out. That did not happen on this bill. So we are trying to get some clarification done.

I appreciate that the Senator from Maryland put some things in the RECORD that show legislative intent. I prefer to have it in the bill. That is why my amendment is in here. It is an attempt to remove some of the legal uncertainty this bill will create. It will clarify who is able to sue under title VII.

Under my amendment, only the person who has experienced discrimination can bring a lawsuit. Without my amendment the door is left open to any affected individual. This is an undefined term in the statute.

Senator MIKULSKI and I have had some back and forth about what the language means. The truth is, without my amendment the courts will be able to define the term any way they want to. If you want to ensure that only the person affected has standing to sue, then support my amendment.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, the Enzi amendment is unnecessary. The ''affected by'' language is not vague. Our bill only applies to workers and their employers.

Other parts of title VII that our bill does not change make this clear. The ''affected'' language is patterned after the Civil Rights Act of 1991. It has been around for 17 years and no one has tried to interpret it to apply to grandparents, spouses, or children, or anyone else other than the worker.

I understand the Enzi amendment No. 28 is now pending. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

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

The result was announced—yeas 55, nays 41, as follows:

[Rollcall Vote No. 10 Leg.]

YEAS—55

Akaka	Feingold	Menendez
Baucus	Feinstein	Merkley
Bayh	Hagan	Mikulski
Begich	Harkin	Murray
Bingaman	Inouye	Nelson (FL)
Boxer	Johnson	Nelson (NE)
Brown	Kaufman	Pryor
Burris	Kerry	Reed
Byrd	Klobuchar	Reid
Cantwell	Kohl	Rockefeller
Cardin	Landrieu	Sanders
Carper	Lautenberg	Schumer
Casey	Leahy	Shaheen
Conrad	Levin	Snowe
Dodd	Lieberman	Stabenow
Dorgan	Lincoln	Tester
Durbin	McCaskill	Udall (CO)
Udall (NM)	Warner	Whitehouse
Wyden		

NAYS—41

Alexander	DeMint	McCain
Barrasso	Ensign	McConnell
Bennett	Enzi	Murkowski
Bond	Graham	Risch
Brownback	Grassley	Roberts
Bunning	Gregg	Sessions
Burr	Hatch	Shelby
Chambliss	Hutchison	Specter
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Collins	Johanns	Voinovich
Corker	Kyl	Webb
Cornyn	Lugar	Wicker
Crapo	Martinez	

NOT VOTING—1

Kennedy

The motion was agreed to.

AMENDMENT NO. 29

The PRESIDING OFFICER. The question is on amendment No. 29.

Ms. MIKULSKI. Mr. President, I understand amendment 29 is now the pending business. I thank Senator ENZI for allowing us to dispose of his amendment through a voice vote. I move to table the Enzi amendment No. 29.

The PRESIDING OFFICER. If all time is yielded back, the question is on agreeing to the motion to table amendment No. 29.

The motion was agreed to.

Ms. MIKULSKI. I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

CERTIFICATE OF APPOINTMENT

The VICE PRESIDENT. The Chair lays before the Senate the certificate of appointment to fill the vacancy created by the resignation of former Senator Ken Salazar of Colorado. The certificate, the Chair is advised, is in the form suggested by the Senate.

Since there is no objection, the reading of the certificate will be waived and will be printed in full in the RECORD.

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

STATE OF COLORADO

CERTIFICATE OF APPOINTMENT

To the President of the Senate of the United States:

This is to certify that, pursuant to the power vested in me by the Constitution of the United States and the laws of the State of Colorado, I, Bill Ritter, Jr., the governor of said State, do hereby appoint Michael F. Bennet a Senator from said State to represent said State in the Senate of the United States until the vacancy therein caused by the resignation of Ken Salazar, is filled by election as provided by law.

Witness: His Excellency our Governor Bill Ritter, Jr., and our seal hereto affixed at Denver, Colorado this 21st day of January, in the year of our Lord 2009.

By the Governor:

BILL RITTER, Jr.,
Governor.

BERNIE BUESCHER,
Secretary of State.

[State Seal Affixed]

ADMINISTRATION OF OATH OF OFFICE

The VICE PRESIDENT. If the Senator-designate will now present himself at the desk, the Chair will administer the oath of office.

Mr. BENNET, escorted by Mr. Salazar and Mr. UDALL of Colorado, advanced to the desk of the Vice President; the oath prescribed by law was administered to him by the Vice President; and he subscribed to the oath in the Official Oath Book.

(Applause, Members standing.)

APPOINTMENT

The PRESIDING OFFICER (Ms. KLOBUCHAR). Pursuant to the provisions of section 201(a)(2) of the Congressional Budget Act of 1974, the Speaker of the House of Representatives and the President Pro Tempore of the Senate hereby appoint Dr. Douglas W. Elmendorf as Director of the Congressional Budget Office effective immediately for the remainder of the term expiring January 3, 2011.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. MIKULSKI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

LILLY LEDBETTER FAIR PAY ACT OF 2009—Continued

Ms. MIKULSKI. Madam President, I ask unanimous consent that Senator REED of Rhode Island be recognized for up to 5 minutes to speak on the bill; that following his remarks, the Senate resume consideration of the Isakson amendment No. 37, with up to 10 minutes equally divided between Senator ISAKSON and myself, or our designees; that upon the use or yielding back of time on the Isakson amendment, the Senate resume consideration of the DeMint amendment No. 31, with 20 minutes of debate, 10 minutes under the control of Senator DEMINT or his designee, 5 minutes each under the control of Senator MIKULSKI, me, and Senator ALEXANDER or our designees; that following the use or yielding back of time on the DeMint amendment, the Senate proceed to vote in relation to the following amendments: DeMint No. 31, and Isakson No. 37; further, that no amendments be in order to the pending DeMint or Isakson amendments prior to the votes; and that there be 2 minutes of debate equally divided between the votes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Ms. MIKULSKI. Madam President, I will yield the floor to Senator REED. I

first thank Senator HARKIN for managing the bill during the Lilly Ledbetter press conference. His devotion to this issue is well known.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. REED. Thank you, Madam President. And I thank Senator MIKULSKI.

First, let me commend Senator MIKULSKI for her extraordinary leadership on this legislation, along with Senator HARKIN and also Senator KENNEDY, who have been a driving force to ensure this legislation came to the floor and is ready for passage.

I strongly support the Lilly Ledbetter Fair Pay Act of 2009. This bill is about ensuring that all Americans are protected from pay discrimination and treated fairly in the workplace, particularly during these tough economic times. After 8 years of enduring an economy rigged to benefit only the wealthy few, it is about time we reached out to try to help those struggling paycheck to paycheck, and this legislation will do that.

As an original cosponsor of this legislation, I am pleased this bill seeks to address and correct the Supreme Court's decision in Ledbetter v. Goodyear Tire & Rubber Co. It is a decision from 2007 that required employees to file a pay discrimination claim within 180 days of when their employer first began to discriminate, even if the discrimination continued after that 180-day period.

Under the Ledbetter ruling, a worker could face longstanding pay discrimination and yet be shortchanged of a remedy simply because they did not discover the discrimination within 180 days of their initial discriminatory paycheck.

The Ledbetter decision overturned established precedent in courts of appeals across the country and the policy of the Equal Employment Opportunity Commission under both Democratic and Republican administrations. In fact, it almost defies common sense and logic. Most employees, if they have a pay dispute, hope it will be resolved internally, and they will give their employer the benefit of the doubt probably for more than 180 days until it becomes readily apparent that this is systematic and discriminatory.

The legislation we are considering today reverses this erroneous finding but also restores a sense of common sense into the workplace. It returns the law to the pre-Ledbetter precedent by clarifying that each discriminatory paycheck restarts that 180-day period. As such, this bill does not modify the time limit for filing a claim or the 2-year limit on back pay but reestablishes when the statute of limitations begins to run.

This allows workers to demonstrate and detect a pattern or cumulative series of employer decisions or acts showing ongoing pay discrimination rather than simply reacting to any perceived notion of discrimination to fall within this 180-day period. As Justice Ginsburg noted in her Ledbetter dissent, such a law is ''more in tune with the realities of the workplace.'' I entirely agree.

The Supreme Court majority failed to recognize these commonsense realities, including that pay disparities typically occur incrementally and develop slowly over time, and they are not easily identifiable and are often kept hidden by employers. Many employees generally do not have knowledge of their fellow coworkers' salaries or how decisions on pay are made.

Our Nation has certainly made progress on ensuring fairness, justice, and equality in the workplace. However, we know there are still significant barriers to overcome in closing the pay gap and making certain that an individual's gender, race, religion, national origin, disability, and age are not an impediment to their economic and employment growth and prosperity. The Lilly Ledbetter Fair Pay Act of 2009 is one important step toward achieving this goal.

Again, let me thank Senator MIKULSKI for leading the charge on this bill and, again, acknowledge the longstanding efforts of Chairman KENNEDY to seek passage of this and other legislative efforts to help workers. One of the great dilemmas we face today ensuring that Americans who are working—particularly wage earners—have sufficient income so they can provide for their families and for their future.

Because of the flat and, in some cases, the receding income of working Americans over the last 8 years, we have seen a situation where they have to resort to their credit cards, where they have to put off important purchases, deny themselves opportunities, scale down access to colleges for their children because their income has not grown.

The great challenge—and it is not just an economic challenge but, I believe, it is a moral challenge—is to ensure that the income of every level of America grows; not just the very wealthy, but every level of Americans has a chance to use their talents and see those talents rewarded by increasing income, we hope, each year. This legislation is part of that effort. But much more must be done.

I strongly urge my colleagues to support this bill and to oppose any amendments that seek to dilute its intent.

Madam President, I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. Madam President, is the distinguished chairman prepared to move forward?

Ms. MIKULSKI. Yes.

AMENDMENT NO. 37

Mr. ISAKSON. Madam President, I ask unanimous consent that Senator SAXBY CHAMBLISS be added as an original cosponsor of amendment No. 37.

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

Mr. ISAKSON. Madam President, I grew up in the South when the civil rights era came and the civil rights laws were passed. After the passage of the Civil Rights Act, I ran a real estate brokerage company and saw the transition to fair housing from housing discrimination. I understand the ramifications of the Civil Rights Act, and I am proud and appreciative of what it has helped us to accomplish.

The 180 days in the statute of limitations applies to every facet of that act. It applies to housing discrimination and, obviously, in this case it applied to employment and pay discrimination. Obviously, with the votes that have taken place and the failure of the Hutchison amendment, it is pretty obvious which direction the bill is going.

So it is time we ask ourselves one question: Is it fair to reach back to the 1960s, repeal a statute of limitations that applied for over 45 years, and open the possibility of a plethora of cases that have not been filed to now being filed or, asked another way: Is it fair, after a game has been played, to change the rules in order to change the outcome?

Practically speaking, I would submit to you that this bill should be prospective and not reach back. It should say in the future that all the provisions apply to any case that may be filed on a future incident of discrimination. But to reach back without limitation and repeal the 180 days changes the rules of the game, changes the law under which people were trying to operate in running their business.

But, most importantly of all, let me tell you what it specifically does. I ran a company for 22 years. I am very familiar with what lawyers can do in terms of bringing in an alleged case, filing a case, taking you into depositions, and then saying: We can put a stop to all this if you will settle for $5,000 or $10,000 or $15,000. It is using an opportunity open to them to intimidate or, in some cases, extort, in my judgment, a fee out of an unwitting and unwilling business.

So I ask the fairness question: Is it right to go back to the inception of the civil rights laws, take an established principle that applied to housing, pay, and employment of 180 days, and change the rules so people can reach back after the passage of this legislation and create new litigation under changed rules?

In the interest of fairness, I would submit it should be prospective, that all the applications of law should begin with the passage of the law and its enactment.

Madam President, I will be glad to yield the floor to the distinguished chairman who is managing the bill and urge the adoption of the Isakson amendment.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Madam President, I oppose the Isakson amendment because it would create an arbitrary and unfair cutoff for who gets the benefit of this fair pay bill.

The Isakson amendment No. 37 would limit application of the bill to only claims that arise out of discrimination that takes place after the bill passes.

There is no principled reason for applying the bill only to future cases. The point of this bill is to correct a terrible wrong done to victims of pay discrimination. We should be seeking justice for as many people as possible.

Applying this bill to pending cases would not be an unfair surprise for employers. This bill restores the law to where it was the day before the Supreme Court decided the Ledbetter case. There is nothing new in this bill.

If this amendment passes, it would create a 20-month gap in the law. Let me repeat: If the Isakson amendment passes, it would create a 20-month gap in the law. Those workers who were unfortunate enough to have been discriminated against during that 20-month period would be treated worse than those who came before them and those who came after them. That is arbitrary, and it is unfair.

As we work on this wage discrimination bill, we cannot fix only part of the problem. We have not come this far to leave some victims out in the cold. Yet that is what I am concerned the Isakson amendment would do.

Madam President, I will urge the rejection of the Isakson amendment, and when it comes time to call up the vote, I will be making a motion to table. But I am not making that motion now.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Madam President, how much time do I have remaining?

The PRESIDING OFFICER. Senator, you have 1 minute 50 seconds remaining.

Mr. ISAKSON. Madam President, with deference and respect for the chairman, this amendment would do nothing to a pending case. This amendment will only apply to a case that has not been filed and could have reached back all the way to the civil rights era of the 1960s. Please be aware it would not in any way obliterate anybody's rights on any pending case that has been filed since May of 2007. It would only affect those cases that haven't been filed all the way back to the Civil Rights Act.

So, again, I think it is a matter of fairness and equity. I appreciate the time that has been allotted. At the appropriate time I will ask my colleagues to vote against tabling if that is the motion.

I yield the floor.

Ms. MIKULSKI. Madam President, first I wish to say to my colleague from Georgia that I appreciate the tone of civility in which he has offered his amendment, and that has been characteristic of the whole day. I hope it signals a new tone.

Although I appreciate the tone, I still disagree with the amendment. The Lilly Ledbetter Act does not go back to the inception of the Civil Rights Act. It goes back only to the Supreme Court decision of May 28, 2007. So I continue to disagree with the Isakson amendment because I do believe it would create an arbitrary and unfair cutoff for those who would benefit from this bill.

I yield the floor.

The PRESIDING OFFICER. Do the Senators yield back their time on the pending amendment?

Ms. MIKULSKI. Madam President, how much time do I have?

The PRESIDING OFFICER. The Senator from Maryland has 1 minute 45 seconds.

Ms. MIKULSKI. And how much time does the Senator from Georgia have?

The PRESIDING OFFICER. The Senator has 1 minute 10 seconds.

Ms. MIKULSKI. I would just inquire if the Senator from Georgia wishes to yield back his time. I would be happy to cooperate and we could move to the DeMint amendment.

Mr. ISAKSON. I yield back the remainder of my time.

Ms. MIKULSKI. I thank him. I yield back the remainder of my time, and we can proceed to the DeMint amendment.

AMENDMENT NO. 31

The PRESIDING OFFICER. The DeMint amendment is now pending.

Mr. DEMINT. Madam President, I am afraid the Ledbetter bill is another example that the majority in the Senate doesn't understand the American economy or how businesses create jobs or how freedom works for all of us to create a better quality of life. Recessions are caused by uncertainty. This bill creates more uncertainty for the very businesses we need to create the jobs and to keep the jobs we have in our country today.

Why would we pass a bill, or even be talking about it, in the middle of a recession, that many have said is the worst we have ever seen in our lifetime? This bill will also create a lot of unintended consequences that will do the exact opposite of what it is intended to do.

I was in business for well over 20 years before I came to Congress. Once you create more liability for hiring a woman or know that liability is going to exist for years, employers are going to figure out a way to get around that. This is more likely to discourage the employment and the promotion of women because it creates an indefinite liability.

It seems that a lot of my colleagues have never been in business themselves. I remember being in the advertising business, and I was 1 of 15 account executives. I was about in the middle as far as salary. There were men and women who made less than I did. There were men and women who made more than I did. Some who made more than I did had less experience, but because of clients or some other factor—some other intangible—it made them worth more than I was, they were paid more. It was the same with those who made less. I was younger and in some cases less experienced than some of the men and women who made less, but I had demonstrated that I could help our company make a profit more than they had. The market was deciding our salaries. There is no way that anyone in this Senate or any government bureaucrat or Federal judge could come in and say that there was discrimination because I was paid less than someone who was making more money or the same with someone who was making less than I was.

For us to intervene and create a permanent liability is only going to create more uncertainty. This is not what we need to do with our businesses. So this whole bill should not even be considered now.

I have an amendment that gets at some of the issues that have been talked about with this bill, about fairness and about discrimination. One of the biggest forms of discrimination in this country today is when we force an American worker to join a union. My amendment is a right-to-work amendment. Right now in this country, we have a Federal law that forces American workers to join a union. States can pass a right-to-work law, as my State, South Carolina, has to protect their workers, but this has proved very difficult for many States with powerful union bosses and union lobbies. My amendment, which is a national right-to-work amendment, would restore the right of every American not to join a union. It would eliminate the Federal requirement that workers pay union dues.

We are getting ready to hear from some opponents of this amendment that will use some very convoluted logic to defend their position. The same people who support Federal labor laws, including wage requirements that supersede State laws, will argue that my amendment violates States rights. Removing a Federal mandate on States could only violate States rights in the minds of politicians who have lost touch with our constitutional moorings. My amendment is not about States rights. It is not about Federal rights. It is not about business rights. My amendment restores basic unalienable, individual rights.

No law—Federal or State—should force an American to join a union in order to get a job in this country. No law—State or Federal—should allow an American worker to be fired because he or she does not want to join a union. This is about individual rights. There should not be a Federal law that discriminates against workers who choose not to join a union. This is about fairness and about stopping basic discrimination that is sponsored by this Federal Government.

I urge my colleagues to vote for this right-to-work amendment. It is very consistent with the theme of this Ledbetter bill. It is more likely to eliminate discrimination than the Ledbetter bill itself. I urge my colleagues to support it. I will reserve the remainder of my time and ask for a vote.

The PRESIDING OFFICER. Who yields time?

Ms. MIKULSKI. Under the consent agreement, the Senator from Tennessee has 5 minutes of his own time, and then I will have 5 minutes of mine.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Madam President, I would appreciate being reminded when 4 minutes is up so that I may reserve the last 30 seconds of my time.

The DeMint amendment would take away from States the right to decide whether they want to be a right-to-work State or a State that allows for an agency shop or a union shop. Now, on this very Senate floor, in 1947, after World War II, Mr. Conservative, Robert A. Taft, the leader of the Republicans, stood before the American people and said the law that was passed in 1935—the National Labor Relations Act—was wrong because it took away from States the right to make that decision, and there was a tumultuous argument on the Senate floor.

Section 14(b) of the Taft-Hartley Act was passed, and it gave the States the right to decide whether an employee would have to pay union dues or join a union in order to have a job. Since then, 22 States, including the State of Tennessee, have decided, yes; we want to be a right-to-work State under the principles supported by the distinguished Senator from South Carolina, but he wants to make that a national law.

I don't trust Washington on this issue. What do you suppose would happen in the Senate if today we voted about whether to have a national right-to-work law or a national agency shop or a union shop? I think I know what the result would be, and I know what would happen.

Thirty years ago I was the Governor of Tennessee and we were the third poorest State and we had no auto jobs. Nissan wanted to come somewhere in the United States, and they chose Tennessee because we had a right-to-work law. Tennessee had the right to make that decision, even though other States chose not to have a right-to-work law. Then Saturn built a plant, and the Saturn employees chose to belong to the UAW and the Nissan employees said, no; we don't want to be in a union. Since that time, 13 major companies have come to the States that have right-to-work laws, including South Carolina, Tennessee, Georgia, Alabama, and Mississippi.

If we let the prevailing Washington view decide whether a State should have a right-to-work, union shop, open shop, or agency shop law, we wouldn't have had that advantage, and we might not even have had an auto industry in the United States today. That competition between the States brought the companies that came here, hired American workers, built cars in our country, and now build half of our cars. These companies are providing the competition that will help the Detroit part of our industry survive, I think, more so than Government bailouts.

So I say to my Republican colleagues especially, be careful what you ask for. Do you want to ask the Congress to vote on whether States have the right to choose a right-to-work law? I do not. I don't think you get any smarter about that issue by coming to Washington, DC. Democratic and Republican Governors and legislatures in Tennessee for a long time have thought we were perfectly capable of making that decision.

So I would urge my colleagues to say Robert Taft was right in 1947 and 1948. We don't want Washington telling Tennessee, North Carolina, Minnesota, or Maryland what their labor laws ought to be. Let Tennessee decide whether it wants a right-to-work law. I can think of nothing more fundamental to the prosperity of my State than preserving the principle that States have the option to decide whether or not to have a right-to-work law. So I respectfully oppose the DeMint amendment.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Madam President, I have a question for the Senator from Georgia. I just wish to clarify the sequence after we conclude our debate. Does the Isakson amendment come after the DeMint amendment? Is that his understanding?

Mr. ISAKSON. It was my understanding of the UC agreement that the Isakson amendment will follow the DeMint amendment in terms of a vote.

Ms. MIKULSKI. I thank the Senator. That clarifies it. I have a question of Senator DEMINT. Is the DeMint amendment to Lilly Ledbetter or are you amending another piece of legislation? Could you clarify what your amendment amends?

Mr. DEMINT. The Ledbetter bill.

Ms. MIKULSKI. Does the DeMint amendment amend the Ledbetter bill or the National Labor Relations Act and the Railroad Act? The Ledbetter Act is the pending one.

Mr. DEMINT. Right.

Ms. MIKULSKI. But the consequences are—aren't you amending the National Labor Relations Act? The Ledbetter Act is strictly a wage discrimination bill.

Mr. DEMINT. It is a discrimination and fairness bill, and my bill would change the National Labor Relations Act to remove a mandate on States.

Ms. MIKULSKI. I still have the floor. Madam President, I have the floor.

The PRESIDING OFFICER. The Senator from Maryland has the floor.

Ms. MIKULSKI. I had a question for Senator DEMINT, and if the Senator will withhold, after I make my remarks, he can address the Chair.

The consequence of the DeMint amendment is that it amends the National Labor Relations Act. Let me tell my colleagues the consequences. First of all, let's go to the facts.

The Lilly Ledbetter Fair Pay Act is about pay discrimination, about wage discrimination. That is what we have been debating on both sides of the aisle. The debate has been focused, it has been targeted, it has been precise and, I might add, quite civil. It has nothing to do with right-to-work laws. This is not the time nor the place to debate whether we should have a Federal right-to-work law. We need to restore the ability of victims of pay discrimination to pursue justice. If we want to have a debate on a Federal right-to-work law, then I suggest to the Senator from South Carolina that he offer his own bill, let's put it through the committee, and let's vote on it, but let's not bring right-to-work laws into the wage discrimination focus of the Lilly Ledbetter Fair Pay Act.

So let's go now to the facts or the merits of the amendment being offered by Senator DEMINT.

No. 1, it reverses decades of established labor law and addresses the issues that have nothing to do with the Fair Pay Act. The DeMint amendment undermines States abilities to choose what labor laws work best for them. That is the point made by the Senator from Tennessee. It would also impose right-to-work laws on workers who do not want them. Federal labor policy has been neutral on right-to-work issues for over 60 years. That means States are free to decide whether they want to impose right-to-work laws. The amendment would impose right-to-work laws on States that do not want them, and it would even impose such laws in the railroad and aviation industry, which has never been subjected to them.

We have debated this issue before. A bipartisan majority of Congress rejected this approach in the 104th Congress, which was in 1996. We had a vote on a similar amendment, and it was defeated 31 to 68. I hope we defeat the DeMint amendment today.

Let's stick strictly to the Lilly Ledbetter discussion. We have been having an excellent discussion all day long.

Again, I urge defeat of the DeMint amendment.

Madam President, how much time do I have remaining, and, of course, answer the questions of our colleagues as to time.

The PRESIDING OFFICER. The Senator from Maryland has 36 seconds remaining. The other side has 4 minutes 36 seconds remaining.

Ms. MIKULSKI. I reserve the remainder of my time.

Mr. ALEXANDER. Madam President, how much time do I have remaining? I am supposed to have 30 seconds left.

The PRESIDING OFFICER. The Senator from Tennessee has 1 minute 45 seconds.

The Senator from South Carolina.

Mr. DEMINT. Madam President, I think I mentioned some convoluted logic. I appreciate my colleague's civil discussion on this issue, but it is interesting to hear that removing a Federal

mandate on States somehow violates States rights.

My colleague from Tennessee described a situation they have in their State—the same situation in South Carolina—where you can have a nonunion shop. People can choose to be in unions or unionize an organization. Workers can decide whether they belong to a union. What that is called is freedom. Those are basic rights of Americans. What my amendment would do is restore that freedom for people who live in every State, not just in States where State legislators have been able to overcome union pressure and reestablish that freedom.

This is not about States rights, and this is not about the rights of the Federal Government. It is not about some Federal bureaucrats or what judges decide. Every American should have a right to decide whether they are going to join a union. For us to have a law at the Federal level imposed on people around the country that they have to join a union, they have to pay union dues, that employers have a right to fire them if they don't join a union—this is not good for individuals, but it is not good for our country.

A few weeks ago, we had a debate about the American auto industry. Just about every expert recognizes that forced unionization has essentially run them out of business. There is a reason companies are leaving the forced compulsory union States and moving to Tennessee and South Carolina. It is because there is more freedom there. That is what this amendment is about. It is removing a Federal mandate that imposes on the freedom of every American.

It is very relevant to the discussion today. We are talking about fairness. We are talking about discrimination. We are talking about wages. But when we force an American to join a union, take part of their wages and give it to a union, that is not freedom. I cannot imagine anyone here who thinks through this issue saying it does not have something to do with fairness and discrimination and what we are about as a country. We should have a right to unionize, we should have a right not to unionize, but we should not force an American to join a union and make their job contingent on it. This is much greater discrimination than we are dealing with in this Ledbetter bill, and it is very appropriate, if we are going to talk about fairness in eliminating discrimination, that we include this amendment that would restore a basic freedom to every American. That is what this amendment is about, is doing exactly what my colleague from Tennessee said they enjoy there. Why shouldn't they enjoy those same freedoms in Michigan and other States?

I encourage my colleagues to set aside old ways of thinking and partisan politics, payback to unions. This is not about us. It is not about States. It is about people. It is about basic American rights. No American should be forced to join a union.

I urge my colleagues to support this amendment.

Mr. ALEXANDER. Madam President, if I were speaking in Tennessee, I would give the Senator from South Carolina an A-plus for his statement because it is exactly the law I want Tennessee to have. But what we are talking about here today is whether we want Washington to tell each State whether it can have a right-to-work law or agency shop or a union shop law. If Washington were to do that, Tennessee would not have a right-to-work law. We would not have permission to do that. We would not have an auto industry which is one-third of all of our manufacturing jobs.

So I want my Republican colleagues, if I may say so, to be very careful here. Do we really want Washington telling us that the principle is they are going to say whether we can have a right-to-work law? I don't want them telling me that.

Does that mean 1 minute?

The PRESIDING OFFICER. The Senator has 1 minute remaining.

Mr. ALEXANDER. When I was Governor of Tennessee—and I see the former Governor of Missouri here—nothing used to make me madder, to be blunt about it, than some Washington Congressman or Senator holding a press conference and telling me what to do because usually they would tell me what to do and not send the money, and then I would have to send the money on to the mayor, raise taxes, lower taxes. I would have to do something myself. We are perfectly capable of deciding whether we need a right-to-work law.

Last year, the Senator from New Jersey was trying to ship New Jersey's laws to Tennessee with a national law. I cannot stand up and say we want a national right-to-work law and then argue against having New Jersey's laws in Tennessee, for States and counties that don't want those laws. So we want to fit those to our own circumstances.

I greatly respect my colleague and friend, the Senator from South Carolina. On principle, he is right. There is another principle—federalism—that we can decide for ourselves. We would undermine that principle.

I urge my colleagues to vote against the DeMint amendment.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Madam President, how much time remains?

The PRESIDING OFFICER. The Senator has 38 seconds.

Ms. MIKULSKI. The Senator from South Carolina has how much time remaining?

The PRESIDING OFFICER. The Senator has 1 minute 12 seconds remaining.

Ms. MIKULSKI. I don't know whether the Senator wants to yield back his time or use the time for further debate.

Mr. DEMINT. Madam President, if I may continue, I will use the rest of my time. I want to make sure we are clear.

Again, my good friend from Tennessee has said that somehow this amendment is going to take away the rights of States to have a right-to-work law. This is a right-to-work law. Every State in the country would have a right to work, a right to choose to be union or not to be union. This is not to restrict a State in any way at all.

Right now, if a State wants to be right-to-work, it has to override Federal legislation. Most of us continuously talk about protecting secret ballots of workers. It is Federal legislation, it imposes a law on everyone, but it is protecting the rights of individuals because it is not about unions and it is not about the businesses for which they work. The Secret Ballot Protection Act would protect the individual and their rights. That is what this amendment is about. It is respecting the rights of individuals not to join a union. It does not take away any right from a State; it actually removes a Federal mandate on States.

I appreciate all the time that was given to this discussion. I, again, urge my colleagues to support my amendment.

Ms. MIKULSKI. Madam President, this amendment reverses decades of established labor law and addresses issues that have nothing to do with the Lilly Ledbetter Fair Pay Act. While the Senator from South Carolina debated right to work, I want to keep on fighting for the right to get equal pay for equal work.

I understand the DeMint amendment No. 31 is now the pending business. I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

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

The result was announced—yeas 66, nays 31, as follows:

[Rollcall Vote No. 11 Leg.]

YEAS—66

Akaka	Feingold	Merkley
Alexander	Feinstein	Mikulski
Baucus	Gregg	Murkowski
Bayh	Hagan	Murray
Begich	Harkin	Nelson (FL)
Bennet	Inouye	Nelson (NE)
Bingaman	Johanns	Pryor
Bond	Johnson	Reed
Boxer	Kaufman	Reid
Brown	Kerry	Rockefeller
Burris	Klobuchar	Sanders
Byrd	Kohl	Schumer
Cantwell	Landrieu	Shaheen
Cardin	Lautenberg	Snowe
Carper	Leahy	Specter
Casey	Levin	Stabenow
Collins	Lieberman	Tester
Conrad	Lincoln	Udall (CO)
Dodd	Martinez	
Dorgan	McCaskill	
Durbin	Menendez	

Udall (NM)	Warner	Whitehouse
Voinovich	Webb	Wyden

NAYS—31

Barrasso	DeMint	McCain
Bennett	Ensign	McConnell
Brownback	Enzi	Risch
Bunning	Graham	Roberts
Burr	Grassley	Sessions
Chambliss	Hatch	Shelby
Coburn	Hutchison	Thune
Cochran	Inhofe	Vitter
Corker	Isakson	Wicker
Cornyn	Kyl	
Crapo	Lugar	

NOT VOTING—1

Kennedy

The motion was agreed to.

CHANGE OF VOTE

Mr. CORKER. Mr. President, on rollcall vote No. 11, I voted ''aye.'' I ask unanimous consent that I be permitted to change my vote to ''nay'' since it will not affect the outcome of the legislation.

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

(The foregoing tally has been changed to reflect the above order.)

AMENDMENT NO. 37

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate equally divided prior to the vote on amendment No. 37, offered by the Senator from Georgia, Mr. ISAKSON.

The Senator will be in order.

Who yields time?

The Senator from Georgia is recognized.

Mr. ISAKSON. Mr. President, the bill as it is written applies to any claim back to May 28. But the way it is worded, it appears to me it is a claim filed and leaves it open for any past claim to be brought up that wasn't previously filed. The amendment simply ensures that the act couldn't be used for new claims to be filed retroactively all the way back to the passage of title VII of the Civil Rights Act. It is a mere matter of being clear that it doesn't retroactively open the opportunity to file new cases all the way back to the inception of the act.

Mr. ENZI. Mr. President, I would also like to speak in support of Senator ISAKSON's amendment No. 37. This amendment is about basic fairness. We have been talking a lot about fairness during consideration of this bill—fairness for employees who suffer discrimination and don't realize it before a legal deadline passes, and fairness for an employer who may have done nothing wrong but becomes a target of an ambitious trial lawyer eager to test new legal theories.

The question many people ask when looking at what the underlying bill would do is how is it fair to sue a businessperson over something that may or may not have happened in his or her company decades earlier? What is a businessperson to do if the person who is alleged to have committed the discriminatory act no longer works there or, perhaps, is deceased? Anyone can recognize the difficult position this creates. How do you prove something didn't happen years ago when the only witness other than the accuser is absent?

Senator ISAKSON has come up with a very equitable solution to this riddle. He recognizes that, if this bill is enacted, employers will have to keep a far more detailed record of every employment decision, every performance review, every personnel action, and more. The bill retroactively re-opens liability for dozens of years of employment decisions. Upon enactment of this bill, employers will be on notice that the statute of limitations for title VII cases virtually never expires. But it simply isn't fair to apply this new open-ended statute of limitations to employment decisions that occurred decades ago.

Senator ISAKSON's amendment resolves this inequity by applying the new law on a prospective basis. As a former small business person myself, I believe this is the only fair way to apply a new and burdensome standard.

I urge my colleagues to support this amendment.

Ms. MIKULSKI. Mr. President, I object to the Isakson amendment. It would create an arbitrary and unfair cutoff for those who get the benefits of this bill. If the Isakson amendment is agreed to, it would create a 20-month gap in the law. Those workers who were unfortunate enough to have been discriminated against during that 20-month period would be treated worse than those who came before them or after them. It is arbitrary and it is unfair.

I understand that the Isakson amendment is now the pending business.

I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

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

The result was announced—yeas 59, nays 38, as follows:

[Rollcall Vote No. 12 Leg.]

YEAS—59

Akaka	Durbin	Menendez
Baucus	Feingold	Merkley
Bayh	Feinstein	Mikulski
Begich	Hagan	Murray
Bennet	Harkin	Nelson (FL)
Bingaman	Inouye	Nelson (NE)
Boxer	Johnson	Pryor
Brown	Kaufman	Reed
Burris	Kerry	Reid
Byrd	Klobuchar	Rockefeller
Cantwell	Kohl	Sanders
Cardin	Landrieu	Schumer
Carper	Lautenberg	Shaheen
Casey	Leahy	Snowe
Collins	Levin	Specter
Conrad	Lieberman	Stabenow
Dodd	Lincoln	Tester
Dorgan	McCaskill	
Udall (CO)	Warner	Whitehouse
Udall (NM)	Webb	Wyden

NAYS—38

Alexander	DeMint	Martinez
Barrasso	Ensign	McCain
Bennett	Enzi	McConnell
Bond	Graham	Murkowski
Brownback	Grassley	Risch
Bunning	Gregg	Roberts
Burr	Hatch	Sessions
Chambliss	Hutchison	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Voinovich
Cornyn	Kyl	Wicker
Crapo	Lugar	

NOT VOTING—1

Kennedy

The motion was agreed to.

Ms. MIKULSKI. Mr. President, I move to reconsider the vote.

Mr. REID. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that when the Vitter amendment is offered, which will be very quickly, there be 15 minutes for debate, 10 minutes for Senator VITTER, 5 minutes for Senator MIKULSKI; that upon the use or yielding back of time, the Senate proceed to vote in relation to the amendment; that no amendment be in order to the amendment prior to the vote; that upon disposition of the Vitter amendment, no further amendments be in order, the bill be read a third time, and the Senate proceed to vote on passage of the bill; that the vote on passage would be as if it were a cloture vote, and that if the threshold is achieved, the bill is passed, with no intervening action or debate.

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

Mr. REID. Mr. President, I, on behalf of all Senate leadership, appreciate the way we have moved through this legislation. Now, were all of these votes easy? No, they were not easy. Some of them were difficult votes for a number of my Senators, I am sure on the other side of the aisle as well. But this is the way we need to operate as a Senate.

Were all of these amendments offered germane? No. But the people have a right to offer amendments. So I appreciate everyone's cooperation to this point. We are going to move forward, we hope, to work out, and we are going to clear, some of the nominations of President Obama tonight or tomorrow.

We also hope we can arrange to have, Monday night, a vote on Treasury Secretary-designee Geithner. We will try to do that at a time convenient. It has been suggested to me that time would be about 6 o'clock. We will probably come in sometime in the afternoon. It is my understanding that people who are for and against him want 2 hours of debate equally divided. But if people want to talk more, we can come in earlier in the afternoon and do some morning business, and people can talk about whatever they want during that time.

We also understand we are going to be able to move to the SCHIP bill without filing cloture. I was going to file cloture on that tonight, but it is my understanding that we can start that Monday night and work through the amendments on that next week. We are going to finish that next week. I understand there will be a lot of amendments. I am sure that is the case.

The reason we have to complete work on it next week is that we must move to the economic recovery package. We only have 2 weeks to finish that. I want to spend a good, long, hard week finishing what we are doing before we send our product to the House because we need that final week to make sure we do conferences and messages and work out whatever differences we have between the two bills.

We are not going to be able to take our recess for Presidents Day unless we finish that legislation. I think everyone agrees, Democrats and Republicans agree, we need to get this done. The imperative of doing this every day becomes more pronounced, in my mind. We had our Democratic policy committee today where we had Alan Blinder, who is a Democrat; Martin Feldstein is a Republican; and Mark Zandi, who I think is a Republican. I am pretty sure he is. He was one of Senator MCCAIN's chief advisers. They all agreed and, in fact, Mark Zandi said to me before the presentation: You are going to be hearing from dark, darker, to darkest. We have economic problems that have never been seen in this country or the world before and we have to work to see what we can do to help alleviate the problems that exist out in that difficult financial world in which we find ourselves.

So that is why people should not plan on next weekend going home. You should plan on being here. If there is a way we can work our way around that, I will be happy to do that. But I think the chances are quite slim that we would be able to do that.

Mr. SCHUMER. Mr. President, today we get a second chance to do the right thing.

Millions of American women and men understand that it is wrong for a woman to work, year after year, alongside a man and make less money simply because she is a woman.

Millions of American women understand—unfortunately many know first hand—that you don't always know when you are being discriminated against. Proof that you have been a victim of discrimination rarely boils down to one magic moment where the curtain is raised and it is all made clear. And of course, the curtain hardly ever comes up within 180 days of the actual ''act'' of discrimination.

All too often, discrimination based on gender happens exactly the way it happened to Lilly Ledbetter. Paycheck after paycheck, a woman receives lower pay than her male colleagues. But only after years does she discover that this was even happening. Only after years does she discover that it has been the result of discrimination.

It is just as demeaning, and in many ways even more frustrating, than a single, concrete episode of bias.

Justice Ruth Bader Ginsburg, who took the unusual step of reading her dissent in Lilly Ledbetter's case from the bench, was outraged by her compatriots on the Supreme Court who held the passage of time against Lilly Ledbetter. You see, Justice Ginsburg understands what so many Americans also understand—that it is often a series of small and hidden decisions that add up to a lifetime of unequal pay. This kind of discrimination can't be tied to one definitive act. Instead, it comes from the cumulative effect of weeks, months, and sometimes years of bigotry and injustice.

Many of us have daughters and granddaughters who need us to vote for the Lilly Ledbetter Fair Pay Act. What will you say if your daughter or granddaughter calls you tonight and said, ''Hey, I need some advice. I have had this job for 5 years. I have been working really hard and I have always had good reviews, my colleagues like me, and I love my job. I need this job to support my family. But I just found out that all along, I have been getting paid about 75 percent of what the guys here get paid for doing the same thing. I have been asking around and it turns out our supervisors have been doing this for a while—paying men more, and saying things about women that are negative. One guy even said that our workplace doesn't need women. What should I do?''

Do you want to tell your daughter or granddaughter, ''Well, if the decision to discriminate against you was made more than 180 days ago, that is too bad, you should have complained earlier''?

I don't want to do that, and I don't intend to. I want to be able to say to my daughter, and all American daughters, wives, sisters, and granddaughters: There is something you can do about this. This behavior is wrong, and Congress gave you a way to make it right. Plain and simple.

It is un-American to work your whole life for a fraction of what your colleagues make, solely because you are a woman. It is un-American to tell a woman who just wants a fair shake in exchange for 20 years of work that she should have known what was going on, and now it is too late—that she should have filed a new claim after every paycheck.

Congress did not pass Title VII, not to mention the Equal Pay Act, 46 years ago only to lace it with traps and trip wires for the unwary worker.

Some critics of the Lilly Ledbetter Fair Pay Act have said that it will lead to an onslaught of lawsuits. But the Congressional Budget Office has said that this isn't true. I believe that is based on the obvious proposition that most women don't want to sue their employers. They don't go out of their way to ruin their own lives with lawsuits. They didn't do it before the Ledbetter decision, and there is no reason to believe that they will do it after we restore the import of the law.

Lilly Ledbetter didn't want to sue. In fact she has said that she wouldn't have bothered if she thought the case was close, or the result of an oversight, or based on poor reviews. But, as all of the evidence showed, it wasn't. Lilly Ledbetter said: ''It wasn't even close to being fair. I had no choice. I had to go to court. I had to stand up for what was right.''

This bill isn't some windfall for women to sit on their hands without bringing claims during years of discrimination. All of an employer's normal defenses are untouched by this bill. We have discussed the legal defenses and the operation of various parts of this bill ad nauseum, but overlawyering this isn't going to change the fact that women make 78 cents on the dollar compared to similarly situated men.

The right to make a fair wage to support your family, regardless of gender, is not something that should be doubted in America. The right to equal paychecks is something that Congress thought it guaranteed 46 years ago, and which was not in doubt until Lilly Ledbetter's case reached the Supreme Court.

We must take the very simple step of restoring this right so that women in America can be assured that their hard work for their families and their country will be compensated on the same basis as men.

Mrs. BOXER. Mr. President, I rise in strong support of the Lilly Ledbetter Fair Pay Act.

As we begin our work this Congress to address the greatest economic challenge our nation has faced in a generation, the solutions we consider must focus on strengthening the middle class.

Last month the economy lost 524,000 jobs, and in 2008, 2.6 million jobs were lost—the most in one year since 1945.

Unemployment continues to climb—in some areas of my State of California, the unemployment rate is over twelve percent. Wages for many in the middle class have actually decreased over the last 8 years.

And 46 years after passage of the Equal Pay Act, workers throughout the nation still suffer pay discrimination based on gender, race, religion, national origin, disability and age.

When it comes to achieving the principle of equal pay for equal work, we still have a long way to go.

Women workers today earn only 78 cents for every dollar men earn. The pay disparity is still so great that it takes a woman 16 months to earn what a man earns in 12 months.

In 2006, an average college-educated woman working full time earned $15,000 less than a college-educated male.

According to the American Association of University Women, working families lose $200 billion in income per

year due to the wage gap between men and women.

To put it simply, pay discrimination is hurting our middle class families and hurting our economy.

Unfortunately there is no easy solution that will eliminate all pay discrimination.

But what this bill will do is ensure that when an employer discriminates based on gender or race or other factors, the employee can have his or her day in court.

With its 2007 Ledbetter v. Goodyear decision, the Supreme Court reversed decades of legal precedent in the courts of appeals and long-standing Equal Employment Opportunity Commission policies, and effectively undercut a commonsense, fundamental protection against pay discrimination.

With its decision, the Court imposed significant obstacles for workers by requiring them to file a pay discrimination claim within 180 days of when their employer FIRST starts discriminating—an almost impossible standard.

This bill simply restores the law to what it was prior to the Court's decision in a workable and fair way that will protect people like Lilly Ledbetter from discrimination.

Mr. President, the story of Lilly Ledbetter makes it clear why this legislation is necessary.

The discrimination she suffered is not unfamiliar to many female and minority employees in manufacturing plants and office parks across the country.

Ms. Ledbetter was a female manager at an Alabama Goodyear Tire plant when she discovered after 19 years of service that she was earning 20 to 40 percent less than her male counterparts for doing the exact same job.

As Justice Ginsburg noted in her dissenting opinion, ''the pay discrepancy between Ledbetter and her 15 male counterparts was stark.''

In 1997, her last year of employment at Goodyear, after 19 years of service, Ms. Ledbetter earned $5,608 less than her lowest-paid male coworker. She earned over $18,000 less than her highest-paid male coworker.

Evidence submitted in her trial showed that Ms. Ledbetter was denied raises despite receiving performance awards, her supervisors were biased against female employees, and that in some cases, female supervisors at the plant were paid less than the male employees they supervised.

When Ms. Ledbetter discovered this, she took Goodyear to court and a jury awarded her full damages.

But Goodyear appealed the jury's decision, and in 2007, the Supreme Court overturned the verdict and said that Ms. Ledbetter could not sue for back pay despite overwhelming evidence that her employer had intentionally discriminated against her because of her gender.

The Supreme Court threw out the case because it took her longer than six months to determine that she had been the victim of years of pay discrimination.

This is an unfair standard.

In most situations, if an employee suspects pay discrimination, it takes significant time to determine the facts.

As Justice Ginsburg pointed out, ''compensation disparities are often hidden from sight for a number of reasons.''

Ginsburg's point underscores the unreasonableness of the standard created by the Supreme Court.

Many employers do not publish employee salaries and employees are often not eager to discuss their wages with other employees.

Earlier this month the New York Times reported that ''in the last 19 months, Federal judges have cited the Ledbetter decision in more than 300 cases . . .''

This decision has had significant impacts on the employees alleging pay discrimination, severely limiting their rights to equal pay. Some courts are also using the decision to limit rights in other areas of the law, like equal housing, equal education, and civil rights cases.

The Ledbetter decision was a giant step backward in the fight for equal opportunities and equal rights.

Goodyear engaged in chronic discrimination against female employees, but because of this decision, the courts must treat intentional, ongoing pay discrimination as lawful conduct.

Employers who can conceal their pay discrimination for 180 days are free to continue to discriminate with no redress for the employee.

We must ask ourselves: Is this a standard that Congress should support?

This bill simply restores the law to what it was in almost every state in the country before the Ledbetter case was decided. That law basically said you had 180 days to seek justice on equal pay for equal work each time that you were discriminated against.

It does so by eliminating the unreasonable barrier created by the Supreme Court and allows workers to file a pay discrimination claim within 180 days of each discriminatory paycheck.

For the Nation's working families and middle class to succeed and grow, the principle of equal pay for equal work must have teeth, it must have meaning, and this bill restores meaning to the equal pay principle.

Justice Ginsburg told us, ''Congress, the ball is in your court.''

The time is now to restore decades of legal precedent and prevent the narrow Ledbetter decision from impacting more Americans facing discrimination.

We must restore this important protection and return the law to its intended meaning.

I urge my colleagues to vote for this bill.

Mr. DODD. Mr. President, I rise today to speak about an issue of fundamental economic fairness—an issue that affects the dignity and the security of millions of Americans: the right to equal pay for equal work.

Before I begin, let me thank Senator KENNEDY, the chairman of the HELP Committee, and Senator MIKULSKI, for their tireless work on this important issue.

The Lilly Ledbetter Fair Pay Act goes a long way toward ensuring that right to equal pay. In a perfect world, of course, we could take that right for granted—we could take it for granted that the value of work lies not in the race or gender of the person who is doing it but in a job well done.

Unfortunately, we don't live in that world. We know that, even now, some employers cheat their employees out of equal pay for equal work.

That's what happened to Lilly Ledbetter. For almost two decades, from 1979 to 1998, she was a hard-working supervisor at a Goodyear tire plant in Gadsden, AL.

And it is telling that she suffered from two types of discrimination at the same time. On the one hand, there was sexual harassment, from the manager who said to her face that women shouldn't work in a tire factory, to the supervisor who tried to use performance evaluations to extort sex.

And on the other hand, there was pay discrimination: by the end of her career, as the salaries of her male coworkers were raised higher and faster than hers, she was making some $6,700 less per year than the lowest paid man in the same position.

Now, the two kinds of discrimination faced by Ms. Ledbetter have a good deal in common. Morally, each amounts to a kind of theft—the theft of dignity in work and the theft of the wages fairly earned.

Both send a clear message as well—that women don't belong in the workplace.

But there is a clear difference between sexual harassment and pay discrimination. The former is blatant. The latter far too often stays insidiously hidden.

In fact, Lilly Ledbetter didn't even know she was being paid unfairly until long after the discrimination began. Absent an anonymous coworker giving her proof, she might be in the dark to this very day.

And that is hardly surprising. How many Americans know exactly how much their coworkers make? What would happen if they asked? At some companies, you could be fired.

Armed with proof of pay discrimination, Ms. Ledbetter asked the courts for her fair share. And they agreed with her: she had been discriminated against.

She had been cheated.

And she was entitled to her back pay.

Unfortunately, the Supreme Court ruled against her, and took it all away. Yes, she had been discriminated against—but she had missed a very important technicality.

She only had 180 days—6 months—to file her lawsuit—and the clock started running on the day Goodyear chose to discriminate against her.

Never mind that she had no idea she was even the victim of pay discrimination until years later. Figure it out in 180 days, the Court said or you are out of luck for a lifetime.

It is not hard to see how this ruling harms so many Americans beyond Ms. Ledbetter. In setting an extremely difficult, arbitrary, and unfair hurdle, it stands in the way of many, many Americans fighting against discrimination.

It also flatly contradicts what had been the standard practice of the Equal Employment Opportunity Commission, flies in the face of decades of legal precedent, and ignores clear congressional intent.

As Justice Ginsburg put it in her vehement dissent, the Court's Ledbetter ruling ignores the facts of discrimination in the real world. She writes:

Pay disparities often occur . . . in small increments; cause to suspect that discrimination is at work develops only over time. Comparative pay information, moreover, is often hidden from the employee's view . . . Small initial discrepancies may not be seen as meet for a federal case, particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves.

''The ball,'' Ginsburg concluded, ''is in Congress's court . . . The legislature may act to correct this Court's parsimonious reading.''

That is precisely what we are here to do today. With today's passage of the Lilly Ledbetter Fair Pay Act, employees will have a fair time limit to sue for pay discrimination. They will still have 180 days, but the clock will start with each discriminatory paycheck, not with the original decision to discriminate. After all, each unfair paycheck is in itself a decision to discriminate—it is ongoing discrimination. Employees like Ms. Ledbetter will no longer be blocked from seeking redress, through no fault of their own, except a failure to be more suspicious.

This is an important moment and important bill. I do wish we were also strengthening the remedies available to victims of pay discrimination under the Equal Pay Act.

For this reason we must also pass into law the Paycheck Fairness Act, authored by my friend and colleague in the Connecticut delegation, Congresswoman ROSA DELAURO, and championed in the Senate by Senator Hillary Clinton. Had paycheck fairness been law when Lilly Ledbetter decided to go to court, she may well have received just compensation for the discriminatory practices she endured. She certainly would have had a stronger case to make and a greater array of tools. So, as critical as the Lilly Ledbetter Fair Pay Act is, we certainly have more work to do.

Millions of Americans depend on the right to equal pay for equal work: to earn a livelihood, to feed their families, and to uphold their basic dignity. We ought to make it easier for Americans to exercise that right, not harder. We ought to get unfair roadblocks, hurdles, and technicalities out of their way. With passage of the Lilly Ledbetter Fair Pay Act, we take an important step toward eliminating these discriminatory roadblocks once and for all.

Ms. MURKOWSKI. Mr. President, I rise to speak about my vote on final passage of the Lilly Ledbetter Fair Pay Act.

I want to first reiterate a most important statement of the entire debate on this bill, with which we all agree. As I said yesterday, during debate on Senator HUTCHISON's substitute amendment, discrimination because of an individual's gender, ethnicity, religion, age, or disability cannot be tolerated. No Americans should be subject to discrimination, and if they are, they have the right to the law's full protection.

Having said that, I am pleased that we have had the opportunity to offer and vote on amendments that Members of the Senate believe would have perfected this legislation. I would also note that this opportunity is a welcome reversal from last year, when we did not have an opportunity to offer amendments, and it was for that reason that I voted against cloture last year.

As you know, I have had concerns about the Fair Pay Act's deletion of the statute of limitations. In my view, once an employee knows, or has a reasonable suspicion, that he or she has been the subject of discrimination, the employee has the responsibility to file a complaint within a reasonable amount of time. That responsibility benefits the employee first of all, but also benefits the employer, if a claim is pursued while records are available and memories are fresh. In addition, the employee is more likely to be able to recover the full amount of his or her lost wages rather than just the previous 2 years' wages.

For these reasons, I supported Senator HUTCHISON's substitute amendment. Her amendment recognized the important point that many employees do not know that their rate of pay is discriminatory. It would also have restored beneficial timeliness to the process once the employee suspected or knew of discrimination. I am disappointed that this amendment failed.

At the end of the day, however, after the amendment process has concluded—a process that was not available to us last year—I believe it is more important to vote for legislation that will improve every American's ability to access full redress for any act of wage discrimination.

The Fair Pay Act provides that vital protection. For that reason, I will vote for this legislation.

Mr. LEVIN. Mr. President, I support the Lilly Ledbetter Fair Pay Act. This legislation is important to ensure that Americans from all walks of life have a realistic opportunity for recourse if they are victims of pay discrimination. We are considering this bill because of the Supreme Court's interpretation, in Ledbetter vs. Goodyear Tire & Rubber Co., of title VII of the Civil Rights Act of 1964. The Court's 5 to 4 ruling makes it almost impossible for many victims of pay discrimination to find an adequate legal remedy under the Civil Rights Act. The legislation we are considering today will correct that.

The Civil Rights Act established the Equal Employment Opportunity Commission, EEOC, to enforce title VII. The EEOC is empowered to protect against employment discrimination based on sex, race, national origin, religion and disability by receiving complaints of discrimination, investigating discrimination, conducting mediations to settle complaints and filing law suits on behalf of employees.

Despite the efforts of the EEOC, the United States still suffers from significant pay iniquities. Numerous studies using census data and controlling for work patterns and socioeconomic factors found that half or more of the wage gap between males and females is due to gender alone, demonstrating that discrimination based on gender is all too common in American work places. Over the past decade, the EEOC has averaged more than 24,400 complaints of sex-based discrimination each year.

One of those complaints was filed in 1998 by a woman named Lilly Ledbetter. She alleged that she was the victim of a sex-based pay disparity during her nearly 20-year career at Goodyear. Ledbetter sued Goodyear, and a jury awarded her back pay and damages after finding, among other things, that Ledbetter was being paid $550 to $1550 less per month than her male counterparts who were doing the same work. For almost her entire tenure at Goodyear, Letbetter was not aware that she was being discriminated against because the pay levels of her coworkers were kept strictly confidential. In fact, she only learned that she was making less than males doing the same job as her because of an anonymous tip that she received shortly before her retirement.

Congress's intent in passing the Civil Rights Act and in passing subsequent updates to the Civil Rights Act in 1991 a bill which I supported was to help remedy the sort of discrimination that Lilly Ledbetter fell victim to. Although the validity of claims of pay discrimination filed within 180 days of receiving a paycheck reflecting discriminatory policies has been recognized by countless lower courts and was explicitly accepted under EEOC guidelines and by previous EEOC administrative decisions, the Supreme Court ruled that Ledbetter's claim of discrimination was not actionable under title VII. Their opinion stated that Ledbetter's claim was not filed within 180 days of the discriminatory act against her.

In ruling against Ledbetter, the majority's opinion stated that ''it is not [the Supreme Court's] prerogative to change the way in which title VII balances the interests of the aggrieved

employees against the interest in encouraging the prompt processing of all charges of employment discrimination.''' The majority concluded that ''Ledbetter's policy arguments for giving special treatment to pay claims find no support in the statute'' and that the Supreme Court must apply ''the statute as written, and this means that any unlawful employment practice including those involving compensation, must be presented to the EEOC within the period prescribed in the statute.''

The dissenters rightly characterize the majority opinion as ''parsimonious.'' I believe that the majority put forth a misguided interpretation of unlawful employment practices, and in doing so incorrectly found that Lilly Ledbetter's claim did not fall within title VII of the Civil Rights Act. I also believe that the opinion of the Court required an unreasonable interpretation of Congress's intent in title VII. Their finding would make it next to impossible to file a successful claim of discriminatory pay, given the challenges in detecting such discrimination. The Supreme Court interpreted Congressional intent in a civil rights law in a way that is restrictive of peoples' civil rights and available remedies.

But the issue for us to decide is not what a previous Congress intended. We are to decide what the law should be, and what is right. This legislation determines that each discriminatory paycheck will qualify as an unlawful employment practice under title VII. Equitable remedies defendants can raise, including laches, are not disturbed by this bill.

The Lilly Ledbetter Fair Pay Act will restore the protections against discriminatory pay that Congress and the courts have previously endorsed, and provide a reasonable route through the EEOC and the court system for people like Lilly Ledbetter to have pay discrimination corrected and remedied.

Mrs. FEINSTEIN. Mr. President, I rise today in support of the Lilly Ledbetter Fair Pay Act of 2009.

This bill is about equality, and it is about fairness. Although our country has made many important strides toward equality, when it comes to the week-to-week question of paychecks, or the day-to-day issue of financial security, women continue to lag behind.

Women simply are not paid as much as men, even when they do the exact same job.

Last summer, the U.S. Census Bureau reported that women who work full time earn, on average, only 78 cents for every dollar that men earn.

This is not an insignificant difference. It means that when a man is paid $50,000 a year for a certain kind of work, a woman may receive only $39,000. That is $11,000, or 22 percent less.

But when women go to pay their bills, to buy groceries, or to try to find health care, they are not charged 22 percent less. They are charged the same and must stretch their finances as best they can to make ends meet.

Women's financial struggles do not affect them alone. They affect countless families across the country. According to the U.S. Census, as of 2007, approximately 20 percent of American households were headed by women, and other surveys of households have revealed that a majority of women report providing more than half of their household incomes, with over a third totally responsible for paying the bills.

Ensuring equality in pay is absolutely essential right now. While all Americans are concerned about downturns, layoffs, stagnant wages, and pay cuts, it is also true that in an economic downturn, women suffer disproportionately under almost every economic measure. Women lose their jobs more quickly than men, and in December 2008, 9.5 percent of women who were the heads of their households were unemployed. Women's wages fall more rapidly. Women are disproportionately at risk for foreclosure, and as of last year, 32 percent more likely to receive subprime mortgages than men. And women have fewer savings on average.

The Lilly Ledbetter Fair Pay Act takes an important step forward in protecting working American women's financial well-being. The bill reverses the Supreme Court's parsimonious reading of pay discrimination law in Ledbetter v. Goodyear Tire & Rubber Co. so that women will not be turned away twice—first by their employers when they seek equal pay for equal work, and second by the courts when they go to file claims of unfair treatment.

The bill is a necessary correction to a Supreme Court decision that was incorrect. The bill ensures that when employers unlawfully pay women less for performing the same job, they can seek recourse in the Federal courts.

I also want to say a word about the amendments offered today. The Lilly Ledbetter Fair Pay Act does not change the substance of title VII discrimination law. What it does is make sure that women who have meritorious discrimination claims under that law are not unfairly denied the right to go to Federal court and recover compensation.

The bill says that women can file their claims within 180 days of their last discriminatory paycheck and can recover up to 2 years' back pay from that date. Any stricter timing requirement is simply out of touch with the realities of the workplace.

As Justice Ginsburg explained in her dissent in the Ledbetter case:

> [I]nsistence on immediate contest overlooks common characteristics of pay discrimination. . . . Pay disparities often occur, as they did in Ledbetter's case, in small increments; cause to suspect that discrimination is at work develops only over time. . . . [A worker's] initial readiness to give her employer the benefit of the doubt should not preclude her from later challenging the then current and continuing payment of a wage depressed on account of her sex.

When women work the same jobs as men with the same skill, they should be paid the same amount. If they are not paid the same amount because of discrimination, they should be able to seek recourse in Federal courts. I urge my colleagues to support this bill and restore American fair pay law.

Mr. SANDERS. Mr. President, soon we will be voting on the Lilly Ledbetter Fair Pay Act, S. 181. The House of Representatives has already passed this legislation by a vote of 247 to 171. Passing this bill today will send a clear message that our country will not tolerate unequal pay for equal work.

As astonishing as it is, in the year 2009, women earn, on average, only 77 cents for every dollar earned by men in comparable jobs. What a truly unthinkable, and frankly disgraceful, circumstance—one that we must do everything within our power to change. Today we have the opportunity to take a small but very significant step in making sure that Americans have the legal opportunity to challenge pay discrimination.

Lilly Ledbetter was a loyal employee at Goodyear Tire and Rubber Company for 19 years. At first, her salary was in line with that of her male colleagues, but over time she got smaller raises creating a significant pay gap. Ms. Ledbetter was not aware of this pay discrimination until she received an anonymous note detailing the salaries of three male coworkers. After filing a complaint with the Equal Employment and Opportunity Commission, her case went to trial and the jury awarded her $3.3 million in compensatory and punitive damages due to the extreme pay discrimination she endured.

The Court of Appeals for the Eleventh Circuit reversed this verdict, arguing that Ms. Ledbetter filed her complaint too late. If you asked anyone on the street, they would tell you that this decision goes against the citizens of this country's sense of right and wrong. How was she to know that this discrimination was happening? Ms. Ledbetter was already facing sexual harassment at Goodyear Tire and Rubber Co. and told by her boss that he didn't think a woman should be working there. To argue that Ms. Ledbetter should have asked her male counterparts what their salaries were at the moment she suspected discrimination defies common sense. This topic was off limits, as it is in most work places. It is clearly not her fault she didn't discover this inequity sooner.

In 2007, the Supreme Court upheld the Eleventh Circuit ruling in Ledbetter v. Goodyear Tire and Rubber Co. and, as a result, took us a step back in time. It gutted a key part of the Civil Rights Act of 1964 that has protected hardworking Americans from pay discrimination for 45 years by making it extraordinarily difficult for victims of pay discrimination to sue their employers.

The bill before us overturns the Court's 5–4 decision and reinstates prior law. It ensures that victims of pay discrimination will not be penalized if they are unaware of wage disparities. I am happy to say that we will have the opportunity today to protect millions of hardworking Americans and reverse the unreasonable and unfair Ledbetter decision. I call on all of my Senate colleagues to vote in favor of this bill, which will send a clear signal that pay discrimination is unacceptable and will not be tolerated.

Ms. SNOWE. Mr. President, I come to the floor today to thank my Senate colleagues—particularly the persistent efforts of Senator MIKULSKI, but also to commend Senators KENNEDY and SPECTER for their willingness to address a controversial Supreme Court decision head-on. I am proud to see the Senate taking up an issue that is so fundamental to America—to the way we see ourselves, to the way we are perceived around the world, to the core principles by which our country abides. Equality. Fairness. Justice.

I believe everyone in this body is familiar with the story of Lilly Ledbetter. She spent 20 years diligently working at the same company, at the same facility in suburban Alabama, striving alongside her coworkers, both male and female. Unknown to her at the time, from her earliest days at the facility she had become a victim of gender discrimination. How? Over time, those male colleagues who rose through the ranks at the same rate as Ms. Ledbetter were receiving considerably more compensation.

Then, one day in June of 1998, her eyes were opened by an anonymous individual who provided her with documentation finally alerting her to the discrepancy in wages. From there, her legal odyssey began. She filed a complaint with the Equal Employment Opportunity Commission, EEOC, in July, filed a discrimination lawsuit 4 months later and found herself at what she expected to be the end of her journey, the U.S. Supreme Court, 8 years later. But this was not the end of the journey.

As Justice Ginsburg indicated in her dissenting opinion, the majority did not sufficiently consider the broad array of case law that would have resulted in a decision in favor of Ms. Ledbetter. Yet we are here today not to argue the validity of the May 2007 Supreme Court decision. Rather, we are here to address the root of the problem, a role Congress must fulfill when the law clearly is lacking. In fact, in that same dissent, Justice Ginsburg urged Congress to act expeditiously to repair this inequity. Today, we are one step closer to doing just that.

The existing statute plainly indicates the discrimination must have occurred within 180 days of filing the complaint in order for the complaint to be considered timely. But as Ms. Ledbetter's case proves, this provision, now codified in title VII of U.S. law, is fundamentally flawed. With respect to a situation like that experienced by Ms. Ledbetter, and thousands of American women every day, the statute is not tailored in such a way to recognize long-term workplace discrimination. If a woman is terminated solely because of her gender—or perhaps passed over for promotions or increased compensation irrespective of merit, but instead based solely on the fact she is a woman, she typically would have the ability to meet the 180-day requirement.

But the kind of mistreatment we are attempting to rectify with this legislation is both subtle and longstanding, it is almost impossible to comply with the statute as written. Generally, women like Ms. Ledbetter enter a company on a lower pay scale than their peers, and starting with such a handicap continues to plague them throughout their careers. Over time, that gulf between her compensation and that of her male colleagues only widens. But why should they be penalized in law simply because they didn't have the information necessary to know they were being discriminated against? Do we really wish to say that justice should be arbitrarily decided merely by a date and time?

Now, opponents of the legislation have indicated the Ledbetter bill before us today will cost jobs, that it is a radical departure from the intent of the law, that it will impose massive costs on employers, and encourage a deluge of lawsuits. But nothing could be further from the truth.

This bipartisan bill would simply restore the law of the land prior to the Supreme Court's 2007 decision. Nine courts of appeals followed the approach we endorse in this bill, and the EEOC used the same underpinnings included in the Ledbetter bill under both Democratic and Republican administrations. In fact, the legislation mimics language that Congress employed in the Civil Rights Act of 1991 to mitigate a Supreme Court decision that all but eliminated employees' opportunity to challenge seniority systems in the workplace.

Indeed, after 17 years, this language has not resulted in even a minimal spike in claims through the kind of broad interpretation we were warned against. That's why the nonpartisan Congressional Budget Office, CBO, has specifically stated it will not significantly increase the number of pay discrimination claims. What it will do is give workers who have reasonable claims a fair chance to have them heard.

In addition, this legislation does nothing to alter current limits on the amount employers owe. Under Senator MIKULSKI's bill, employers would not have to make up for salary differences that occurred decades ago. Current law limits back pay awards to 2 years before the worker filed a job discrimination claim under title VII of the Civil Right Act of 1964. The bill would do nothing to change this 2-year limit on back pay.

Some view this as a unique circumstance specific to Ms. Ledbetter. I wholeheartedly disagree. According to a Government Accountability Office presentation based on the 2000 Census data, 7 of the 10 industries that hire the majority of women in this country experienced a widening of the wage gap between male and female managers. In 1963, when Congress passed the Equal Pay Act, a woman working full-time was paid 59 cents on average for every dollar paid to male employees, while in 2005 women were paid 77 cents for every dollar received by men. Over the last 42 years, despite our best efforts, the wage gap has only narrowed by less than half of a penny per year.

In my home State of Maine, the situation is even harsher for women in the workplace. For women in Maine, the concern about equal pay is especially acute. In 2007, on average, women in my State working full-time year-round earned only 76 percent of what men working full-time, year-round earned. This is 2 percentage points below the nationwide average of 78 percent. Over recent years, the gender wage gap has plateaued—we are not making progress. The following point is particularly illustrative—the wage gap in Maine persists, like it does across America, at all levels of education. Women in the State with a high school diploma earned only 62 percent of what men with a high school diploma earned. In fact, as is true nationwide, the average woman in Maine must receive a bachelor's degree before she earns as much as the average male high school graduate.

So, today, we have come here only to ensure that women who have been treated unfairly in the workplace have the opportunity to seek redress. In conclusion, Lilly Ledbetter's journey—indeed, the journey of all working women—continues. Like Ms. Ledbetter, many of us who followed the case all the way to the chambers of the Supreme Court considered it the final step. We were wrong—but now we have the opportunity to right that injustice. I urge my colleagues to support final passage for this legislation, and guarantee that the Senate's support for this legislation is indeed her final step on a decade-long journey.

Mr. FEINGOLD. Mr. President, I am pleased to support the Lilly Ledbetter Fair Pay Act of 2009, legislation that I have cosponsored for the past 2 years. This legislation simply seeks to protect American workers from pay discrimination based on factors such as race, gender, religion, and national origin. I am pleased that the Senate is on the verge of finally passing this important bill after we came so close to passing it last year. For over 2 years, Lilly Ledbetter, the victim of discriminatory pay based on gender, has worked tirelessly to move this legislation forward and today's Senate passage of the Ledbetter bill marks an important victory for her and the many advocates

around the country who joined with her.

These are challenging economic times for many families in Wisconsin and around the country. Too many workers are struggling to hang onto their jobs, their homes, and provide for their children. We in Congress need to do all we can this year to help create solid family-supporting jobs, but we also need to make sure that people who already have jobs can support their families. We need to pass legislation like the Ledbetter bill to help ensure that workers are treated fairly and earn what they deserve.

I know many of my colleagues in the Senate share my disappointment and frustration that, despite all the gains women have made since gaining the right to vote 100 years ago, they still make 77 cents on the dollar compared to their male counterparts. It is hard to believe that this pay disparity continues to exist in the 21st century. Unfortunately, the pay disparity not only exists but is even larger in my State of Wisconsin. According to data gathered by the Institute for Women's Policy Research, IPWR, women's salaries were only approximately 72 percent of men's salaries in Wisconsin. The wage gap gets even larger when you look at the earnings of minority women throughout Wisconsin. In 1999, African-American women's salaries were only around 63 percent of White men's salaries; while Hispanic women's salaries were only 59 percent of White men's salaries according to an analysis of Wisconsinites' wages by IWPR.

These troubling wage gaps exist throughout the country and, thanks to the flawed Supreme Court decision in Ms. Ledbetter's case, it is now even more difficult for hard-working Americans to seek legal redress for this inequity in the workplace.

As we heard in testimony before the Judiciary Committee last year, Lilly Ledbetter's experience ''typifies the uphill battle that American workers face'' in efforts to ''right the wrong of pay discrimination.'' After she found out that she was being paid less than her male counterparts, she filed a complaint with the EEOC and then brought a lawsuit in Federal court in Alabama. The Federal district court ruled in her favor, but 2 years ago, the Supreme Court ruled that Ms. Ledbetter had filed her lawsuit too long after her employer originally decided to give her unequal pay. Under title VII of the Civil Rights Act of 1964, an individual must file a complaint of wage discrimination within 180 days of the alleged unlawful employment practice. Before the Ledbetter decision, the courts had held that each time an employee received a new paycheck, the 180-day clock was restarted because every paycheck was considered a new unlawful practice.

The Supreme Court changed this longstanding rule. It held that an employee must file a complaint within 180 days from when the original pay decision was made. Ms. Ledbetter found out about the decision to pay her less than her male colleagues well after 180 days from when the company had made the decision. Under the Supreme Court's decision, it was just too late for Ms. Ledbetter to get back what she had worked for. It did not matter that she only discovered that she was being paid less than her male counterparts many years after the inequality in pay had begun. And it did not matter that there was no way for her to find out she was being paid less until someone told her that was the case.

In Ms. Ledbetter's case, to put it simply, the Supreme Court got it wrong. It ignored the position of the Equal Employment Opportunity Commission and the decisions of the vast majority of lower courts that the issuance of each new paycheck constitutes a new act of discrimination. It ignored the fact that Congress had not sought to change this longstanding interpretation of the law.

The Court's decision also ignores realities of the American workplace. Perhaps we lose sight of this in Congress, since our own salaries are a matter of public record, but the average American has no way of knowing the salary of his or her peers. As Ms. Ledbetter noted, there are many places across the country where even asking your coworkers about their salary would be grounds for dismissal.

The Lilly Ledbetter Fair Pay Act, which has been pending in the Senate since shortly after the Supreme Court's erroneous decision, reestablishes a reasonable timeframe for filing pay discrimination claims. It returns the law to where it was before the Court's decision, with the time limit for filing pay discrimination claims beginning when a new paycheck is received, rather than when an employer first decides to discriminate. Under this legislation, as long as workers file their claims within 180 days of a discriminatory paycheck, their complaints will be considered.

This bill also maintains the current limits on the amount employers owe once they have been found to have committed a discriminatory act. Current law limits back pay awards to 2 years before the worker filed a job discrimination claim. This bill retains this 2-year limit, and therefore does not make employers pay for salary inequalities that occurred many years ago. Workers thus have no reason to delay filing a claim. Doing so would only make proving their cases harder, especially because the burden of proof is on the employee, not the employer.

Opponents say that this bill will burden employers by requiring them to defend themselves in costly litigation. This is simply not the case. Most employers want to do right by their employees and most employers pay their employees fair and equal wages. This legislation is targeted at those employers who underpay and discriminate against their workers, hoping that employees, like Ms. Ledbetter, won't find out in time. The Congressional Budget Office has also reported that restoring the law to where it was before the Ledbetter decision will not significantly affect the number of filings made with the EEOC, nor will it significantly increase the costs to the Commission or to the Federal courts.

The impact of pay discrimination continues throughout a person's life, lowering not only wages, but also Social Security and other wage-based retirement benefits. This places a heavy burden on spouses and children who rely on these wages and benefits for life's basic necessities like housing, education, healthcare, and food. This discrimination can add up to thousands, even hundreds of thousands, of dollars in lost income and retirement benefits. In these challenging economic times, Congress must do all it can to ensure that the wages and retirement savings of American men and women are protected and not subject to attack by flawed court decisions or legislative inaction.

On matters of pay discrimination, this bill simply returns the law to where it was before the Supreme Court issued its misguided decision in 2007. We need to do more than just correct past mistakes, however we also need to examine the challenges facing working Americans and address those challenges in a constructive and thoughtful way. I look forward to working with my colleagues to strengthen and improve laws that help working families, including creating jobs, expanding access to health care, and improving educational opportunities for all Americans.

Mr. President, I am pleased that the Senate was finally able to prevent a filibuster of this important legislation and that we are now on the verge of passing this bill. I am a proud cosponsor of the Lilly Ledbetter Fair Pay Act, and I was disappointed when it failed in the Senate by just four votes last year. This is a significant victory for working families in Wisconsin and around the country. Of course, pay discrimination is not the only issue that women, minorities, people with disabilities, and other protected groups of workers confront, and we need to do more to strengthen and improve other employment conditions, like worker safety, as well. As this new Congress gets underway, I stand ready to work with my colleagues in the Senate to advance legislation that protects employment rights and strengthens job opportunities for all Americans.

Mr. GRASSLEY. Mr. President, let me first say, I adamantly oppose and abhor discrimination of any kind, whether it is based on gender, age, religion, disability or race. I am a father to two daughters. I have five granddaughters and two great-granddaughters. I want all of my granddaughters to know that their goals and achievements will only be limited by their own ambition rather than a despicable act of gender discrimination. There is no place for discrimination in

our country, and all of my colleagues share this belief. No side in this debate is in favor of gender discrimination.

The matter before the Senate is the Lilly Ledbetter Fair Pay Act. The Lilly Ledbetter Fair Pay Act seeks to overturn a Supreme Court decision that the sponsors contend has removed statutory protections against discrimination, in this case, pay discrimination. The Court's decision in Ledbetter v. Goodyear Tire held that a plaintiff alleging pay discrimination under title VII must file a claim within the statutory filing period of the alleged discrimination.

It is unfair to individuals who were unknowingly discriminated against to have a strict statute of limitations that prevent them from bringing suit once they discover the discrimination. I could not agree more. An individual should not be precluded from seeking justice simply because they were not aware of the discrimination. This is the situation that the proponents of the Ledbetter bill seek to address.

However, we must also ensure that the remedy to this injustice does not lead to allegations of discrimination that are years and, perhaps, decades old. A reasonable statute of limitations ensures that the discrimination is identified and reported and the employee receives a timely resolution if there is discrimination. Statutes of limitation have been part of our legal history for hundreds of years and further the interest of justice by ensuring claims are brought in a timely manner while evidence is still available. These limitations have long been recognized by courts as a way to balance the rights of plaintiffs against the rights of defendants. In the case of employment discrimination suits, the statute of limitations provides employers protection from having to defend allegations where records no longer exist or employees have moved on or passed away.

Statutes of limitations have always stood in some tension, and it is our job as the elected representatives of plaintiffs and defendants across this country to strike the necessary balance. We need to ensure that law does not sanction hidden discrimination nor effectively eliminate the statute of limitations.

The supporters of this bill have offered their version of a solution to this problem. The underlying bill would essentially reset the clock on the statute of limitations every time a new paycheck was received by an individual who was discriminated against in the past. They believe this is necessary regardless of how long in the past the claim of discrimination occurred. It would effectively eliminate the statute of limitations for discrimination claims.

The underlying bill also goes far beyond the stated objective of providing justice to those who have been subject to concealed discrimination. Instead, it could have the exact opposite effect of hindering efforts to quickly resolve discrimination claims. By pushing claims off indefinitely into the future, the bill creates a separation between the discriminatory act and the filing of a claim making cases harder to prove and more costly to defend. Simply put, the bill offered by Senator MIKULSKI greatly expands the existing statute further than it was before the Supreme Court decided the Ledbetter case.

While I believe the Mikulski bill goes too far, I do believe Congress should act to ensure discrimination claims are not simply ignored. As I said before, we need to find the right balance. I believe that balance is found with the alternative bill offered by my colleague, Senator KAY BAILEY HUTCHISON. Her amendment essentially codifies a discretionary approach that courts and the Equal Employment Opportunity Commission have applied in these cases for years.

The fact is, the Supreme Court and the EEOC have long recognized that statutes of limitation or charge-filing periods can be extended or ''tolled'' in circumstances where the discrimination is hidden or concealed. Simply put, defendants shouldn't be able to run out the clock just because they hide the discrimination or it is unknown to the victim.

The Hutchison alternative simply codifies this doctrine of equitable tolling. The Hutchison amendment provides that the clock on the charge-filing deadline does not start running until an employee discovers the discrimination or should have discovered the discrimination. This thoughtful, balanced approach protects the rights of the employee if the discrimination was concealed, but also ensures that the claim can be resolved timely. The Hutchison amendment codifies the flexibility of the claim-filing deadline when the discrimination is concealed, rather than effectively eliminating the deadline outright. It is the type of balanced, measured approach we as legislators are elected to find.

While it is my sincere hope that in this day and age no employer treats individuals differently based on gender, I am a cosponsor and strongly support the Hutchison amendment and believe it is the best possible way to ensure that the rights of all individuals are protected from discrimination.

Unfortunately, this balanced amendment was rejected by the majority, as were a number of other thoughtful, balanced, and needed amendments offered by colleagues on my side of the aisle. Because those efforts to improve the bill and minimize unintended consequences were rejected, I must vote against the bill. I regret that the Senate was unable to work in a more bipartisan manner to address the serious issue of gender discrimination.

Mr. MARTINEZ. Mr. President, lawyers have a saying: ''Bad facts make bad law.'' In my opinion, bad facts make even worse legislation. The proposal before the Senate, S. 181, assumes a number of erroneous facts directly related to the case of Ms. Lilly Ledbetter and how current law treats those wishing to file discrimination claims. I believe improvements are in order to the current law, but S. 181 goes well beyond what is reasonable and equitable.

Ms. Ledbetter was not prevented from asserting claims because she wasn't aware of her employer's alleged discrimination. She was prevented from asserting her claims because, as Ms. Ledbetter testified under oath in the case, she knew about the alleged discrimination for nearly 6 years before bringing her lawsuit.

While it is essential that employees be given an adequate period of time to press a discrimination claim, employers must also be protected from endless litigation.

Statutes of limitation serve an important function in our judicial system. By effectively eliminating the statute of limitation in employment discrimination cases, S. 181 would make it very difficult for an employer to mount a credible defense to a discrimination claim. Both small business owners and employees deserve a fair process. Although I support fair pay for equal work and oppose workplace discrimination of any kind, I oppose S. 181 and I am hopeful a balance can be reached before it becomes law.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. KENNEDY. Mr. President, equal pay for equal work is a fundamental civil right. This principle is at the heart of our Nation's commitment to fairness. When President Kennedy signed the Equal Pay Act in 1963, he reminded us that protection against pay discrimination is ''basic to democracy.'' Those words ring even truer today. When we inaugurated Barack Obama as our new President this week, our country strongly reaffirmed its commitment to a fairer, more just American society.

My good friend Senator MIKULSKI has taken an important step toward achieving this fairer, more just society by leading the debate in the Senate on the Lilly Ledbetter Fair Pay Act, and I thank her for her inspired leadership. She has truly been a passionate advocate for women and others who have suffered the injustice of discrimination. I also commend Senator HARKIN for the work he has done on this bill and on the Fair Pay Act. Senator Clinton has also been a champion for pay equity, and we pledge to continue her good work.

We must pass the Lilly Ledbetter Fair Pay Act. It will give American workers who are victims of pay discrimination based on race, age, gender, national origin, religion, or disability a fair chance to enforce their rights.

As a nation, we have often acted in recent years to expand and strengthen our civil rights laws in order to end discrimination, and we have always done so with bipartisan support. The

result has been great progress towards increasing equal opportunity and equal justice for all our people, and we will never abandon this basic goal.

Despite our past efforts to end pay discrimination, too many of our citizens still put in a fair day's work, but go home with less than a fair day's pay. Women, for example, bring home only 78 cents for each dollar earned by men. African American workers make only 80 percent of what White workers make and Latino workers make only 68 percent. Many qualified older workers and workers with disabilities also bear the burden of an unlawful pay gap. They are paid less than their coworkers for reasons that have nothing to do with their performance on the job.

Confronting pay discrimination is about addressing the real challenges faced by real Americans to make ends meet. These challenges have been mounting in recent months, as millions of American workers struggle even harder each day to provide for their families in this troubled economy.

Pay discrimination makes their struggle even harder. In these dire economic times, workers and their families can't afford to lose more economic ground—but that is just what is happening to thousands of Americans who still face pay discrimination.

With the economy in a severe recession, we cannot afford to wait to fix this problem. With women and minorities still making less than White men for the same work, we can't be complacent. With thousands of workers facing discrimination because of their race, their sex, their national origin, their age, their religion, and their disability every year, we must continue the battle to end this national disgrace.

Lilly Ledbetter's own case demonstrates the financial toll that pay discrimination can take. Lilly made 20 percent less than her lowest paid, least experienced male colleague and almost 40 percent less than her highest paid male colleague. For Lilly and other victims like her, the cost of pay discrimination over time is large. A recent study estimates that women lose an average of $434,000 over the course of their career because of the pay gap. Not only that, but their lower wages also mean their pension benefits and their Social Security benefits are lower as well. Unless we act, thousands of American workers will continue to face the same injustice that Lilly Ledbetter has endured.

It is our common responsibility to attack this problem with every tool at our disposal. Unfortunately, the challenge has been made more difficult because of the Supreme Court's decision last May that pulled the rug out from under victims of pay discrimination by making it harder for them to stand up for their rights.

In Ledbetter v. Goodyear Tire & Rubber Company, the Supreme Court reversed decades of established law by reinterpreting existing law on equal pay and ruling that workers must file claims of pay discrimination within 180 days after an employer first acts to discriminate. Never mind that many workers, such as Ms. Ledbetter, do not know at first that they are being discriminated against. Never mind that workers often have no way to learn of the discrimination against them or gather evidence to support their suspicions because employers keep salary information confidential. Never mind that the discrimination continues each and every time an employee receives an unfair paycheck.

The Ledbetter decision means that many workers across our country will be forced to live without any reasonable way to hold employers accountable when they violate the law. Employers will have free rein to continue their illegal activity, and the workers who are unfairly discriminated against will have no remedy. This result defies both justice and common sense.

The American people have made clear that they are yearning for a government that promotes, not defies, justice and common sense. We can answer this call for change by quickly passing the Lilly Ledbetter Fair Pay Act and restoring a clear and reasonable rule addressing how pay discrimination actually occurs in the workplace. The 180-day time period for filing a pay discrimination claim begins again on each date when a worker receives a discriminatory paycheck.

By doing so, the Lilly Ledbetter Fair Pay Act ensures that employers can actually be held accountable when they break the law. Under this bill, workers can challenge ongoing discrimination as long as it continues. As long as the injustice and the damage of the discrimination continue, the right to challenge it should continue too.

The bill before us restores the rules that employers and workers had lived with for decades, until the Supreme Court upended the law in the Ledbetter case. We know these rules are fair and workable. They were the law in most of the land and had the support of the EEOC under both Democratic and Republican administrations until the Ledbetter decision. There won't be any surprises after this bill passes. As the Congressional Budget Office has stated, the bill will not increase litigation costs.

Congress must stand with American workers to reverse the Supreme Court's Ledbetter decision. Civil rights groups, labor unions, disability advocates, and religious groups from across the country support this legislation. Many responsible business owners also support it, especially, the members of the U.S. Women's Chamber of Commerce. The American people want us to act.

In her stirring dissent in the Ledbetter case, Justice Ruth Bader Ginsburg wrote that ''Once again, the ball is in Congress's court.'' Nearly 2 years after she wrote those words, the ball is still in Congress's court. The House passed this important legislation last year, but the Senate dropped the ball. Now we have a new Congress and a new opportunity to master the challenge that Justice Ginsburg put to us, and we have a new President who is strongly committed to equal pay and to ending pay discrimination. I ask my colleagues to enable the march of progress on civil rights to continue. Together, let us stand with working people. Let us pass the Lilly Ledbetter Fair Pay Act.●

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 34

Mr. VITTER. Mr. President, I call up amendment No. 34.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. VITTER] proposes an amendment numbered 34.

Mr. VITTER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects)

At the appropriate place, insert the following:

SEC. ___. GOVERNMENT NEUTRALITY IN CONTRACTING.

(a) PURPOSES.—It is the purpose of this section to—

(1) promote and ensure open competition on Federal and federally funded or assisted construction projects;

(2) maintain Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded or assisted construction projects;

(3) reduce construction costs to the Federal Government and to the taxpayers;

(4) expand job opportunities, especially for small and disadvantaged businesses; and

(5) prevent discrimination against Federal Government contractors or their employees based upon labor affiliation or the lack thereof, thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects.

(b) PRESERVATION OF OPEN COMPETITION AND FEDERAL GOVERNMENT NEUTRALITY.—

(1) PROHIBITION.—

(A) GENERAL RULE.—The head of each executive agency that awards any construction contract after the date of enactment of this Act, or that obligates funds pursuant to such a contract, shall ensure that the agency, and any construction manager acting on behalf of the Federal Government with respect to such contract, in its bid specifications, project agreements, or other controlling documents does not—

(i) require or prohibit a bidder, offeror, contractor, or subcontractor from entering into, or adhering to, agreements with 1 or more labor organization, with respect to that construction project or another related construction project; or

(ii) otherwise discriminate against a bidder, offeror, contractor, or subcontractor because such bidder, offeror, contractor, or subcontractor—

(I) became a signatory, or otherwise adhered to, an agreement with 1 or more labor

organization with respect to that construction project or another related construction project; or

(II) refuse to become a signatory, or otherwise adhere to, an agreement with 1 or more labor organization with respect to that construction project or another related construction project.

(B) APPLICATION OF PROHIBITION.—The provisions of this subsection shall not apply to contracts awarded prior to the date of enactment of this Act, and subcontracts awarded pursuant to such contracts regardless of the date of such subcontracts.

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to prohibit a contractor or subcontractor from voluntarily entering into an agreement described in such subparagraph.

(2) RECIPIENTS OF GRANTS AND OTHER ASSISTANCE.—The head of each executive agency that awards grants, provides financial assistance, or enters into cooperative agreements for construction projects after the date of enactment of this Act, shall ensure that—

(A) the bid specifications, project agreements, or other controlling documents for such construction projects of a recipient of a grant or financial assistance, or by the parties to a cooperative agreement, do not contain any of the requirements or prohibitions described in clause (i) or (ii) of paragraph (1)(A); or

(B) the bid specifications, project agreements, or other controlling documents for such construction projects of a construction manager acting on behalf of a recipient or party described in subparagraph (A) do not contain any of the requirements or prohibitions described in clause (i) or (ii) of paragraph (1)(A).

(3) FAILURE TO COMPLY.—If an executive agency, a recipient of a grant or financial assistance from an executive agency, a party to a cooperative agreement with an executive agency, or a construction manager acting on behalf of such an agency, recipient, or party, fails to comply with paragraph (1) or (2), the head of the executive agency awarding the contract, grant, or assistance, or entering into the agreement, involved shall take such action, consistent with law, as the head of the agency determines to be appropriate.

(4) EXEMPTIONS.—

(A) IN GENERAL.—The head of an executive agency may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of 1 or more of the provisions of paragraphs (1) and (2) if the head of such agency determines that special circumstances exist that require an exemption in order to avert an imminent threat to public health or safety or to serve the national security.

(B) SPECIAL CIRCUMSTANCES.—For purposes of subparagraph (A), a finding of ''special circumstances'' may not be based on the possibility or existence of a labor dispute concerning contractors or subcontractors that are nonsignatories to, or that otherwise do not adhere to, agreements with 1 or more labor organization, or labor disputes concerning employees on the project who are not members of, or affiliated with, a labor organization.

(C) ADDITIONAL EXEMPTION FOR CERTAIN PROJECTS.—The head of an executive agency, upon application of an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of such entities, may exempt a particular project from the requirements of any or all of the provisions of paragraphs (1) or (2) if the agency head finds—

(i) that the awarding authority, recipient of grants or financial assistance, party to a cooperative agreement, or construction manager acting on behalf of any of such entities had issued or was a party to, as of the date of the enactment of this Act, bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions set forth in paragraph (1)(A); and

(ii) that one or more construction contracts subject to such requirements or prohibitions had been awarded as of the date of the enactment of this Act.

(5) FEDERAL ACQUISITION REGULATORY COUNCIL.—With respect to Federal contracts to which this subsection applies, not later than 60 days after the date of enactment of this Act, the Federal Acquisition Regulatory Council shall take appropriate action to amend the Federal Acquisition Regulation to implement the provisions of this subsection.

(6) DEFINITIONS.—In this subsection:

(A) CONSTRUCTION CONTRACT.—The term ''construction contract'' means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(B) EXECUTIVE AGENCY.—The term ''executive agency'' has the meaning given such term in section 105 of title 5, United States Code, except that such term shall not include the Government Accountability Office.

(C) LABOR ORGANIZATION.—The term ''labor organization'' has the meaning given such term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

Mr. VITTER. Mr. President, this is my amendment, No. 34 the Government neutrality in contracting amendment. It is very simple; it is very straight forward. It would provide true equal opportunity and open competition in national contracting.

Congress has a duty to ensure that infrastructure projects paid for by taxpayers are free from favoritism, and these interests would not be served if Congress were to require union-only Project Labor Agreements or PLAs for construction projects in the 111th Congress.

According to a January 2008 report issued by the Bureau of Labor Statistics, only 13.9 percent of America's private construction work force belongs to a labor union. So this means that union-only PLAs discriminate against well over 8 out of 10 construction workers in America who would otherwise be able to work on those projects.

Given the debate on the current legislation, I believe this amendment is particularly important for the following reasons: Minorities are particularly negatively impacted by union-only PLAs. This discrimination is harmful to women and minority-owned construction businesses whose workers have traditionally been underrepresented in unions, mainly due to artificial and societal barriers to union apprenticeship and training programs.

Requirements under a PLA can be so burdensome that many women and minority-owned businesses are deterred from even bidding on construction projects. A PLA could force these employers to have to abandon their own employees in favor of union workers, to pay into union and pension health plans, even if they already have their own plans.

Not being able to bid on a public project because of a PLA is very detrimental to small disadvantaged companies who rely on these contracts for much of their growth.

Again, this amendment would provide equal opportunity and open competition in Federal contracting. It would codify the status quo right now, which is to bar Federal agencies from requiring union-only PLAs on Federal construction projects. This sort of equal opportunity nondiscrimination is important and certainly is consistent with the spirit of this underlying bill.

Let me also mention in closing that this amendment has the full support of many national groups such as Associated Builders and Contractors, The Associated General Contractors of America, the National Association of Minority Contractors, Independent Electrical Contractors, the National Association of Disadvantaged Businesses, the National Black Chamber of Commerce, the National Federation of Independent Business, Women Construction Owners and Executives, and others.

I ask unanimous consent to have printed in the RECORD a letter making clear that support from a broad-based group of organizations.

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

JANUARY 21, 2009.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The undersigned organizations call on you to support an amendment offered today by Senator David Vitter (S.A. 34) to the ''Ledbetter Fair Pay Act of 2009'' (S. 181) that eliminates discrimination and ensures fairness in federal procurement by forbidding union-only project labor agreements (PLAs) on federal and federally funded construction projects. In addition, this amendment protects taxpayers and ensures fair and open competition on contracts for all federal infrastructure projects. We urge you to support the Vitter Amendment to the ''Ledbetter Fair Pay Act of 2009'' (S.181) when it comes up for a vote in the U.S. Senate.

Equal opportunity and open competition in federal contracting are critical issues to consider as the federal government explores various solutions, including significant infrastructure spending, to stimulate our ailing economy. Congress must ensure federal and federally funded infrastructure projects paid for by taxpayers are administered in a manner that is free from favoritism and discrimination while efficiently spending federal tax dollars. These interests would not be served if Congress were to require union-only requirements, commonly known as union-only PLAs, on federal construction projects. The Vitter Amendment would protect taxpayers from costly and discriminatory union-only PLA requirements on federal construction contracts.

A union-only PLA is a contract that requires a construction project to be awarded to contractors and subcontractors that agree to: recognize unions as the representatives of their employees on that jobsite; use the union hiring hall to obtain workers; pay union wages and benefits; obtain apprentices

through union apprenticeship programs; and obey the union's restrictive work rules, job classifications and arbitration procedures.

Construction contracts subject to union-only PLAs almost always are awarded exclusively to unionized contractors and their all-union workforces. According to the most recent data from the U.S. Department of Labor's Bureau of Labor Statistics, only 13.9 percent of America's construction workforce belongs to a union. This means union-only PLAs would discriminate against almost nine out of 10 construction workers who would otherwise work on construction projects if not for a union-only PLA.

This discrimination is particularly harmful to women and minority-owned construction businesses whose workers traditionally have been under-represented in unions, mainly due to artificial and societal barriers in union membership and union apprenticeship and training programs.

In closing, we strongly urge you to eliminate discrimination and guarantee equal opportunity and open competition in federal construction procurement by supporting the Vitter Amendment (S.A. 34) to the ''Ledbetter Fair Pay Act of 2009' (S. 181).

Sincerely,

Associated Builders and Contractors; Independent Electrical Contractors; National Association of Minority Contractors—Northeast Region; National Association of Small Disadvantaged Businesses; National Black Chamber of Commerce; National Federation of Independent Business; Women Construction Owners and Executives, USA.

Mr. VITTER. I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I want to be clear that I object to the Vitter amendment. I do it on both policy and procedural grounds.

First, on procedure, this amendment has nothing to do with the Lilly Ledbetter Fair Pay Act. The Lilly Ledbetter Fair Pay Act focuses on wage discrimination. The Vitter amendment focuses on project labor agreements by Federal agencies. It deals with contracting. It deals with construction work. It does not deal with wages in that category.

The great thing about today is that we have not become locked in a debate on process. I thank my colleagues on the other side of the aisle for the amendments they offered. They were focused. They were clear. It was primarily about wage discrimination.

When we look at the Vitter amendment, it would prohibit Federal dollars from being used for something called project labor agreements. These agreements, which contractors and labor organizations establish to set the terms of employment for large construction projects, benefit both the Government and workers. History has shown they produce high-quality jobs, high-quality work that is completed efficiently and effectively, on time, and meeting the bottom line of the bid.

When we talk about project labor agreements, it is not true that PLAs require union-only labor. Project labor agreements have been used for years to help construction companies run effectively and efficiently. State and local governments often use these agreements because they know they are going to get a good job at the price that has been bid. These agreements help keep costs predictable and under control. That is critical for large Federal projects.

It is also a preventive strategy. Often, they prevent labor disputes and assure a steady supply of high-quality workers.

Project labor agreements benefit workers and communities. Now more than ever, we need to be creating high-quality jobs. Project labor agreements ensure that wages and benefits and working conditions are simply fair. Instead of embracing these benefits, the Vitter amendment would prohibit the use of it.

Then there is another issue—executive authority. This would take away longstanding executive authority. It would tie the hands of a President. I certainly don't want to tie the hands of our new President, but I don't want to tie the hands of any President under the Executive authority to do PLAs. Our Nation's Executive has always had the authority over Federal contracting. There is no reason to shift the balance of power. That could result in all kinds of lawsuits, et cetera.

Senator VITTER says that project labor agreements restrict competition, but that is not true. Under President Clinton, both union and nonunion contractors were able to win bids. Nonunion workers were not excluded. All construction workers could work on projects governed by project labor agreements. That is what I am going to repeat: Project labor agreements do not require union-only labor. That is a myth. It has no basis in reality. It has no basis in statute.

I know the time is growing late. I also thank the Senator from Louisiana for agreeing to a time agreement. I think I have made the essence of our argument. I will reserve the remainder of my time for a wrap-up statement and some individuals I would like to acknowledge, some of the people who have worked so hard on this bill.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Louisiana has just under 6½ minutes. The Senator from Maryland has 30 seconds.

Mr. VITTER. Mr. President, let me again underscore that it has been clearly demonstrated that project labor agreements, union-only project labor agreements, do hurt women and minorities and also hurt women- and minority-owned businesses. They are often shut out or disadvantaged through those agreements because of historical factors. That is one reason, among many, why all of those organizations I cited, including organizations representing minority- and women-owned businesses, strongly support my stand-alone bill and strongly support my amendment.

In addition, the distinguished Senator from Maryland talked about cost. PLAs do impact cost. They push up cost. If they make cost reliable, they only make them reliably high. A good example is the $2.4 billion project right here to replace the Wilson Bridge between suburban Maryland and Virginia. When a union-only PLA requirement was pushed by former Maryland Governor Glendening, that threw a wrench into the project and drove costs up 78 percent. After that, President Bush issued an Executive order to do away with those PLAs, and phase 1 of the bridge project was rebid. Multiple bids were received, and the winning bids came in significantly below engineering estimates. Today, with that rule against the PLA requirement, the project is almost complete and substantially under budget. I have example after example such as that, where union-only PLAs do jack up the cost to the taxpayer.

In addition, since we are talking about discrimination issues, PLAs do cut out and harm and put at a disadvantage many women and minorities, certainly including women- and minority-owned businesses.

With that, I urge all of my colleagues to support this amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that my remarks be extended by 1 minute for the purpose of acknowledgment and thanking people.

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

Ms. MIKULSKI. Mr. President, I thank someone who is not with us tonight for his steadfast work on this bill, our beloved Senator KENNEDY. We can't wait to have him back. I thank the distinguished ranking member, Senator ENZI, for his wonderful cooperation in enabling us to move this bill and to proceed with civility and focus and, I might add, timeliness. I thank all of my colleagues, Judiciary Committee as well as HELP Committee members. I thank the Kennedy staff who worked with me on doing this—Sharon Block, Portia Wu, and Charlotte Burrows—and my own staff: Ben Gruenbaum and Priya Ghosh Ahola.

I want to, then, proceed to the first bill the Senate will actually vote on since the inauguration of our new President. I think this debate shows we can change the tone. Let's keep that up.

I move to table the Vitter amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 34. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

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

The result was announced—yeas 59, nays 38, as follows:

[Rollcall Vote No. 13 Leg.]

YEAS—59

Akaka	Hagan	Nelson (FL)
Baucus	Harkin	Nelson (NE)
Bayh	Inouye	Pryor
Begich	Johnson	Reed
Bennet	Kaufman	Reid
Bingaman	Kerry	Rockefeller
Boxer	Klobuchar	Sanders
Brown	Kohl	Schumer
Burris	Landrieu	Shaheen
Byrd	Lautenberg	Specter
Cantwell	Leahy	Stabenow
Cardin	Levin	Tester
Carper	Lieberman	Udall (CO)
Casey	Lincoln	Udall (NM)
Conrad	McCaskill	Voinovich
Dodd	Menendez	Warner
Dorgan	Merkley	Webb
Durbin	Mikulski	Whitehouse
Feingold	Murkowski	Wyden
Feinstein	Murray	

NAYS—38

Alexander	Crapo	Lugar
Barrasso	DeMint	Martinez
Bennett	Ensign	McCain
Bond	Enzi	McConnell
Brownback	Graham	Risch
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Hutchison	Snowe
Cochran	Inhofe	Thune
Collins	Isakson	Vitter
Corker	Johanns	Wicker
Cornyn	Kyl	

NOT VOTING—1

Kennedy

The motion was agreed to.

Mrs. MURRAY. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the clerk will read the title of the bill for the third time.

The bill was read the third time.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

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

The result was announced—yeas 61, nays 36, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—61

Akaka	Bennet	Burris
Baucus	Bingaman	Byrd
Bayh	Boxer	Cantwell
Begich	Brown	Cardin
Carper	Kohl	Reid
Casey	Landrieu	Rockefeller
Collins	Lautenberg	Sanders
Conrad	Leahy	Schumer
Dodd	Levin	Shaheen
Dorgan	Lieberman	Snowe
Durbin	Lincoln	Specter
Feingold	McCaskill	Stabenow
Feinstein	Menendez	Tester
Hagan	Merkley	Udall (CO)
Harkin	Mikulski	Udall (NM)
Hutchison	Murkowski	Warner
Inouye	Murray	Webb
Johnson	Nelson (FL)	Whitehouse
Kaufman	Nelson (NE)	Wyden
Kerry	Pryor	
Klobuchar	Reed	

NAYS—36

Alexander	Crapo	Lugar
Barrasso	DeMint	Martinez
Bennett	Ensign	McCain
Bond	Enzi	McConnell
Brownback	Graham	Risch
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Voinovich
Cornyn	Kyl	Wicker

NOT VOTING—1

Kennedy

The PRESIDING OFFICER. Under the previous order, three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the bill is passed.

The bill (S. 181) was passed, as follows:

S. 181

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 ''Lilly Ledbetter Fair Pay Act of 2009''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Supreme Court in Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007), significantly impairs statutory protections against discrimination in compensation that Congress established and that have been bedrock principles of American law for decades. The Ledbetter decision undermines those statutory protections by unduly restricting the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress.

(2) The limitation imposed by the Court on the filing of discriminatory compensation claims ignores the reality of wage discrimination and is at odds with the robust application of the civil rights laws that Congress intended.

(3) With regard to any charge of discrimination under any law, nothing in this Act is intended to preclude or limit an aggrieved person's right to introduce evidence of an unlawful employment practice that has occurred outside the time for filing a charge of discrimination.

(4) Nothing in this Act is intended to change current law treatment of when pension distributions are considered paid.

SEC. 3. DISCRIMINATION IN COMPENSATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5(e)) is amended by adding at the end the following:

''(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

''(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.''.

SEC. 4. DISCRIMINATION IN COMPENSATION BECAUSE OF AGE.

Section 7(d) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(d)) is amended—

(1) in the first sentence—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(B) by striking ''(d)'' and inserting ''(d)(1)'';

(2) in the third sentence, by striking ''Upon'' and inserting the following:

''(2) Upon''; and

(3) by adding at the end the following:

''(3) For purposes of this section, an unlawful practice occurs, with respect to discrimination in compensation in violation of this Act, when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to a discriminatory compensation decision or other practice, or when a person is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.''.

SEC. 5. APPLICATION TO OTHER LAWS.

(a) AMERICANS WITH DISABILITIES ACT OF 1990.—The amendments made by section 3 shall apply to claims of discrimination in compensation brought under title I and section 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq., 12203), pursuant to section 107(a) of such Act (42 U.S.C. 12117(a)), which adopts the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5).

(b) REHABILITATION ACT OF 1973.—The amendments made by section 3 shall apply to claims of discrimination in compensation brought under sections 501 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794), pursuant to—

(1) sections 501(g) and 504(d) of such Act (29 U.S.C. 791(g), 794(d)), respectively, which adopt the standards applied under title I of the Americans with Disabilities Act of 1990 for determining whether a violation has occurred in a complaint alleging employment discrimination; and

(2) paragraphs (1) and (2) of section 505(a) of such Act (29 U.S.C. 794a(a)) (as amended by subsection (c)).

(c) CONFORMING AMENDMENTS.—

(1) REHABILITATION ACT OF 1973.—Section 505(a) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)) is amended—

(A) in paragraph (1), by inserting after ''(42 U.S.C. 2000e–5 (f) through (k))'' the following: ''(and the application of section 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims of discrimination in compensation)''; and

(B) in paragraph (2), by inserting after ''1964'' the following: ''(42 U.S.C. 2000d et

seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e–5), applied to claims of discrimination in compensation)''.

(2) CIVIL RIGHTS ACT OF 1964.—Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) is amended by adding at the end the following:

''(f) Section 706(e)(3) shall apply to complaints of discrimination in compensation under this section.''.

(3) AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—Section 15(f) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(f)) is amended by striking ''of section'' and inserting ''of sections 7(d)(3) and''.

SEC. 6. EFFECTIVE DATE.

This Act, and the amendments made by this Act, take effect as if enacted on May 28, 2007 and apply to all claims of discrimination in compensation under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), title I and section 503 of the Americans with Disabilities Act of 1990, and sections 501 and 504 of the Rehabilitation Act of 1973, that are pending on or after that date.

Mrs. MURRAY. I move to reconsider the vote.

Ms. MIKULSKI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Ms. MIKULSKI. Mr. President, today is a great day in the Senate. We have now overwhelmingly passed a bipartisan bill to correct an injustice that has been prevailing among people—women, minorities, and people with disabilities—in the area of wage discrimination.

What is so great about today is not only our overwhelming legislative victory, but we showed, No. 1, that we can change the tone. I thank Leader REID for the leadership he provided in creating the legislative framework where we can move ahead with open debate.

Notice that we did this bill in a well-measured, well-modulated, well-paced way. There was no need for cloture motions. There was no need for parliamentary quagmires. What it showed, though, is there is a need for civility and cooperation. We, as Americans, have to know, given this economic situation, that we are all in it together. When we work together, we now know each and every one of us makes a difference. But when we truly work together, we can make change.

Today we changed the law, we changed direction, we change history, and I thank all my colleagues and all the staff who have made this possible.

I also wish to say a special thanks to Senator TED KENNEDY. I hope he is watching tonight because, TED, we miss you. We know you are not on the floor; you are with us in spirit. There is more to be done. We cannot wait for you to be back. Let's go and get the job done.

America is counting on us to do the kinds of things we have done today and act the way we did, the way we got the business done.

VOTE EXPLANATION

Mr. HARKIN. Mr. President, while I was necessarily absent for rollcall vote No. 7 on amendment No. 25, had I been present I would have voted ''nay.''

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. I thank the Chair.

(The remarks of Mr. GRASSLEY pertaining to the introduction of S. 301 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. GRASSLEY. I thank the Chair for the time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

ALASKA TERRITORIAL GUARD

Ms. MURKOWSKI. Mr. President, sometime this week letters will be mailed from the U.S. Army Human Resources Command in St. Louis, MO, to 25 elderly Alaskans. Those letters will tell these 25 elderly Alaskans that the Army has changed its mind—it has changed its mind—about whether their service in the Alaska Territorial Guard during World War II counts toward military retirement. The effect of this abrupt reversal in position is to reduce the monthly retirement payments to each of these 25 elderly Alaskans. These retirement payments will be reduced by an average of $386 a month. Six will lose more than $500 a month in retirement pay. These reductions will take effect on February 1.

So in less than 10 days, these individuals who have been receiving these payments—these elderly Alaskans who served us during World War II—will be receiving a letter, maybe before their benefits are cut off, but they will be receiving a letter saying: Sorry, your service doesn't count toward military retirement.

Mr. President, I state again: None of these 25 elderly Alaskans knows this is coming. It will come as a complete surprise to them, possibly, when they receive that letter. Whether they are tuning in to C–SPAN and hear my comments tonight, we don't know.

It is going to take a while for these letters coming out of St. Louis, MO, to reach their destinations because these letters are being sent to some of the remotest parts of our State, of rural Alaska. Four of these letters are destined for the village of Noatak. This is an Inupiat Eskimo village of 489 people in northwest Alaska. I would suggest, Mr. President, that outside of you and I, there is probably nobody in Washington, DC, who could identify Noatak on a map. Four of these letters are destined for the village of Kwigillingok. We call it Kwig because it is so difficult to pronounce. This is a Yupik Eskimo community of 361 people.

All told, these letters are being sent to elders in 15 Alaska Native communities in interior and western Alaska. The poster board that I have behind me indicates some of the elderly gentlemen who may be receiving these letters in the next several weeks.

This decision is tragic. It is tragic because it affects veterans who defended Alaska and who defended the United States from the Japanese during World War II. It is a tragedy because these people were led to believe they would be compensated for their service to our Nation. It is a tragedy because most of the people I am talking about, most of these gentlemen, are Eskimos—among the first people of the United States, members of a class of people to whom the United States Government has broken its promises time and time again. It is a tragedy because they were misled into believing their retirement pay was increasing. It is a further tragedy because this bad news is going to be communicated in a letter signed by a branch chief in the Army Human Resources Command. These people deserve an apology from the Secretary of Defense. They do not need to be receiving this news about this error from a branch chief in the Army Human Resources Command.

It is also a tragedy because some of these people in the Department of Defense chose to implement this decision in the dead of an Alaska winter, when we know that our Native elders in rural Alaska are most vulnerable. Right now, in the village of Kwig and in Noatak and in the other communities, it is dark, it is cold, and resources are scarce. The increase in retirement pay, which was implemented just this last June, was very welcome news to those who were receiving it. It came at a time when the cost of fuel was rising to levels in our rural communities that people simply could not pay.

If you will recall, back home in June and July, in the cities, we were paying $4.50, $5 a gallon for our fuel. But out in the villages they were paying $7, $8 a gallon, and in some areas even higher than that. Throughout the State, but particularly in rural Alaska last summer, folks were anxious about whether they were going to be able to afford to heat their homes this winter.

Last week, in the Indian Affairs Committee, the Presiding Officer had an opportunity to join us, and I was able to put on the record the plight of some of the Native people in the community of Emmonak who have literally had to choose between buying stove oil to heat their homes or whether they should buy food for their families.

I guess some of the good news we have learned is that none of these letters informing these elders that they will see a reduction in benefits is going to the village of Emmonak, but I would suspect many of the villages to which these letters are going are no better off. You just have to ask the question: How can our government be so insensitive—taking money, taking retirement benefits out of the pockets of our elders, of our seniors, at a time of the year when they are absolutely the most vulnerable?

I hope I have gained the attention of some, and with the indulgence of my colleagues, I would like to fill in a little bit of the background. I will not be