tigers is the demand for tiger parts and products, and leakage of captive tiger parts and products into the illegal market continues to encourage demand, perpetuating poaching and threatening remaining wild populations.

Finally, this bill will address the current patchwork state regulation. There are still two states that have no regulations or permits at all regarding private ownership of exotic animals including big cats. Seven other States have little to no regulations of private ownership of exotic animals including big cats. Another 14 states allow big cat possession only with a state permit, and 27 states and the District of Columbia have enacted full bans on private ownership of big cats, though all of those exempt federally-licensed exhibitors. Given the risks I have already outlined, this kind of regulatory patchwork is simply unacceptable and could be dangerous.

I believe that the Big Cats and Public Safety Protection Act will help ensure that lions, tigers, and other potentially dangerous big cats do not threaten public safety, harm global conservation efforts, or end up living in squalid conditions where they are subject to mistreatment and cruelty.

A number of organizations are supportive of this bill, including the International Fund for Animal Welfare, the Humane Society of the United States, Born Free USA, Big Cat Rescue, the Animal Welfare Institute, and the World Wildlife Foundation.

I would like to recognize Senators LIEBERMAN, SANDERS, and BLUMENTHAL as original cosponsors of this bill. I look forward to continued progress in enhancing the protection and conservation of wild big cats and in increasing public safety from the dangers of these untamed animals.

By Mr. AKAKA:

S. 3548. A bill to clarify certain provisions of the Native American Veterans

Memorial Establishment Act of 1994; to the Committee on Indian Affairs.

Mr. AKAKA. Mr. President, as Chairman of the Committee on Indian Affairs, I am introducing legislation to make technical corrections to the National Native American Veterans' Memorial Act of 1994.

The 1994 Act honors the profound contributions of Native Veterans by authorizing the construction of a National Native American Veterans' Memorial. Unfortunately, technical issues with the law have made it difficult to move forward with the Memorial. The bill I am introducing today seeks to alleviate those obstacles.

My legislation would make technical corrections in order to allow the National Museum of American Indian to join the National Congress of American Indians in the fundraising efforts for the Memorial. In addition, my bill would allow the Memorial to be constructed on the property provided for by the National Museum of American Indian Act.

Per capita, American Indians, Alaska Natives, and Native Hawaiians serve at a higher rate in the Armed Forces than any other group of Americans. Native peoples have served in all of the Nation's wars since the Revolutionary War. A memorial in their honor is well-deserved and long overdue.

My non-controversial, no cost, technical amendments bill will make it easier to construct the authorized memorial to honor our Native Veterans.

#### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 554—CALLING ON THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA TO FACILITATE THE IMMEDIATE AND UNCONDITIONAL RELEASE OF GAO ZHISHENG, AND FOR OTHER PURPOSES

Mrs. BOXER (for herself and Mr. CORNYN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 554

Whereas Gao Zhisheng is a prominent Chinese human rights lawyer known for representing religious minority groups, factory workers, coal miners, and victims of government land seizures;

Whereas, in 2001, the Ministry of Justice of the People's Republic of China listed Gao Zhisheng as one of the top ten lawyers in China;

Whereas the Government of the People's Republic of China arrested Gao Zhisheng on August 15, 2006, and prevented him from meeting with chosen legal counsel;

Whereas, on December 22, 2006, Gao Zhisheng was convicted of inciting subversion and received a suspended sentence of three years subject to five years of probation;

Whereas, in September 2007, authorities in China apprehended and detained Gao Zhisheng for 50 days;

Whereas Gao Zhisheng claimed that during his detention, government officials threatened his life and tortured him, including

beating him with electrified batons, urinating on him, leaving him tied up for hours, and holding lighted cigarettes close to his eyes and nose;

Whereas the Government of the People's Republic of China arrested and detained Gao Zhisheng again on February 4, 2009;

Whereas Gao Zhisheng's whereabouts were unknown until March 2010, when he resurfaced, only to be arrested once more on April 20, 2010;

Whereas, on November 19, 2010, the United Nations Working Group on Arbitrary Detention determined Gao Zhisheng's ongoing detention to be arbitrary and in violation of international law;

Whereas Gao Zhisheng was held for 20 months before officials in China informed his family in December 2011 that he was being held at the Shaya County Prison in remote Xinjiang, China;

Whereas authorities allowed Gao Zhiyi to visit his brother, Gao Zhisheng, in the Shaya County Prison for 30 minutes on March 24, 2012, but then warned him not to speak to the media or he would not be allowed to visit his brother again;

Whereas the arbitrary arrest and detention of attorneys who represent minority groups and human rights activists could have a chilling effect on other attorneys working with similar clients;

Whereas Article 9 of the International Covenant on Civil and Political Rights, adopted at New York December 16, 1966, to which the Government of the People's Republic of China is a signatory, states, "No one shall be subjected to arbitrary arrest or detention.";

Whereas the International Covenant on Civil and Political Rights also guarantees the right to freedom of expression;

Whereas the wife of Gao Zhisheng, Geng He, and their two children have been afforded protection as political asylees in the United States;

Whereas the United States Government has authorized Gao Zhisheng to enter the United States, based on his family's successful claim of political asylum; and

Whereas the continued detention of Gao Zhisheng, with limited or no access to family or legal counsel, by the Government of the People's Republic of China is a source of grave concern to the United States Senate: Now, therefore, be it

*Resolved*, That the Senate calls on the Government of the People's Republic of China—

(1) to immediately facilitate continued access to Gao Zhisheng by his family and lawyers;

(2) to facilitate the immediate and unconditional release of Gao Zhisheng, including allowing Mr. Gao to leave China to come to the United States to be reunited with his family, should he wish to do so; and

(3) to release all persons in China who have been arbitrarily detained.

#### SENATE RESOLUTION 555—SUPPORTING THE GOALS AND IDEALS OF "NATIONAL SAVE FOR RETIREMENT WEEK", INCLUDING RAISING PUBLIC AWARENESS OF THE VARIOUS TAX-PREFERRED RETIREMENT VEHICLES AND INCREASING PERSONAL FINANCIAL LITERACY

Mr. CONRAD (for himself, Mr. ENZI, and Mr. CARDIN) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions: