

In addition, the bill would make a number of regulatory changes at the Labor Department related to equal employment opportunity requirements for federal contractors. Re-imposing the flawed Equal Opportunity Survey and requiring use of dubious statistical models for determining whether employers engage in systematic compensation discrimination, would do nothing to combat discrimination and instead would waste both enforcement and employer resources.

Litigation in employment discrimination has exploded since the inclusion of compensatory and punitive damages under Title VII, resulting in increased costs associated with attorneys' fees and employment investigations as employers must respond to each charge filed, whether frivolous or not. Further increasing the opportunity for frivolous litigation will only further serve to undermine our nation's civil rights laws.

The Chamber strongly opposes S. 3220 and urges you to vote against this legislation. The Chamber may consider including votes on, or in relation to, S. 3220—including on procedural votes and any motion to proceed—in our annual How They Voted scorecard.

Sincerely,

R. BRUCE JOSTEN.

NATIONAL RETAIL FEDERATION,  
Washington, DC, May 31, 2012.

Hon. MICHAEL B. ENZI,  
U.S. Senate, Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR ENZI: On behalf of the National Retail Federation, I am writing to urge you to oppose S. 3220, legislation that would greatly increase government involvement in pay decisions in businesses of all sizes and give trial lawyers an incentive to pursue unlimited litigation against American employers. Votes on S. 3220 will be considered a "key vote" by the National Retail Federation and the retail industry.

Retailers strongly oppose discrimination of all types. Sex discrimination in employment is no exception. Two federal laws protect employees from gender-based pay inequity: Title VII of the Civil Rights Act of 1964 and the Equal Pay Act of 1963. Both laws have broad coverage, prohibit intentional gender-based pay discrimination and impose liability on employers for gender-pay differences, even where there is no evidence of intentional discrimination if the employer fails to justify the pay discrepancies.

The pending legislation, S. 3220, would dramatically expand the Equal Pay Act to allow workers who claim they are the victims of gender-based wage discrimination to sue for unlimited compensatory and punitive damages. Moreover, its provisions would allow business owners to be sued if wage differentials exist due to local market rates, revenue production, or profitability. As a result, S. 3220 could effectively block retailers from considering issues such as store location and local economic conditions in setting wage rates.

Furthermore, the bill expedites class action lawsuits by requiring employees to "opt-out" of the class, effectively using size to force settlements against the Main Street businesses that will become its target. The legislation would also direct the Equal Employment Opportunity Commission (EEOC) to collect employee pay and compensation data from covered employers. Nothing in the bill would prevent this data from being publicly disclosed by the EEOC or made available through a Freedom of Information Act request.

Again, the National Retail Federation strongly urges you to oppose S. 3220, and we

will consider a vote on this legislation a key vote for the retail industry.

Sincerely,

DAVID FRENCH,  
Senior Vice President,  
Government Relations.

## RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:37 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. WEBB).

## PAYCHECK FAIRNESS ACT— MOTION TO PROCEED—Continued

The PRESIDING OFFICER. Under the previous order, the time until 2:30 will be equally divided, with the minority controlling the first half.

Mrs. MURRAY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. MURRAY. Mr. President, we are coming to a very critical vote. Today we have the opportunity to address an issue that affects the bottom line of nearly every American family. The paychecks that American women take home at the end of each week or each month are as tied to our economic health as just about anything else. It is what helps sustain local businesses. It is what pays grocery bills at the end of the month. It makes mortgage payments. Ultimately, the pay women receive as we continue to make up a larger and larger part of our workforce is going to be critical to the growth of this Nation. Yet over the course of the past week, as we have debated this bill in the Senate and across the country, we have been met by either silence or resistance from those on the other side of the aisle. Time and again we have heard the same excuses on why we cannot join together to provide the guaranteed fairness women deserve.

First, we heard this was a "manufactured issue." Mr. President, if you talk to American women all across our country, you will quickly learn what some of my colleagues have called "manufactured" is an all-too-real part of everyday American women's lives. Women will tell you that at a time when families across America are struggling to make ends meet, equal pay for equal work should not be a pipe dream; it should be law. They will tell you that nearly 50 years after the Equal Pay Act was signed, the pay gap between what men and women earn is just as real today as it was back then. They will tell you women still earn 77 cents for every dollar earned by men.

They will tell you this gap undermines their retirement security because they receive reduced Social Security benefits. Then, most importantly, they will tell you women are not worth less than men.

The other argument we have heard is that this critical vote is in some way a distraction from the economic issues we face, as if somehow the pay of women—who compromise nearly half of all American workers—is not at its very core an economic issue. Let me be very clear. When women are not paid what they deserve, middle-class families, communities, and our economic growth pay the price.

Let's consider that in my home State of Washington where women still earn 77 cents on the dollar—or a pay gap that averages over \$11,000 in lost earnings every year—for the average family that is an extra 90 weeks of groceries, it is 7 months of mortgage payments or it is 179 tanks of gasoline—all at a time when women are participating in the workforce at higher rates than ever before.

Surely, my friends and colleagues on the other side of the aisle realize this is not the time to be denying American families this extra income they need to make ends meet. Surely, we should be guaranteeing American women and their families the fairness they deserve. This should not be a partisan issue. Throughout the history of the Senate, we have joined together to root out discriminatory practices and provide the protections American workers deserve. Today, as American families struggle, it is time to make sure unfair practices are not contributing to those struggles.

Today we have an opportunity to close loopholes in the system that allows for pay discrimination, to create strong incentives for employers to obey the laws that are in place, and to strengthen Federal outreach and enforcement efforts on behalf of women.

Today we all have an opportunity to say the status quo is not good enough. We have the opportunity to tell our daughters we are not going to let another generation face a pay gap because we are unwilling to stand and fight. We have the chance to improve our economy right now. So to those of my colleagues who claim to be so concerned about the economy and the struggles of the middle class, now is your chance to prove to your constituents you mean what you say. Now is the chance to provide nearly half of all Americans with the economic fairness they deserve. Now is the time to guarantee American women equal pay for equal work.

I yield the floor and yield back the remainder of our time.

The PRESIDING OFFICER. The clerk will report the motion to invoke cloture.

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 debate on the motion to proceed to Calendar No. 410, S. 3220, 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.

Barbara A. Mikulski, Harry Reid, Maria Cantwell, Patty Murray, Frank R. Lautenberg, Jeff Bingaman, Sheldon Whitehouse, John F. Kerry, Kent Conrad, Jeanne Shaheen, Bernard Sanders, Tom Udall, Amy Klobuchar, Carl Levin, Mark R. Warner, Mark Pryor, Jack Reed, Kirsten E. Gillibrand.

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. 3220, 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 Illinois (Mr. KIRK).

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

The yeas and nays resulted—yeas 52, nays 47, as follows:

[Rollcall Vote No. 115 Leg.]

#### YEAS—52

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

#### NAYS—47

Alexander	Enzi	Moran
Ayotte	Graham	Murkowski
Barrasso	Grassley	Paul
Blunt	Hatch	Portman
Boozman	Heller	Reid
Brown (MA)	Hoeven	Risch
Burr	Hutchison	Roberts
Chambliss	Inhofe	Rubio
Coats	Isakson	Sessions
Coburn	Johanns	Shelby
Cochran	Johnson (WI)	Snowe
Collins	Kyl	Thune
Corker	Lee	Toomey
Cornyn	Lugar	Vitter
Crapo	McCain	Wicker
DeMint	McConnell	

#### NOT VOTING—1

Kirk

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 47. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The majority leader.

Mr. REID. Mr. President, I enter a motion to reconsider the vote by which cloture was not invoked.

The PRESIDING OFFICER. The motion is entered.

Mr. REID. I now withdraw my motion to proceed to Calendar No. 410, S. 3220.

The PRESIDING OFFICER. The motion is withdrawn.

#### AGRICULTURE REFORM, FOOD, AND JOBS ACT OF 2012—MOTION TO PROCEED

Mr. REID. I now move to proceed to Calendar No. 415, S. 3240.

The PRESIDING OFFICER. The motion is pending. The clerk will report the motion.

The legislative clerk read as follows: Motion to proceed to Calendar No. 415, S. 3240, a bill to reauthorize agricultural programs through 2017, and for other purposes.

#### CLOTURE MOTION

Mr. REID. Mr. President, I have a cloture motion at the desk on the motion to proceed to this matter.

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 debate on the motion to proceed to Calendar No. 415, S. 3240, a bill to reauthorize agricultural programs through 2017, and for other purposes.

Harry Reid, Debbie Stabenow, Carl Levin, Kent Conrad, Jeff Bingaman, Herb Kohl, Patrick J. Leahy, Michael F. Bennet, Christopher A. Coons, Al Franken, Max Baucus, Barbara A. Mikulski, Ben Nelson, Amy Klobuchar, Sherrod Brown, Jeff Merkley, Robert P. Casey, Jr.

Mr. REID. Mr. President, I now ask unanimous consent that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

#### PAYCHECK FAIRNESS ACT

Ms. MIKULSKI. Will the leader yield for a question?

Mr. Leader, I noted that on the last vote, you voted no. Was that so the bill could be reconsidered?

Mr. REID. I say to my friend, through the Chair, there is no one in this body who has a reputation for a bigger and better fighter than BARBARA MIKULSKI, the senior Senator from Maryland. I entered the motion to reconsider the vote because I want the fight to continue.

Ms. MIKULSKI. I would like to respond to the majority leader. We want to fight too. We thank him for his vote and his voice. I want him to know that although we lost the vote today, we are not going to give up on this vote. It is a very sad day here in the Senate, but it is a sadder day every day when paycheck day comes and women continue to make less than men.

We are sorry that this vote occurred strictly on party lines. Under the leader's effort to reconsider, we hope to bring up this bill again. We hope to forge a bipartisan vote. We are coming up on the 49th anniversary of equal pay for equal work. We are not going to let this bill die in parliamentary entanglements. The majority should rule in the Senate.

I want to say this, in the words of Abigail Adams. While John Adams and all the guys were sitting around Philadelphia writing the Constitution, she wrote him a letter and said, "Don't forget the ladies." And they did it for 150 years, and then they forget, too, to get rid of the loopholes in the Equal Pay Act now. Well, Abigail said: If you forget us, we will foment our revolution, and we are going to foment our revolution.

So I say to the women here, to the good men who support us, to the women out there in America, let's keep this fight going. Put on your lipstick, square your shoulders, suit up, and let's fight for this new American revolution where women are paid equal pay for equal work. Let's end wage discrimination in this century once and for all.

Mr. REID. Mr. President, I appreciate very much the statement made by the Senator from Maryland, as usual. She will outline a way to proceed on this matter that will be dignified and strong.

I filed cloture on this motion to proceed to this very important bill relating to farm programs in America and nutrition programs in America—extremely important legislation. I am confident—maybe it is the wrong thing in the temperament of the Senate today—that we are going to be able to complete this bill. It is an important bill for America. It will be a good thing for this Congress to do this farm bill. The two managers of this bill, Senator STABENOW of Michigan and Senator ROBERTS of Kansas, have done a remarkably good job. This bill creates jobs and reduces subsidies by a significant amount. Where else would you find a bill that reduces the debt of this country by \$24 billion? This is a fine piece of legislation, and I hope we can work something out so we do not have to have a vote on this matter on Thursday, that we can start legislating.

We have had good fortune shine upon us on the last couple of big bills we brought through here. We had the managers work with floor staff to work on the relevant amendments and then have a way to finish the bill. I hope we can do that.

I repeat, I have confidence in Senator STABENOW and Senator ROBERTS. They are very good legislators. We need to proceed on this bill. This bill is not a Democratic bill or Republican bill, it is a bill for America.

Mrs. BOXER. Will the Senator yield for a question?

Mr. REID. I will be happy to.

Mrs. BOXER. I want to say that I agree with my friend's comments about