

pay rate. Corporate America has argued that the administrative and financial burdens associated with such inclusion, given a huge number of different employees having different amounts of options with different exercise dates and strike prices, outweigh the benefits of having a broad-based stock option plan.

This legislation is not inconsistent with my proposal to require the reporting of stock options as an expense on a company's financial statements, a key part of the Ending the Double Standards for Stock Options Act. Therefore, I support the Worker Economic Opportunity Act to remove a potential barrier to workers' participation in the prosperous American economy they helped create.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that for the next 5 minutes the time be held open, and then at 2:05 p.m. I will yield back all the time on the measure, and I ask unanimous consent that there be a period for morning business from 2:05 p.m. until 2:30 p.m., with the time equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, what is the order of business?

The PRESIDING OFFICER. Before the Senate is S. 2323.

The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. JEFFORDS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on the passage of the bill.

The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Delaware (Mr. ROTH) and the Senator from Maine (Ms. SNOWE) are necessarily absent.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KERRY), the Senator from New York (Mr. MOYNIHAN), the Senator from West Virginia (Mr. ROCKEFELLER) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 81 Leg.]

YEAS—95

Abraham	Edwards	Lincoln
Akaka	Enzi	Lott
Allard	Feingold	Lugar
Ashcroft	Feinstein	Mack
Baucus	Fitzgerald	McCain
Bayh	Frist	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Murkowski
Bingaman	Gramm	Murray
Bond	Grams	Nickles
Boxer	Grassley	Reed
Breaux	Gregg	Reid
Brownback	Hagel	Robb
Bryan	Harkin	Roberts
Bunning	Hatch	Santorum
Burns	Helms	Sarbanes
Byrd	Hollings	Schumer
Campbell	Hutchinson	Sessions
Chafee, L.	Hutchison	Shelby
Cleland	Inhofe	Smith (NH)
Cochran	Inouye	Smith (OR)
Collins	Jeffords	Specter
Conrad	Johnson	Stevens
Coverdell	Kennedy	Thomas
Craig	Kerrey	Thompson
Crapo	Kohl	Thurmond
Daschle	Kyl	Torricelli
DeWine	Landrieu	Voinovich
Dodd	Lautenberg	Warner
Domenici	Leahy	Wellstone
Dorgan	Levin	Wyden
Durbin	Lieberman	

NOT VOTING—5

Kerry	Rockefeller	Snowe
Moynihan	Roth	

The bill (S. 2323) was passed, as follows:

S. 2323

*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 "Worker Economic Opportunity Act".

**SEC. 2. AMENDMENTS TO THE FAIR LABOR STANDARDS ACT OF 1938.**

(a) EXCLUSION FROM REGULAR RATE.—Section 7(e) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(e)) is amended—

(1) in paragraph (6), by striking "or" at the end;

(2) in paragraph (7), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(8) any value or income derived from employer-provided grants or rights provided pursuant to a stock option, stock appreciation right, or bona fide employee stock purchase program which is not otherwise excludable under any of paragraphs (1) through (7) if—

"(A) grants are made pursuant to a program, the terms and conditions of which are communicated to participating employees either at the beginning of the employee's participation in the program or at the time of the grant;

"(B) in the case of stock options and stock appreciation rights, the grant or right cannot be exercisable for a period of at least 6 months after the time of grant (except that grants or rights may become exercisable because of an employee's death, disability, retirement, or a change in corporate ownership, or other circumstances permitted by regulation), and the exercise price is at least 85 percent of the fair market value of the stock at the time of grant;

"(C) exercise of any grant or right is voluntary; and

"(D) any determinations regarding the award of, and the amount of, employer-provided grants or rights that are based on performance are—

"(i) made based upon meeting previously established performance criteria (which may include hours of work, efficiency, or produc-

tivity) of any business unit consisting of at least 10 employees or of a facility, except that, any determinations may be based on length of service or minimum schedule of hours or days of work; or

"(ii) made based upon the past performance (which may include any criteria) of one or more employees in a given period so long as the determination is in the sole discretion of the employer and not pursuant to any prior contract."

(b) EXTRA COMPENSATION.—Section 7(h) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(h)) is amended—

(1) by striking "Extra" and inserting the following:

"(2) Extra"; and

(2) by inserting after the subsection designation the following:

"(1) Except as provided in paragraph (2), sums excluded from the regular rate pursuant to subsection (e) shall not be creditable toward wages required under section 6 or overtime compensation required under this section."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 90 days after the date of enactment of this Act.

(d) LIABILITY OF EMPLOYERS.—No employer shall be liable under the Fair Labor Standards Act of 1938 for any failure to include in an employee's regular rate (as defined for purposes of such Act) any income or value derived from employer-provided grants or rights obtained pursuant to any stock option, stock appreciation right, or employee stock purchase program if—

(1) the grants or rights were obtained before the effective date described in subsection (c);

(2) the grants or rights were obtained within the 12-month period beginning on the effective date described in subsection (c), so long as such program was in existence on the date of enactment of this Act and will require shareholder approval to modify such program to comply with section 7(e)(8) of the Fair Labor Standards Act of 1938 (as added by the amendments made by subsection (a)); or

(3) such program is provided under a collective bargaining agreement that is in effect on the effective date described in subsection (c).

(e) REGULATIONS.—The Secretary of Labor may promulgate such regulations as may be necessary to carry out the amendments made by this Act.

Mr. LOTT. I move to reconsider the vote.

Mr. JEFFORDS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, I had hoped we would be able to announce a unanimous consent agreement at this time as to how we will proceed on eliminating the marriage tax penalty and what amendments would be in order and how much time. I have now received a list of amendments from Senator DASCHLE, but we have had only a couple of minutes to review that. We need a little time. I understand several of the amendments actually have been filed. There may be one or two on which we don't actually have access to an amendment. For instance, Senator TORRICELLI may have an amendment

prepared and we would like to get a copy of the amendment. We would like to have a little time to review the list and the substance of these amendments. We have agreed we should go forward with general debate while we do that.

I ask consent the Senate resume the pending legislation for debate, equally divided, until the majority leader is recognized at 4:30 this afternoon.

The PRESIDING OFFICER. Without objection, it is so ordered.

MARRIAGE TAX PENALTY RELIEF  
ACT OF 2000—Resumed

Pending:

Lott (for Roth) amendment No. 3090, in the nature of a substitute.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from the State of New Hampshire, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I yield 10 minutes to the Senator from California.

Mrs. BOXER. Mr. President, I know the majority leader is looking over amendments that Members on this side of the aisle want the opportunity to offer to the bill on the marriage tax penalty. I certainly hope the majority leader will be able to accommodate us. After all, if we were using the regular rules of the Senate, we could offer any and all amendments; that is, the rules of the Senate provide Members can, in fact, offer amendments on bills that come before the Senate.

The Senator from Montana, who has done so much work on this marriage tax penalty issue, and I were talking about how much the procedure around here is like the House of Representatives with tremendously restricted opportunities for debate and restricted opportunities to offer amendments. We are working very hard, on our side of the aisle, to fight for the right merely to put matters before the Senate. We may not win every time, but the fact is we are here for a reason and that is to legislate; it is to bring these matters before the American people in this forum called the Senate.

The bill purports to take care of the marriage tax penalty, but I have big news for everyone: It does not take care of the marriage tax penalty. Why do I say this? I get this directly from Senator MOYNIHAN's work on this issue as the ranking member of the Finance Committee. We know there are 65 marriage tax penalties in the code for all taxpayers—65.

So if you really believe the marriage tax penalty is your biggest priority and that is all you want to do, that it is the most important thing as you look at

the Tax Code—and, frankly, from my point of view, it is not the only thing I want to do and there are more important things we can do to help the middle class in this country—the most honest thing to do is repeal the penalty in these 65 occasions in which it appears in the Tax Code.

However, the GOP plan fully eliminates only 1 of these penalties, partially eliminates 2 others, and it leaves 62 marriage penalties in the code.

We have a situation where we are told we can do away with the marriage tax penalty, but when we look at the fine print, we are not doing away with the marriage tax penalty at all. We are only doing it in one place, completely, where it appears, and partially in another couple. And we are leaving 62 penalties in place.

So I do not really think this is a good way for us to proceed because it is so expensive and we have not taken care of the marriage tax penalty. It is another one of these risky tax schemes that is going to come back to haunt us because it is going to rob us of debt reduction.

When you add it to all the tax bills that have already passed the Senate with majority support from the Republicans, it is breaking the back of the non-Social Security surplus. We will have no surplus. Pretty soon, we are going to start eating into that surplus.

We are going to hear Senator BAUCUS talk about why he believes this plan is flawed. It actually hurts some people at the lower end of the scale. It does not do what it purports to do.

We are going to hear from Senator BAYH, who has another idea that is certainly more affordable and would allow us to do other things we need to do for our people, such as the prescription drug benefit.

We now know for sure that our people are suffering because they cannot afford prescription drugs. If we listen to Senator WYDEN, who has spoken on this eloquently, we know our senior citizens are not taking their prescription drugs. They are cutting their pills in half. They risk getting strokes. They risk getting heart attacks. They cannot afford the prescription drugs.

While we are talking about a marriage tax penalty—and a lot of relief goes to people who are earning a lot of money in this country—what about the prescription drug benefit? What about a tuition tax break for parents who are struggling to send their kids to college and college tuition goes up each and every year?

We cannot do these things in a vacuum. We have to look at the entire picture. We have to ask ourselves: Do we want to give tax breaks or do we want all the money to go to debt reduction? I myself would like to give targeted tax breaks that we can afford to the middle class, who needs them, and use the rest of the money for debt reduction and for investments in our people, in our children.

In closing, there is something we can really do for married people here, those

at the lowest incomes who are working at the minimum wage, more than 60 percent of whom are women. Raising the minimum wage would go a long way to doing something good for people who are married and in the low brackets. A tuition tax break for people who send their kids to college would go a long way to helping married people and their families. A prescription drug benefit would help those families who are seeing their moms and dads struggling along, not being able to afford prescription drugs.

So the question we face, just to sum it up as we look at this Republican plan, is this: Why would we do something that says it is relieving the marriage tax penalty when it leaves 62 marriage tax penalties in place? Why would we do that? It is not real. We are telling people we are doing something we are not doing. We are backloading it. We are breaking the Treasury. We are eating into the non-Social Security surplus. Why would we do that?

Why not look at a more modest plan? We have some ideas on that. We are going to hear about one of them today. Why don't we look at raising the minimum wage? Why don't we look at the prescription drug benefit or the tuition tax break for our families who are struggling to send their kids to college? Why don't we look at this economic recovery and together, both sides of the aisle, say we do not want to derail it by doing these tax breaks, one after the other after the other after the other. They are adding up to hundreds of billions of dollars.

If our President were not so strong in saying let's keep this country on a fiscally sound basis, we would be in a lot of trouble, if those bills had been signed.

I asked of the Senator from Montana yesterday—I was talking to his staff—how many tax bills have already gone through here with the votes of the other side of the aisle. I think his staff told me it was about \$500 billion at this point, \$500 billion of tax breaks—by the way, most of them to people who do not want them, who do not need them, who are asking us to keep the economy strong, reduce the debt, and do targeted tax breaks for the people who really need them.

I hope the majority leader will accept these amendments we have come up with, allow us to debate as Senators, not turn us into the House of Representatives which gives its Members very few rights to offer amendments. I hope we will reject this Republican plan because it does not do what it says it does. It is fiscally irresponsible, and it stops us from doing the good things we need to do for our families.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, I yield 7 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I support legislation which would provide