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

hindsight is a preferable ''alternative employment practice.''

Uncle Sam to the nation's employers: We'll tell you how to run your business.

Imagine a company that pays more to workers with greater experience. If women haven't been on the job as long as men, they would likely earn less. The burden would be on the employer to prove that experience not only yielded a measurably better quantity and quality of work, but also that it was the best yardstick to use. ''How are you going to prove that?'' asks Camille Olson, an attorney at Chicago's Seyfarth Shaw LLC who has testified against the legislation on behalf of the U.S. Chamber of Commerce. ''It would be very, very difficult.''

Making matters worse, under the new law, damage awards would be uncapped, and class-action procedures loosened. Bring on the trial lawyers.

The nation already has strong legal protections for women in the workplace, even for cases of unintentional discrimination. Under the Equal Pay Act of 1963, employers can justify wage differentials only if they're based on gender-neutral factors, such as education, experience, productivity and market conditions.

This bill has its heart in the right place. It even has some worthwhile, less-intrusive provisions, such as protection from company retaliation for workers who share information about wages.

It has been approved by the House and is slated to reach the Senate floor next week. It is a high priority for the Obama administration. But it is much too intrusive, and the Senate should reject it.

[From the New York Times, Sept. 21, 2010]

FAIR PAY ISN'T ALWAYS EQUAL PAY

(By Christina Hoff Sommers)

Among the top items left on the Senate's to-do list before the November elections is a ''paycheck fairness'' bill, which would make it easier for women to file class-action, punitive-damages suits against employers they accuse of sex-based pay discrimination.

The bill's passage is hardly certain, but it has received strong support from women's rights groups, professional organizations and even President Obama, who has called it ''a common-sense bill.''

But the bill isn't as commonsensical as it might seem. It overlooks mountains of research showing that discrimination plays little role in pay disparities between men and women, and it threatens to impose onerous requirements on employers to correct gaps over which they have little control.

The bill is based on the premise that the 1963 Equal Pay Act, which bans sex discrimination in the workplace, has failed; for proof, proponents point out that for every dollar men earn, women earn just 77 cents.

But that wage gap isn't necessarily the result of discrimination. On the contrary, there are lots of other reasons men might earn more than women, including differences in education, experience and job tenure.

When these factors are taken into account the gap narrows considerably—in some studies, to the point of vanishing. A recent survey found that young, childless, single urban women earn 8 percent more than their male counterparts, mostly because more of them earn college degrees.

Moreover, a 2009 analysis of wage-gap studies commissioned by the Labor Department evaluated more than 5o peer-reviewed papers and concluded that the aggregate wage gap ''may be almost entirely the result of the individual choices being made by both male and female workers.''

In addition to differences in education and training, the review found that women are more likely than men to leave the workforce to take care of children or older parents. They also tend to value family-friendly workplace policies more than men, and will often accept lower salaries in exchange for more benefits. In fact, there were so many differences in pay-related choices that the researchers were unable to specify a residual effect due to discrimination.

Some of the bill's supporters admit that the pay gap is largely explained by women's choices, but they argue that those choices are skewed by sexist stereotypes and social pressures. Those are interesting and important points, worthy of continued public debate.

The problem is that while the debate proceeds, the bill assumes the answer: it would hold employers liable for the ''lingering effects of past discrimination''—''pay disparities'' that have been ''spread and perpetuated through commerce.'' Under the bill, it's not enough for an employer to guard against intentional discrimination; it also has to police potentially discriminatory assumptions behind market-driven wage disparities that have nothing to do with sexism.

Universities, for example, typically pay professors in their business schools more than they pay those in the school of social work, citing market forces as the justification. But according to the gender theory that informs this bill, sexist attitudes led society to place a higher value on male-centered fields like business than on female-centered fields like social work.

The bill's language regarding these ''lingering effects'' is vague, but that's the problem: it could prove a legal nightmare for even the best-intentioned employers. The theory will be elaborated in feminist expert testimony when cases go to trial, and it's not hard to imagine a media firestorm developing from it. Faced with multimillion-dollar lawsuits and the attendant publicity, many innocent employers would choose to settle.

The Paycheck Fairness bill would set women against men, empower trial lawyers and activists, perpetuate falsehoods about the status of women in the workplace and create havoc in a precarious job market. It is 1970s-style gender-war feminism for a society that should be celebrating its success in substantially, if not yet completely, overcoming sex-based workplace discrimination.

[From the Washington Post, Sept. 28, 2010]

PAYCHECK FAIRNESS ACT: A FLAWED APPROACH TO JOB BIAS

There should be no tolerance for gender-based discrimination in the workplace, and the Paycheck Fairness Act contains sensible provisions on the issue, including protections against retaliation for employees who challenge pay schedules. But the proposal, which builds on the existing Equal Pay Act, would allow employees and courts to intrude too far into core business decisions.

The bill, which is pending in the Senate, would allow employers to defend against equal-pay lawsuits by proving that pay disparities between men and women were based on ''bona fide'' factors, such as experience or education, and that these factors are ''consistent with business necessity.'' This provision would codify the current state of the law as developed in the courts over the past 30 years. During that time, judges pressed employers to prove the need for educational requirements that had no nexus to advertised jobs. Such requirements were often used to deny employment to minority applicants.

But the bill does not stop there. It also mandates that the business necessity defense ''shall not apply'' when the employee ''demonstrates that an alternative employment practice exists that would serve the same business purpose without producing such differential and that the employer has refused to adopt such alternative practice.'' But what if the employer has refused because it has concluded that the alternative is—contrary to the employee's assertion—more costly or less efficient? What if the employee and employer disagree on what the business purpose is or should be?

This approach also could make employers vulnerable to attack for responding to market forces. Take an employer who gives a hefty raise to a valued male employee who has gotten a job offer from a competitor. Would a court agree that the raise advanced a legitimate business purpose or could the employer be slammed unless he also bumps up the salary of a similarly situated female employee?

Discrimination is abhorrent, but the Paycheck Fairness Act is not the right fix.

Mr. ENZI. Mr. President, the newspaper articles I have submitted for the RECORD were written by the editorial boards of the Boston Globe, the Chicago Tribune, and the Washington Post, while the other op ed, written by a guest columnist, appeared in the New York Times. I don't think any of these would be considered to be conservative newspapers, but they have taken a strong stand in the same direction and position that I have been speaking here.

The bottom line is that this legislation will insert the Federal Government into workplace management decisions like never before. This intrusion will benefit trial lawyers and harm job growth and employment, which will affect both women and men.

Supporters of this bill cite wage data that the Bureau of Labor Statistics itself says ''do not control for many factors that can be significant in explaining earning differences.'' In fact, studies show that if you factor in observable choices, such as part-time work, seniority, and occupational choice, the pay gap stands between 5 to 7 percent. Let me repeat: Part-time work, seniority, and occupational choice reduces the pay gap to between 5 and 7 percent. Some of these choices are certainly personal prerogatives, and I would not question the choices anyone makes with regard to family obligations or job security and the quality of fringe benefits, such as health, retirement, and child care. But to a large extent, this remaining gap is due to occupational choice.

It is unfortunate that this Congress has not done more to foster a job growth environment and improve job training programs, such as the Workforce Investment Act, which could train 100,000 people to be hired in skilled jobs—sometimes in the nontraditional roles. So instead of being a waitress, they might be a brick mason. We have heard that example in hearings. Such training under the Workforce Investment Act produces significantly higher wages, and that would prepare more women to enter higher earning occupational fields. Surely this would be a more reasonable solution

than a trial lawyer bonanza sure to disadvantage all employers and depress job growth to the disadvantage of all employees, which results in disadvantaged employees getting coupons while the trial lawyers keep most of the money.

I urge my colleagues to oppose this cloture vote.

Mr. President, I yield the floor, and I ask unanimous consent that the time during the quorum be equally divided between the two sides.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BENNET). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

PAYCHECK FAIRNESS ACT—MOTION TO PROCEED

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the motion to proceed to S. 3772, which the clerk will report.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 561, S. 3772, a bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the motion to proceed to Calendar No. 561, S. 3772, the Paycheck Fairness Act.

Harry Reid, Patrick J. Leahy, John F. Kerry, Carl Levin, Jack Reed, Bernard Sanders, Benjamin L. Cardin, Frank R. Lautenberg, Ron Wyden, Tom Harkin, Amy Klobuchar, Sherrod Brown, Kirsten E. Gillibrand, Christopher J. Dodd, Patty Murray, Barbara Boxer.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 3772, a bill to amend the Fair Labor Standards Act of 1938 to provide more effective remedies to victims of discrimination in the payment of wages on the basis of sex, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. KYL. The following Senator is necessarily absent: the Senator from Alaska (Ms. MURKOWSKI).

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

The yeas and nays resulted—yeas 58, nays 41, as follows:

[Rollcall Vote No. 249 Leg.]

YEAS—58

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

NAYS—41

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

NOT VOTING—1

Murkowski

The PRESIDING OFFICER. On this vote, the yeas are 58, the nays are 41. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mrs. BOXER. Mr. President, I am very disappointed that the Paycheck Fairness Act was filibustered today.

The Paycheck Fairness Act passed the House on January 9, 2009, by a vote of 256–163 and Senate passage is long overdue.

This critical legislation will strengthen the Equal Pay Act and close the loopholes that have allowed employers to avoid responsibility for discriminatory pay.

Although the wage gap between men and women has narrowed since the passage of the landmark Equal Pay Act in 1963, gender-based wage discrimination remains a problem for women in the workforce.

According to the U.S. Census Bureau, women only make 77 cents for every dollar earned by a man. The Institute of Women's Policy Research found that this wage disparity will cost women anywhere from $400,000 to $2 million over a lifetime in lost wages. Today an average college-educated woman working full time earns as much as $15,000 less than a college-educated male. Working families lose $200 billion in income per year due to the wage gap between men and women.

Pay discrimination is hurting our middle class families and hurting our economy. Loopholes created by the courts and weak sanctions in the law have allowed many employers to avoid liability for engaging in gender-based pay discrimination.

That is why the Paycheck Fairness Act is so important.

The bill closes loopholes that have allowed employers to justify pay discrimination and prohibits employers from retaliating against employees who share salary information with their co-workers. It puts gender-based discrimination sanctions on equal footing with other forms of wage discrimination—such as race, disability or age—by allowing women to sue for compensatory and punitive damages. And it also requires the Department of Labor to enhance outreach and training efforts to work with employers in order to eliminate pay disparities.

One of the 111th Congress's most important achievements was passing the Lilly Ledbetter Equal Pay Restoration Act. That legislation, which is now law, ensures that women who have been the victims of pay discrimination get their day in court and can challenge employers that willingly pay them less for the same work.

The Equal Pay Restoration Act honors the legacy of Lilly Ledbetter, a supervisor at a Goodyear Tire Plant in Alabama, who after 19 years of service discovered she had earned 20 to 40 percent less than her male counterparts for doing the exact same job.

Today we had another important opportunity to honor the legacy of women like Lilly Ledbetter by passing this legislation.

But instead of standing up for equal economic opportunity for women, Republicans said no, and filibustered this important bill.

I am very disappointed by this outcome, but I want my colleagues to know that we will not give up this fight.

Mr. WHITEHOUSE. Mr. President, I rise today to express my disappointment in the failure of the Senate to invoke cloture on the Paycheck Fairness Act. After our triumph 2 years ago in advancing gender equality through the Lilly Ledbetter Act, the first piece of legislation signed by President Obama, the Paycheck Fairness Act would have been another step towards ending gender discrimination in the workplace.

Four decades after the Equal Pay Act was signed into law, women still earn only 77 cents for every dollar earned by their male counterparts. That equates to almost $11,000 less per year. In Rhode Island, women on average make approximately $36,500 where men make $49,000. For full-time, college educated Rhode Island workers over 25 years old, women make an average of $55,000, while men average $70,000. This is simply unacceptable and shows that the