

The ACTING PRESIDENT pro tempore. The Senator from Maryland is recognized.

### PAYCHECK FAIRNESS

Ms. MIKULSKI. Mr. President, I rise to speak on paycheck fairness, a bill on which we will be voting on cloture. The paycheck fairness bill picks up where the famous Lilly Ledbetter bill left off. I was so proud to lead the fight on the Senate floor 2 years ago, under a new Congress and a new President, to ensure that we righted the wrong of a Supreme Court decision, where Lilly Ledbetter, on behalf of American women everywhere, would be assured that she could get equal pay for equal or comparable work. The Congress responded well and that legislation is now the law of the land.

The paycheck fairness bill picks up where Ledbetter left off, because Ledbetter left the courthouse door open to sue for discrimination. Paycheck fairness makes it more difficult to discriminate in the first place; it increases penalties for discrimination; prohibits employer retaliation for sharing pay information; it closes the loophole that allows for a broad defense in equal pay cases.

Let me go through this one by one. It improves remedies where discrimination has occurred. Current law now says that women can only sue for back pay and fixed damages. The paycheck fairness bill would allow women to get additional compensatory damage, which makes up for the injury or harm suffered based on discrimination. Ledbetter had no provisions regarding that. Also, so crucial is that it prohibits employer retaliation—and, wow, does this go on in the workplace.

Under current law, employers can sue or actually punish employees for sharing salary statements and information with coworkers. This is usually the way employees find out that they are being discriminated against. In the famous Supreme Court hearing, some of our Supreme Court Justices, who bragged that they don't know what a BlackBerry is, gave women the raspberries when they said women should know they are being discriminated against, but you cannot even talk at the water cooler, or down in the office gym, and say: I get paid this; what are you getting paid for the same job?

What paycheck fairness will now do is prohibit employers from taking action against employees who simply share information about what they are getting paid. This was not included in the Ledbetter Act. It clarifies that any factor other than a sex offense—right now, an employer can assert a defense that the pay differential is based on a factor other than sex. Courts can interpret this broadly, and a number of factors are limited. What the paycheck fairness bill does is tighten that loophole by requiring that the differential is truly caused by something other than sex or gender or is related to job

performance that is necessary for the business. Ledbetter did not address that loophole. By the way, I know that the specter of small business is always raised, but I say to my colleagues that small businesses with revenue of less than \$500,000 are exempt from the Equal Pay Act. That means that paycheck fairness maintains that exemption. That is how it takes Ledbetter one step farther. It gives women the tools to begin to know what they are being paid—or people of ethnic minorities, et cetera.

Why is this important? First, it is fundamental fairness. You ought to be paid equal pay for equal or comparable work. It is fundamentally fair. If the same people are doing the job with the same skills and background, they ought to get the same pay. It affects a family's paycheck; it affects their pension; it affects their whole way of life. Right now, equal pay is actually critical to economic recovery. It is one of the ways that we can make sure the family checkbook is increased based on merit.

Some people say: Oh, well, why do you need another bill, Senator Barb? Women already have enough tools to fight discrimination. Well, we haven't fixed everything. And here, I think this bill is simple and achievable with the small business exemption that will do that.

When the Equal Pay Act was passed in 1963, women earned merely 59 cents on every dollar earned by men. We have made progress. In 47 years, we have now come up to 77 cents for every dollar that men make. It only took us 43 years to get an 18-cent increase. Well, I think times are changing. Women are now more in the workplace, and women are now often the sole or primary source of income. Creating a wage gap is not the way to improve the health of a family or the health of our community.

I could go through a lot of statistics about what that means, but I simply want to say to my colleagues that with many Americans already earning less, we need to make sure that the family budget is based on people being able to get paid for what they do and to make work worth it and make wage compensation fair.

I think the facts speak for themselves as to why this bill is necessary. I think the bill itself is a very specific, achievable, narrowly drawn bill, and I urge my colleagues to vote for cloture.

Mr. DODD. Mr. President, I rise today to speak on the Paycheck Fairness Act, a critically important bill to guarantee women equal pay for equal work. I am proud to lead the effort in the Senate to pass this legislation, which my dear friend and colleague ROSA DELAURO has already shepherded through the House of Representatives.

I am pleased that the Senate is finally considering this commonsense legislation and am grateful to the majority leader for his strong support and his recognition of how important this bill is to American families.

Americans must be assured of equity in the workplace. Unfortunately, the fundamental principle of equal pay for equal work has yet to be realized in this country. In my view, it is high time that Congress step in to remedy this injustice.

Despite passage of the Equal Pay Act over 40 years ago, which was intended to ensure that women are paid the same as their male counterparts, a large wage gap still persists. Women are paid, on average, just 77 cents for every dollar earned by a man. To put it another way, the pay gap means that the average woman is paid more than \$10,000 less per year than she deserves. The gap is even larger in the African American and Hispanic communities, with black women earning 70 cents and Hispanic women earning merely 67 cents for every dollar a man earns. In my view, it is an outrage that in the year 2010 we are still not treating women as equals in the workplace.

Even a college education doesn't suffice to correct this inequality. In my home State of Connecticut, the median wage for a woman with a bachelor's degree is \$55,000—which puts her on par with a man who only has a high school diploma. This wage gap means that, cumulatively, a working woman will be shortchanged by \$400,000 to \$2 million over her lifetime in lost wages, pensions, and Social Security benefits.

Now, some will argue that the wage gap is a product of the choices women make, such as what they study in college, what field they pursue careers in, and whether to take time off to raise their children. But study after study has corrected for every possible variable, and still has found that only part of the wage gap can be explained by measurable factors. The rest of the gap is a result of discrimination in the workplace. One study compared men and women who had pursued the same majors, attended equally good schools, and were entering the same industry, and found that women are already paid less than these identically qualified men just one year out of college.

This is not just a matter of fairness but of economic necessity. Every dollar that women are shortchanged means a dollar less spent in her community, to take care of her family. The problem is particularly acute during the current economic recession, in which women are increasingly the primary or sole breadwinners for their families. Since the recession began, approximately 70 percent of jobs lost were jobs that had been held by men. In the typical married-couple family, this translates into forcing the family to survive on just 42 percent of its former income. This means families have less money to spend on everything—groceries, going out to eat, new school clothes, home and car repairs—all of which means less money going into our local economies. Paying women fairly is not just the right thing to do, it is also an immediate economic boost.

The Paycheck Fairness Act would finally give women tools strong enough

to end wage discrimination. It provides a long-overdue update to the Equal Pay Act, which has not been amended since it was signed into law by President Kennedy in 1963. I would add to my colleagues who may be undecided on whether to support the upcoming cloture vote—it has been forty-seven years since the Equal Pay Act was enacted. If we fail to pass this critically important legislation now, there may not be another opportunity to do so for a decade or more.

The Paycheck Fairness Act improves on the Equal Pay Act by toughening penalties for pay discrimination. It puts gender-based discrimination on equal footing with discrimination based on race or ethnicity by allowing women to sue for compensatory and punitive damages. It closes a significant loophole in the Equal Pay Act that for too long has allowed to justify unequal pay without a legitimate business need. It prohibits employers from punishing whistleblowers. Furthermore, it will require better data collection by the Department of Labor and Equal Opportunity Commission and set up training programs to help women learn more effective salary negotiation skills.

To continue our economic recovery, I believe that we must not only work to create jobs. We must also ensure that those jobs are good jobs. Making sure that all workers are confident that they are being treated and compensated fairly is critical to that goal.

This bill will ensure that workers are paid what they deserve and will provide them with security and fairness in the workplace. I urge my colleagues to support this effort.

Mr. CARDIN. Mr. President, I rise today in support of the Paycheck Fairness Act.

Progress for women in this country has not come easily or come quickly. There was a time when women were not allowed to vote or own property. In fact, our country once considered women to be the property of their fathers or husbands.

Over the years, women have fought gender barriers and broken down stereotypes, making great strides toward equity. Unfortunately, inequities still exist. While women have successfully broken through glass ceilings on careers across the employment spectrum, pay discrimination still remains.

Today, women make up half of the total workforce and nearly 4 in 10 mothers are the primary breadwinners of their household. Nearly two-thirds of mothers bring home at least a quarter of the household earnings. In these hard economic times, when women's wages put food on the table, keep the lights on and put gas in the car, pay inequities should not be tolerated.

In 1963, Congress passed the Equal Pay Act in an effort to end pay discrimination. Despite the good faith effort of this legislation, legal loopholes exist that have weakened the intent and goal of the law. The Paycheck

Fairness Act updates and strengthens the core principles in the Equal Pay Act. It will close loopholes in the original legislation; level the playing field for employers, so the employers paying fair wages are not disadvantaged; and will shine a light on pay discrimination occurring throughout our country.

According to the Census Bureau, although women between the ages of 25 and 29 possess a higher percentage of bachelor degrees than men in the same age group, women consistently earn less than men at every level of education attainment. In 2009, women working full time, year around were paid 77 cents for every dollar paid to men on average. This gap is worse for minorities. African-American women were paid 62 cents and Latino women are paid only 53 cents for every dollar a man makes.

In fact, women earn less on the dollar than men as their level of education increases. A study completed by the American Association of University Women found that female graduates working full time earn only 80 as much as their male graduates. The study then looked ten years after graduation to find women fall further behind, earning only 69 as much as men. Overall women are paid less than their male counterparts during their entire career.

Opponents of this legislation argue that there is no real gender pay gap and if there is one it's due to women's choices. Specifically, opponents assert that women earn less because they are more likely to choose part-time work to accommodate a growing family. This is incorrect. Many studies demonstrate that the wage gap is real. According to a recent GAO study, so-called life choices do not explain the persistent wage gap. Additionally, GAO found that even when all relevant career and family attributes are taken into account, there is still a significant unexplained gap in men's and women's earnings.

Additionally, opponents of the legislation assert that the Paycheck Fairness Act will create increased litigation. This, too, is just wrong. The Equal Pay Act is not a strict liability statute and it sets a very high burden for an employee to bring a claim. That burden will not change with the passage of the Paycheck Fairness Act. The legislation will now require that the "factor other than sex" defense available to employers is a bona fide, job related factor that must be articulated. This language mirrors other civil rights legislation prohibiting discrimination.

Finally, opponents assert that this legislation will hurt businesses and reduce job growth during these hard economic times. This is yet another incorrect assertion. In fact, this legislation will help ensure that women are paid fairly for equivalent work. In a nationwide survey of registered voters, 84 percent of voters said they supported "a new law that would provide women

with more tools to get fair pay in the workplace." There is an overwhelming level of support for fair pay across the political spectrum.

The goal of the Paycheck Fairness Act is simple: close the loopholes that exist in current law to ensure that men and women are paid fairly and accurately in the workplace. No longer will an employer be able to pay women and men different wages if they are doing the same or equivalent jobs. No longer will an employer be allowed to retaliate against employees for discussing their wages with other employees. No longer will we allow pay discrimination to be tolerated.

As an original cosponsor of this bill, I urge my colleagues to support this bill and join our colleagues in the House by passing the Paycheck Fairness Act.

Mr. DURBIN. Mr. President, it is nearing 2 years since we passed the Lilly Ledbetter Fair Pay Act protecting the principle of equal pay for equal work by allowing workers to pursue pay discrimination cases beyond the arbitrary window established by the Supreme Court. Unfortunately, while the Lilly Ledbetter Act was an important step in eliminating pay discrimination, a sizable pay gap remains between working men and women.

The numbers are astounding. Nearly 50 years after the passage of the Equal Pay Act, a recent GAO report shows that managers who are women make 81 cents to every dollar of their male counterparts. According to the U.S. Census Bureau report, the gap grows even larger—77 cents to every dollar—when looking at the entire working population.

In Illinois, for a median income household, that is a difference of \$11,000 each year. This is a significant difference in compensation. Imagine, for a family where the woman is the primary or only wage-earner how much difference \$11,000 a year could make.

The Paycheck Fairness Act would help narrow this pay gap by amending the Equal Pay Act to reduce discrimination in the workplace. It would bar retaliation against workers for disclosing wages, so that workers can identify pay discrimination when it happens.

The bill would clarify what constitutes valid justification for pay differentials so that employers know what factors are lawful considerations. The law would clarify that gender difference alone is not adequate pay differential must be based on legitimate, job-related requirements. It would create incentives for good behavior by providing technical assistance and employer recognition awards.

Finally, the legislation would amend the Equal Pay Act to ensure that women facing discrimination have access to the same wage discrimination remedies as are available for racial or ethnic wage discrimination.

These commonsense solutions can help narrow the wage gap. Women cannot afford, quite literally, to wait for

this legislation any longer. We cannot ignore that the gender wage gap is unacceptably large and shrinking much too slowly. We owe working women of America and their families—more. I look forward to casting my vote to proceed to the Paycheck Fairness Act and urge my colleague to join me.

Mr. President, I yield the floor.

#### FOOD SAFETY

The ACTING PRESIDENT pro tempore. The Senator from Georgia is recognized.

Mr. CHAMBLISS. Mr. President, first, I thank Senator ENZI for allowing me a couple of seconds here as we move toward a cloture vote on S. 510. I am an original cosponsor of S. 510, the food safety bill. I certainly had hoped that we would be able to come together in a bipartisan way in support of that bill. Unfortunately, the bill, with the substitute that has now been filed, is not the same bill I originally cosponsored. I will speak more about this after the vote, but it is my intent to vote against cloture on this bill.

With that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming is recognized.

#### PAYCHECK FAIRNESS ACT

Mr. ENZI. Mr. President, I want to talk about the paycheck unfairness bill that is before us. A better title for this bill should be the “jobs for trial lawyers act.”

I am confident that there is no Member of this Senate who would tolerate paying a woman less for the same work simply because she is a woman. As husbands, fathers, and mothers of working women, I believe we all recognize the gross inequity of discrimination in pay based on gender. Congress has put two laws on the books to combat such discrimination—Title VII of the Civil Rights Act of 1964 and the Equal Pay Act of 1963. These are both good laws that have been well utilized to combat discrimination where it exists, and I support the full enforcement of these laws. Businesses that discriminate against a female employee because of her gender must be corrected and penalized.

But what the majority is trying to push through here today is of a very different nature. The so-called Paycheck Fairness Act is actually a “jobs for trial lawyers act.” The primary beneficiary of this legislation will be trial lawyers. They will be able to bring bigger class action lawsuits—which usually result in coupons for the people that were disadvantaged—without even getting the consent of the plaintiffs, and they will have the weapon of uncapped damages to force employers to settle lawsuits even when they know they have done nothing wrong. The litigation bonanza this bill would create would extend even to the smallest of small businesses, only further hampering our economic recovery.

There are a number of other concerning provisions of this legislation, such as authorizing government to require reporting of every employer's wage data by sex, race, and national origin. Had this bill gone through committee markup under regular Senate order, we may have been able to address some of these concerns. But this bill—like so many other labor bills in the HELP Committee jurisdiction of this Congress—has circumvented regular order.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of letters from a total of 44 groups opposing this legislation and 4 newspaper op eds.

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

#### GROUPS OPPOSING PFA, 11/17/2010

1. Alliance for Worker Freedom; 2. American Bakers Association (coalition letter); 3. American Bankers Association (coalition letter); 4. American Hotel & Lodging Association (coalition letter); 5. Associated Builders and Contractors; 6. Associated General Contractors (coalition letter); 7. Associated Industries of Massachusetts; 8. Coalition of Franchisee Associations; 9. College and University Professional Association for Human Resources (coalition letter); 10. Concerned Women for America; 11. Food Marketing Institute; 12. HR Policy Association (coalition letter); 13. Independent Electrical Contractors; 14. Indiana Restaurant Association; 15. International Franchise Association; 16. International Foodservice Distributors Association (coalition letter); 17. International Public Management Association for Human Resources (coalition letter); 18. Louisiana Restaurant Association; 19. Maine Restaurant Association; 20. Montana Restaurant Association.

21. National Association of Manufacturers; 22. National Association of Wholesaler-Distributors (coalition letter); 23. National Council of Chain Restaurants (coalition letter); 24. National Council of Textile Organizations (coalition letter); 25. National Federation of Independent Business (coalition letter); 26. National Public Employer Labor Relations Association (coalition letter); 27. National Restaurant Association; 28. National Retail Federation; 29. National Roofing Contractors Association (coalition letter); 30. National Small Business Association; 31. National Stone, Sand and Gravel Association (coalition letter); 32. Nebraska Restaurant Association; 33. North Carolina Restaurant and Lodging Association; 34. Ohio Restaurant Association; 35. Printing Industries of America (coalition letter); 36. Retail Industry Leaders Association; 37. Small Business & Entrepreneurship Council (coalition letter); 38. Society for Human Resource Management (coalition letter); 39. Texas Restaurant Association; 40. U.S. Chamber of Commerce; 41. U.S. Commission on Civil Rights; 42. Virginia Hospitality and Travel Association; 43. West Virginia Hospitality & Travel Association; 44. World At Work (Requires clarification that legit ER practices not covered by PFA).

#### BILL TAKES ON DISTURBING PAY GAP—BUT OFFERS FLAWED REMEDIES (November 17, 2010)

All eyes will likely be on U.S. Senator Scott Brown this week as he casts a decisive Senate vote on the Paycheck Fairness Act, a bill aimed at helping women fight for equal pay in the workplace. But while parts of the

bill would be useful, the measure as a whole is too broad a solution to a complex, nuanced problem.

The bill is meant to address a troublesome wage gap between women and men, which has decreased over time, but still persists; today, most women earn roughly 77 cents for every dollar earned by men in equivalent jobs. The reasons for this discrepancy are under dispute, and the Paycheck Fairness Act would take some steps to protect against blatant discrimination. Most notably, it would bar businesses from retaliating against employees who share information about their salaries with their coworkers. The bill would also provide funds to train businesses to improve their pay practices and train women to negotiate their salaries more effectively.

But the controversial meat of the bill is the changes it would make to the legal process, amending the Equal Pay Act of 1963. Where women today can only sue for back pay, the new bill would allow them to seek both compensatory damages and unlimited punitive damages. The bill would also make it easier for workers to join class-action suits. Most problematically, it would alter the burden on businesses, requiring them to prove that any difference in pay is the result of a business necessity, and to demonstrate why they didn't adopt a plaintiff's suggested “alternative remedy” that wouldn't result in a pay gap.

But what if a company offers a higher salary for retail workers in a more dangerous location, and more men sign up? What if a male worker leverages a job offer into a higher salary? Should these be illegal acts? The bill would create too strong a presumption in favor of discrimination over other, equally plausible explanations for disparities in salaries. In addition, the threat of much higher damage awards by juries might lead businesses to make quick settlements for frivolous claims. (Today, about 60 percent of discrimination claims tracked by the Equal Employment Opportunity Commission are found to have no merit.)

Proponents of the bill note that today's penalties for wage discrimination are so anemic that there's no incentive for businesses that discriminate to change their ways. A narrower bill that would stiffen some penalties and ban retaliation would be helpful. But companies are right to be concerned that this bill, as written, is too deep an intrusion.

[From the Chicago Tribune, Nov. 12, 2010]

#### PAYCHECK FAIRNESS?

Equal pay for equal work stands as a cornerstone of the American workplace, and we support the principle wholeheartedly. But Congress is moving toward a fix that would be grossly intrusive on decision-making by private businesses.

At least one group would get a fatter paycheck from the Paycheck Fairness Act: trial lawyers.

The proposed law says that in cases where a pay disparity between men and women is challenged in court, an employer would have to prove there is some reason for the gap other than discrimination. The employer would also have to prove that the gap serves a necessary business purpose. And even then, the employer could be in trouble if a court determines that an “alternative employment practice” would serve the same purpose without skewing the salaries.

Those judgment calls go by another name: management decisions. The legislation would open businesses to wide second-guessing of decisions they made to hire and promote the most effective work force in a competitive environment. It would leave businesses with one eye on the competition and one eye on what a judge might decide in