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## Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable MARK L. PRYOR, a Senator from the State of Arkansas.

### PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Lord, who has given Your servants diversities of gifts, bless all who love and serve humanity. May this time of change help us remember the importance of making Your priorities our own.

Lord, give wisdom and strength to our lawmakers as they seek to build bridges of consensus for the good of our land. Strengthen them with the assurance that the purposes of Your providence will prevail. Light up their small duties and routine chores with the knowledge that glory can reside in the common task. Reward them with Your peace and joy.

Lord, we ask Your rich blessings upon our Senate pages who will be leaving us tomorrow.

We pray in Your powerful Name. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable MARK L. PRYOR led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, January 22, 2009.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable MARK L. PRYOR, a Senator from the State of Arkansas, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. PRYOR thereupon assumed the chair as Acting President pro tempore.

### RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

### SCHEDULE

Mr. REID. Mr. President, following leader remarks, there will be a period of morning business for up to 1 hour, with Senators permitted to speak for up to 10 minutes each during that period of time. The Republicans will control the first 30 minutes and the majority will control the second 30 minutes.

Following morning business, the Senate will resume consideration of S. 181. There will be 60 minutes for debate equally divided and controlled between Senators MIKULSKI and HUTCHISON. At approximately 11:30 a.m., the Senate will proceed to a rollcall vote in relation to the Hutchison amendment. There have been a number of other amendments laid down. Senator ENZI, it is my understanding, and Senator SPECTER have laid down some amendments. We are going to do our best to dispose of those as quickly as possible today and move on to other things.

We have a number of nominations we have to consider. We have at least one important piece of legislation we must deal with before we get to the economic recovery legislation. So we have a lot to do. We are going to do our best to not have a lot of procedural prob-

lems, and I am hopeful we can finish this legislation very quickly today and move on to other matters.

### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

### MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate shall proceed to a period of morning business for up to 1 hour, with Senators permitted to speak for up to 10 minutes each, with the Republicans controlling the first 30 minutes and the majority controlling the final 30 minutes.

The Senator from Arizona is recognized.

### LILLY LEDBETTER FAIR PAY ACT OF 2009

Mr. KYL. Mr. President, for nearly half a century, the Equal Pay Act of 1963 and the Civil Rights Act of 1964 have made it clear that discrimination on the basis of sex with regard to compensation paid to women and men for substantially equal work performed in the same establishment is illegal. As do my colleagues on both sides of the aisle, I strongly support both of these antidiscrimination laws.

Unfortunately, some of my colleagues are misleadingly stating in the debate about the legislation pending that it is about pay discrimination. That is not true. The only issue is the length of time of the statute of limitations that will apply in such cases.

In the case *Ledbetter v. Goodyear Tire & Rubber Company*, the Supreme Court considered the timeliness of the civil rights title VII sex discrimination claim that was based on paycheck disparities between a female plaintiff and her male colleagues. Under title VII, a

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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plaintiff must file suit within 180 days of the alleged unlawful employment practice. In this case, the plaintiff attempted to argue that each paycheck constituted a new violation of title VII and consequently restarted the 180-day clock. The Supreme Court disagreed with that argument and held that:

A new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from past discrimination.

In other words, the Court held that the plaintiff's suit had not been filed in a timely manner since the 180-day statute of limitations had long since passed.

In the Ledbetter case, the Supreme Court restated its support for and the rationale behind a statute of limitations, stating they:

Represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period of time and that the right to be free of stale claims in time comes to prevail over the right to prosecute them.

In creating a 180-day statute of limitations period, Congress sought to encourage the prompt processing of all employment discrimination cases.

Now, there are some additional commonsense reasons why virtually every criminal and civil law articulates a timeframe within which the charge or the complaint must be filed. The loss of evidence, which is more likely to occur with the passage of time due to loss of documents, cloudier memories, or even death can have a significant impact on the defendant's ability to mount a fair defense in the case.

The other side has raised an interesting point, because information about an individual's paycheck is frequently a private matter, and the idea is, well, there was no way this plaintiff could have known she had, in fact, been discriminated against. So the argument is that there should be in effect no statute of limitations along the lines of the act today of 180 days but, rather, should be tolled with each succeeding check.

While everybody agrees with the argument, the point is there is already an answer to this and it has been in the common law for hundreds of years. It has been in statutory law, and it has been adopted by courts. It is the doctrine of equitable tolling, which essentially is, when you should have become aware of something, that is when the statute begins to run. When an employee did not know and could not be expected to know about certain facts relating to alleged discrimination, then the Equal Employment Opportunity Commission, the EEOC, and the courts may "toll" or freeze the running of the clock as it relates to the filing of the deadlines.

In fact, there is a U.S. Supreme Court case square on point called *Cada v. Baxter Health Care Corporation* in which the Supreme Court clearly established the doctrine of equitable tolling which in the Court's words:

Permits a plaintiff to avoid the bar of the statute of limitations if, despite all due diligence, he is unable to obtain vital information bearing on the existence of his claim.

That has always been the law.

Senator HUTCHISON has introduced an amendment—an alternative to the bill that is before us—which preserves the balance between an employer's need for certainty with the right of an aggrieved employee to file a valid claim of discrimination. It does this by preserving the existing 180-day filing period for standard claims while offering employees the right to assert claims beyond the filing period in situations where they were unaware of the discrimination or where there were impediments to discovering the discrimination—exactly the allegation in this particular case. In essence, the Hutchison amendment codifies the doctrine of equitable tolling, which is the remedy to the alleged injustice in the Ledbetter holding, and makes sure that such tolling is applied more uniformly.

Unfortunately, the majority legislation goes far beyond the remedy to the particular problem I have just discussed. It arguably provides the greatest expansion of the Civil Rights Act since 1964. It does this in three specific ways. First, it effectively eliminates the statute of limitations, as I said, by imposing this arbitrary paycheck rule which eviscerates the statute of limitations. Second, it expands the class of people who may file a claim by applying the statute to "affected persons" without defining what the limitation on affected persons is. So this class expansion would allow not only the aggrieved plaintiff or employee but any spouse, children, or other individuals who might claim to be affected by the discrimination to file a claim. Finally, the expansion would not just apply to sex discrimination but to all protected classes of multiple employment laws covering civil rights, age, disability, and so on. So it is a much broader statute than is being portrayed by some who are simply saying this is about employment discrimination and changing the statute of limitations.

So I wish to stand with all Members of this body who I am sure agree that we need to have laws such as the Civil Rights Act to protect our Nation's citizens. I believe Senator HUTCHISON's amendment strikes the right balance between the needs of employers for certainty and the need of an aggrieved employee to file a valid claim alleging discrimination. I hope my colleagues will be supportive of the Hutchison amendment as a good-faith attempt to combine these two doctrines and in a way that has already been blessed by the U.S. Supreme Court in the *Cada* decision.

Mr. President, I yield the floor.

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

Mr. ALEXANDER. Mr. President, I congratulate the Senator from Arizona as usual for his very clear explanation

of the issues. He is one of the legal scholars in the Senate with a great deal of experience. There is no need for me to go through the details of what he has just explained, so let me think about it and talk about it in a little bit different way.

On Tuesday, a couple million people here and millions all over the world watched an eloquent ceremony from our Nation's Capital, the very moving speech by President Obama, and were reassured by his eloquence in a time of difficulty for our country. Among all of the difficulties we have, of course, the most important seems to be—or is—our economic troubles. The new President promised he would make his first order of business to get this economy moving again, get people working again, and to create new jobs. So it then becomes extremely important to say that is what the new President said, and we agree with him.

I think we agree with that on the Democratic side and on the Republican side. The Democrats are in charge of the Congress, so it is important to see what their priorities are for fulfilling the President's promise to get the economy moving again. Would it be cutting payroll taxes so people have more money in their pockets? Would it be building new roads and bridges to try to create new jobs quickly? Would it be to extend unemployment benefits? Would it be new investments in energy research and development? All of those, one might expect, would be priorities. The President has talked about many of those ideas. But no, it is none of those.

The first priority of the new Democratic Congress, which was already passed by the House and brought to the floor of the Senate without even being considered by a committee, and which we are debating today, is a trial lawyer bailout. Let's give our friends the trial lawyers a big bailout as the first order of business in our effort to help the economy. That is exactly what the Democrats' bill does.

Why does it do that? The bill Senator KYL talked about attempts to regulate a solution that is fair to employees and fair to business about a pay discrimination lawsuit, whether you are a woman or whether you are a man. You need to have a reasonable amount of time for the employee to file the cause of action, the act of discrimination, but you have to have a reasonable amount of time for the employer to know that the chances of that lawsuit being brought are limited. That is a part of every aspect of our law, and we call it the statute of limitations. You cannot sit in your backyard for 20 or 30 years with a cause of action in your pocket and then run up to the courthouse and say: Oops, I should have brought this 30 years ago, but I noticed now all the witnesses are dead, nobody is around to defend this; I am going to bring it now. That is, in effect, what we are talking about today.

We have differences in our responses to the Supreme Court decision about

what the reasonableness of a statute of limitations on a cause of action on pay discrimination might be. On this side of the aisle, Senator HUTCHISON's amendment on which we will be voting on later this morning says: Let's expand the current law and say that an employee should bring the lawsuit, not just within 180 days as the Supreme Court and the law now says, but whenever that employee could have known or reasonably should have known about the lawsuit. So that gives the employee even more fairness than the law exists today.

On the other side of the aisle the solution is: Let's, in effect, abolish the statute of limitations and have never-ending lawsuits.

What would the effect of this be in practical terms? I can speculate what the effect will be. I think it means that employers will have to keep more records. We are not talking about General Motors and General Electric here. They have big staffs who already keep lots of records and big law firms, in effect, that work for their companies. We are talking about the shoe shop owner, the filling station owner, and the small business owner who works 10 or 12 hours a day every day of the week. We are talking about the men and women in America on whom we are relying to create the largest number of jobs to spur the economic recovery that our new President talked about and that we all want.

What are we saying to them? We are saying: Mr. and Mrs. Small Business Person, we want you to keep a lot more records. That means you might have to spend money you are earning to hire an employee to keep records going back interminably so you can defend a lawsuit. We want you to be careful about pay for performance, rewarding one person over another person, because under the law proposed by that side, years later, some son or daughter or relative of that person may say: Somebody wasn't fair to mama or daddy and bring a lawsuit after everybody is gone, particularly whoever knew about whatever this situation was.

So employers and small business people will be discouraged from being more competitive by saying to one employee over another employee that we are going to have pay for performance, which is never easy to do. The legitimate complaints, people who are real victims of real pay discrimination, also are going to be hurt. The Equal Opportunity Employment Commission had 75,000 or so claims and most of them were not meritorious. That means everybody is delayed in terms of the meritorious claims, and this will open the floodgates and slow justice for the real victims.

It will mean, if you are a small businessman in America and this law passes, if Senator HUTCHISON's amendment is not adopted, you better get ready to hire a recordkeeper, you better get ready to pay some settlements to lawyers because, for the intermi-

nable future, a lawyer and someone who used to work for you or is a relative of that person may come in and allege pay discrimination, even though it was 25 years ago and they knew it all the time.

What does that mean for you? You better set aside \$25,000, \$50,000, \$200,000 of money that you could use to hire more people or pay a dividend or get the economy moving again to bail out the trial lawyers.

I am disappointed with the proposal on the other side of the aisle. I fully support Senator KAY BAILEY HUTCHISON, who has a proposal that I hope we adopt at 11:30 this morning that is fair to employees and that is fair to small businesses.

I would think the majority would have something better to offer the American people in response to the new President's eloquent suggestion that it is time to get the economy moving again than a bailout for their friends, the trial lawyers.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. BENNETT of Utah. Mr. President, I rise to comment with respect to the proposed Lilly Ledbetter legislation, and I bring the perspective of a small employer, for I have presided over firms with as few as half a dozen employees. I have been fortunate enough to see some of those firms grow to larger firms. Indeed, one firm I joined as the fourth employee in the history of that firm ended up listed on the New York Stock Exchange. So I have seen the travails employers go through as they deal with growth situations and creating jobs. The company with which I was involved grew from the original four employees to a staff of 4,000.

One of the challenges that comes with a company that is growing that rapidly and creating that number of jobs is you are always involved with change. You are always involved with uncertainty. It is not the same thing as presiding over a company that has been established for 60 or 70 years and has a degree of stability. Every month is a new adventure, a new challenge, and you are constantly changing your employee base. As new people are hired, the old people sometimes get resentful of the new people and say: We were here at the beginning; why aren't we getting these promotions? And you have to explain to them that the company has changed and we need new talents, we need to bring on board new skills, and, quite frankly, the small group that was with us in the beginning has to be augmented with new people.

There are resentments, there are concerns, and occasionally there are discrimination cases filed.

But if we were to take the position of the underlying legislation that says if there was genuine wage discrimination in a circumstance, everyone who was involved in writing a paycheck after

that discrimination has committed the discrimination again and has effectively reset the clock for the statute of limitations.

As I consider the impact of this on a business, I realize this, in a way, is the asbestos fight all over again. We saw in the asbestos fight companies that were taken down for actions that occurred outside the company on the part of those who worked in other companies that were acquired decades later. Let's put it specifically.

Let's assume a business had a situation where there was, in fact, wage discrimination that took place. The individual against whom this discrimination was practiced did nothing with respect to it but continued to stay employed and continued to receive the paycheck.

Under the Lilly Ledbetter legislation, the clock would be reset for the statute of limitations. The individual who performed the discrimination, let us say, was discharged. The individual who supervised the situation was unaware that discrimination had occurred. The company in which it happened is later acquired by another company. And then the trial lawyers discover this had been going on years ago. They now sue the eventual company that acquired the first company for a great amount of money, perhaps even a class action suit is filed. You cannot prove what happened because all the people involved have disappeared. They have gone away. They no longer work for the company. They have no memory of what happened. It is decades later.

It doesn't matter. Under this legislation, the statute of limitations that is crafted to deal with a situation where there are no available witnesses anymore somehow magically, by virtue of this bill, keeps getting set again and again going forward.

The Supreme Court got this one right. The attempt on the part of those who want to curry favor with the trial lawyers have got this wrong. What will happen? Will more people who have had wage discrimination receive benefits? There is no guarantee that will happen. Will trial lawyers who are looking for causes of action receive fees? There is a pretty good guarantee that will happen. Will small and medium-size businesses that cannot afford legal fees be faced with enormous settlement charges? I am pretty sure that will happen. Will jobs be destroyed as a result of this, as they were in the asbestos case? I guarantee that will happen.

Here we are, in the worst financial situation any of us can recall, talking about a circumstance that would destroy jobs among small businesses and that would discourage employers who are struggling to create new jobs in medium-size businesses. We are talking about putting out billions of dollars in the name of a stimulus while simultaneously discussing legislation that would destroy jobs and create chaos among those who are trying to survive in this financial circumstance.

This is bad legislation on its face and bad legislation on its merits. But the timing of this proposal is atrocious. To be making these kinds of proposals in this kind of financial circumstance is incomprehensible to me, unless I assume that there are those who say the trial lawyers played an important part in the election; the trial lawyers need to be rewarded for the important part they played in the election; let's have a bill that will line the pockets of the trial lawyers and look the other way in terms of the economic consequences.

I compared this to the asbestos litigation. I was in the Chamber when we dealt with what are called strike suits, where trial lawyers would file lawsuits on behalf of clients who were, in fact, not aggrieved but were simply posing in behalf of a class that the trial lawyer himself had put together.

We passed that legislation. It was vetoed by President Clinton. It was the only Clinton veto that was overridden in this Chamber, as everyone was outraged at the behavior of the trial lawyers who brought these strike suits.

There are those who said: Oh, you still don't get it, you who are picking on the trial lawyers. They do wonderful things. I agree that the ability to file a grievance and have a trial lawyer carry it forward, even in a class-action suit, is a protection the American people need. But these lawyers were going far beyond anything that was good for the American people.

The position was summarized by Bill Lerach, known as the "king of the trial bar," when he said: I have the ideal law practice. I have no clients. He is now in jail because his practices finally caught up with him, as it was finally demonstrated that the people on whose behalf he was suing were, in fact, not real clients. They were paid by him to pose as people who were aggrieved.

We saw those kinds of abuses that came out of that situation. We finally saw his law firm destroyed, and this man, and others like him from the trial bar, went to jail for their activities.

Let's not create another circumstance where there is a temptation to once again take advantage of people who have been legitimately hurt, but by manipulating the law in such a way as to maximize the return to the plaintiff's bar, we see the economy hurt.

The Supreme Court, as I say, got this one right. We should stay with the Supreme Court decision and not try to give special advantage to a special group simply because of their activities in the last election.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I ask unanimous consent to speak as in morning business for up to 10 minutes.

The ACTING PRESIDENT pro tempore. We are in morning business, and currently there is 3 minutes 45 seconds left of Republican time.

Without objection, the Senator may speak for up to 10 minutes.

ROE V. WADE

Mr. BROWNBACK. Mr. President, today is a sad day. We had a wonderful inauguration a couple of days ago, phenomenal crowd, a great celebration, and a peaceful transfer of power took place. It was amazing. I was there on the front steps of the Capitol watching it, participating in it, excited about the first African-American President of the United States; an amazing thing to take place within one generation of Martin Luther King's marches and what he did in this country. My State has been a big part of all of those things and what has taken place. Today is a sad day, though. Today, 36 years ago, the Supreme Court's ruling in *Roe v. Wade* banned all impediments to having an abortion in the United States and said abortion is a constitutional right that the individual carries in the United States and that it cannot be infringed upon, cannot be limited. It did later limit some of that and gave a few places where the State could act to limit—most recently partial-birth abortions, where the Supreme Court has recently ruled that the State can limit partial-birth abortions. And there were a few minor areas in the *Roe* decision, but overall it made a constitutional right to abortion. That was 36 years ago.

The reason I say it is a sad day is there have been roughly—and nobody knows for sure—40 million children who are not here today because of that decision. It ratcheted up, escalated up substantially the number of abortions in the United States that took place after that. It moved forward to the point that most estimates are that one in four pregnancies in the United States will end in an abortion and a child dying. And it even gets worse from that point. When you look at children with special needs, such as Down syndrome children, the number is somewhere between 80 to 90 percent do not make it here, as I have stated on this floor previously, as they are aborted and they are killed because of their genetic type. They get a test, the amniocentesis test, which says they have an extra chromosome, and generally because of that extra chromosome they are aborted and they are killed, even though the fact is, if they would get here on the ground, life and the prospects for a Down syndrome child now have never been better. Life expectancy, quality of life issues, if that is your measure, have never been better than they are now. Plus, the families who have a Down syndrome child look at those children as the centerpiece of the family, an amazing person. Yet somewhere between 80 to 90 percent of these amazing people never make it here, and that is because of what happened 36 years ago this day in the Supreme Court of the United States.

That is why there will be hundreds of thousands, primarily young people, marching today in Washington, DC. They will get no mention. There will be

very little press, if any, outside of some of the religious press that will be there. But outside of that, they will get virtually no coverage. There will be hundreds of thousands of young people here marching and asking for a change and something different, something that I hope President Barack Obama would embrace. He was empowered on the legs of young people and young enthusiastic minds looking for change, looking for something different. That same young generation is the most pro-life demographic in our country today. That age group that is below the age of 25 is the most pro life. They are looking for something different. They are looking for a sanctity of life. They are looking for us to protect all innocent human life. They are looking for us to work to make all human life better, whether that is a child in the womb or a child in Darfur. Whether it is somebody in prison or somebody in poverty, they want that person's life to be better.

That is a beautiful pro-life statement. It is one that we need to see mirrored. It is one we need to see acted upon. It is one we need to see happen, rather than the repealing of things such as Mexico City language which says we can now use taxpayer dollars to fund groups overseas that work and support and fund abortion. Yet apparently that is what the Obama administration is going to do, it is going to repeal Mexico City language and say that taxpayer dollars can now be used for these purposes that most Americans disagree with. That is not the change people are looking for. Those are chains to the past. Those are things that bind us to a culture that doesn't affirm life, that doesn't see it as sacred and beautiful in all its places and dignity in every human life no matter who it is. Those are ones that say quality of life is your measure, as to whether you should be the recipient of such a gift of life.

It is a sad day. It is a tough day. I hope it is a day that doesn't go on as far as our having many future annual recognitions of the *Roe v. Wade* decision but, rather that in the future we will be a life-affirming place and that we will say, in a dignified culture every life at every place in every way is beautiful and it is unique and it is amazing and it is something that should be celebrated and it should not be killed. When we move to that, that will be real change. That is the sort of change that people can look at and say, that is what I want my country to be like.

You know, the sadness doesn't stop with the death of the children. We are now seeing more and more studies coming out about the impact on people who have abortions. In August this past year, 100 scientists, medical and mental health professionals, released a joint statement that abortion does indeed hurt women. The Supreme Court of the United States concluded some women do regret their abortions and can suffer severe depression and loss of

self-esteem. These professionals have officially confirmed these facts. They say the number of women adversely affected by abortions cannot be overlooked by the medical community.

In looking at this in our own family situation, every one of our children is incredibly precious. If I think of one of them not being there, it is one of those stunning sort of thoughts of despair, and yet to think of the 40 million who aren't here and of the stunning amount of despair there must be in a number of people's lives and hearts as they think, I made that decision fast, or I did that under a lot of pressure, or I didn't think I had another choice. But other choices did exist. People want to adopt, and people want to adopt Down syndrome children. As TED KENNEDY and I recognized, in my bill we got passed last year on prenatally and postnatally diagnosed diseases, which established a list of people who wanted to adopt Down syndrome children or children with special needs—some people look at a child in that situation and say, I can't handle that, and I understand. But there are people who believe they can handle it and they want to take a child and raise it.

So I hope as we look forward, we will work together and say, this is something that shouldn't be happening the way it is in the United States and we want to make it different. I hope we will recognize these young people who are marching out here now, who are hoping for change, and understand the change they want is quite valuable, it is beautiful, it is life affirming, and that ultimately it is going to happen.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### THE ECONOMY

Mr. DURBIN. Mr. President, this is truly a historic week in Washington. Those of us who were among the millions who were on the Mall a few days ago witnessed a moment in history which I am sure we will talk about, and future generations will refer to, for a long time. Someone during the course of this lead-up, the few days of preinaugural activities, said it was the third chapter in America's social history.

The first chapter was when Thomas Jefferson announced, then wrote, that all men were created equal, endowed by their creator with certain inalienable rights, but living in a time when even in his own household there was slavery. That was the first chapter. In the second chapter, they referred to, of course, Abraham Lincoln, who said it

is worth blood and war to fight for this right of equality and to preserve this union dedicated to that principle. And, of course, what happened this Tuesday was the third chapter, a graphic validation of the fact that America has made dramatic progress toward equality.

There is so much more to do, and I am particularly honored that the man who now leads our Nation is one whom I served with as a colleague in the Senate, a person I encouraged to run, and a person who I think has grown immeasurably to the position he has reached today.

America has so much faith in Barack Obama and what he can bring, but he is the first to caution us that we face unparalleled challenges. You have to go back 75 years to Franklin Delano Roosevelt, who came to the Presidency in the midst of the Great Depression, when the economic plight of the United States was even worse than today. People had lost hope, they had lost their savings, and they had lost their jobs. There was gloom across America. That man, with braces on his legs, staggering to the podium, brought a new confidence to the American people. He began a turnaround that literally took years but eventually succeeded in restoring the faith and the economy of America.

When Barack Obama took to the podium just last Tuesday to give his inaugural address, his message was reminiscent, telling America that we are facing difficulties that will require our best efforts on a bipartisan basis. We have to work together. All of the division in this Chamber and across Capitol Hill notwithstanding, the American people are tired of it. They expect us to come here and achieve something. They understand the momentous challenge we face.

President Obama spoke 2 days ago of gathering clouds and raging storms. He said we are in the midst of a crisis, and he spoke about our Nation at war on two fronts and our economy in disrepair.

Yesterday, I think we took an important step forward in addressing one of those challenges. It was the right, under the Senate rules, of the minority side to ask for a rollcall on the appointment of Senator Clinton as our new Secretary of State. I understand that and I respect it. I believe the fact that they allowed that rollcall to be brought to the floor in a timely basis is consistent with this new attitude that we will not give up the traditions of Congress, the traditions of our Government, but will understand that we face a special urgency in dealing with issues. The vote last night on the Senate floor was 94 to 2 in favor of the confirmation of Hillary Clinton as our next Secretary of State. I am so happy she is going to have that responsibility, and I know she will do an excellent job.

Today, President Obama has asked us to take up a measure of similar urgency. It is a measure known as the

Lilly Ledbetter Fair Pay Act. You may have heard some of the debate on the floor, and the debate has been an important one. I do not question those who oppose this. I understand that they do not favor discrimination. But I have to say that I disagree with them.

We, those of us who I believe will show a majority vote for this measure, believe that when there is discrimination in the workplace, whether it is in pay or age or gender discrimination, that is not American, that is not consistent with our values, and that the person who is wronged, the person who is the victim should have an opportunity to come to court for justice.

The Lilly Ledbetter case is a classic illustration. This woman, working in a Goodyear tire plant in Gadsden, AL, after 15 years, nearing retirement, in the management ranks, came to learn she had been underpaid for the same job the males at her establishment were being paid more. Naturally, when she learned this, after years of doing the same work for less pay, she believed it was unfair. I did too. Anyone would. She took her case to court asking for compensation, asking that the company pay for their discrimination.

The case went through the courts and eventually ended up across the street at the U.S. Supreme Court, and they came up with a decision which was nothing short of incredible. They said that from the first moment when the first discriminatory paycheck was given to Lilly Ledbetter, she had 180 days to file a claim. That overlooks the obvious: People who work in private sector jobs don't know the pay of the person at the next desk in a position similar to their own. It is not published. There is no way they would know it. In this case, to hold Lilly Ledbetter to an unreasonable standard to filing this case so quickly after the first discrimination is to overlook the obvious. The discriminatory activity continued beyond that first paycheck, and Lilly Ledbetter, when she brought this case, brought it within 180 days of the discovery of this discrimination. What we are doing through the leadership of Senator MIKULSKI is to finally right this wrong, and President Obama has asked us to send this to his desk. I hope we do it and do it quickly.

Then we are going to shift to an even larger undertaking as we work to address the troubles of our economy. We have to do this boldly and quickly—no excuses. It is a grim beginning for that administration in the fields of jobs, health care, and housing. Rarely has a new President been immediately confronted with an economic situation so grim.

This is just a sampling of the headlines, the job cut headlines, across the United States of America from Washington; St. Louis; Portland, OR; Hartford, CT; Detroit—all across the United States. We know these stories. Americans continue to wake up to headlines like these every day—another company decides to lay off or close.

Then, of course, we know what this toll means to us in terms of daily statistics. This is another one of these statistics which are hard for us to absorb; to think that 17,000 Americans will learn today that they have lost their job, and 17,000 tomorrow, and 17,000 the day after. That is what happened in December—over 500,000 Americans lost their jobs, and sadly, they think in this month of January the number may be 600,000. At the same time, 11,000 Americans lost their health care coverage. They were told the company is in trouble, sales are not good, the people who run the company are going to have to cut back on benefits. Health care, one of the more expensive benefits, is one of the first to go. Mr. President, 17,000 out of work, 11,000 lost their health care. But then another 9,000 will go home and open the mail and be told they are facing foreclosure, they are about to lose their home. Think about that—17,000 losing their jobs, 11,000 losing their health insurance, and 9,000 losing their homes. You can understand the gravity of the economic crisis that faces us.

We are in the midst of one of the greatest economic crises since the Great Depression. For the middle class, working Americans, the current situation is hard to bear because they have gained so little over the past 8 years. It is not as if you are losing a job that was giving you a paycheck that allowed you to keep up with the pace of the cost of living. For the last 8 years, the average American family smack dab in the middle of the middle class has been falling further and further behind. We know why. For a time, the cost of gasoline was up over \$4 a gallon. We know the cost of utilities has gone up, the cost of daycare, the cost of health care, and wages have not kept pace. While some have pronounced prosperity over the last 8 years, the reality is that for real families facing the real world, prosperity has not been there despite their best efforts, and they have fallen further and further behind.

Eight years ago, we celebrated the turn of a new millennium with hope and optimism. Most people believed they and their children would be better off in the future. Those hopes have been shaken.

Unemployment has risen from 5.6 million people—that was 3.9 percent in December of 2000—to over 11 million people today, 7.2 percent. That is a doubling of the number of unemployed people over the course of the last administration. Mr. President, 5.5 million more Americans are unemployed today at the dawn of the 21st century.

Median or middle household income for working-age households—those headed by someone under the age of 65—has actually decreased over the last 8 years by \$2,000 adjusted for inflation. For those in the middle class who still have a job, workers are earning less for every hour they contribute.

The number of Americans not covered by health insurance has increased

from over 38 million people—13.7 percent of our population—in 2000 to over 45 million people—15.3 percent of our population—in 2007, and the number obviously will grow when the statistics are reported for 2008. At least 7 million more Americans are uninsured than at the beginning of the decade.

In the year 2000, we first heard the phrase “subprime mortgage” spoken on the floor of the Senate and around our Nation. The boom and bust of irresponsible lending since that time has left us with a record number of foreclosures across America. In just the last 2 years, individual foreclosure filings have risen 226 percent.

I have looked at maps of the great city of Chicago which I am honored to represent. Many people who travel know Midway Airport. Midway Airport is surrounded by bungalows—which is kind of a traditional house for the city of Chicago—neat little brick bungalows, one after the other, that people are so proud to have. You see the backyards with the little swimming pools, the above-ground pools, as you fly into Midway, and the well-kept lawns. Many of these families are second or third generation, from Ireland and Poland and all over the United States. They come into this area because middle-class families see this as a great place to live and work in the city of Chicago.

Then somebody showed me a map. They took the ZIP code around this Midway Airport and they put in little red dots for every home under foreclosure in each block. There were maybe four or five blocks that did not have a home in foreclosure in that solid, middle-class neighborhood in the middle of the city of Chicago. It clearly is a situation almost out of control.

Some of the experts, such as Credit Suisse, predict that between 8.1 million and 10 million American families will lose their homes in the next 4 years.

I will just tell you point blank, I do not think we can come to grips with this recession, that we can really turn this economy around, until we do something bold, dramatic, and comprehensive about mortgage foreclosures. We have waited patiently for too long. We kept saying to the banks: We know you are going to lose a fortune when a home goes into foreclosure. Do the bankers want to start cutting the grass? Do they want to start making sure the place looks good for a real estate showing? Of course not. They are in the financial business. We say: Why doesn't the banking business step up and start to renegotiate the mortgages so people have a fighting chance?

I got on a plane flying back to Chicago just 2 weeks ago, and a flight attendant said: Senator, I need to talk to you. She came over and knelt down in the aisle next to me once the flight was underway and said: I want to tell you my story. I am a single mom. I have three kids, two in high school. I live in a suburb of Chicago. This is my job. It

has been tough. Airlines have struggled, wages have not increased. But I keep coming to work because this is how we keep our family together. I am underwater with my mortgage.

Do you know what that means? That the value of her home currently is less than the principal balance of her mortgage. She is underwater.

She said: I am paying over 6 percent on my mortgage, and if I do not get this mortgage interest rate lower, I don't know what to do. Senator, what should I do?

You know, I can give her advice but not very good advice. I can tell her: If you go into foreclosure, maybe the bank will come in and talk to you, maybe you can renegotiate the mortgage. If you go any further along, though, who knows. You may end up losing the house and your kids will be out in the street.

That is the literal truth of life for many people in America. We have to do something about that. We have waited so long for the banks to get it together, to renegotiate these mortgages, and it has not happened.

I like Henry Paulson, our former Secretary of the Treasury. I really do. He has been a good friend, and I know he has tried through a crisis. But every time I bring this up to him, he says: We are going to try to do it on a voluntary basis. But it has not worked. He set up a plan called HOPE, and the plan was supposed to encourage banks to renegotiate mortgages. They said: Our goal is 400,000 mortgages are going to be renegotiated. At the end of the day, fewer than 400 were renegotiated.

We have to do more and, sadly, we are not. I hope we address this and address it soon.

I see the minority leader, the Republican leader is on the floor, and I know he wanted to speak at 10, so I am going to bring these remarks to a close by just saying this. We have to act and act quickly. We have to act together, Democrats and Republicans. We cannot do this alone. All Democratic votes cannot reach the magic number of 60 in the Senate Chamber. We need to hope that some of the Republicans who understand the gravity of this economic crisis in their own States and in our Nation, who understand the need to move quickly—which we hear from, basically, economists of all political stripes and backgrounds—who stood and listened to our new President challenge us to step up and act and act quickly—we need to hope they will join with us.

Then, in return, we have a responsibility in the majority, as President Obama has said, to listen to constructive suggestions and ideas, to try to put together a package that represents the best of Democratic thinking, the best of Republican thinking. That is what I heard then-President-elect Obama say to Senator McCONNELL at a meeting we had just a few weeks ago.

It is in that spirit, with that approach, that I think we can start to



solve these problems. But we have to get moving on it. We have to do it now. We have to do it with a sense of urgency.

Senator REID, the Democratic majority leader, has said that before we leave in the middle of February—I think the date is February 14—we need to pass this economic recovery and re-investment plan. That means rolling up our sleeves and getting down to business. I know we can do it. I know the American people expect nothing less from this Senate.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Republican leader is recognized.

#### LILLY LEDBETTER FAIR PAY ACT

Mr. MCCONNELL. Mr. President, we have heard a lot of debate over the past few days on the question of fairness. Every Member of this body supports equal pay for equal work. I could not find anybody who does not support that.

But this so-called Ledbetter bill is a trial lawyers' bailout. It is not about fair pay.

Pay discrimination has been illegal since 1963. Let me say that again. Since 1963. This bill is about effectively eliminating the statute of limitations on pay discrimination. It unfairly targets business owners who, in many cases, will no longer have the evidence they will need to mount a just defense.

As we all know, job creators have enough to worry about these days. We should not add the threat of never-ending lawsuits. Republicans have a better idea to ensure fairness in the workplace. Senator HUTCHISON has crafted a commonsense proposal that says the clock should not run out on someone who has been discriminated against until he or she discovers the alleged discrimination. That is fair to both sides.

If we are going to grow our economy, we need to focus on legislation that will create jobs, not put undue hardships on job creators. So we will have an opportunity to vote on the Hutchison amendment, which is absolutely fair to anyone who has been discriminated against in the workplace but also does not create a plaintiffs' lawyer bailout, which is what is at stake if we pass this bill without the Hutchison amendment.

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

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

Ms. MIKULSKI. Mr. President, we are now in the 1 hour that has been determined to be equally divided to conclude the debate on the Hutchison

amendment to the Lilly Ledbetter Fair Pay Act. It is the intention for us to be able to conclude the bill today, and we want to thank our colleagues for their cooperation in offering amendments, and we are willing to debate them.

We have heard much debate already—Mr. President, in our enthusiasm to move ahead, I neglected to say that we yield back our time in morning business.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. All time is yielded back. Morning business is closed.

#### LILLY LEDBETTER FAIR PAY ACT OF 2009

The PRESIDING OFFICER. Under the previous order, the Senate shall resume consideration of S. 181, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 181) to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

Pending:

Hutchison amendment No. 25, in the nature of a substitute.

Specter amendment No. 26, to provide a rule of construction.

Specter amendment No. 27, to limit the application of the bill to discriminatory compensation decisions.

Enzi amendment No. 28, to clarify standing.

Enzi amendment No. 29, to clarify standing.

The PRESIDING OFFICER. Under the previous order, there will be now be 60 minutes of debate equally divided between the Senator from Texas, Mrs. HUTCHISON, and the Senator from Maryland, Ms. MIKULSKI, or their designees.

The Senator from Maryland is recognized.

Ms. MIKULSKI. Well, thank you very much, Mr. President. It was in my enthusiasm that I neglected a few parliamentary housekeeping tasks.

On April 23, when we had the vote in the Senate to vote on the Lilly Ledbetter Fair Pay Act, we lost it by two votes. On that day, I said we would continue our fight and that we needed to—we the women of America and the men who supported us—square our shoulders, suit up to fight for a new American revolution. I called upon the other women of America to put their lipstick on and be ready to go. Well, today is “go day.” And we are actively debating this amendment.

One of the arguments that is often made is that this Fair Pay Act we are

advocating could trigger either needless and enormous volumes of lawsuits or it creates a shifting ball of the statute of limitations. Both of those criticisms are false.

First, the Lilly Ledbetter Fair Pay Act will not trigger more lawsuits. Because this bill the Democrats are advocating—and, oh, by the way, it is a bipartisan bill. We have over 54 cosponsors; Republicans are joining with us. It does not in any way trigger enormous lawsuits, because it simply restores the law, with greater clarity, that existed before the outrageous Supreme Court decision.

We were not flooded with volumes of lawsuits on wage discrimination. There was an orderly process that occurred.

The other is this floating statute of limitations argument. Well, that is a foggy term. But I tell you what is foggy is the Hutchison amendment.

Now, I so admire the gentlewoman from Texas. We have worked together, as I said, on many issues. I know her intentions are good, but her language is flawed. I should say, not her language, but the language of her amendment. It is foggy.

Let me go on to this a little bit. The amendment does not address the fundamental problem of the pay discrimination case, Ledbetter v. Goodyear, which created unreal and strict limitations for filing pay discrimination claims. It also fails to recognize that pay discrimination, unlike other kinds of discrimination, is repeated each time a worker receives an unfair paycheck.

I want to repeat that. The Hutchison amendment fails to recognize that pay or wage discrimination, unlike other forms of discrimination, is repeated each time someone receives an unfair paycheck. Instead, the Hutchison amendment creates a new confusing standard that requires workers to either be subject to the Ledbetter rule or prove they had no reasonable suspicion of discrimination when the employer first decided to pay them.

Well, you have to prove a negative. That is almost impossible. From the day you walk onto the job or the day your coworker who gets a raise, when the guys get it and the girls do not, you would have to be snooping around and creating a very hostile workplace, branded a troublemaker, because you were saying, well, you would have to every week say, well, what did you get paid, Mr. UDALL? What did you get paid, Mr. TESTER? What did you get paid?

Well, I know we get paid the same pay, and I know we are doing the same, equal work. But that is not true in the workplace. So we believe the Hutchison amendment actually creates more fog than solutions.

I want to continue the debate on this. I note that the gentlewoman from Texas has not come in, but I see the gentleman from South Carolina.

Mr. GRAHAM. Mr. President, I wish to speak on her time.

Ms. MIKULSKI. What I would recommend is kind of rotating back and forth every 5 minutes. That way everybody gets a chance to speak, everyone gets a chance to debate, and everyone will get a chance to vote at 11:30.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. GRAHAM. Mr. President, if you would let me know when 4 minutes has expired.

I thank the chairwoman for allowing me to speak. I wanted to make the RECORD clear. I am not in a fog about the Hutchison amendment. I think it makes a lot of sense. The reason I am on the floor is I have a pretty good reputation of making sure that people have a fair day in court. There is nothing more important in a free democratic society than to be able to take your cause to court and have your day in court. But what we are doing here, in my opinion, is creating a statutory statute of limitations that we have not seen before, that, quite frankly, does not make a whole lot of sense to me, if we pass the bill that came out of committee.

Let me tell you why. The ability to create a job in America and keep a job here is very much at risk. The way we regulate, the way we litigate, and the way we tax will determine if the business will create a job in America or go somewhere else. We are on the verge, in my opinion, of having a taxation system, a regulatory system, and a litigation system that is going to drive people out of business and leave this country.

Quite frankly, if we go down the road this bill is charting, we are going to make it harder to do business in this country and we will not enhance fairness. The whole concept of the Hutchison amendment is that you have 180 days from the time you knew or should have known you are being discriminated against.

The Supreme Court case has a ruling that says you had 180 days from the event. That does not seem quite fair to me. But this idea that you could realize discrimination or know of it for 20 years and file a lawsuit 20 years later, based on the last paycheck, is not fair to the legal system, and not fair to business, because a lot of the people have left.

So this is not foggy at all to me. I think a fair process would be that within 180 days of the time you knew or should have known you are being discriminated against in the workplace, you should file a lawsuit to preserve the evidence, to allow people to come in and testify with a fresh memory of what is going on.

That is not what we are doing here. We are allowing people to file lawsuits decades, potentially, after they knew or should have known they were being discriminated against, and that would create legal chaos.

So we are not advancing fairness, we are creating a system that is going to make it harder to do business. And for

those employees in the workplace who count on their employer opening the door, they are going to lose, and the people who have been discriminated against in a legitimate way are not going to be enhanced.

So to the Senator from Texas, I am not in a fog at all about what you are trying to do. I think you are trying to do a reasonable thing; that is, to protect the rights of people who have been discriminated against in a fair way, or have a claim that they think they may have been discriminated against in a fair way: 180 days from the time you knew or should have known of the act of discrimination, not decades after you knew or should have known.

I think this is the right balance. And if we do not watch it as a Nation—we live in a global economy. I want regulations that protect the air and the water and the worker. I want a taxation system that collects a fair amount from the American people to run this Government on which we all depend. I want a legal system that gives everybody their day in court with no bias, a fairminded jury or judge deciding the claim. If we don't watch it and we go down the road of this bill, we are going to make it hard to do business in America, harder than it ought to be, harder than fairness requires, and we are going to shut out some businesses because the ability to do business in this country is at risk in a global economy if we overtax and overregulate and we have unfair litigation rules. The idea is to be fair and balanced.

The Hutchison amendment achieves that, and the base bill does not. I will be supporting the Senator from Texas, opposing the bill coming out of committee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I thank the distinguished Senator from South Carolina. I believe he laid it out very well. I am very concerned about the broadening aspects of the underlying bill. As I have said on many occasions, Senator MIKULSKI and I have worked on so many issues to advance the cause of women, the rights of women, fair treatment of women. I would like to be able to support her bill, and I support the concept of her bill.

My concern is in two major areas: One is the inability for a legitimate defense to be raised if a person waits when they should have known there was discrimination, to be able to address that immediately or within a reasonable amount of time. I want people to be able to raise the issue.

I have heard of company policies. I have worked in a place where it was company policy that one didn't talk about pay. That was when I was making \$600 a month. Maybe there was discrimination there. If there is a company policy or a feeling in the company that if you talk about pay, you are

going to be punished or maybe even fired, then that makes the statute of limitations not function at that point. That, then, is a policy that is discriminatory. That is what we are trying to do: give the right of the plaintiff to show that he or she could not have known, didn't know, and could not have known.

The second area that is of great concern to me is the expansion of the right of the plaintiff to go beyond the plaintiff himself or herself, to allow a person affected by the alleged discrimination to file suit, which could even occur after the person is not even there or is dead. That is putting into our system a possibility that the person might not have filed the claim on their own, didn't file it, might not have wanted to, might have believed it wasn't the right thing to do, or might have believed there were other areas that made up for what the person might have thought was not right in one particular area, such as the area where he or she worked or the amount of pay.

I think you have to have a right yourself, but when it is a tort in our English law, in our American law, that does not accrue to another person generally. There are specific exceptions to that, but in general the tort claim goes with the person against whom the tort is committed. It should be that way in a discrimination area as well. So adding the ability for someone to sue on behalf of someone who isn't suing for something that happened to the person who isn't suing is a trail that is going to go way beyond the fairness that we try to put into our legal system.

I hope we can pass my amendment. I hope we can keep working on this bill. I wish there had been a markup in committee because there might have been more of a capability to shape this bill so that it would be something that would meet the test of adding to a plaintiff's claim, cause of action, opportunities, but without producing such an unfair disadvantage to anyone to be able to defend by having a statute of limitations that is not effective and by increasing the capability of someone to make a claim on behalf of someone who has chosen or doesn't make the claim.

I hope our colleagues will look at this issue. I hope we will be able to keep working on this matter. I would vote for this bill if my amendment passes. It will be a much harder decision if my amendment does not pass because I know the struggles of small business. I have great admiration for people who are in small business. I have been in small business myself. I know many times margins are very thin, and you want to make sure you know what your liabilities might be and that you have the ability to plan for that. We want business to thrive. We want business to keep employees. We don't want to do anything that causes fewer people to be employed because of greater potential liabilities. We don't want to do anything that adds



to the instability of the job market today. We want to help our businesses get through this time by keeping people working. I am afraid the underlying bill will be a deterrent in that respect.

I appreciate those who have spoken for this amendment. I hope we can continue to work on it together.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, how much time remains in the debate?

The PRESIDING OFFICER. The Senator from Maryland controls 25½ minutes. The Senator from Texas controls 19 minutes.

Ms. MIKULSKI. Mr. President, I would like to comment on the arguments that have been made by the advocates for the Hutchison amendment. First, let me say this: If you are a business and you want to avoid a lawsuit, there is one clear remedy that does not require statutory action, and that is called give equal pay for equal or comparable work. If you don't want to end up in court, you don't want to end up with a tattered and tarred reputation, pay people equal pay. That is the way to avoid a lawsuit. Then you don't need a law.

But, no, there are those in our country who still think we are back in the 20th or 19th centuries, and we are not going to put up with it. We can talk about the 180-day rule and wage-setting decisions and so on. I am a pragmatic, pro-business, pro-fairness Senator. My grandmother ran a small bakery and was known as having the best doughnuts in Maryland—well, certainly in Baltimore. My father ran a small grocery store. We paid equal pay for equal work.

When we talk about small business, I know about small business.

I also know the Hutchison amendment would create more problems. For example, the discovery rule fails to hold employers fully accountable for ongoing discrimination. That is a very big deal. If workers suspect discrimination but delay filing the claim for fear of retaliation or hopes that things could be worked out without litigation, they should not be forced to suffer continued wage discrimination indefinitely. Wage discrimination continues with every new unfair paycheck. If harm is ongoing, the remedy should be as well, regardless of when a worker learned of it.

Doesn't this rule make things better for employers? No. The Hutchison amendment is very vague and foggy. The rule encourages premature claims which is going to increase litigation. Workers are going to feel compelled to file formal claims with the EEOC or take legal action for fear that they will be accused of delay. That is what the Supreme Court accused Lilly Ledbetter of. They didn't accuse Goodyear of discriminating in their paycheck. They accused Lilly Ledbetter of delay and Lilly Ledbetter lost out.

There is a new day coming, including on the Supreme Court. I can't wait for those votes. Workers will feel compelled, as I said, to file formal claims quickly.

The Hutchison amendment adopts an uncertain legal requirement that will increase litigation costs for workers and employers alike. It also creates an environment that is hostile. It means if you are a worker, you have to act on rumor or speculation. My gosh, this is like the French Revolution and letters of cachet, and it was rumored that they were not faithful to concepts of the Revolution. We can't have that in our workplace. We have to have a workplace that we are all in together. So the Hutchison amendment is well intentioned but deeply flawed in the very objective that it seeks to accomplish.

I hope we defeat the Hutchison amendment and move on with debating other amendments.

I also want to say to the Senator from Texas, if I may have her attention, we are going to have a vote, up or down, on her amendment. I will not move to table. I think she deserves a clear vote, the way we are talking about a new style of civility and openness and so on. At the conclusion, that would be the process, rather than going through a tabling motion. Is that agreeable with the Senator?

Mrs. HUTCHISON. I appreciate that very much from the Senator from Maryland, as always, because I would like an up-or-down vote. This is an amendment that is the decision on this bill. I appreciate that. This whole debate has been sort of the test. HARRY REID said we would be able to have amendments. Our leader said we would take up the amendments that would be relevant to this labor issue. I think everyone has performed admirably. I hope we can keep going. I thank the Senator very much.

Ms. MIKULSKI. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. I suggest the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DEMINT. I ask unanimous consent that the order for the quorum call be rescinded.

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

#### AMENDMENT NO. 31

Mr. DEMINT. Mr. President, in the interest of time, I have filed three amendments. I know the majority leader wants to move this through, so I am going to call up one of them and not speak on it at this time during the discussion and debate of the Hutchison amendment. I ask unanimous consent to set aside the pending amendment and call up the DeMint amendment No. 31 and ask for its immediate consideration.

Ms. MIKULSKI. Withholding the right to object pending an inquiry, is it

the Senator's purpose simply to call it up so we can consider it later today?

Mr. DEMINT. I just want to get it pending. I will not speak on it right now.

Ms. MIKULSKI. I have no objection.

The PRESIDING OFFICER. Is there objection to setting aside the pending amendment? Without objection, it is so ordered.

The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. DEMINT], for himself and Mr. VITTER, proposes an amendment numbered 31.

Mr. DEMINT. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities)

At the appropriate place, insert the following:

#### SEC. \_\_\_\_ . RIGHT TO WORK.

(a) NATIONAL LABOR RELATIONS ACT.—

(1) RIGHTS OF EMPLOYEES.—Section 7 of the National Labor Relations Act (29 U.S.C. 157) is amended by striking “except to” and all that follows through “authorized in section 8(a)(3)”.

(2) UNFAIR LABOR PRACTICES.—Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended—

(A) in subsection (a)(3), by striking “: *Provided*, That” and all that follows through “retaining membership”;

(B) in subsection (b)—

(i) in paragraph (2), by striking “or to discriminate” and all that follows through “retaining membership”; and

(ii) in paragraph (5), by striking “covered by an agreement authorized under subsection (a)(3) of this section”; and

(C) in subsection (f), by striking clause (2) and redesignating clauses (3) and (4) as clauses (2) and (3), respectively.

(b) AMENDMENT TO THE RAILWAY LABOR ACT.—Section 2 of the Railway Labor Act (45 U.S.C. 152) is amended by striking paragraph Eleven.

Mr. DEMINT. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

#### AMENDMENT NO. 25

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that my amendment be reinstated for the debate and the vote as previously ordered.

The PRESIDING OFFICER. Without objection, the amendment is pending.

Mrs. HUTCHISON. Mr. President, I just want to say my distinguished colleague, the Senator from Maryland, said it is easy for an employer to know they will not have a liability; just pay equal. Simple: Pay equal. But let me give you an example of what an employer actually faces.

You take the situation where, say, an employer owns a bakery. One employee punches in at 8, leaves at 4, does an adequate job during that time, and that employee is paid one wage. Another employee always stays late when

there is a need to stay late for a reason and comes in early if the employer has a big order and needs help early, and the second employee is paid more than the first one. But the first one believes there is discrimination for some reason—age, race, gender—and, therefore, believes they have a claim.

That is not a situation where the employer should have to pay exactly the same to two different people when one goes the extra mile and one does not. This is just one example a person who has been in small business can tell you happens every day in every business in our country. The people who go the extra mile, who do a little more, should be able to be rewarded. That is what ownership of a business thrives on.

So I think to just say: Just don't discriminate, is to say, well, if one person is doing more, adding more to the business, and becoming more productive, we should have the ability as an employer to allow that person to make a little more or do something extra. So I do not think we want to get into a situation where you are only to pay the same wage for two different people who bring different things to the table. That is why we have lawsuits. It is why we have EEOC, to make those judgment calls.

So I am trying to make sure we keep an equal and level playing field so people who own a business who are struggling in this very tough economy have the ability to make the decisions that will keep those employees employed and make the judgment calls so that an owner—who is the one signing the checks, the one signing the loan applications, the one putting forth their whole livelihood and their family's security—also has a fair chance in any kind of a dispute to do what is best for the business and for the employees of the business.

Thank you, Mr. President. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I now yield 5 minutes to the Senator from Texas to speak on this issue. She has been an unabashed and—

Mrs. BOXER. The Senator from California, not Texas.

Ms. MIKULSKI. Excuse me. The Senator from California. It is the big State, with big gals here.

Mrs. BOXER. You got it.

Ms. MIKULSKI. The Senator from California has been such a long-standing and faithful advocate for those who have been left out and left behind and particularly an intrepid voice for women.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Thank you so much, I say to Senator MIKULSKI.

The bill Senator MIKULSKI is urging us to vote for simply restores the law to what it was in almost every State in the country before the Supreme Court dealt us a very serious blow and said, in fact, you had to move from the minute the discrimination started.

Well, what if you had no clue you were being discriminated against, just like Lilly Ledbetter, who did not know until an anonymous note appeared from a male colleague, and he told her: The men who are doing the same work as you are getting paid far more. Well, she did not know that for years and years and years. Although the lower courts acted in the right fashion, the Supreme Court, in the tightest of decisions, destroyed what I consider to be the ability to recover damages when you have been blatantly and unabashedly discriminated against simply because you are a woman.

Now, I urge my colleagues to defeat these pernicious amendments that are coming. As to the one from my friend, Senator HUTCHISON, believe me, it is a wolf in sheep's clothing. If we adopt the Hutchison amendment, people such as Lilly Ledbetter simply would not be helped. The Hutchison amendment essentially adopts the flawed decision by the Supreme Court in the Ledbetter case. It creates a confusing new standard for employees. Let's not take my word for it or Senator MIKULSKI's word for it. Let's take the words of the National Women's Law Center. Their whole life has been spent fighting for women's rights.

What do they say? They say: Under the Hutchison amendment—and I am quoting—"employees are left without any remedy against present, continuing pay discrimination if they do not file a complaint within 180 days of the first day when they 'have or should have expected to have' enough information to suspect discrimination."

Well, take Lilly Ledbetter. If you never met her, she is the most hard-working, direct individual I have ever met. She worked so hard for Goodyear Tire. She had no clue, no time to think about whether she was getting equal pay. She got up in the morning, she got dressed for work, and she worked hard, never suspecting her work would not be rewarded in an equal fashion to her male counterparts.

Under the Hutchison amendment, she is left out in the cold, and all those other women who have no clue. Sometimes discrimination is carried out in a way that you have no way of knowing that it is happening.

Now, in the Senate, we have open books. Everybody can see what I make, what my staff makes. It is clear. If there is any discrimination going on, you can ferret it out, figure it out, and, by the way, you have a cause to seek recompense. We do not have a situation as they do in the private sector where it is a totally private situation. So it could be you could be working for years and years and years and never know.

This bill on which Senator MIKULSKI is leading us is so important because it says every time you get a paycheck, that 180 days runs, so you have a chance to make up for this discrimination. So I say to my friends, you are going to see these amendments coming

at you. Do not fall for them. Do not fall for them because they actually undermine, undercut, and destroy what we are trying to do for the women of America.

I say to my friend, Senator MIKULSKI, how proud I am to stand with her. She feels this issue in her heart of hearts. She is a working woman. She comes from a working-class family. I have to say, I came from a family where my mother never even went to high school. She could not graduate because she was forced to go to the workplace to support her parents. The thought of my mother working so hard every day and having someone in the workplace say: Don't worry about that little lady over there, she has no power, no clout; we can pay her less than we pay a man—and I am sure that occurred because this was a long time ago—the thought of my mother in the workplace being discriminated against and not having the opportunity to do anything about it really sets me off.

I think about all the moms out there in the workplace and I think about the grandmas in the workplace. I think about single women in the workplace. They have a right to be protected.

Vote no on Hutchison; vote no on Specter; vote yes on the underlying Mikulski bill.

Mr. President, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I control the time.

Mr. President, I now yield 5 minutes to the Senator from Montana, a very good friend on this issue.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. TESTER. Thank you, Mr. President.

I thank the Senator from Maryland for her leadership on this issue. This is a critically important issue in this country today.

I would also like to welcome the Senator from New Mexico in the Chair. It is good to see you there.

Mr. President, I rise today in support of the Lilly Ledbetter Fair Pay Act. It is a fair, commonsense piece of legislation that honors the hard work and dedication of a great Montanan, that Montanan being Jeannette Rankin, who was America's first Congresswoman, an outspoken peace activist and a champion of equal rights.

Congresswoman Rankin would have voted yes today because she fought so hard for equality and fairness.

Every employee deserves to earn the same pay for doing the same work, regardless of artificial timelines. Lilly Ledbetter worked at Goodyear Tire Company for 19 years, and she discovered she was being paid significantly less than her male colleagues for doing the exact same amount of work. A jury agreed. The jury awarded Ms. Ledbetter significant—significant—damages. The U.S. Supreme Court said

too much time had passed since her first paycheck, and the Court ruled that Ms. Ledbetter's claim was invalid and even took away that jury award. Thankfully, this legislation undoes that wrongheaded decision. It clarifies the law to make it fair to America's workers.

When he signed the original Equal Pay Act in 1963, President Kennedy said protecting America's workers against pay discrimination is "basic to democracy." Forty-six years after President Kennedy signed that historic piece of bipartisan legislation, American women still make only 77 cents for every dollar a man makes for doing the same work. African-American workers make 18 percent less, while Latinos make 28 percent less for doing the same work. American Indians make even less.

Nearly 100 years after Jeannette Rankin came to Congress, we cannot ignore this kind of discrimination. We have a duty to speak out against pay discrimination and to make sure the law is clear. Hard-working Americans deserve nothing less than equal pay for equal work.

Mr. President, I urge all my colleagues to pass the Lilly Ledbetter Fair Pay Act.

With that, I yield the floor.

**THE PRESIDING OFFICER.** Who yields time?

The Senator from Maryland.

Ms. MIKULSKI. Mr. President, how much time is remaining on my side?

**THE PRESIDING OFFICER.** The Senator from Maryland controls 9 minutes 35 seconds. The Senator from Texas controls 13 minutes 24 seconds.

Mrs. HUTCHISON. Mr. President, I wish to reserve my time. There is another speaker coming down now on my side. The Senator from Maryland may wish to go forward or we may wish to wait and have the time equally divided.

Ms. MIKULSKI. Mr. President, while we are working this out, I suggest the absence of a quorum, with the time equally divided, while we establish our next steps forward.

**THE PRESIDING OFFICER.** Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

**THE PRESIDING OFFICER.** Without objection, it is so ordered.

Ms. MIKULSKI. Mr. President, we are in the closing minutes of the debate on the Hutchison substitute. We know there is one more speaker besides the Senator from Mississippi. This is not going to be my last say for this bill, but I do wish to offer my concluding arguments on the Hutchison amendment.

First, I ask unanimous consent to submit for the record a Q&A on the question of the Hutchison amendment because when all is said and done, I wish for there to be a very clear record

on congressional intent so we won't have the type of Supreme Court decisions that brought us here today.

So I ask unanimous consent to have a Q&A on the Hutchison amendment printed in the RECORD.

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

#### Q & A ON THE HUTCHISON AMENDMENT

**Q:** What does Senator Hutchison's amendment do?

**A:** The amendment doesn't address the fundamental problem of the pay discrimination case, *Ledbetter v. Goodyear*, which created unrealistic limits for filing pay discrimination claims. It also fails to recognize that pay discrimination, unlike other kinds of discrimination, is repeated each time a worker receives an unfair paycheck. Instead, the amendment creates a confusing new standard that requires workers to either be subject to the Ledbetter rule, or prove that they had no reasonable suspicion of discrimination when the employer first decided to pay them less than others.

**Q:** Would Senator Hutchison's amendment have solved the problems for Lilly Ledbetter?

**A:** No. The Hutchison amendment would have imposed additional burdens on Ms. Ledbetter and increased the costs of her litigation. It is impossible to show exactly when a worker would have known discrimination was occurring. Yet the Hutchison amendment forces workers to prove a negative—that they did not have information to suspect discrimination. This unnecessary requirement will lead to confusion and needless litigation. *Goodyear* argued that Ms. Ledbetter should have realized earlier based on workplace rumors that she was a victim of discrimination, even though they kept salaries hidden. Ms. Ledbetter would have had to spend time and resources litigating this issue, which has nothing to do with the real problem of discrimination.

**Q:** Isn't the Hutchison amendment a fair approach to the problem, since it gives a claim to workers who have no way of discovering discrimination within 180 days of an employer's pay-setting decision?

**A:** No. The discovery rule fails to hold employers fully accountable for ongoing discrimination. If workers suspect discrimination, but delay filing a claim for fear of retaliation or in hopes of working things out without litigation, they should not be forced to suffer continued pay discrimination indefinitely. Pay discrimination continues with every new unfair paycheck. If the harm is ongoing, the remedy should be as well—regardless of when a worker learned of it.

**Q:** Doesn't this rule make things better for employers?

**A:** Not at all. The rule encourages premature claims, which will increase litigation. Workers will feel compelled file formal claims quickly, for fear that they will be accused of delay, even if the only evidence they have is based on rumors or speculation. In addition, the amendment adopts an uncertain legal requirement that will increase litigation costs for workers and employers alike.

**Q:** Is there a better way of fixing the problem created by the Ledbetter case?

**A:** The bipartisan Lilly Ledbetter Fair Pay Act creates a fair, bright-line rule that workers and employers can easily understand, and which was applied by most courts and the EEOC under both Republican and Democratic Administrations before the Ledbetter decision.

Ms. MIKULSKI. Now, let's get to the facts. The difference between the

Hutchison alternative and the Lilly Ledbetter bill is this: The Lilly Ledbetter Fair Pay Act restores the law to the way it was before the Supreme Court decision, *Ledbetter v. Goodyear*. The Hutchison alternative creates a whole new legal standard which regrettably is very vague and I am concerned will trigger a tremendous amount of lawsuits and further add to hostility and suspicion in the workplace. The issue of triggering more lawsuits as an argument for the Hutchison alternative is flawed because the Hutchison substitute will create confusion in the courts and for employers trying to interpret when employees should have known they were being discriminated against. The Ledbetter Fair Pay Act establishes a legal framework that had been accepted by nine appellate courts and the EEOC, and it has been a standard that has stood essentially the test of time.

Let's go to the statute of limitations. The Lilly Ledbetter Fair Pay Act says it is 180 days from the last unequal paycheck, not from the initial point of hiring or the initial point of a discriminatory pay raise. The Hutchison alternative goes 180 days from when employees have or should have been expected to have knowledge that they were being discriminated against. This "expected to have" is really what is so foggy. Also, as long as employers are discriminating, employees can get justice. Under the Hutchison alternative, employees have no remedy if the claim is not brought when they should have known. I don't know when you should have known.

Also, the Lilly Ledbetter Act gives workers a chance to figure out whether they are being discriminated against, approach the employer, and perhaps have an alternative dispute resolution on this before EEOC complaints, before going to court, and so on. I am concerned that the Hutchison amendment language "should have known"—this "should have known," where you would have to operate on rumor and speculation—will force many lawsuits as employees will sue before running out of time.

The Lilly Ledbetter Fair Pay Act also gives workers a chance to be able to resolve this. If an employer is currently paying women less than men, that is illegal. Under the Hutchison amendment, it forces employees to prove when they suspect discrimination. I have made that point over and over.

So in summary, I say to the private and nonprofit sector: If you don't want to be sued, don't discriminate. That is the best way to go. If you don't want to be sued, don't discriminate.

The other point I wish to make is that the Fair Pay Act doesn't only affect women, it affects anyone who might be discriminated against in wages. So that means yes for women, but this bill would cover you if you have been discriminated against on the basis of race, ethnicity, national origin, religion, and the traditional forms

of discrimination that regrettably we have dealt with. So this bill is not a women-only bill. We women certainly wouldn't discriminate against other people.

The Lilly Ledbetter Fair Pay Act takes us to where we need to be to fully implement the Civil Rights Act of 1964. If we have a dream, I have one too: that we pass the Lilly Ledbetter Fair Pay Act.

Mr. President, I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, we are 5 minutes away from voting. The last speaker on my side was not able to make it, so I wish to close on my amendment.

What some courts around our country do is allow a plaintiff to say that he or she knew or didn't know, allow the person to say why they didn't know, and let the plaintiff go forward to give their defense or to give this statement as the reason why the statute of limitations should be tolled. In many jurisdictions, this is accepted and the statute of limitations is tolled.

What my substitute does is codify this so every jurisdiction will allow the plaintiff to have a right to say: I didn't know, and here is why I didn't know, and I need to be able to toll the statute of limitations to have my rightful amount of pay or the job I have been denied. It codifies so that it is clear. It brings clarity to the law and a unification of all the districts' views that this plaintiff should be allowed to say: I could not have known, and that is why I didn't file my claim earlier.

The other part of my amendment that I think is very important is that it does not allow the added person who is not the person who alleges the discrimination to still file a lawsuit on behalf of that person who did not file the lawsuit. That is in the underlying bill. I think it is a huge increase in another area of litigation that we don't have in the law today. In fact, in most tort claims we don't allow that because it is important when a person has a claim that they make the decision to pursue that claim. Having another person who might claim to be affected by the discrimination against someone else really takes one into a whole other realm of "he said, she said." Well, why would an heir be able to file when the other person didn't? Maybe the person is gone, maybe the person is dead, maybe the person did not want to make this claim or would have had they been alive and they could make the decision. It just adds an element of instability in the system that I don't think we have seen really in any other area of the law.

I want to have a fair judicial system. I want there to be more rights for the plaintiff to be able to come forward and sue for discrimination if they feel they have been discriminated against and to be able to say: I didn't know, I couldn't have known, our company doesn't let

us talk about what we make, and have that before the court because I don't want anyone in this country to be discriminated against.

I also want a businessperson—a small businessperson, a big businessperson, anyone who is creating jobs in our country and trying to make it so that we keep our economy strong and keep jobs from being let go—I want that person to have a fair chance too. If you have a person who files a claim when the supervisor who is alleged to have made the discrimination is dead, that is a problem for the company to be able to make a defense, and that is what this whole case is about.

I believe Lilly Ledbetter was a good employee. I think she probably put forward her claim believing she had a discrimination, and I believe she probably did. I believe she started at a lower level, and even though she was increased at the same level every year as her peers, because she started out at the bottom or at a lesser level, that did cause discrimination.

If she had brought the claim in a timely way when she first knew or should have known because of a note that she received that was anonymous, then she probably would have been able to prevail.

I think she is a good and nice person, but we are setting a standard in the law that is going to make it very difficult for businesses to know what their liability is if a person claims something that happened 6, 8, 10 years ago. Not being able to have the records, not being able to have the witnesses, not being able to have the memories of people is going to be a significant deterrent for the employer to run the business.

I particularly have a place in my heart for small businesses because I know it is very difficult for a small business to make the salaries and the payroll and to put their livelihoods on the line.

I want to make sure we are fair to everyone. I want a person who is discriminated against to have a right of action. I do. I have said it before, I have been discriminated against. I know how it feels to be on the lower level when you know you are working harder. I know. But it is so important that also the person I am working for have a chance to defend with their witnesses and their records and let the court have everything to make a fair decision.

In America, one of the things we have prided ourselves on that was put in the Constitution by our Founding Fathers is fairness, justice. We are a country that prides itself on fairness and justice. We have to make sure we continue to have equal rights of plaintiffs and defendants to be heard, and that is what my amendment does.

If my amendment is adopted, I know we will add to the plaintiffs' capabilities, but with a fair right for the defense to make their case. And that is what our justice system should be.

I hope we will adopt this amendment. I hope we can keep working on this bill. I am sure there are other things we can do. I would like for us to talk about the ability to have a negotiation. I tolled the statute of limitations when a point is brought up and there is a negotiation, an arbitration going on between an employer and an employee. When we go to conference, if my amendment is adopted, and we can work something like that out, I will be for it. I think it is a fair point because we do want to have the total ability of the plaintiff to be able to make his or her case, and we want to keep people employed in this country, and we do not want there to be a deterrent for small businesses to keep the people they have employed so we can get the economy going again in this country and go back to the full employment we had maybe 2 years ago and try to make sure we don't have in any way a deterrent for people to know what their liabilities are and start pulling back.

I hope we can adopt my amendment and continue to work on this bill.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, we have now concluded the debate on the Hutchison amendment. It is time for change. It is time to turn the page rather than turn back the clock. It is time to defeat the Hutchison amendment and proceed with the bill. We have five pending amendments. We are fired up, and we are ready to go.

I yield back my time, and if the Senator does so, I will ask for the yeas and nays and then vote.

Mrs. HUTCHISON. Mr. President, I yield back my time, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Under the previous order, the question is on agreeing to amendment No. 25 offered by the Senator from Texas, Mrs. HUTCHISON. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Iowa (Mr. HARKIN) and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

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

The result was announced—yeas 40, nays 55, as follows:

[Rollcall Vote No. 7 Leg.]

YEAS—40

Alexander	Collins	Hatch
Barrasso	Corker	Hutchison
Bennett	Cornyn	Inhofe
Bond	Crapo	Isakson
Brownback	DeMint	Johanns
Bunning	Ensign	Kyl
Burr	Enzi	Lugar
Chambliss	Graham	Martinez
Coburn	Grassley	McCain
Cochran	Gregg	McConnell

Murkowski  
Risch  
Roberts  
Sessions

Shelby  
Specter  
Thune  
Vitter

Voinovich  
Wicker

## NAYS—55

Akaka  
Baucus  
Bayh  
Begich  
Bingaman  
Boxer  
Brown  
Burris  
Byrd  
Cantwell  
Cardin  
Carper  
Casey  
Conrad  
Dodd  
Dorgan  
Durbin  
Feingold  
Feinstein

Hagan  
Inouye  
Johnson  
Kaufman  
Kerry  
Klobuchar  
Kohl  
Landrieu  
Lautenberg  
Leahy  
Levin  
Lieberman  
Lincoln  
McCaskey  
Menendez  
Merkley  
Mikulski  
Murray  
Nelson (FL)

Nelson (NE)  
Pryor  
Reed  
Reid  
Rockefeller  
Sanders  
Schumer  
Shaheen  
Snowe  
Stabenow  
Tester  
Udall (CO)  
Udall (NM)  
Warner  
Webb  
Whitehouse  
Wyden

## NOT VOTING—2

Harkin

Kennedy

The amendment (No. 25) was rejected.  
Ms. MIKULSKI. I move to reconsider the vote.

Mr. DURBIN. 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, we have been making progress on this bill. People are cooperating. While we have a lot of Senators in the Chamber, I have to add that we have a lot of work to do. I mentioned briefly yesterday, and I will say briefly again today, when the time is up, the vote is going to be cut off. It will affect Republicans and Democrats, but maybe we will get here in time to vote. We cannot hold up this place, we have so much work to do. We are going to finish Ledbetter today or tonight. Whatever it takes, we will finish that. I think we have set a good tone. I hope I do not have to file cloture on this tonight for a Saturday cloture vote. I don't want to do that. We have a lot of other things we can do that we can get done and not have to mess with the weekend.

I am in touch with the Republican leader, and I think we have a way of moving forward next week, but everyone who has amendments to offer on Ledbetter should do it today and we can finish this early this evening, late this afternoon, or sometime tonight.

We have other things to do. We have nominations we have to move. I spoke to the Republican floor staff today. They said they are hotlining a number of nominations. President Obama is getting very anxious on the nominations that have not been approved. He wants to get that done as quickly as possible, to get the country moving with the Cabinet spots being filled.

The manager of the bill, Senator MIKULSKI, is in charge of this legislation, as she is in charge of everything in her life. I appreciate her good work, and we are going to move this bill. She understands we are going to finish this bill today.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. ISAKSON. Taking the lead from the majority leader, would now be an appropriate time to call up an amendment I have filed at the desk? I call up amendment No. 37.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. The only problem, I say to my friend from Georgia, is we do not have a copy of it. If we could see it, that would be terrific.

Mr. ISAKSON. The staff is copying it now.

Mr. REID. What we are trying to do, I say to Senator ISAKSON and the rest of the people in the Chamber, is, we have a number of amendments that have been filed. We want to try to set them up. We want to try to set up a process to get rid of the amendments that have already been filed. We certainly look forward to the Senator from Georgia offering the amendment.

I see no reason we should not go ahead and have the Senator offer that now. Everyone should be alerted we are going to have the managers of this legislation clear the decks after Senator ISAKSON offers his amendment. If people want to offer amendments after that, certainly that is appropriate. But we are going to get rid of these amendments either by tabling them or having votes on them after people have had enough debate on them.

Mr. ISAKSON. Will the leader yield for a question?

Mr. REID. Sure.

Mr. ISAKSON. Mine is a short amendment. I can summarize with a one-compound sentence explanation. Do you want me to do it now or later?

Mr. REID. I saw it. Just lay it down now.

## AMENDMENT NO. 37

Mr. ISAKSON. Mr. President, I would like to lay down amendment No. 37, the Isakson amendment.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Georgia [Mr. ISAKSON] proposes an amendment numbered 37.

Mr. ISAKSON. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To limit the application of the Act to claims resulting from discriminatory compensation decisions, that are adopted on or after the date of enactment of the Act)

On page 7, strike lines 11 through 20 and insert the following:

## SEC. 6. EFFECTIVE DATE.

(a) IN GENERAL.—This Act, and the amendments made by this Act, take effect on the

date of enactment of this Act, except as provided in subsection (b).

(b) CLAIMS.—This Act, and the amendments made by this Act, shall apply to each claim 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, if—

(1) the claim results from a discriminatory compensation decision and

(2) the discriminatory compensation decision is adopted on or after that date of enactment.

Mr. ISAKSON. Mr. President, would it be appropriate now for me to give that one-line explanation or wait until the manager of the bill is back? Shall I go ahead now?

Mr. President, amendment No. 37 is very simple. It says the provisions of this legislation take effect on the day the legislation becomes law and is not retroactive, which is obviously the intent of everything we do. So any incident that occurred in the past could not be reopened for litigation, but any case after the day of enactment would be governed by the provisions of the law as they are in the new legislation. I think it is a simple, straightforward amendment, and I urge its adoption at the appropriate time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HARKIN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. HAGAN). Without objection, it is so ordered.

Mr. HARKIN. Madam President, it is unbelievable to me that more than four decades after the passage of the Equal Pay Act and the Civil Rights Act women are only making 78 cents on the dollar for every dollar a man makes. Discrimination takes many forms. Sometimes it is brazen and in your face, like Jim Crow and apartheid, and sometimes it is silent and insidious. That is what is happening in workplaces all across America today.

Millions of female-dominated jobs—social workers, teachers, childcare workers, nurses, and so many more—are equivalent in effort, responsibility, education, et cetera, to male-dominated jobs, but they pay dramatically less. The Census Bureau has compiled data on hundreds of job categories, but it found only five job categories where women typically earn as much as men, five out of hundreds.

Defenders of this status quo offer all manner of bogus explanations as to why women make less. How many times have I heard the fairy tale that women work for fulfillment but men work to support their families? This ignores, first of all, so many single women who work to support themselves and their families, and married

women whose paycheck is all that allows their families to make ends meet and educate their kids. It also ignores the harsh reality that so many women face in the workplace that they have to work twice as hard to be taken seriously or they get pushed into being a cashier instead of a more lucrative sales job. These acts of discrimination deny women fair pay, but they also deny women basic dignity.

Let me cite one example of what I am talking about. Last year, in a hearing before our Health, Education, Labor and Pensions Committee, we heard testimony from Dr. Phillip Cohen of the University of North Carolina. Dr. Cohen compared nurses' aides, who are overwhelmingly women, and truckdrivers, who are overwhelmingly men. In both groups the average age is 43. Both require "medium amounts of strength," and in some cases nurses' aides have to be stronger than truckdrivers. Truckdrivers now have power steering and power brakes and stuff like that. Nurses' aides have to pick up patients and turn them over and stuff like that. Nurses' aides on average have more education and more training than truckdrivers. But nurses' aides make less than 60 percent of what a truckdriver makes.

Given that this discrimination is so obvious and pervasive, you would expect that women would have no trouble obtaining simple justice through our court system, but in a major decision in June of 2007 in the case of *Lilly Ledbetter v. Goodyear Tire & Rubber Company*, the Supreme Court took us back. In a 5-to-4 ruling, the Court made it extremely difficult for women to go to court to pursue claims of pay discrimination, even in cases where the discrimination is flagrant. A jury acknowledged that Lilly Ledbetter, a former supervisor at Goodyear, had been paid \$6,000 a year less than her lowest paid male counterpart. But the Supreme Court rejected her discrimination claim. Why? The Court held that women workers must file a discrimination claim within 180 days of their pay being set when they were first hired, even if they were not aware at the time their pay was significantly lower than their male counterparts.

That is important to note. The Court said you have to file your discrimination claim within 180 days of your pay being set when you are hired, even if you don't know, even if you did not know that your pay was significantly lower than your male counterparts.

As Justice Ginsburg said in a forceful dissent, this is totally out of touch with the real world of the workplace. In the real world, pay scales are often kept secret, employees are often kept in the dark about coworkers' salaries. Lacking such information, how can you determine when your pay discrimination begins? Furthermore, the vast discrepancies are often a function of time. If your original pay was just a little bit lower than your colleagues' pay, but you worked there for 20 years

and you all get pay raises, you can see over 20 years that gap widens and widens and widens.

So what started out to be a small gap winds up being a big gap over a period of time. Now, in the case of Lilly Ledbetter, not only was she discriminated against for all of her lifetime of work at Goodyear because she started out at a lower pay scale, that gap widened over time, but she is also now going to be discriminated against for the rest of her life in terms of her pension. Because she is making so much less than her male counterparts, her pension is going to be less.

But Lilly Ledbetter did not get discriminated against once, she got discriminated against for over 20 years, and now for the rest of her lifetime in terms of the pension she gets. So what the Supreme Court decision means is that once that 180-day window for bringing a lawsuit is passed, this discrimination gets grandfathered in. This creates a free harbor for employers who have paid female workers less than men over a long period of time. Basically, it gives the worst offenders a free pass to continue their gender discrimination.

Think about it. Once the 180 days has passed, the employer is home free. So you hire women, you pay them a little bit less than their male counterparts, but they do not know that because you do not publish the coworkers' salaries. After 180 days, you are home free. You can continue that discrimination for the next 10, 15, 20, 25 years, and there is not a darn thing a woman can do about it under that Supreme Court 5-to-4 decision.

Well, now, I also heard several businesses were complaining that if we peg, if we peg the 180-day limit to the continued payment of discriminatory paychecks, which is what this bill before us does, they will keep accruing liability. So the companies will continue to accrue liability.

Well, there is a simple answer to that. They can stop the clock anytime they want. Go through the books one day, make sure all the women are being paid fairly. On that day, you stop sending everyone discriminatory paychecks. On that day, everyone gets a fair deal. On that day, you stop accruing liability.

The very thought that an employer would say: Well, we cannot have this bill, the Lilly Ledbetter bill we are talking about, because, gee, you know, after 180 days I keep accruing liability. Well, stop it. Stop paying the discriminatory pay. Go through your books, find out what the discrimination is, if it exists, and pay everyone fairly.

Ledbetter was a bad decision. As Justice Ginsburg says, it ignores the reality of today's workplace. I am glad to work together with Senator KENNEDY and Senator MIKULSKI, champions of this effort, to reverse the damage done by that decision.

This bill would establish that the unlawful employment practice under the

Civil Rights Act is the payment, is the payment, of a discriminatory salary, not the original setting of the pay level.

It would be a great miscarriage of justice for this Senate to tell Lilly Ledbetter that her 20 years of discrimination, and the resulting loss of income in retirement, in her pensions should go unchecked because she did not have a crystal ball telling her what her coworkers were making at the time her pay was set. She had no way of knowing that.

While the need for the passage of this legislation is critical and immediate, it is not enough. It is not good enough to go back to the way the law worked 2 years ago, because at that time, women were still making only 78 cents on the dollar as compared to men. That should be intolerable in our society.

Moreover, if pay scales are kept secret, if there is not some transparency, how can women know if they are being discriminated against? That is why we need to pass the Fair Pay Act, which I have introduced in every Congress starting in 1996, the Fair Pay Act. Not only does that act require that employers provide equal pay for equivalent jobs, my bill also requires the disclosure of pay scales and rates for all job categories at a given company.

This will give women the information they need to identify discriminatory pay practices. This could reduce the need for costly litigation in the first place. Now, I am not saying a company has to publish the salary of every single person. That is not what I am saying. What our bill says, the Fair Pay Act says, is you have to make transparent what the pay scales are in categories, certain categories.

Now, I asked Lilly Ledbetter, when she appeared before our committee a year ago, I think it was, I asked her about the Fair Pay Act. I said: If you had had this kind of information when you first went to work, could you have negotiated for better pay and avoided the litigation? And she said: Yes. But she did not have that information. Well, there are countless more Lilly Ledbetters out there who are paid less than their male coworkers but will never know about it unless they have this kind of information. My Fair Pay Act amends the Fair Labor Standards Act of 1938 to prohibit discrimination in the payment of wages on the basis of sex, race, national origin. Most importantly, it requires each individual employer to provide equal pay for jobs that are comparable in skill, effort, responsibility, and working conditions.

We know about the Paycheck Fairness Act. I support that also. But we have the Equal Pay Act that was passed in, I think, 1963—1963—which says that, if a woman has the same job as a man, equal pay for equal jobs, you have to pay them the same. That has been in law since 1963. To be sure, it has not been enforced enough, and that is why we need the paycheck fairness bill that is here, to enforce it more.



But the fact is, it has been the law since 1963, equal pay for the same job. What we now need to address 45, 49, 46 years later is equal pay for equivalent work because so many jobs in our society are kind of denoted as "women's jobs." Are they crucial to our society? You bet they are.

But for some reason, because they are "women's jobs," they get paid less. I used the example of a truckdriver. Philip Cohen, from the University of North Carolina, testified before our committee, and he gave this example. They did a large study. I will repeat it again for emphasis sake of truckdrivers and nurses' aides.

Truckdrivers, overwhelmingly men; nurses' aides, overwhelmingly women; medium age for all of them, 43. They both require median levels of strength. Truckdrivers do not need a lot of strength anymore; they have power steering and power brakes and everything else. Nurses' aides still have to lift people and duties such as that. So a median amount of strength is required. Nurses' aides actually have more education and more training than truckdrivers. Yet nurses' aides are paid less than 60 percent of what a truckdriver makes.

Why is that? Is it somehow nurses' aides are not as important as a truckdriver? I will be glad to debate that any day of the week. When you are ill or when you need long-term care, do you want a truck driver or a nurses' aide? Answer me that question. I think a truckdriver is important, I do not mean to denigrate them, but I am saying nurses' aides are every bit as important.

Childcare workers. What could be more important to our country than taking care of our country's youngest children? Mostly women, grossly underpaid, compared to male workers in terms of skill, effort, responsibility, and working conditions.

A lot of people say: Well, you know, we cannot—this is all nice pie-in-the-sky stuff. We cannot do it. But 20 States, 20 States have fair pay policies in place for their State employees, including my State of Iowa. I would point out the State of Iowa passed a fair pay bill for all State employees in 1985, when we had a Republican governor and a Republican legislature.

Oh, the sky was going to fall. This was going to cost our taxpayers enormous sums of money. Well, the sky did not fall. Women are making more money, and our State is better for it. I might point out that our neighbor to the north, Minnesota, not only has fair pay policies for their State employees, they have it for their municipal and local workers also.

Twenty States have done this for State employees. So, again, this should not be any kind of partisan issue. Some people say: We do not need any more laws, that market forces will take care of the wage gap. But experience shows there are some injustices the market simply will not rectify. That is why we

did pass the Equal Pay Act in 1963, why we passed the Civil Rights Act, the Family and Medical Leave Act, and the bill that has my name on it, the Americans with Disabilities Act.

Were there market forces out there pushing to end discrimination against people with disabilities? No. But we did it. We are better off. That is the same way market forces are not going to take care of this, this issue of unequal pay for women in so many jobs in our country.

I guess now that we are on the Enzi amendment, which would eliminate the language saying that those affected by discriminatory pay practices can sue—well, I am glad about one thing, that my colleagues are acknowledging discrimination hurts everyone because it does. It hurts everyone in two ways. First, an injury to one is an injury to all. But, second, I defy you to find a person in America who does not have a woman in their family, a person of color, someone with a disability, someone who observes a different or any religious practice. That is the point we have been trying to make all along.

But this bill, as written, does not allow all those very indirectly affected parties to bring suit. This is patterned after language in the 1991 Civil Rights Act, and that legislation has not resulted in all the people who are hurt by discrimination to bring suit.

It has been interpreted all those years to mean the party directly injured by the discriminatory practice. However, if we strike this language, we risk failing to fix the full extent of the problem caused by the Ledbetter decision.

It is important to use precise language to make sure all the employees affected by discriminatory pay decisions by their employer are covered, not just the one who was discriminated against but all those employees affected.

I would like to close with a story from a woman from my State, Angie. She was employed as a field office manager at a temp firm, temporary workers firm. The employees there were not allowed to talk about pay with their coworkers. Only inadvertently did Angie find out that a male office manager at a similar branch who had less education, less experience, was earning more than she was.

Well, in this case, the story has a happy ending. She cited this information in negotiations with her employer, and she was able then to get a raise. But the experience left her feeling bewildered and betrayed, and this ultimately led her to quit her job. Had she not inadvertently found this out, she would have continued to have been discriminated against.

So I think there is a twofold lesson in this true story. The first lesson is that if we give women information about what their male colleagues are getting, they can negotiate a better deal for themselves in the workplace.

The second lesson is that pay discrimination is a harsh reality in the

workplace. Not only is it unfair, it is also demeaning and demoralizing, and it should cease its existence in our society.

Individual women should not have to do battle in order to win equal pay. We need more inclusive national laws to make equal pay for equal work a basic standard and a legal right but also equal pay for equivalent work so that we don't discriminate against whole classes of people just because of the job they do. Childcare workers, social service workers, nurses aides, nurses, homemakers—why should people who are cleaning houses make less than janitors? People who clean houses are generally women and janitors happen to be men, but they are both doing the same kind of work.

We have to come to grips with this before we will ever really end discriminatory pay. The Lilly Ledbetter bill before us is a step in the right direction. But unless and until we pass the Fair Pay Act, which has been supported by the business and professional women of America since we first introduced it in 1996, until we pass that, discrimination against women will continue wholesale in America. We will continue to demean the kinds of jobs so important to us—childcare, nurses, nurses' aides, teachers, Head Start workers, the women who clean our homes, take care of our elderly in long-term care facilities. Go into any long-term care facility, go where your grandparents are or maybe your parents. Who is taking care of them? Nine times out of ten, it will be a woman. Their responsibilities are immense. Their effort, the training they need is important. They have to have all that. Yet they are making much less than their male counterparts in other parts of society.

The Lilly Ledbetter bill is important. We have to pass it, but we have to get the Fair Pay Act passed one of these years. As I said, I have been introducing it since 1996. Then they get the paycheck fairness bill up. We have to do that. That is important. Don't get me wrong, that is important. But the biggest discrimination in our society is the discrimination that occurs against women who have what has been denoted as "women's jobs" in our society. It is time to end that discrimination.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. NELSON of Florida. Madam President, it is great to see you as our Presiding Officer. I might call to the attention of the Senate again that the Presiding Officer, the junior Senator from North Carolina, has roots that go very deep in the State of Florida. Her

family is one of the prominent families of our State. The Senator happens to have been raised in Lakeland, FL, in Imperial Polk County. It is a delight to have her come join the Senate family.

I wish to address the matter before us, which is the Lilly Ledbetter bill. We have a chance, with passage of this legislation, which is going to occur perhaps tonight, to have it as a major first step in the legislative process that will ultimately go to the new President for his signature into law to right a wrong, to bring justice where justice has not been because of an insidious kind of discrimination, discriminating in the employment workplace, by paying women less than men for the same task that is performed.

You would think that back in the 1920s, with America finally coming to realize that American women had the right to vote, the course would have been set back then in removing that discrimination. But here it is in the new century, in the dawn of a new age, and we still have to confront this inequity. We will do that. It is too bad we had to do that now as a result of a 5-to-4 decision in the Supreme Court that, for technical reasons, said Mrs. Ledbetter could not be made whole financially because she did not know of the discrimination that had happened to her some 15 years before. Whatever that technicality was, it was unfortunate that the Supreme Court, in that 5-to-4 decision, struck down her ability to get compensation, to get recompense for the injustice that had been bestowed upon her. But since we are a government of three separate branches, where there has been a mistake made, we have the opportunity to correct it. So we are going to do that today here in the Senate. I am certainly going to be a part of it because I will be voting for this legislation.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. HARKIN. Madam President, I ask unanimous consent that at 1 p.m. the Senate resume consideration concurrently of the pending Enzi amendments No. 28 and No. 29, that they be debated concurrently for 1 hour, and that the time be equally divided between Senators ENZI and MIKULSKI or their designees; following the use or yielding back of time on the Enzi amendments, the Senate resume consideration concurrently of the Specter amendments No. 26 and No. 27; that they be debated concurrently for 1 hour, and that the time be equally divided between Senators SPECTER and MIKULSKI or their designees; following the use or yielding back of time on the Specter amendments, the Senate pro-

ceed to votes in relation to the Enzi and Specter amendments in the order listed below:

Specter No. 26, Specter No. 27, Enzi No. 28, and Enzi No. 29; further, that no amendments be in order to the pending Enzi and Specter amendments prior to the votes; that there be 2 minutes of debate equally divided between the votes; and that all rollcall votes after the first vote be limited to 10 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HARKIN. I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). Who yields time?

The Senator from Oklahoma.

AMENDMENTS NOS. 28 AND 29

Mr. INHOFE. Mr. President, I yield myself such time as I may consume from the Enzi time on the Enzi amendments.

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

Mr. INHOFE. Mr. President, today, I have stated several times, and I again state, I am in opposition to S. 181, the Lilly Ledbetter Fair Pay Act, and reinforce my support for Senator HUTCHISON's alternative, S. 166 and amendment No. 25, the title VII Fairness Act.

What we are told by the other side of the aisle is that the Lilly Ledbetter Fair Pay Act is about protecting the right of employees who may not know they have been discriminated against. But in reality, this bill represents a tremendous burden on employers and a boon for trial lawyers across the country. It is an overly broad and cumbersome approach, essentially eliminating the statute of limitations.

Senator HUTCHISON's alternative, on the other hand, takes a measured approach and applies a targeted remedy by allowing claimants to bring suit within the statute of limitations, which runs from the time they should be expected to have enough information to support a reasonable suspicion that they are being discriminated against. The rationale for statutes of limitation is to ensure fairness and balance—balance between access to the courts for aggrieved parties while allowing certainty for those who may be called to defend themselves. S. 181 clearly steps beyond this, greatly reducing confidence in the civil discovery process and forcing businesses to stage a defense on decisions that were made years—perhaps dozens of years—before the action was brought.

There have been a lot of amendments. I did vote in favor of the Hutchison amendment and feel that would be one that was a very reasonable compromise. Tomorrow in Oklahoma I will be meeting with voters in Clinton and Burns Flat and other areas in southern Oklahoma. It will be my unfortunate duty to tell them that this burden has been unfairly placed upon them and their businesses in this difficult economic time. But I will be proud to say that my vote did not con-

tribute to the passage of S. 181; rather, I stood with my colleague, Senator HUTCHISON, and we worked for a balanced approach that provides a remedy to those who have legitimate discrimination claims and at the same time allows employers, many of whom have never made a discriminatory compensation decision, to mount a defense based upon discovery of reliable evidence. I register my opposition to the Lilly Ledbetter Fair Pay Act because it is such a clear departure from previous legal principles.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mrs. LINCOLN. Mr. President, I ask unanimous consent to speak for up to 10 minutes.

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

Mrs. LINCOLN. Mr. President, I rise this afternoon to speak about the bill that is before us, which is the Lilly Ledbetter Fair Pay Act.

It doesn't take a legal scholar to understand that the U.S. Supreme Court did get it wrong when they ruled against Lilly Ledbetter in 2007. In fact, I think the issue is rather simple. All I have to do is look out across my great State of Arkansas at the number of single mothers who are working hard to care for their families and who need equal pay and deserve equal pay.

In today's business environment, where women make on average 78 cents for every dollar their male counterparts make for the same work, it can be impossible for someone to know that they have been discriminated against until long after the fact. Employees are not privy to pay data in the workplace, as we are. Our pay is published, as well as for our staff, but in the regular workforce it is not published. In many instances, they can actually be disciplined or fired if they share pay information with one another.

In the case of Lilly Ledbetter, she was hired as a supervisor at a tire plant in Alabama nearly 30 years ago. For years, day upon day, she went to work next to her male counterparts working hard to do her job the best she could, doing the same job or an extremely similar job to what these gentlemen were doing. She received unequal pay for equal work to her male colleagues. She only discovered she was a subject of discrimination after she received an anonymous tip shortly before her retirement. Although an Alabama jury found in her favor, her employer appealed the decision and the U.S. Supreme Court ruled against her. In a 5-to-4 decision, they overturned years of precedent and said that she should have filed a complaint every time she received a smaller raise than the men she served alongside, even though she didn't know what they were making or if the pay was discriminatory. How could she know? She was not privy to that information, and she was prohibited from asking.

In her very spirited dissent, Justice Ruth Bader Ginsberg said that the majority clearly misinterpreted the law and that “the ball is now in Congress’s court” to correct this inequity. It is in our court. It is in our court to ensure that the women of this country are going to receive the equal pay that is due to them for the job they do working alongside their male counterparts.

So that is why we are here today, to pass the Lilly Ledbetter Fair Pay Act. It is a responsible and fair piece of legislation which ensures that all employees, regardless of their race, color, religion, sex, or national origin, are treated the same. That is what we have just celebrated in the inauguration of a new President: the values we hold dear as a part of this great country, the blessing of being American, and that we would have the same opportunity to reach our potential—each of us as individuals—whether we are men or whether we are women.

I know in some of the business communities they are concerned that this bill will extend the statute of limitations and expose employers to numerous lawsuits. However, I reject those arguments, because this bill provides little incentive for employees to sit on claims with only a 2-year limit on back pay. In addition, it does not create new grounds for filing lawsuits. In fact, the Congressional Budget Office expects that it would not significantly affect the number of filings within the EEOC. So I encourage my colleagues to support this important piece of legislation.

When I first came to the Congress in 1992, I came to the House representing the eastern district of Arkansas, and I remember my campaign vividly. I was a young single woman at the time. People thought I was crazy, not only because of my age and my gender, but because of the fact that I was unmarried, and it was unheard of for a young single woman to be out there running for the Congress.

I remember sitting next to a distinguished banker in one of my hometown communities. He looked quite conservative, and sitting next to him I got a little nervous. He started asking me about some women’s issues that would probably be before me at one time or another if I were elected to the Congress. He started to quiz me pretty heavily. I got nervous, but I came back with what I felt were strong and concise and well thought out answers. At the end of our conversation, he looked at me and he said: I have kind of been a little hard on you, but I wanted to know how you felt about these issues. I wanted to know how you truly, deep down felt about these issues, because I have three daughters who are in the workforce and one of them is a single mom. I want to know that you are going to be fighting for them and for their children.

So it is not just the women who are interested in what happens here; it is the fathers and grandfathers, it is the

brothers of women who are out in the workforce doing their best, working hard to make a living for their families, to care for their children, or to help their aging parent. I found, when I came to the House and then to the Senate, my colleagues were always ready to work with me regardless of my gender or my age, if I came to the table prepared and ready to work hard, and if I was honest in where I was coming from on those issues and wanted to work hard to bring about results for the betterment of my constituencies in Arkansas. So I hope as we look at this, we will realize that is what we are talking about here: for American women across this great land who are working hard—many of them in the same job as a man; maybe supporting a family by themselves or taking care of an aging parent, financially and otherwise—that we would do the right thing, the thing this country is based on, which is equity and fairness and justice, and that we would provide for those women the reassurance that the principles we stand for are not lost in them or in their paycheck, but that we do see the importance of standing up and saying how important it is to who we are and what we stand for that they deserve to have that equal pay. It is a fair and responsible bill that restores the congressional intent and ensures that those responsible for discrimination are held accountable.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. ENZI. Mr. President, can you tell me what the time agreement is?

The PRESIDING OFFICER. There is 1 hour equally divided for debate. The Senator from Wyoming has 26½ minutes remaining.

Mr. ENZI. Mr. President, I wish to call up amendment No. 28 and ask unanimous consent that as soon as we have disposed of amendment No. 28, that we will voice vote amendment No. 29 based on the decision of amendment No. 28, because there are two different sections of the law that say the same thing. So we have to have both pieces, but if one is acceptable, the other one ought to be acceptable. If one is not acceptable, the other one should not be acceptable. So I know it is a change in parliamentary procedure, but I am trying to speed things up by having as few votes as possible but still get the decisions made.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Amendment No. 28 is now pending.

Mr. ENZI. Mr. President, I have offered amendments Nos. 28 and 29 and they respond to the question many have asked about the underlying bill. Those of us who have looked at the bill have wondered what a particular provision means. This provision appears to greatly expand the number of people who can bring a Title VII lawsuit beyond those who have directly experienced discrimination.

As drafted, the bill extends the right to sue for employment discrimination, not only to the person who is discriminated against but also to any individual who is affected by application of a discriminatory compensation decision or other practice. This can clearly be read to include spouses, family members, and other individuals, depending on the employee’s income or pension, or even more broadly. There is a lack of definition in this part of the bill. In this part of the bill that we are debating, I am trying to amend to add some clarity, and Senator SPECTER will be trying to amend if mine fails to again bring some clarity to this issue. These are steps to see how expansive we can make the trial lawyer bailout.

So S. 181 would not only allow decades-old claims to be suddenly revived, it doesn’t even require that they be revived by the person who was discriminated against, even if that person won’t bring the action or even if that person is no longer around. The language is so broad that the claim could be brought by virtually anyone. It is nothing more than an invitation to trial lawyers to litigate a situation compounded by the fact that such claims would be largely indefensible because of the passage of time, maybe not even having the person around who was discriminated against.

Do we really want to see employers forced to expend resources defending decades-old, stale claims that are not even being brought by the individuals who are the supposed objects of the discrimination?

What we are looking at here could be an exponential increase in lawsuits at a time when many employers are struggling to make their payroll and avoid laying people off. It was reported this week that a certain type of employment-related class of lawsuits have increased 99 percent over the last 4 years—just the last 4 years, a 99-percent increase. If enacted as drafted, this bill could make that increase seem minuscule.

Our new President has made some proposals intended to stimulate the economy. One proposal he made at one point was to offer a \$3,000 tax credit to employers who create new jobs. Perhaps that was a great idea, but if you couple that with increased litigation liability such as that included in this bill, it will not only cancel each other out, it would make that tax credit seem minuscule, very small, particularly when you compare it to the cost of a lawsuit. A small businessman faced with a lawsuit that is going to cost him \$20,000, \$25,000, \$100,000 to defend cannot afford the time or the money to do that and may work harder at a settlement and encourage people to do lawsuits that may not have the same merit we are trying to achieve in this bill. I can tell you as a former small businessman, I would rather not have the tax credit and not get sued any day—not that the two are even related.

I hope the bill's sponsor can explain why this provision should be included in the bill. It is the sort of question that might have been sorted out more easily if the bill had gone through the proper committee process. But the majority has opted to circumvent that process again. My amendments would strike the provision entirely.

I understand there might be some, and I am sure we will hear some explanation of it, where there might be some instances where there were special circumstances. But this bill goes well beyond just special circumstances. It opens it up dramatically.

I look forward to a debate and vote on my amendment later today.

We also will be voting on two amendments that Senator SPECTER has offered to improve the underlying bill. I will use some of my time to speak in favor of those amendments as well.

Senator SPECTER's amendment No. 26 shows there is justifiable concern among many Members that allowing individuals to go far back in time and claim that pay decisions made years ago were discriminatory does place unfair burdens on employers.

Senator SPECTER's amendment No. 26 provides a small measure of potential relief to employers who must face the daunting task of trying to defend decisions made in the distant past by individuals who may not be available and based on documentation that no longer exists. We will have to increase the amount of time that we expect people to keep all of their records if this bill goes through the way that it is.

Senator SPECTER's amendment makes it clear that an employer in those circumstances may still raise traditional equitable defenses to those claims, such as the defense of laches. For example, if an employer can demonstrate an employee knew or should have known the allegedly discriminatory nature of a pay decision made years ago, but lets the claim slip, then it may be barred if the employer is hindered in mounting a fair defense because of the passage of time.

The proponents of S. 181 have said repeatedly that it is not their intent to limit employers in their use of equitable defenses. Accordingly, they too should support Senator SPECTER's amendment. It would restore a small measure of fairness in employment discrimination litigation. I commend Senator SPECTER for offering it. I support the amendment in full. I urge my colleagues on both sides of the aisle to look at it and support it.

Senator SPECTER's amendment No. 27 has also offered another amendment to improve the underlying bill which deserves full and fair consideration from colleagues on both sides of the aisle. We know Senator SPECTER has been very involved in judiciary work and that he does reasonable amendments and is concerned about some of the implications of the bill.

He has offered another amendment to improve the underlying bill. I hope we

will give that a careful look. I have been clear that I am troubled by the fact that this bill effectively eliminates the statute of limitations from employment discrimination claims since I believe that statutes of limitations do serve an important function. They speed recovery to the victims of discrimination, as well as ensure fairness in our legal process and accuracy in the resolution of disputed claims. The important role they play demands that any effort to change or eliminate the statute of limitations be carefully defined and clearly targeted at the precise problem the legislation purports to address. As presently drafted, S. 181 does not come close to achieving this standard. Senator SPECTER's amendment does much to correct this very problematic lack of precision.

The proponents of S. 181 have been careful to note that the concern which they seek to address by this legislation relates to "discriminatory pay decisions." The language of the bill, however, is much broader. The bill would not only eliminate the statute of limitations with regard to discriminatory pay decisions, it would also do so with respect to any "other practice." However, this legislation nowhere defines what is meant by "other practice."

Virtually all personnel decisions—promotions, transfers, work assignments, training, sales territory assignments—affect an individual's compensation, benefits, or their pay. It appears that the other undefined "other practices" language would extend liability far beyond simple pay decisions to include anything that might conceivably affect compensation. This would include claims of denied promotions, demotions, transfers, reassignments, tenure decisions, suspensions, and other discipline, all of which could be brought years after they occurred and years after the employee left employment, and, without my amendments, be brought by other people. The phrase could also potentially embrace employment decisions with no discriminatory intent or effect.

This result is plainly an overreach and goes far beyond the publicly stated aims of this legislation's proponents. Defending a claim based upon a pay decision made years and years earlier is a heavy burden. Reaching back years and years to defend the dozens of other personnel actions an employer takes every day is an impossible burden. Senator SPECTER's amendment limits the reach of S. 181 solely to discrete pay decisions and makes clear that S. 181 does not apply to any other personnel decisions. While I believe it does not cure all the ills which S. 181 creates, it does put this very problematic interpretation to rest, and I support his effort and amendment.

I heard many on the other side of the aisle state that S. 181 has been fully vetted because two hearings were held on it last year. I point out that the HELP Committee hearing was held before Senator HUTCHISON offered her al-

ternative legislation, her "better Ledbetter." Neither hearing covered this or any other alternative means to accomplish the goal on which we all agreed. If we had been able to explore alternatives in a hearing and have a markup—and a markup is a point I keep emphasizing—I believe we might have come to a change in the legislation that would more clearly state what is trying to be done and wind up with an agreement on both sides which would greatly reduce the amount of time that it takes to do amendments. The amendments, again, are done up or down rather than having slight revisions that could perhaps make them palatable to both sides.

Our side has turned in amendments that are relevant, that are designed to hopefully improve the bill, and do it in a way that it does not eliminate the purpose of the bill. There could have been a lot of constructive work in a committee markup, but that is not the choice, so we will continue to proceed and we have been proceeding with amendments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, first of all, I wish to thank the Senator from Wyoming, Mr. ENZI, for his cooperation in moving this bill on the floor. He has been a big help working with this side of the aisle and working with us and the respective leadership to line up these amendments so that we can actually offer them and discuss them, and we are going to be voting on them. I thank him for doing that.

Also, the distinguished Senator from Wyoming had a very content-rich presentation. He covered his amendments, the Specter amendments, and other comments. He even discussed the Hutchison amendment. What I am going to do is respond to sections 3 and 4 of the bill and his concerns about the words "affected by."

I oppose Senator ENZI's amendments to the Lilly Ledbetter Fair Pay Act. Those amendments strike the words "affected by" from sections 3 and 4 of the bill. These amendments, I believe, are not necessary, and I am concerned that they could lead courts to mistakenly read this legislation in too narrow a framework.

The Senator from Wyoming argues that his amendments are necessary because the bill somehow expands the category of persons who may sue for discrimination under the civil rights laws referenced in the bill. His concern and his claim is that the Lilly Ledbetter Fair Pay Act would allow spouses and other relatives of the workers who suffer discrimination to file their own lawsuits, claiming that they have been affected by the discrimination of their relative.

I appreciate his concern. What we want, though, is to assure him, and I say to my colleagues that his concerns are not valid, that if you look at the legislation, this argument ignores the

plain language of the existing statutes and the actual language in the Ledbetter bill.

I am going to sound like a lawyer for a minute, but bear with me. The Ledbetter bill amends title VII of the Civil Rights Act of 1964 which outlaws job discrimination based on race, color, national origin, gender, and religion. The Ledbetter bill also amends the Age Discrimination in Employment Act of 1967 and applies those amendments also to the Americans with Disabilities Act and section 404 of the Rehabilitation Act.

These laws make crystal clear that the only persons who can file under the act are those who have suffered discrimination on the job or the Federal entities charged with enforcing the civil rights laws, not the relatives or friends of these workers.

I am going to make it crystal clear, I say unabashedly for legislative intent, that these laws make it crystal clear that the only persons who can file a suit under the act of discussion today are those who have suffered discrimination on the job or the Federal entities charged with enforcing these civil rights acts, not the relatives or friends of these workers. The citations are 42 U.S.C. 2000e-5(f)(1); 29 U.S.C. 626(c)(1); 29 U.S.C. 791(g), 794(d); and 42 U.S.C. 12117(a).

I also wish to elaborate that the bill amends only the provisions of the respective statutes regarding timeliness of job discrimination suits and leaves unchanged current law regarding who may file a suit.

So the only thing we are dealing with is timeliness. Nothing in the Ledbetter bill would change the basic requirements that job discrimination suits under title VII, the ADA, the ADEA, or the Rehabilitation Act must be filed by the workers personally affected by workplace discrimination or by the Federal Government on their behalf.

In addition, for further clarification, the House Education and Labor Committee's report on this legislation states that the language in sections 3 and 4 of the bill is modeled on the text of section 112 of the Civil Rights Act of 1991, which was adopted with overwhelming support in both Chambers of Congress to overturn the Supreme Court's decision in *Lorance v. AT&T*. I repeat that decision: *Lorance v. AT&T Technologies*.

The *Lorance* fix has been around for nearly two decades, and it has not expanded the category of persons who can sue for job discrimination. Our bill will not change who may file the suit under the civil rights law it amends.

Finally, the Enzi amendments should be rejected because omitting the words "affected by" from the bill might actually lead a court to conclude that we intend the fix adopted in this legislation to be more narrow than the *Lorance* fix. Although the Ledbetter bill uses the term "affected by," where the *Lorance* fix used "injured by," the House report makes clear that this is a

distinction without a difference. This is a distinction without a difference. Accordingly, if we followed the Enzi amendment, if we remove "affected by" from the Ledbetter bill, we run the risk that the courts might erroneously read this legislation as less comprehensive than the parallel provision of the 1991 act.

I urge my colleagues to oppose the amendments offered by our colleague from Wyoming. In a nutshell, the Enzi amendment only fixes half the problem, it does not cover discrimination, it has a delayed impact on workers' wages, and we know that anyone would not be able to sue even though they were still affected by this job evaluation business.

I am going to say more about this, but my initial argument is to lay to rest the concern that persons other than the one who is actually discriminated against would have standing to file under this bill, and I think I have clarified that.

I note that Senator SPECTER is here and he has his amendments, and I also note that there are other Senators on the other side of the aisle who wish to speak. So for now, I will conclude my arguments, and I yield the floor so that we may proceed with other Members.

The PRESIDING OFFICER. Who yields time?

Mr. ENZI. Mr. President, I yield such time as the Senator from Georgia needs, but first I wish to make a very brief comment.

The Senator from Maryland kind of makes the point I have been trying to make through all of this. If there is wording that more clearly states the Senate's intention or Congress's intention, and since there is disagreement over how widely this affects people, had we gone through a committee markup, we would have already covered this and would have found more careful wording that would have done what I think both of us are talking about. So again, that is why we should send them to committee.

I yield time to the Senator from Georgia.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. CHAMBLISS. I thank the distinguished Senator from Wyoming for yielding me this time, and I rise in opposition to the Lilly Ledbetter bill.

I oppose, just like everybody else, discrimination in the workplace, and I believe any worker who experiences discrimination should have their claim handled in a fair and timely way. But I would like to reiterate what several of my colleagues have already mentioned, which is that discrimination in the workplace has been outlawed since 1963.

This legislation, S. 181, the Lilly Ledbetter Fair Pay Act of 2009, did not go through the normal process. I think the Senator from Wyoming has just said that the issue we are talking about now is that this amendment might have clarified something that is

not clear in the bill had it gone through the regular process.

This bill is not about supporting or opposing discrimination. This debate is strictly focused on when the statute of limitations on pay discrimination suits should begin. As a first-year law student, you learn the critical importance of the statute of limitations in our judicial system. Our judicial system is the envy of the free world, and one of the basic fundamental rights or issues involved in our judicial system is the accruing of a right and a point in time when that right dissipates. That is what we call the statute of limitations, and it truly is fundamental and should not be tinkered with in any way whatsoever.

What this bill would do would be to undermine fair and timely resolution of employment discrimination allegations.

We are facing difficult economic times today. According to the U.S. Department of Labor, 984 Georgians lost their jobs last week. This bill, should it become law, will have a devastating financial impact on already hindered employers and business owners. Businesses around the country are on the defense. They need more incentives to hire and retain employees. What this will do is to create incentives to take money that would ordinarily be used to either increase pay or to hire more employees and put that money aside because at some point in time they are going to have to defend litigation as a result of this piece of legislation. I believe the legislation would undermine the fair and timely resolution of employment discrimination suits.

I strongly support the amendment of my colleague, Senator ISAKSON. His amendment would make the legislation, should it pass, prospective only and would deny any rights on a retroactive basis. If we go to making bills such as this retroactive, what will we do to the business community?

I also rise in support of the amendment of Senator ENZI. What it says is that an action accrues only to an affected employee.

Those two amendments are common-sense amendments. Anybody who has ever been in the business world and who has hired employees knows and understands that there are certain guarantees you have to have if you are going to be successful in the business world. One of them is to know your exposure to litigation. What we are looking at here, unless the Isakson amendment is adopted, is that people who have been operating their businesses for years, in a way that they thought limited their exposure, all of a sudden may be exposed to what will amount to frivolous lawsuits that can be filed against them.

Again, the Enzi amendment makes such common sense that oftentimes people in this town have a difficult time understanding it. As I have heard the Senator from Maryland discuss this issue a minute ago, I think we agree

that only “affected” employees are covered by this, and we ought to clarify that. I think Senator ENZI’s amendment does that, and therefore I am in strong support of his amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Ms. MIKULSKI. Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time during the quorum be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Ms. MIKULSKI. Mr. President, how much time is remaining on my side?

The PRESIDING OFFICER. The Senator from Maryland has 13½ minutes remaining; the Senator from Wyoming has 8½ minutes remaining.

Ms. MIKULSKI. Mr. President, I just wanted to say a few words.

First of all, let’s go to the remarks that were made that, somehow or another, by passing the Lilly Ledbetter Fair Pay Act, we are going to further undermine our economy and our ability to hire people. I find it surprising—first puzzling, then surprising—to say that the way we are going to get out of this economic mess is if we continue the status quo—or the stacking quo—which is that if you have discrimination in the workplace, don’t pass the law to do greater clarification. I think that is a flawed argument.

First of all, women of America already subsidize our economy. And you know what. We are mad as hell, and we don’t want to take it anymore. Everyone needs to hear that: We, the women of America, are mad as hell, and we don’t want to take it anymore. Now, why do I say that? We are already paid 77 cents for every dollar that men make, so we are already subsidizing the economy in the workplace. Then when you go into the home, our work is often undervalued and it is certainly not compensated. So somehow or another women’s work doesn’t quite count in the same way.

Well, we want to be counted, and we want what we do to be counted. We want the world to know that if we are doing equal work, we want equal pay. We do not want to subsidize the economy. We don’t want any subsidies. We want fairness, we want justice, we want the law on our side, and we want the courthouse doors open to us.

Now, if business thinks the only way they can succeed is by continuing these practices, then business has a lot of lessons to learn. And by God, when you look at what the banks did, you can certainly see that. If business doesn’t want lawsuits, there is one clear, right way of avoiding a lawsuit: don’t discriminate. If you are an employer and

you are paying equal pay for equal or comparable work, you will not be sued, you will not be challenged, and you have no need to fear.

If you want to have some economic stimulus, give us that 23-cent raise—all those single mothers out there; as Senator LINCOLN spoke about earlier, all those Norma Rays, all those Lilly Ledbetters, all those people who have lined up through the ages. So 23 cents might not sound like a lot, certainly in Washington where we give zillions to banks and they do not even say thank you. They don’t even promise they will send out more or promise they will join with our President and work through this.

So we are very clear that we want to be paid equal pay for equal work, and we want it in our checkbooks. But we know we have to get to that by having the Ledbetter bill in the Federal lawbooks.

I can understand some of the fine points, the concerns raised by Senator ENZI. I think I have presented a sound legal argument that shows that the only thing we mean by the “affected party” is that person who is actually discriminated against, or if a Federal entity sues on their behalf. I think we have clarified it. But I believe we also need to be clear why we are doing this legislation. We are righting a wrong, we are addressing a grievance, and we are ensuring those fundamental principles of our society, which are fairness, equality, and justice.

Mr. President, I am going to yield the floor, and I yield back my time.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. ENZI. Mr. President, I thank the Senator from Maryland. I have always appreciated working with her on issues. We probably wouldn’t have completed the Higher Education Act if it had not been for her diligence and expertise and ability, and this is a bill on which she has expertise and ability. It hasn’t gotten all of the viewpoints of all of the people on the committee, let alone all the people in this Chamber, and that is what we are trying to get to.

There isn’t anybody in this Chamber or probably on the other end of the building who isn’t for equal pay. That is the law. If anybody knows of a situation where that is not occurring, let any one of us know, and I bet you we would help to right the wrong. We are against discrimination.

But we are also against discrimination against the small businessmen who have to sometimes interpret our laws, figure out what we are saying, and become some of the precedent setters on some of the fine points that we don’t even address. That should not happen. It is very expensive for them. What they are trying to do is put out a product or service and get compensated for it so they can compensate their employees. There are a lot of decisions they have to make to be able to do that. Fairness is one of them.

This 23-cent pay differential that keeps coming up—and that is wrong—is why we had a fantastic hearing in our committee about why that happens. That is because different jobs—not the same job, different jobs—pay different amounts. The ones with more risk apparently pay more. The ones with more risk are nontraditional jobs for women.

One of the people who testified had taken a course to become a mason, a rock mason, to do rock work. Her first rock work was, of course, at ground level. Later, she was installing big sheets of marble on the outside of skyscrapers. She went through how her compensation changed as she did these different jobs. That is a nontraditional job for a woman, but she is being paid more than most men in this country now.

That is what we have to do. We have to provide the encouragement, the skills, and the training to be able to perhaps do nontraditional jobs. I have tried to get this Workforce Investment Act through for the last 5 years. We passed it through the Senate once unanimously and were never able to get a conference committee on it with the House. Since that time, it has just languished. That would provide skills training to 900,000 people a year. It is criminal we do not pass that. That would solve a lot of the 23-cent gap we are talking about. That is not equal pay for equal work, that is higher pay for different work. But we need to have people trained to do that work, and we need to provide the training to do that work. That will solve a lot of the 23-cent gap.

But as long as we are encouraging people to do the traditional jobs, and we are not providing them with the training, we are relegating them to a gap. I guarantee it is bigger than 23 cents. That is the average. That is the way it works out across this country, which means some are making more and some are making a whole lot less. We do not want that to happen. I want everybody to be clear. Nobody wants to have unequal pay for equal work.

What we have tried to do, since we can’t, as in a markup, sit down with the people who have the common interests in some of the parts of this that we have questions about and work out something that everybody agrees with that, from the perspective of those people in the room, solves the problem we are talking about—we have been doing that in the HELP Committee. We have been doing that on a frequent basis. We have even been so agreeable in the committee that a lot of times we will have some amendments that people are concerned about, and we haven’t been able to reach an answer by the time we get to markup, but we know that is a problem, and we say we will get that solved by the time it gets to the floor, and we do and it doesn’t take much floor time.

The reason I brought up this amendment is that I think it is far too broad. I have not had a chance to review the



specific cites that the chairman has brought up. I would like to be able to do that, but we are not going to have that time either which we would if we had a normal amendment markup—but S. 181 adds a new undefined term to title VII, and that is “individual”—this “affected individual” will be permitted to sue under S. 181. But we do not know what the term means. Does it include spouses, et cetera? Why didn’t the bill’s sponsor use a defined term such as “person.”

This bill, as drafted, leaves the door open to lawsuits from people other than the employee. My amendment shuts that door. Maybe it is not the most effective way, but we have not had the opportunity to sit down and look at these different perspectives, look at these words, make sure we have it defined right, make sure we have the right ones in the bill.

That always disturbs me. We are trying to solve a problem, a problem that is real, and we are trying to do it in a way that is fair to everybody. “Everybody” means all the employees and the employers and do it in a way that we will get the right information. If this opens the door to other people, even without the permission of the person who was affected in some cases—families take things much more personally than the individuals do usually. I know in campaigns it is the families who get upset when they see one of these terrible ads on television and they hold the grudge longer. They do not understand it the same way the candidate does. The same thing happens in the workplace—and I am sure it does. If a person comes home from work, and they are upset and they complain, the family takes it personally. That is a help to the employee. They need to be able to voice these things and have somebody who acts as a sounding board on it. But the family always continues the grudge longer.

I can tell you this bill allows those people to go ahead and open the door and sue on behalf of the person who came home with the grudge, even if that person is not willing to sue because they can be affected. There are ways to fix this, but I contend that just doing it through these votes on the floor probably is not going to do it.

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the Enzi amendment? The Senator from Maryland is recognized.

Ms. MIKULSKI. Did I yield back my time?

The PRESIDING OFFICER. The Senator yielded back her time, but we know how much time she had remaining.

Ms. MIKULSKI. I said, did I yield back my time?

The PRESIDING OFFICER. The Senator did yield back her time.

Ms. MIKULSKI. At that time I was unaware that Senator McCASKILL was coming to the floor. I ask unanimous consent for 5 minutes for Senator McCASKILL to be able to speak.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The Senator from Missouri is recognized.

Mrs. MCCASKILL. Mr. President, there are certain things that just reflect common sense. One is the reality of the workplace, who has power and who does not. Generally, the people who are being subjected to unfair treatment—doesn’t it make sense they are not the powerful ones? Doesn’t it make sense they have the least information about what is going on in terms of policies and procedures?

The thing about the Ledbetter case that just defies common sense is that we are asking the least powerful people in the workplace to be all seeing and all knowing. We are asking them to know what clearly they cannot know because they are being discriminated against. How unfair is it that we are saying to a woman: You must know when they start denying you a promotion. It is not just about equal pay. With all due respect to my friend and colleague from Pennsylvania, it is not just about pay. It is about promotions. It is about whether you are considered for the big job not just whether you are making the same amount when you get the big job. We cannot ask those people who have been kept in the dark because they are not considered as worthy as others to be the ones to know what the policies and procedures have been in the workplace.

I think it is important we defeat these amendments. I think it is important that we restore common sense to allow someone to take action when they have, in fact, been kicked to the curb in the workplace—not because of their job but because of who they are, because of whether they are a man or a woman, whether they are old or young, whether they are Black or White.

The secrecy in the workplace sometimes invades other places. There are so many rules around here that I respect, but I tell you, I do not get anonymous holds. I do not get anonymous holds. I do not understand why any Member of the Senate would not be proud to explain why they were willing to hold up someone’s nomination.

Imagine my frustration when I look at the nominations that are being held now in secret. Do you know what is amazing about it? They are women, the same women who have suffered in the workplace because they do not get enough information. There are now four women who are secretly being held from doing their jobs: Lisa Jackson at EPA, Nancy Sutley at White House Environmental Council, HILDA SOLIS for the Department of Labor, and Susan Rice for the Ambassador to the U.N. Just like Lilly Ledbetter, they are being kept in the dark as to why they are not being allowed to step up to service.

I implore the Senators who are secretly holding these women—by the way, those are almost all the women who have been nominated. Proportion-

ally, almost every woman who is being nominated is being secretly held, compared to the men who are nominated.

I urge everyone to defeat the amendments on Lilly Ledbetter. I urge its passage.

#### UNANIMOUS CONSENT REQUEST—EXECUTIVE SESSION

I ask unanimous consent the nominations of Lisa Jackson, Nancy Sutley, HILDA SOLIS, and Susan Rice be moved forward.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. I object.

The PRESIDING OFFICER. Objection is heard.

Mrs. MCCASKILL. On behalf of those women, I am disappointed at the objection. I look forward to the passage of Ledbetter and the confirmation of those women so they can serve.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Ms. MIKULSKI. Mr. President, what is the regular order?

The PRESIDING OFFICER. One minute remains for each side in debate.

Ms. MIKULSKI. Mr. President, I yield back my time. I know Senator SPECTER is waiting. He is also dealing with the nomination of Mr. Holder. We would like to move Mr. SPECTER along.

I yield my 1 minute back, if the Republicans yield back their minute.

The PRESIDING OFFICER. The time is yielded back. The Senate will now debate the Specter amendment.

The Senator from Pennsylvania is recognized.

#### AMENDMENT NO. 26

Mr. SPECTER. Mr. President, I call up amendment No. 26.

The PRESIDING OFFICER (Mr. BROWN). The amendment is pending.

Mr. SPECTER. Mr. President, this amendment provides that:

Nothing in this Act or any amendment by the act shall be construed to prohibit a party from asserting a defense based on waiver of a right, or an estoppel or laches doctrine.

This amendment goes to the issue of giving the employers a fair opportunity for offering a defense. I have long supported equal pay for women. I have long supported breaking the glass ceiling as a matter of equitable fairness. In my book, “Passion For Truth,” I wrote almost a decade ago:

The majority in a democracy can take care of itself while individuals and minorities often cannot. Moreover, our history has demonstrated that the majority benefits when equality helps minorities become part of the majority.

Last Congress I cosponsored two bills dealing with equal pay. I cosponsored the Fair Pay Restoration Act with Senator KENNEDY and the title VII Fairness Act with Senator HUTCHISON. Earlier today I voted with Senator HUTCHISON, which would have started the tolling of the statute of limitations when the employee knew or should have known.

The availability of the defense is very important. What the amendment

does is to incorporate the language in the dissent of Justice Ginsburg in the *Ledbetter* case, where Justice Ginsburg pointed out that:

Allowing employees to challenge discrimination that extends over long periods of time into the charge-filing period . . . does not leave employers defenseless against unreasonable or prejudicial delay. Employers disadvantaged by such delay may raise various defenses. Doctrines such as waiver, estoppel and equitable tolling allow us to honor title VII's remedial purpose without negating the particular purpose of the filing requirement, to give prompt notice to the employer.

So what we have, essentially, are equitable defenses. If you have waiver, where there is an affirmative act to give up a right, or where you have estoppel or laches, that means the party has waited an unreasonable period of time, so those defenses may be asserted.

Now, it is my legal judgment that these defenses would be available without this amendment, but you never can tell what a court will do. One of the objectives of legislation is to cure any potential ambiguity, so it is plain what will happen in court. That is what this amendment does.

If I may have the attention of the distinguished senior Senator from Maryland, we had discussed first, if it is agreeable to the Senator from Maryland, who is managing the bill, I compliment her on her outstanding work and again repeat, I cosponsored her bill in the last Congress. I did not do so this year, not that I am opposed to the principle of equal pay, but I tried to work out these matters to make what I consider to be improvements.

The question I would ask of the Senator from Maryland, is: Do you believe that the defenses of waiver, estoppel, laches, and equitable tolling are available now or would be available if this bill were enacted, even without such a specific amendment such as I have offered?

I raise that question because there has been some discussion that we could have a colloquy. I think it is preferable to having it firmly in the statute. But I begin with the form of a colloquy. Do you agree the defenses of laches, waiver, equitable tolling—

Ms. MIKULSKI. First, let me say to my good friend from Pennsylvania, one, I wish to thank you for your cooperation on this bill. I wish to thank you for your cosponsorship in a previous Congress. We hope we do have the Senator's support at the conclusion of the amendment process.

I wish to say to my friend the bill does not change the law on the topics he has raised. But in all fairness, he is a superior lawyer. I am not a lawyer. Rather than me responding, kind of shooting from the lip, I would like to have a proper colloquy with the Senator at such time that I know we are on firm ground so we can clearly establish the legislative intent.

Could I suggest the absence of a quorum while the Senator and I discuss this and see how we can proceed?

Mr. SPECTER. Certainly.

Ms. MIKULSKI. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SPECTER. Mr. President, after a brief discussion with the distinguished Senator from Maryland and the distinguished majority leader, we decided to go ahead with the debate and a vote on the amendment.

At this time, I call up amendment No. 27.

The PRESIDING OFFICER. The amendment is pending.

Mr. SPECTER. This amendment would strike the language of "other practices." In the statute, the language reads: "pay or other practices." And this amendment would strike the language "other practices," focusing on the pay.

As I said before, I believe there ought to be equal pay for women. The glass ceiling ought to be broken and they ought to be treated fairly and equally.

But I am concerned about the language of "other practices," which might well engage and promote an enormous amount of litigation, as to whether "other practices" included such items as promotion, hiring, firing, training, tenure, demotion, reassignment, discipline, temporary reassignment or transfer and all those items.

That is not intended to be a dispositive list. There could be more items that someone might say "other practices" encompass. There have been objections to this legislation, that it is going to promote extensive litigation. I think the best way to approach this issue is to provide equal pay. If somebody wants to include one of those other items, such as promotion or hiring or firing or any of them, I would certainly be willing to consider them in the legislation.

But what I would like not to see is the language "other practices" with the vagueness and the ambiguity that is present in that kind of language. That is the essence of the argument.

In an extensive floor statement, I have set forth my general approach and my reasons for offering these two amendments. I ask unanimous consent that it appear at the conclusion of my extemporaneous remarks.

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

#### LILLY LEDBETTER FAIR PAY ACT OF 2009

Mr. Specter. Mr. President, I seek recognition today to discuss a very important issue facing American workers—pay discrimination.

I have long been an ardent supporter of civil rights and have consistently supported legislation aimed at rooting out discrimination based on race, gender, disability, and economic disadvantage. "The majority in a

democracy can take care of itself, while individuals and minorities often cannot. Moreover, our history has demonstrated that the majority benefits when equality helps minorities become a part of the majority."

We all agree that pay discrimination is insidious and unacceptable. Last Congress, I cosponsored two bills dealing with the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 127 S. Ct. 2162 (2007)—the "Fair Pay Restoration Act" with Senator Kennedy and the "Title VII Fairness Act" with Senator Hutchison. I cosponsored both of these bills because I believed that the only way for a substantively fair bill to pass was to find a bipartisan compromise. I still believe that, and so in this Congress, I have declined to cosponsor any legislation on this issue in an effort to foster a compromise.

I agree with Senators Mikulski and Hutchison that women should not be expected to challenge pay practices that they do not know about. I also agree with Senator Hutchison that no one—regardless of sex, race, age, or disability should be expected to challenge a decision or practice they do not know about. However, it was Congress' intent in passing Title VII and other anti-discrimination statutes that if employees know about such practices, they should file suit within a reasonable time; they should not sit on their rights. This is what Justice Ginsburg noted in her dissent in *Ledbetter*—that Title VII has a remedial purpose. Moreover, the notion that a statute of limitations begins to run from the time a person knows that they have been harmed is consistent with every other area of the law and is the reason for statutes of limitations.

This is not an easy issue, and there is no doubt this statute will lead to more litigation—some of which will have merit, and some of which will not. For small employers in particular, more litigation can cause serious economic hardship. But my view has always been that we should give maximum protection to women in the workplace. We all know the proverbial "glass ceiling" is more than just a catch phrase. It exists. And where there is discrimination, we must ensure that a technicality on an especially short statute of limitations does not preclude ending a discriminatory practice or recovery. A 180-day deadline may be a reasonable time period for filing claims challenging overt acts of discrimination, such as a termination or denial of promotion based on gender. Pay discrimination, however, is more subtle, and often goes unnoticed by an employee for a long time.

I voted for cloture on the motion to proceed to this bill. But that does not mean I believe that we as Senators should rubberstamp legislation, especially legislation that has bypassed the committee process. There is a great deal to be said for regular order, where we have the text of a bill, amendments are proposed, there is debate, there are votes, and the process moves ahead through the committee system. I believe that the bypassing of the committee process has, in the past, contributed to the ultimate failure of legislation.

It is imperative that, as the world's greatest deliberative body, we have an open debate on every issue that comes before us. Each Member should have the opportunity to offer amendments. Before today, it had been over 120 days since Republicans had an opportunity to offer an amendment to any bill on the floor. I am pleased that the Majority and Minority Leaders have reached an agreement to permit Members to offer amendments to this bill.

As Senator Hutchison said on the floor this week, a bill should be carefully drafted so that it does what the sponsors intend for it to do and so courts are not left trying to sort

things out in a way that may contravene Congressional intent. That is my reason for offering amendments to this bill. My amendments will not alter the legislation significantly, but rather will clarify what I perceive to be two ambiguous aspects of the bill.

My first amendment would strike the phrase "or other practices" where it appears in the bill. The bill does not define the phrase and thus could be interpreted to mean that an employee is excused from filing a timely challenge to any employment decision that ultimately affects compensation, not simply pay decisions. This could include promotions that the employee knows he or she did not receive, transfers, work assignments, or training. Such an interpretation would arguably expand the definition of liability under Title VII in a way that the authors of this bill did not intend. It could also potentially embrace employment decisions with no discriminatory intent or effect.

This phrase could also be interpreted as effectively vitiating the statute of limitations. An unfair employment decision, such as a failure to promote, could still affect an employee's pay decades later. Thus, an employee could potentially sit on his or her claim for years, regardless of the fact that he or she was on notice when the unfair employment decision was made. We want employees to challenge those decisions when they are aware of the unfair decision. And we want employers to have the opportunity to take prompt remedial action.

My second amendment would add a rule of construction to provide that nothing in the Act shall be construed to prohibit any party from asserting waiver, estoppel, or laches. These equitable doctrines allow courts to consider whether an employee had notice of discriminatory treatment but chose to do nothing for a long period of time. In her dissent in *Ledbetter*, Justice Ginsburg reasoned that "[a]llowing employees to challenge discrimination that extends over long periods of time . . . does not leave employers defenseless against unreasonable or prejudicial delay. Employers disadvantaged by such delay may raise various defenses. Doctrines such as waiver, estoppel, and equitable tolling allow us to honor Title VII's remedial purpose without negating the particular purpose of the filing requirement, to give prompt notice to the employer." *Ledbetter*, 127 S. Ct. at 2186 (Ginsburg, J., dissenting) (internal quotations and citations omitted). This amendment makes clear that, under this bill, employers retain their right to assert those affirmative defenses.

I have voted against cloture in the past as a matter of principle. I do not think we ought to end a debate before a debate has even begun or before Members have had an opportunity to offer amendments. That has resulted, as I see it, in gridlock on the Senate floor and dysfunction. I am hopeful that this practice has ended with the new Congress.

I urge my colleagues to support this amendment. I thank the Chair and yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SESSIONS. Mr. President, I would like to share a few thoughts about this subject. The need to ensure

that women are not discriminated against in the workplace is very real. Congress has acted on that more than once.

In fact, this litigation and legislation has arisen from statutory actions to make sure discrimination does not occur. The Supreme Court held that one woman lost her suit because she brought it too late. Because of this her allies, friends and others have promoted the idea that we should change the statute of limitations in a historic way; in ways we should not in order to deal with this problem.

I think that is a mistake. I practiced law for a lot of years. I have seen the power of the statute of limitations. Clarity in that issue is important to me in the practice of law and for every American citizen.

For example, I was a federal prosecutor for many years. A lot of Americans may not know that a burglar, a robber or a thief can get away with his crime if, after 5 years, they are not arrested or charged. They are home free and cannot be prosecuted because of a statute of limitation.

There are only a few crimes, such as treason and murder, that have extended statutes of limitations. The entire legal system we have inherited, this magnificent legal system that began in England and we have worked with here serving us so well, has always recognized, as a matter of policy, that people ought not to sit on their claims.

If someone has a claim they have a responsibility to come forward and make it. Sometimes that makes for difficult choices. There was a case recently in Alabama where an individual who had a claim went to the local probate judge. In Alabama, the probate judge is more of a ministerial office. Some are not lawyers; most are. I am not sure if this probate was a lawyer. He told the individual they could file a lawsuit next Wednesday. He filed it next Wednesday, and the person who was sued went to court and moved to dismiss it, saying the man filing the suit waited too late. In truth, he was 1 day late. The Alabama Supreme Court said: The law says this much time. You file it late, you are out.

This is the nub of the matter. The statute of limitations means something. Before the *Ledbetter* case arose I had on more than one occasion objected to a special piece of legislation in this Senate. I think they finally got it passed through the House, but not the Senate. I was the only one who objected. It would give a law firm in one of the Nation's big cities a special law, a bailout, that would excuse them for missing the statute of limitations on a big, expensive matter. They said: "Well, you know, this is a lot of money. It is millions of dollars. We only missed it by 1 day." I think it was a 1-day thing. "Give us a new law that allows us to get in there and get around our mistake."

One time I suggested, well, would that law firm from hereafter commit to

every client they have in their law firm, that if somebody files a lawsuit too late they will waive the statute of limitations defense; they won't raise that defense, and let the other party go ahead and file a case? Of course not.

A statute of limitations is a part of the law. Every lawyer knows the best way to get sued for malpractice is to miss a deadline, which is what I said of this big law firm and its mistake. That is why you have malpractice insurance and why it exists in the first place. If you miss a statute of limitations or you advise your client wrong on the statute of limitations and filing deadlines, your client can sue you for malpractice. You better have insurance or a lot of money to pay for your mistake.

I want to say to my colleagues how deeply embedded in our legal system is the concept of the statute of limitations, the length of time in which you are entitled before you sue somebody.

Then there came another situation that is more difficult. Courts have worked their way through it, which is how these issues are resolved. Well, what if you are an average American citizen working and somebody cheats you or somebody mistreats you in the workplace and discriminates against you in the workplace. What if you are unaware? What if you had no evidence, you didn't know the true facts and you didn't know they had cheated you? What about that? Well, basically the courts have had an equitable relief that says you have a certain amount of time from the time you discover you have been mistreated in order to file a lawsuit. In other words, the statute of limitation is extended from the point of discovery to allow you to seek relief.

In the *Ledbetter* case the Supreme Court concluded that the person complaining about the mistreatment, the discrimination in the workplace, had known about it for years, several years, 4 or 5 years. They said: You can't wait that long. One of the key witnesses involved in the alleged discrimination had died. So the argument was: Well, I get a percentage of my wages in pension benefits from the company. And because I didn't get promoted, my pension benefits are not as much as they should be. And every time I get a check from the company I worked for, it is somewhat less than what I would have otherwise been entitled to and, therefore, that is a new cause of action that begins to run every time I get a new check.

This is not the way the law has been interpreted. Let me say with more clarity, the philosophy and the history of limitations on actions has never operated in this proposed fashion. If you head down that path of dealing with the issue there is virtually no limit on the statute of limitations. For this class of cases—and it goes beyond employment cases—a very broad piece of legislation here today, it provides an extension of the statute of limitations, a tolling of the statute of limitations to an almost indefinite time. That is not good.

We need to understand what we are doing. I know politically this has been ginned up into a big issue. It is complex and technical in some senses. A lot of people haven't taken the time to grasp what we are doing. But I urge my colleagues to consider the legislation moving forward and some of these amendments; that there are sound reasons that limit the time for which a party can file a lawsuit against you. And they are legitimate reasons. It has been a part of every action since the founding of the Republic, to my knowledge, unless it was an oversight. They all provide for a statute of limitations, even criminal cases. Criminals can walk free totally, if they cannot be charged for 5 years, usually. I say 5. Alabama and most States still have 5 years for burglary and larceny and assaults.

I support equal pay for equal work. I urge my colleagues to recognize that this evisceration of an historic principle of limitation of actions is not a way to fix it. It has ramifications far beyond these cases that have been discussed.

I urge my colleagues to spend some time in reviewing this, making sure that we realize what kind of hole we are knocking through the historic principle of the Anglo-American rule of law. If we do that, this legislation will not become law in its final form.

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

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

The Senator from Maryland may proceed.

Ms. MIKULSKI. Mr. President, earlier, I asked for a quorum call while the distinguished Senator from Pennsylvania and I had a discussion on what is the best way forward to clarify some of his questions on waivers, estoppels, and laches in this bill. We were looking, trying to have colloquies or amendments and so on. What we concluded was that the clearest way to do this so legislative intent is firmly established in the RECORD is for him to offer his amendments, present his arguments, and I would offer rebuttal to that on that matter.

He also raised another issue on striking the phrase "other practices." I would like to now talk about both of those amendments, but sequence them.

First, I will discuss the Specter amendment on adding a rule of construction on the equitable defense of waiver, estoppel, and laches.

Mr. President, I strongly oppose Senator SPECTER's amendment to add a rule of construction to the Lilly Ledbetter Fair Pay Act regarding employers' equitable defenses on just what I said—waivers, estoppels, and laches. This amendment is unnecessary

and unfair. These are technical legal terms, and I am going to be very clear that the language is unnecessary because nothing in the bill changes the availability of these longstanding equitable defenses. Parties have been able to raise equitable claims in employment discrimination cases, and nothing in the pending legislation would change that. Courts will be able to decide equitable claims under the same circumstances as they do now. I am going to repeat that. Courts will be able to decide equitable claims under the same circumstances as they do now, regardless of whether this legislation is passed. The bill does not mention equitable doctrines, and nothing in its language could fairly be implied to suggest that parties may not raise equitable claims.

In enacting legislation, Congress does not normally list all the things the bill does or does not or could or could not do. Doing so here could give courts the mistaken impression that Congress intended courts to look more favorably on equitable defenses than they currently do, thereby putting a thumb on the scale in favor of employers who raise such arguments.

Adopting the Specter rule of construction could also lead courts to conclude that Congress wanted to prevent assertions of equitable claims in other contexts not addressed in the bill, such as challenges to promotion, termination, or other benefits decisions. That result would hurt both employers and employees.

Neither of those interpretations is intended in this bill. The purpose of this legislation is not to upset the longstanding balance that courts have established regarding these equitable defenses. As explained in the findings, the bill's purpose is to overturn the Ledbetter Court decision—a decision that had nothing to do with equitable defenses.

This amendment is also unfair because it is one-sided. It mentions only equitable doctrines raised as defenses by employers, but ignores the arguments workers may raise based on equitable doctrines. Plaintiffs have always had the ability to raise equitable claims such as waiver, equitable tolling, and estoppel. The Supreme Court ruled long ago that the time limit in job discrimination cases is subject to equitable doctrines, and this legislation does not upset that ruling. See *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 398, 1982. Courts have ruled that employees may raise claims of equitable tolling when they were excusably ignorant of their duty to file a discrimination claim by a particular date.

In addition, courts have held that employers are estopped from asserting that a worker's job discrimination claim is untimely if the employer's conduct reasonably can be concluded to have induced the employee to miss the filing deadline. For instance, when workers fail to timely file a charge of discrimination because their employ-

er's misrepresentations caused them to believe they had waived their claims, the employer is estopped from arguing the charge was untimely. See *Tyler v. Unocal Oil Co. of California*, 304 F.3d 379, 5th Cir. 2002. Likewise, if the employer induces a worker to delay filing a charge by falsely stating that the employee was fired because his or her position would be eliminated, the employer may be estopped from complaining that the worker missed the filing deadline. See *Rhodes v. Guiberson Oil Tools Div.*, 927 F.2d 876, 5th Cir. 1991, holding that employer was estopped from arguing that worker's ADEA charge was untimely, where employer concealed facts and misled employee into believing he had been discharged because his position was being eliminated or combined with another position, and that he might be rehired.

Yet the Specter amendment ignores this history and does not say that equitable claims also may be raised by plaintiffs alleging discrimination. This could lead to the perverse result that courts would look less favorably on workers' equitable claims in pay discrimination cases than they do now. This legislation intends to restore workers' ability to fight unfair pay discrimination, and we must avoid erecting new hurdles by adopting an amendment that could undermine workers' arguments based on equitable doctrines.

For decades, the courts have been considering these and other equitable claims by plaintiffs in job discrimination cases, as well as equitable claims raised by defendants. We should do nothing in this legislation to upset the balance courts have established in this area.

So when we do have our votes, I will urge my colleagues to join me in defeating the amendment by the Senator from Pennsylvania, Mr. SPECTER.

Now, Mr. President, he also raises another issue related to "other practices." I also strongly oppose that. I strongly oppose the amendment offered by Senator SPECTER to strike the words "other practices" from section 3 of the Lilly Ledbetter Fair Pay Act. This amendment is unnecessary and would seriously undermine the bill's goal of protecting employees who, like Lilly Ledbetter, were denied a fair chance to challenge pay discrimination in the workplace.

This issue, too, involves a rather complex and detailed legal argument, complete with references and citations.

To summarize in somewhat plain English—because this issue is complicated, and the Senator from Pennsylvania has raised very important and solid questions, and I want to further clarify why we oppose the amendment—Senator SPECTER's proposal to eliminate the term "other practices" from section 3 of the bill would defeat our legislation's purpose of overturning the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 2007. Lilly Ledbetter, the

plaintiff in that case, was paid significantly less than her male colleagues. This difference in pay came about because Lilly's employer based her pay on a bad evaluation they gave her because she was a woman. Now, I am going to repeat that. The difference in pay came about because her employer based her pay on a bad evaluation, but the bad evaluation they gave her was because she was a woman. And this has been established. The discrimination continued every time Ms. Ledbetter received a paycheck, and the difference in pay between her and her male coworkers grew more severe over time. If you listen to her speak, you can see how it affected her pay, her pension, her 410(k), and her Social Security.

If we adopt the Specter amendment, this legislation will no longer cover situations like Ms. Ledbetter's, where a discriminatory difference in pay is tied to a practice like job evaluations that contributes to the employer's decision to set a worker's pay at a certain level. That result is simply unacceptable.

The rule we enact in this bill must be workable and it must accurately reflect how job discrimination occurs in the workplace. Ms. Ledbetter's case—and many others—show that salary determinations often rely on other discriminatory actions.

Unfair differences in pay may be brought about not only by discriminatory job evaluations, but also by discriminatory decisions to classify a job in a particular way, or by discriminatory assignments to a particular location. *See, e.g., Parra v. Basha's, Inc.*, 536 F. 3d 975, 9th Cir. 2008, Latino workers were paid up to \$6,000 less annually than other employees performing the same duties based on their assignment to a store location with a predominantly Latino workforce; *Moorehead v. UPS*, 2008 WL 4951407, employer claimed that differences in starting salaries for men and women were due to its evaluation system.

Because the factors that contribute to pay scales are solely within employers' discretion, we must not adopt a rule that encourages employers to link pay setting decisions to other personnel actions, such as evaluations, in order to avoid the civil rights laws. That would create an unacceptable loophole in what is intended to be a comprehensive solution of the problems created by the *Ledbetter* case.

If we adopt the Specter amendment, we would only help some victims of pay discrimination—and leave countless workers such as Lilly Ledbetter without justice.

Senator SPECTER has said that his amendment is necessary because the bill, as drafted, is overbroad and could apply to discrete personnel decisions, like promotions and discharges. That's not true. The bill specifically says that it is addressing "discrimination in compensation." That limiting language means that it already only covers such claims—nothing more, nothing less.

Mr. President, I am going to yield the floor in order to recognize our colleague from North Dakota, Senator DORGAN.

Mr. DORGAN. Mr. President, I thank my colleague from Maryland for her leadership. It has been a long struggle and she continues that struggle on the floor of the Senate today. I was thinking that the struggle for women's rights has been ongoing for a long time. It was 150 years in this country before women had the right to vote. Think of it. This has been a long and tortured struggle.

I say to my colleagues that I think this is the easiest vote to cast. We come to this floor sometimes to cast wrenching, difficult, controversial votes. This is not one of them. This cannot be one of them. Requiring women who have been discriminated against to bring a lawsuit against their employer before they knew they were discriminated against is absurd, and yet that is what the Supreme Court said. It seems to me it is time to correct that Supreme Court decision.

Women have been fighting for equality and especially equal pay for a long time. In this *Ledbetter* case, she was discriminated against by being paid substantially less than a coworker working right beside her, doing exactly the same thing, and they underpaid her for years and years and years. Finally, in the disposition of the Supreme Court, she was told that her case didn't stand because she didn't file that claim within 180 days. She didn't know for 20-some years, let alone 180 days. Why should she not have been able to have the right to continue redressing that wrong? So we must, it seems to me, do the work of the committee here today and pass this legislation.

This struggle, as I said, has gone on for so long. Abigail Adams was urging her husband John Adams to protect the rights of women as early as 1776. This struggle has gone on since before the Constitution was written in this country. I was reading some while ago about the struggle of the woman's right to vote. This is about equal pay, but the so-called "night of terror" happened in Occoquan Prison. On November 15, 1917, 33 women were severely beaten by over 40 guards in Occoquan Prison. Why? What had they done? They were arrested for obstructing sidewalk traffic in front of the White House. Why were they there? Because they believed that women ought to have the right to vote in this country. So they were arrested and hauled off to prison. Lucy Burn, one of the 33, they say was shackled around both arms and the chain between the shackles was hung on the top of a cell door and that was her position throughout the night as blood ran down her arms. Alice Paul finally went on a hunger strike and they shoved a tube down her throat and her vomit nearly killed her.

These women were tortured during the night of terror in Occoquan Prison because they obstructed traffic on a

sidewalk? Why did they do that? They demanded, after 150 years, the right to vote. That is what they risked. They nearly died, some of them, to get this right to vote. Think of that struggle and how unbelievable that struggle was, and what heroes they were. But as always, there was push-back, people saying no.

My colleague from Maryland brings to us today an issue of fair play—another long struggle, and it is not even nearly over—but at least today we can take a step in the right direction with respect to the Lilly Ledbetter case. A Supreme Court that says a woman has no right to bring a pay discrimination case before the Court because she didn't know she was being discriminated against? That is an absurdity and one that must be corrected.

This long struggle for fairness for American women will not end on the floor of the Senate today, but this should not be a difficult vote at all. I can't conceive of someone who would say the Supreme Court decision has any sort of fairness attached to it. A woman who is working for 25 years or more, beside someone who is doing the same job but paid much more because of that person's gender, that woman doesn't have a right to seek redress? What an unbelievable injustice.

Lilly Ledbetter, by the way, was here this week attending the inaugural of a new President. We have tried to solve this problem before in the last Congress, but couldn't. We will solve it now, because it is right, it is fair, it is just, and this struggle ought to continue until we win. This is one right step in the direction of this struggle of fair pay, and it is a step we ought to take today.

Again, I thank my colleague from Maryland for being such a leader on this issue. My hope is at the end of this day—this day—we will have passed this legislation and taken a very large step in the direction of justice for women.

Mr. President, I yield the floor.

Ms. MIKULSKI. Mr. President, before the Senator leaves the floor, first, he certainly knows his women's history and today he is going to help us write new history. We thank him for recalling—although it is a melancholy thing to recall—how brutal the retaliation was against women. Every time we have had to stand up, whether to exercise our right to vote or as is the case now—the brutal retaliation that occurs in the workplace, often sexual harassment, further discrimination and so on, simply because we pursue being paid equal pay for equal work. So we thank the Senator from North Dakota for his eloquence.

Mr. DORGAN. Mr. President, if the Senator will yield for a moment, this issue is about discrimination, but it goes far beyond this case or discrimination in these circumstances. It goes to the fair pay issue which the Senator from Maryland has been fighting for here in this Chamber for months and years. Obviously, we are going to do

much more, but today is the first step in the direction of justice for women, and I think it will be a good day today if we are able to pass this legislation.

Ms. MIKULSKI. Mr. President, I note the absence of a quorum, and I ask unanimous consent that the time be equally divided.

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

The legislative clerk proceeded to call the roll.

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

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

Ms. MIKULSKI. Mr. President, I ask unanimous consent that Senator KAUFMAN of Delaware be added as a cosponsor of the Lilly Ledbetter Fair Pay Act.

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

Ms. MIKULSKI. I thank the Chair, and I note the absence of a quorum, with the time to be equally divided.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

#### AMENDMENT NO. 26

Ms. MIKULSKI. Mr. President, an inquiry: Has all time expired on the debate on the Enzi-Specter amendments?

The PRESIDING OFFICER. All time has expired.

Ms. MIKULSKI. Mr. President, I call up the Specter amendment on "other practices" and move that it be tabled. The amendment that I wish to call up is amendment No. 26, Mr. SPECTER's amendment.

The PRESIDING OFFICER. That is the regular order.

Ms. MIKULSKI. I call up the amendment.

The PRESIDING OFFICER. The amendment is pending.

Ms. MIKULSKI. I move to table, and I 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 53, nays 43, as follows:

[Rollcall Vote No. 8 Leg.]

#### YEAS—53

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

#### NAYS—43

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

#### NOT VOTING—1

Kennedy

The motion was agreed to.

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

The motion to lay on the table was agreed to.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that all the following votes be limited to 10 minutes in the agreed-upon sequence.

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

#### AMENDMENT NO. 27

The PRESIDING OFFICER. The question is on amendment 27. Who yields time?

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, this amendment strikes the language "or other practices." I believe there ought to be equal pay, and the legislation would provide for equality of pay for women, break the glass ceiling, but would eliminate the surplusage language of "or other practices" because it is vague and ambiguous. It could include promotion, demotion, hiring, transfer, tenure, training, layoffs, or many other items. It may be some of these other items ought to be included, and I, for one, would be glad to consider them, but they ought to be specified so we do not have the vague and ambiguous term, "other practices," which would lead to tremendous litigation. Let's be specific, what we are looking for. We are looking for pay. If somebody wants to add something, fine, but "other practices" ought not to be part of the legislation which would just stimulate litigation.

The PRESIDING OFFICER. The Senator's minute has expired. The Senator from Maryland is recognized.

Ms. MIKULSKI. Mr. President, the Senator from Pennsylvania is a great

lawyer, but his amendment is not. It only fixes half the problem. It does not cover personnel actions that still result in discriminatory wages. It strikes other practices which include job evaluations and classifications.

If we drop "other practices," we leave out Lilly Ledbetter from getting the justice she deserves and all like her. I understand the Specter amendment 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 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 California (Mrs. FEINSTEIN), the Senator from Hawaii (Mr. INOUE), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

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

The result was announced—yeas 55, nays 39, as follows:

[Rollcall Vote No. 9 Leg.]

#### YEAS—55

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

#### NAYS—39

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	Specter
Cochran	Isakson	Thune
Corker	Johanns	Vitter
Cornyn	Kyl	Voinovich
Crapo	Lugar	Wicker

#### NOT VOTING—3

Feinstein	Inouye	Kennedy
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The motion was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. We have scheduled at 4 o'clock the swearing in of the new Senator from Colorado. We are going to complete this vote before we do that.

The PRESIDING OFFICER. The Senator from Wyoming.

#### AMENDMENT NO. 28

Mr. ENZI. Mr. President, I have made this point a number of times, that bills that go through committees have a markup and the amendments give us direction. We often get them worked



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
Burr	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	
Durbin	McCaskill	

Tester  
Udall (CO)

Udall (NM)  
Warner

Whitehouse  
Wyden

NAYS—41

Alexander  
Barrasso  
Bennett  
Bond  
Brownback  
Bunning  
Burr  
Chambliss  
Coburn  
Cochran  
Collins  
Corker  
Cornyn  
Crapo

DeMint  
Ensign  
Enzi  
Graham  
Grassley  
Gregg  
Hatch  
Hutchison  
Inhofe  
Isakson  
Johanns  
Kyl  
Lugar  
Martinez

McCain  
McConnell  
Murkowski  
Risch  
Roberts  
Sessions  
Shelby  
Specter  
Thune  
Vitter  
Voinovich  
Webb  
Wicker

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 Gins-

burg 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 non-union 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)  
VoinovichWarner  
WebbWhitehouse  
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 roll-call 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
Burr	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)  
Udall (NM)Warner  
WebbWhitehouse  
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 law-

suits. 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 non-traditional 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, hur-

dles, 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 inequities. 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, Ledbetter 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 fun-

damentally 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 Rights 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 Wisconsin's 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 deci-

sion 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 co-workers 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 legisla-

tion 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 agree-

ments 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. Non-union 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
Casey	Landrieu
Collins	Lautenberg
Conrad	Leahy
Dodd	Levin
Dorgan	Lieberman
Durbin	Lincoln
Feingold	McCaskill
Feinstein	Menendez
Hagan	Merkley
Harkin	Mikulski
Hutchison	Murkowski
Inouye	Murray
Johnson	Nelson (FL)
Kaufman	Nelson (NE)
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 777A 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



talking too long—I know one of our Senators is waiting—but it is an interesting story, and I think he will appreciate it.

The Alaska Territorial Guard was created in June of 1942 in response to increasing Japanese activity and attacks on and around Alaska. At the time, the U.S. Army was reassigning our Alaska National Guard soldiers away from the State, and so there were no ground troops left to protect Alaska. So Earnest Gruening, who was the territorial governor at the time, called for volunteers to defend our great land up there in the north. Some 6,389 Alaskans answered the call. These volunteers came to be known as the Eskimo Scouts, but they were representative of all of Alaska. They were Inupiat Eskimos, Yupik Eskimos, Aleut people, Athabascan and Tlingit Indians, and there were Caucasians.

With no pay and very little equipment, these volunteers—these Eskimo Scouts—patrolled 5,400 miles of coastline to fend off a possible Japanese invasion. They shot down Japanese air balloons carrying bombs and eavesdropping radios. They rescued downed airmen, they transported equipment and supplies, they constructed airstrips and support facilities, they manned the field hospital outpost, and they engaged the enemy in combat.

You see the picture behind me of the Eskimo Scout in his snowshoes standing guard, standing ready. These men answered the call of our country and they defended our homeland. The Territorial Guard stood as the first line of defense for the terrain around the Lend-Lease area, the route from America to Russia, and it was this vital lifeline that allowed the United States to supply our Russian ally with essential military aircraft and proved essentially crucial to Russia's defense against Hitler's Germany.

In March of 1947, the Eskimo Scouts were disbanded, but many of them went on to continue to serve our Nation in the Army and the Alaska National Guard. For more than half a century after the Territorial Guard was disbanded, these brave and truly dedicated volunteers received not one ounce of recognition from our Federal Government for the service they had performed. It wasn't until the year 2000 that Senator Stevens succeeded in adding language to the Defense appropriations bill to recognize the Territorial Guard, and that legislation required the Secretary of Defense to treat the Alaska Territorial Guard just like any other soldiers and to require them to issue discharge certificates to those who remain alive.

I was privileged to be at a couple of ceremonies where some of these elders received their official discharge certificates, and it was incredibly moving to be with them when, after decades, their Government finally recognized their service. The Secretary of Veterans Affairs was also directed to treat these people as any other veteran of the Armed Forces of the United States.

I do understand and we are told that the Department of Defense was slow to implement the mandate of this legislation. I can tell you from my own experience in dealing with many of the veterans and their families, the efforts to get these discharge certificates in a timely fashion has been very frustrating—frustrating for the families, frustrating for those who have served, most certainly, and frustrating for those of us who have been trying to make it happen. Some former members of the Territorial Guard are still waiting to get their discharge certificates. We have been assisted by a wonderful volunteer, Bob Goodman, who lives in Anchorage. He helps the former members of the Territorial Guard document their service, and he tells me that unless we can get this turned around, unless we can kind of move through this roadblock, we are going to see more of these fine Americans who will pass on before they get their long-awaited recognition.

I just don't understand. I can't understand why it took nearly 8 years—8 years—for the Defense Department to recognize the Alaska Territorial Guard's service for military retirement benefits. But, as I mentioned, back in June of 2008, they did it. Apparently, that decision did not please some at the Defense Department. Between Thanksgiving and Christmas, we learned they made a case that the members of the Territorial Guard are not eligible for retirement benefits. This was all happening over there at the Department under the radar of Secretary Geren here in Washington. The Secretary says there is nothing we can do at this point in time; the retirement benefits have been reduced on the computers of the Defense Finance and Accounting Service and the payments are going to go down effective February 1.

I am not going to stand here and blame the lawyers for telling their clients that the policy of crediting Alaska Territorial Guard service toward retirement pay doesn't comport with the law. But at the same time, the Defense Department hasn't released that legal opinion, so I can't judge—the presiding officer can't judge—whether this conclusion is really compelled by the law. If the conclusion was compelled by the law, I suppose we can't call out the lawyers for saying so. But I do fault their clients, the leaders who knew this was coming. They knew it was coming, but they didn't bother to tell any of the members of the Alaska Congressional Delegation.

I was not notified; you were not notified, Mr. President; our Member in the House of Representatives—nobody came to us late last year and said: Hey, we have a problem. We have a problem, and it requires a legislative fix. Can we work together, can we do something either at the end of the 110th Congress or immediately at the outset of this new Congress?

The senior leaders in the Army and DOD didn't even acknowledge that

there was a problem until you and I contacted the Secretary of the Army and asked: Is there a problem? We hear there is stuff floating around. What is going on?

As far as I was concerned, the reason we suspected there was a problem was because the adjutant general of Alaska, after trying to work through this problem at his level and through the chain of command, told us something was coming and it was going to be coming imminently.

Then just last week, Army Secretary Geren confirmed those fears, the fear that it will be real, that the retirement pay will be cut effective February 1. He says there is nothing he can do about it.

This afternoon, the members of the Alaska Congressional Delegation are writing to the administration, asking that he intervene to ensure that those Native elders who are affected by this tragic series of events do not lose this safety net.

Senator BEGICH and I are also preparing legislation that clarifies that service in the Alaska Territorial Guard is to be regarded as Active-Duty service for purposes of calculating retirement pay. We need to clear up that vagueness in the statutes.

I would just say, as I am able to speak here on the floor of the Senate, to Secretary Gates, if you are within the sound of my voice, I believe you owe an apology to these people. It was just a month ago that the Army Chief of Staff sent a letter of apology to 7,000 surviving families of the global war on terror who received letters addressed to John Doe. The blunder I speak of today affects far fewer people, but it is certainly no less of a blunder. I think we recognize we have just gone through a transition, moving from one administration to the other. Things happen during a transition period—things just happen. Sometimes policy blunders can occur. These things do happen, and then it falls upon Congress and the administration to come back and fix things.

I pledge to the Alaskans, and I know the Presiding Officer and our colleague in the House, Representative YOUNG—I think we all make the commitment to do everything we can to clean up what we are dealing with here. But I am left to wonder, what kind of a government, what kind of a Cruella, could cut retirement benefits to a group of Eskimos in their eighties, in the dead of an Alaskan winter, and say: Sorry, there is nothing we can do.

It is time for some soul searching at the Pentagon. I am looking for answers. I know you are looking for answers. We are looking for solutions, and there is really very little time left.

I thank the Presiding Officer. Know that we will find positive solutions for those who have served us honorably.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. CORKER. Mr. President, after listening to the Senator from Alaska, I

certainly would love to have her advocating on my behalf, and I know you two will make a great team in advocating on behalf of the people in Alaska, certainly seeing that they have been sent an injustice. I thank you for the opportunity to listen to that. Again, it is great to be here with the two Senators from Alaska.

#### FAMILY PLANNING

Mr. DURBIN. Mr. President, today many of our constituents are in town for the annual March for Life. They are expressing their strong concerns about an issue that has divided our Nation for decades: abortion.

This issue divides legislatures. It divides churches and communities. It even divides families. Parents often disagree with their children. Two sisters or two brothers may see the issue differently. Even husbands and wives may not see eye to eye.

And yet, the American people look to their elected leaders to come together and address the issue.

My position on the fundamental issue is clear: abortion should be safe and legal, consistent with *Roe v. Wade*. A decision this personal is best left to a woman, her family, her doctor, and her conscience.

But I don't think the issue ends there. We may never reach a consensus on abortion itself, but we can go beyond the divisions, acknowledge that women have a right to an abortion in America, and still work together to reduce the number of abortions.

So I would like to take a step back and talk about some of the things we can do to prevent unwanted pregnancies, which is a goal I think all of us in this chamber share.

Nearly half of all pregnancies in the United States are unplanned that is almost 3 million times a year that a woman and a man are confronted with the news that, contrary to their intentions, the woman is pregnant.

We can make a greater effort to ensure that couples have access to the information and services they need to prevent unwanted pregnancies.

First, we need to invest in comprehensive evidence-based teen pregnancy prevention programs. Nearly 1 million teen girls become pregnant each year, and it's time we focus on helping them prevent those pregnancies.

Next, we need to ensure that women can afford contraception by expanding funding for the Title X family planning program, which provides a critical safety net that both improves women's health and saves taxpayers money.

Low-income women are four times more likely to have unintended pregnancies than their higher-income peers. Democrats have proposed that women who are entitled to Medicaid-funded labor and delivery also be given access to family planning services through the Medicaid program. If we will cover the childbirth, why would we

not cover the prevention services that would help avoid the unintended pregnancy?

And for women with private health insurance, we must ensure that FDA-approved prescription contraceptives are covered to the same extent as other prescription drugs and devices. If we want women and men to take the responsible steps to avoid unintended pregnancies, we must give them access to the family planning options that will empower them to do so. Ensuring that contraceptive coverage is a covered service in our health plans is a commonsense way to address that issue.

It is also time to restore common sense in other areas.

Women must have timely and medically accurate information about another alternative: emergency contraception.

This product is FDA approved, and can prevent pregnancy and thus the need for abortion. Greater awareness of it could substantially reduce the staggering number of unintended pregnancies.

The facts are also on the side of lifting the so-called "Mexico City" policy that controls how family planning organizations in other countries may use their own funds. The global gag rule requires that, as a condition for receipt of U.S. funding, private and international organizations must agree not to use their own non-American funds to perform abortions, provide abortion counseling, or even lobby to make or keep abortion legal in their countries.

By law, Federal funds cannot be used for abortions. Audits have demonstrated that, in the years when the Mexico City policy has been lifted, Federal funds have not been used for abortions. So this is not about abortion.

This is about whether international family planning programs will be allowed the same rights of freedom of speech and action that domestic programs have. We should not be dictating what groups do with their own independent funds as a condition of receiving U.S. family planning funding.

So often, the battle over abortion has been extended into unnecessary battles over contraception. But there are other policy areas where people who disagree over abortion should be able to come together.

First, we need to support pregnant women when they find themselves in a difficult situation.

We must work to ensure that they have access to health care both before and after the child is born; parenting programs; income support; nutrition assistance; and caring adoption alternatives.

Finally, we must look beyond the immediate crises and work to address the underlying conditions that can affect a couple's response to an unplanned pregnancy. Affordable health care, secure jobs with good wages, expanded child care options, and improved educational

assistance can make it easier for a couple to welcome a child into the family. These, again, are areas where we should be able to come together and make progress.

#### TRIBUTE TO SENATORS

HILLARY RODHAM CLINTON

Mr. HATCH. Mr. President, I rise to speak today regarding the departure of my esteemed colleague from New York, Senator Hillary Rodham Clinton. I have known Senator Clinton for many years now, and I have worked closely with her since the time she served as First Lady of the United States and then as she so aptly served the people of New York in the Senate. Today, I am sure that I am joined by many of my colleagues in saying that her compassion, her skill, and her example in this institution will be missed.

As a former First Lady of the United States, I was very impressed with the work Senator Clinton did to increase the level of care for women and children from around the world. You may recall that her service in this capacity knew no boundaries or borders as millions of lives were touched both here in the United States and abroad by her care, by her understanding, and by her tenacity in helping people receive the level of care and attention they so justly deserved. Indeed, Senator Clinton reminded us all that women's rights are not to be separated from human rights and that through this empowerment we have the potential to improve relations, eradicate violence, and increase prosperity. This is the vision and compassion that served her so well as a former First Lady of the United States, and this is the same compassion that continued to highlight her time here in the Senate.

Although her time in this legislative body has been relatively brief, the accomplishments of Senator Clinton have been many. If I may, let me highlight just two contrasting examples. The first example comes from 2007 when I worked closely with Senator Clinton on the Biologics Price and Protection Innovation Act. It was through these tough negotiations, numerous committee meetings, and candid discussions that I again was privileged to witness Senator Clinton's skill in bringing large groups of affected parties together in the spirit of compromise. With so many competing interests and so much attention being drawn to this legislation, I was appreciative of Senator Clinton's skills in negotiation, in understanding competing interests, and in listening to all of the parties involved in passing this important legislation out of the Senate.

The second example I would like to mention comes from 2008 with little fanfare. It is a simple resolution and one that probably did not receive much attention, but it was a resolution that meant something to me and it meant something to Senator Clinton. I speak

of a Senate resolution designating a week in May as National Substitute Teacher Recognition Week. For helping me to pass this simple resolution, I am grateful to Senator Clinton. More importantly, however, I am grateful that Senator Clinton was more interested in doing what was right for substitute teachers across our Nation. Even though this resolution probably never made a headline, Senator Clinton was one of the first in line to sign on as a cosponsor because she knew it was the least we could do for men and women across our country who give so much to our children through their education.

In closing, I share these two examples simply to illustrate the skill and compassion that defined Senator Clinton's service while she was here in the Senate. From the large legislative issues to the small acts of kindness and recognition, I know that Senator Clinton strived to do what she thought was right and what was best for our country. It is this example that we will all miss in the Senate as she begins the next chapter of her service at the State Department. Truly, their gain is our loss, yet it is without hesitation that I extend my deepest gratitude to Senator Clinton for her countless hours of service, her incredible example of compassion, and the years of friendship that she has extended to me, my colleagues, and the people of the United States. I am excited for what the future holds for Senator Clinton. I am certain that many great things still lie ahead in this next chapter of her life, and it is to Senator Clinton that I extend my congratulations as she begins her journey at the State Department.

KEN SALAZAR

Mr. COCHRAN. Mr. President, the resignation of the distinguished Senator from Colorado, Mr. Salazar in order to undertake the duties and responsibilities of Secretary of the Interior, has left us with a sense of pride and loss. We are very pleased the Department of the Interior will have the benefit of his leadership, but we regret that he will not be able to continue his excellent record of distinguished service in this body.

It has been a personal pleasure to serve with my friend from Colorado. His warm personality and his seriousness of purpose as a Senator have enabled him to serve as a very successful U.S. Senator.

I wish my friend well as he undertakes his new duties. I am sure we will see him often in the Senate working with us as we support him and the Department in carrying out their important responsibilities.

#### EXECUTIVE ORDER CLOSING DETENTION FACILITIES

Mr. DODD. Mr. President, I once again come to the floor to discuss an issue that goes directly to who we are as a country and what we stand for.

Specifically, I want to comment on the executive orders President Obama

signed today to close the Guantánamo Bay detention facility within a year, close secret prisons operated by the CIA, and review the procedures for detaining and trying accused terrorists. In so doing, he sends a long-overdue message not only to the world, but also to the American people here at home, reaffirming our values as Americans and our commitment to the rule of law.

As we speak, some 245 individuals are still being held as enemy combatants at Guantánamo Bay, and about 100 in secret prisons around the world, though we do not even know for sure. Several independent sources have alleged that these detainees have suffered from abuse.

All of the information we have indicates that most, if not all, of these people have engaged in a host of violent actions directed at the United States. They are not misguided innocents, but rather men committed to harming us. I rise today not to defend them and their actions in any way; they must be punished to the full extent of the law.

Rather, I rise to urge exactly that, the application of our great body of law for dealing with dangerous people intent on harming us. Indeed, some in our Government have failed to apply the law and failed to obey it.

According to a Red Cross report, prisoners in Guantánamo Bay were subjected to "cruel, inhumane and degrading" treatment that is "tantamount to torture." FBI agents have reported that many of those held at Guantánamo Bay were chained to the floor in a fetal position for 18 hours or more, and were subject to 100-degree heat and freezing cold. The CIA's secret facilities have never been inspected, so we don't know how prisoners have been treated in them.

These abuses are not just morally wrong, they are violations of American and international law. They weaken respect for the rule of law abroad and subject American citizens to greater risks of unlawful detention and torture in foreign countries. And they weaken our security even as they undermine our democratic ideals.

Guantánamo and the CIA's secret prisons has been an international embarrassment, a symbol of abuse and the breakdown of law, which is why I and others have come to this floor so often to discuss our moral responsibility to close them.

To be absolutely clear, I repeat that those who are a threat to America, who are guilty of crimes, must and will be punished to the fullest extent of the law. They must be tried and prosecuted. This decision is not about protecting those who wish to harm us.

Rather, this decision says, as President Obama did in his inaugural address this week, that the choice between security and liberty is a false choice, and we reject it.

As General George Washington answered when his soldiers asked him for permission to beat their prisoners, "Treat them with humanity. Let them

have no reason to complain of our copying the brutal example" of our enemies.

And so, I am grateful and relieved that President Obama has acted so quickly to remedy this very damaging policy.

This is, of course, only the first step. We must remain vigilant in working with the administration to implement these orders. And there remain many issues to be decided, from when and how Guantánamo and other detention facilities are closed to ensuring the interrogation methods employed by U.S. personnel never again cross the line into torture.

But this is a critical first step toward restoring not only the rule of law and our Constitution but also our moral authority. Today, we remind the world and ourselves that everyone is subject to the law and no one, not you, not I, stands above it.

I am convinced that today's orders will better secure our Nation and allow us to more effectively prevent, detain, and prosecute those who would seek to harm us.

I applaud President Obama for his decision to act without delay on these most important issues.

#### FREEDOM OF INFORMATION ACT

Mr. LEAHY. Mr. President, from the start of his transition to the White House, I have urged President Obama to make a clear commitment to open government. By issuing his directive to strengthen one of our Nation's most important open government laws, the Freedom of Information Act, FOIA, the President is turning the page and moving away from the overreaching secrecy of the last administration. I commend President Obama for recognizing that our Government is accountable to the people it represents. I also commend the President for taking immediate steps during his first full days in office to send this important message to the American people.

I was delighted with the answer of the President's nominee to be the next Attorney General of the United States, Eric Holder, when I asked him at his confirmation hearing last week about how he intended to implement the Freedom of Information Act. He, too, believes that the presumption should be toward disclosure and openness. In fact, that was the policy before Attorney General Ashcroft reversed it.

Today, our Government is more open and accountable to the American people than it was just a few weeks ago. With the President's new FOIA memorandum, the implementation of the first major reforms to FOIA in more than a decade in the Leahy-Cornyn OPEN Government Act, and the nomination of Eric H. Holder Jr., to be the Attorney General of the United States, the American people have more openness and accountability regarding the activities of the executive branch. I am pleased that the President also issued a

Presidential Memorandum on Transparency and Open Government that will promote accountability and transparency in government and an Executive Order on Presidential records that will provide the American people with greater access to Presidential records.

The right to know is a cornerstone of our democracy. Without it, citizens are kept in the dark about key policy decisions that directly affect their lives. Without open government, citizens cannot make informed choices at the ballot box. Without access to public documents and a vibrant free press, officials can make decisions in the shadows, often in collusion with special interests, escaping accountability for their actions. And once eroded, these rights are hard to win back.

The Sunshine in Government Initiative has been vigilant and steadfast on behalf of open government. I have been pleased to work with this coalition of the American Society of Newspaper Editors, the Associated Press, Association of Alternative Newsweeklies, National Association of Broadcasters, National Newspaper Association, Newspaper Association of America, Radio-Television News Directors Association, Reporters Committee for Freedom of the Press, and Society of Professional Journalists in connection with these initiatives and correcting the government's presumption toward openness.

As we celebrate the inauguration of our new President and the start of a new administration, we are reminded that a free, open, and accountable democracy is what our forefathers envisioned and fought to create. I believe that it is the duty of each new generation to protect this vital heritage and inheritance. In this new year, at this new and historic time for our Nation, I am pleased that we have once again reaffirmed a commitment to an open and transparent government on behalf of all Americans.

#### COMMENDING MARGARET TYLER

Mr. LEVIN. Mr. President, today, the Committee on Armed Services unanimously passed a committee resolution to express its appreciation to Margaret Tyler and to commend her for her many years of faithful and outstanding service to the men and women of the U.S. Army, to their families, and to the Senate of the United States.

Margaret Tyler has worked for the Federal Government for 57 years. She has served 45 of those 57 years in the Army Liaison Office—38 of those years in the Army Senate Liaison Office.

Through all those years, Mrs. Tyler has dedicated herself to helping those in need and in solving problems affecting the U.S. Army. She has always been professional, efficient, and effective in her work. Over the years, Senators and staff have learned that when they have a problem involving the Army the first step in solving the problem is calling Margaret Tyler. To many in the Senate family, she is affectionately known as the Army's Angel.

The men and women of our Armed Forces deserve the best support and as-

sistance we in Congress can give them. Day in and day out, for the past 45 years, Margaret has helped us support the men and women of the U.S. Army and their families to the best of her ability. Thousands of soldiers and their families have been touched by her dedicated, professional, and personal care.

On behalf of all the members of the Committee on Armed Services, I ask unanimous consent that our committee's resolution commending Margaret Tyler on her service to the men and women of the U.S. Army, to their families, and to the Senate of the United States be printed in the RECORD.

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

COMMITTEE ON ARMED SERVICES RESOLUTION 1  
COMMENDING MARGARET TYLER ON HER SERVICE TO THE MEN AND WOMEN OF THE UNITED STATES ARMY, TO THEIR FAMILIES AND TO THE SENATE OF THE UNITED STATES

Whereas Margaret Tyler, a native of England who became a United States citizen on February 24, 1954, has worked for the federal Government for 57 years;

Whereas Margaret Tyler worked in the Army Liaison Office in the House of Representatives from 1964 to 1970, and in the Army Liaison Office in the United States Senate from 1971 to the present day, a total of 45 years of dedicated service;

Whereas Margaret Tyler has demonstrated an unwavering commitment to meeting the needs of members of the United States Army, their families, and the members and staff of the United States Senate for the past 38 years;

Whereas Margaret Tyler has earned the respect and gratitude of the Senators and their staffs for her dedication, her professionalism, her service and her good humor;

*Resolved*, That the Committee on Armed Services expresses its appreciation to Margaret Tyler and commends her for her lengthy, faithful and outstanding service to the men and women of the United States Army, to their families, and to the Senate of the United States.

*Resolved*, That the Clerk of the Committee shall transmit a copy of this resolution to Margaret Tyler.

#### EXECUTIVE ORDERS

Mr. KERRY. Mr. President, today is a very significant day for the rule of law in the United States of America, and a powerful statement that the United States again stands for the time-honored principles and values that have made us a beacon to the world.

This morning, the President of the United States signed Executive orders ordering the closure of Guantanamo Bay prison within a year; suspending all military commissions at Guantanamo Bay; closing secret third-country prisons; and placing interrogation in all American facilities for all U.S. personnel under the guidelines of the Army Field Manual.

In a season of transformational changes, these are among the most profoundly meaningful because they will sustain the long-term health of the most cherished ideals of our Republic: respect for the rule of law, individual rights, and American moral leadership.

The threat our Nation faces from terrorism is all too real. And we should all

agree that sometimes, in the name of national security, it is necessary to make difficult ethical decisions to protect the American people.

However, I believe that the use of torture and indefinite detention have not only tarnished our honor but also diminished our security. In this global counterinsurgency effort against al Qaeda and its allies, too often our means have undercut our efforts against extremism. In this struggle, the people are the center of gravity. And too often we have wasted one of the best weapons we have in our arsenal: the legitimacy we wield when we exercise our moral authority.

Efforts to justify, explain away, or endorse the use of torture have played directly into a central tenet of al Qaeda's recruiting pitch: that everyday Muslims across the world have something to fear from the United States of America. From Morocco to Malaysia, people regularly hear stories of torture and suicide at Abu Ghraib, Guantanamo, and other overseas prisons. The result has been a major blow to our credibility worldwide, particularly where we need it most: in the Muslim world.

Torture and lawlessness are not easily contained. Once the strictures are loosened, the corner-cutting practices spread. The Pentagon used high-level Guantanamo detainees to test coercive interrogation techniques, but such techniques eventually found their way to low-level detainees at Abu Ghraib prison in Iraq. While images of Abu Ghraib have long faded from American minds and media, they remain fixtures, years later, across the Arab and Muslim world.

As Senator MCCAIN has argued, the use of techniques like waterboarding—invented in the Spanish Inquisition and prosecuted by the American Government as a Japanese war crime after World War II—leaves its scars on a democratic society as well. Torture, which flourishes in the shadows, depends on lies—not just from those who seek to avoid torture, but from those who seek to conceal it. After years of Orwellian denials and legalistic parsing, what a relief it was to hear our new Attorney General-designee Eric Holder finally acknowledge on behalf of the United States Government what we all know to be true: that yes, “waterboarding is torture.”

As we move forward, President Obama is wise to “reject as false the choice between our safety and our ideals”—but moving beyond this framework does not mean that this administration will not face real and difficult choices about how best to keep Americans safe while honoring our values.

The American people should know that closing Guantanamo will not be easy. Conceived to be outside law, reclaiming the prison and its inhabitants

into our legal system from what Vice President Cheney called “the dark side” will be an enormous challenge and a thicket of thorny legal and policy issues.

However, we are already seeing the international system reorganize itself around an America that is willing to be a moral leader. Countries such as Portugal and Ireland have made welcome offers to join Albania in resettling detainees who cannot be returned to their home countries. Already we are seeing the fruits of a good-faith effort with our allies.

Still, it will take time and effort to overcome numerous hurdles. The new administration faces tough challenges handed over from the previous administration. Looming questions must be addressed about the inadmissibility of evidence improperly coerced. It is difficult or impossible in some cases to return detainees—including many cleared for departure—who would face torture or worse in their home countries; and we already know that some released from Guantanamo have returned to the battlefield. In some cases we simply lack evidence to charge men we know to be extremely dangerous and threatening to the American people. And we owe it to those we believe made grave mistakes to acknowledge the urgency of the moment they inherited, the sacred responsibility to protect American lives, which they strove to honor, and the humbling reality that there are no easy answers when it comes to such life-and-death matters.

But the American story is one of perfectibility and striving for ever-greater fidelity to our ideals—it is a journey from Colony to Republic, from slavery to freedom, from sexism to suffrage, from stark poverty to shared prosperity. The President himself famously said, “the union may never be perfect, but generation after generation has shown that it can always be perfected.”

It is true that today we face unprecedented, unorthodox, and vastly destructive enemies that respect neither borders nor rules of war. But it is equally true that we have done so before. This is not the first new challenge America has evolved to meet. Sometimes that evolution requires us to admit mistakes, learn from them and grow as a nation. Our progress in response to new threats and new fears has been halting but real, and our setbacks have always been followed by a strong corrective impulse. The desire to do better has always been a core part of America’s greatness.

Today Barack Obama and his administration wrote a new chapter in that old story. I commend them and look forward to helping them make good on their goals, keep Americans safe, and usher in a new era of America’s moral leadership.

Today’s Executive orders were a promising sign of things to come—America will again honor the values that make us strong.

### 36TH ANNIVERSARY OF ROE V. WADE

Mr. BURR. Mr. President, today, January 22, 2009, marks the 36th anniversary of the U.S. Supreme Court’s *Roe v. Wade* decision.

Today, concerned Americans, including many North Carolinians, are gathering on the National Mall to March for Life, and I would like to take this opportunity to welcome them to Washington, DC.

On January 17, 2009, in anticipation of today’s events, North Carolinians gathered for their annual Rally and March for Life in Raleigh.

I congratulate them on their successful event, and I would like to thank them for their efforts to promote a culture of life in America.

In recent years we have made great strides in protecting the unborn through various measures, such as passage of the partial birth abortion ban, Lacey and Connor’s Law, and tax incentives to enable more families to adopt.

These achievements are a testament to the advocates who work tirelessly every day to remind us of the value of life.

With these achievements and others, it is my sincere hope that my colleagues in the Senate will continue to work together to protect our children.

Mr. MARTINEZ. Mr. President, today marks the 36th year since the Supreme Court issued its decision in the case of *Roe v. Wade*, a court decision that evokes strong emotions all across America. Today, thousands of Americans who support life have taken time out of their busy schedules to travel to Washington to take part in the “March for Life,” an annual event on the National Mall. I share their hope for seeing the day where the sanctity of life is cherished, valued, and affirmed under the law.

This morning, I had the opportunity to meet with some of these individuals, students from Cardinal Newman High School in West Palm Beach, and I expressed my gratitude for their steadfast commitment to protecting innocent human life.

As a Nation, we have made significant progress in creating a culture that respects life in recent years. As someone who believes that every life is sacred, I encourage President Obama to follow the lead of his predecessor, and continue to restrict the use of taxpayer funding for organizations that perform abortion services or refer patients to abortion providers.

This policy, known as the Mexico City Agreement, was first signed into order by President Ronald Reagan in 1984. Over the years, the policy has been wrongly attacked and falsely characterized as a restriction on foreign aid for family planning. The truth is that the policy has not reduced aid at all.

Instead, it has ensured that family planning funds are given to organizations dedicated to reducing abortions

instead of promoting them. If the policy were to be reversed, it would blur the line that has been drawn between funding organizations that aim to reduce abortions, and those that promote abortion as a means of contraception. President Obama should make the right choice in keeping the Mexico City Agreement in place.

In conclusion, on this 36th year since the Supreme Court handed down its decision, I commend the leaders of “March for Life.” Supporters are in Washington today, marching down Pennsylvania Avenue, reminding lawmakers of the importance of preserving and protecting life. Their voices are heard. They are heard year after year. I hope there is a day when their voices are heard in celebration that life is preserved and protected by the rule of law.

### U.S. AIRWAYS FLIGHT 1549 HEROES

Mr. BURR. Mr. President, I rise today to recognize the heroic efforts of the pilots, crew, passengers, emergency responders, and volunteer organizations that led to the extraordinary outcome of U.S. Airways flight 1549, which was bound for Charlotte, NC, on January 15, 2009.

U.S. Airways flight 1549 departed New York’s LaGuardia Airport on the afternoon of January 15 with 150 passengers and 5 crew, including 2 pilots and 3 flight attendants, aboard. Charlotte was the final destination of 104 of the passengers, many of whom are my constituents.

Within minutes of take-off, the aircraft experienced engine trouble forcing the pilot, Captain Chesley B. “Sully” Sullenberger, to perform an emergency landing on the Hudson River.

I understand that a water landing of this sort is rare and technically challenging, making it extremely dangerous for all aboard. But Captain Sullenberger executed the difficult landing expertly. His skill and decisiveness has been heralded with saving the lives of all on board.

As passengers emerged from the plane onto emergency life rafts and the wings of the still buoyant aircraft, boats were on the scene to assist with the rescue in minutes. Vessels were dispatched from the New York police and fire departments, the Port Authority of New York and New Jersey, the U.S. Coast Guard, and the New York Waterway, which reportedly sent all 14 of its boats to the scene.

Without the immediate assistance of these boats, I am certain the passengers and crew on board would not have fared as well as they did, given the extreme temperatures in New York City on the day of the incident. All participating rescue parties are to be commended for their swift and professional response.

In fact, the tales of heroism emerging from this event are numerous. For example, I was moved by the story of Josh Peltz, a Charlotte resident, husband, and father of two. Flying home

to Charlotte from a business meeting, Josh was seated in the emergency row's window seat. Not only was Josh integral in opening the emergency hatch after impact, but he was also helpful in reassuring passengers and assisting others, including a mother and her 9-month-old baby, up the ladder and onto the awaiting ferry. And as rescuers assisted passengers, I understand that Captain Sullenberger continued to demonstrate true heroism as he refused to deplane until all others onboard had been safely evacuated.

I again commend all who contributed to making this disastrous event a true miracle, including the first responders; volunteer organizations, such as the American Red Cross and the Salvation Army; and most of all the crew and passengers of 1549. The acts of heroism and the stories of selflessness that have emerged from this event are truly inspiring.

#### TRIBUTE TO MELVIN DUBEE

Mr. ROCKEFELLER. Mr. President, Melvin Dubee, one of the Senate's most highly valued staff members and one to whom I am personally grateful, will soon conclude two decades of government service in order to apply his considerable talents in the private sector. While I do not, for a moment, believe that this is the end of Melvin's public duties—one day a wise official will certainly summon him back to public service—it is fitting to note his accomplishments to date.

As evident to even casual observers, particularly around key Longhorn or Cowboy games, Melvin has roots in Texas, where he received at the University of Texas at Arlington a Bachelor of Business Administration degree in finance. His path to public service then included a Masters degree in international affairs from George Washington University in 1988 and two years as a Presidential management intern between 1987 and 1989.

The Presidential Management Intern Program was established by President Carter to attract to Federal service, through a national competition, outstanding individuals from a variety of disciplines who are interested in a career in Federal service. During the internship Melvin worked in the Office of the Inspector General in the Department of Defense, where he began to build expertise in defense issues that carried into his Senate work. During that time he received a congressional fellowship, which introduced him to the Senate in the office of the Senate's master teacher, my senior Senator, ROBERT BYRD, where Melvin continued to work on defense management issues.

It doesn't take long for those with whom Melvin works to be impressed by his considerable skills and calm demeanor. His audition as a Congressional Fellow led to 5 years of service as national security assistant to Senator BYRD, between 1989 and 1994. In that capacity, he advised Senator

BYRD, who was then in the midst of his distinguished leadership of the Senate Appropriations Committee, on foreign policy and defense issues. This included serving as Senator BYRD's staff representative to the Armed Services Committee, during which Melvin complemented his growing knowledge of defense issues with his impressive legislative process skills concerning hearings, markups, floor action, conference committee negotiations, and negotiations with other congressional offices and with the Executive Branch.

In 1994, Melvin began his service on the Senate Intelligence Committee. This service continued until now with brief interruptions, including a year during President Clinton's administration in the Office of National Drug Policy where he advised Director Barry McCaffrey on that office's interaction with Congress.

Melvin has contributed to the committee in a variety of positions.

As a professional staff member, which is the general entry point for our staff, Melvin developed expertise in a number of key intelligence community oversight issues, including counterdrug, counterterrorism, international organized crime issues, as well as area expertise concerning Latin America and Southeast Asia. As a professional staff member, he also served as an adviser and liaison to Senator JOHN KERRY and then to me, during the early part of my service on the committee in 2001.

One of Melvin's particular contributions during that time was leadership of the committee's investigation of the tragic April 2001 shoot-down of a U.S. missionary plane in Peru. Our report, entitled "Report on a Review of United States Assistance to Peruvian Counter-Drug Air Interdiction Efforts and the Shootdown of a Civilian Aircraft on April 20, 2001," S. Prt. 107-64, bears witness to a number of his skills. They include an ability to gather and carefully analyze facts, write accurately and clearly, help the Committee draw sound conclusions and make needed recommendations, and do so in a manner that draws bipartisan support. And, I should add, also to do all that expeditiously so that the committee was able to report publicly within 6 months of the incident.

The skills that Melvin amply demonstrated as a professional staff member led to his selection to fill two key staff management positions.

From mid-2001 through 2002, Melvin served as the committee's budget director. Our budget director post is an immensely important responsibility. The total national intelligence budget when Melvin was budget director is classified. But we have declassified the top line for the last 2 fiscal years. The most recent figure, \$47.5 billion in fiscal year 2008, conveys the importance of the task of reviewing, making recommendations about, and monitoring implementation of the Nation's intelligence budget. As budget director,

Melvin led the committee's budget monitors for each of the individual intelligence community elements in scouring the President's budget numbers and evaluating the broad span of human and technical collection, analytical, acquisition, and management issues they involve. The budget director arranges for the presentation of these issues at classified hearings of the committee, their consideration at committee markups, coordination with the Senate Armed Services and Appropriations Committees, and negotiation with the House and also with the Executive Branch. This work is at the heart of the committee's responsibilities.

Confidence in Melvin, starting with former Vice Chairman Richard Bryan in 2000 and then myself from 2003 through the 110th Congress, also led to Melvin's designation as deputy staff director, initially on the minority side and then beginning in 2007 as the committee's deputy staff director. There are two aspects of that responsibility. One is leadership within the staff, helping it to maintain the high level of professionalism and effectiveness that has been the hallmark of our Intelligence Committee staffs. The other is being a close adviser to the chairman or vice chairman, as the case may be, on the full breadth of issues relating to the oversight of the U.S. intelligence community.

In both respects, as a partner with the staff director in managing the committee and as a close adviser to me, Melvin performed magnificently. On a daily basis, I most often saw Melvin as a trusted adviser. In that role, Melvin combines key capabilities and attributes.

Melvin knows his material. This includes current intelligence and historical background. It includes detailed knowledge of the elements of the intelligence community, from the CIA, to components of the Defense Department, to intelligence elements in the State, Treasury, and Energy Departments, as well as the FBI. And it includes knowledge of the functioning of the Senate, with respect not only to the Intelligence Committee, but also to the committees with which we work, and its leadership and floor proceedings.

Melvin has an admirable ability to express his considerable knowledge succinctly and clearly. He has no hesitation in expressing disagreement or dissent, respectfully but clearly, particularly when a matter of principle is involved, as is often the case when addressing sensitive matters. When a decision is made, he has an uncanny ability to find and recommend the right words for remarks in committee, on the floor, in letters or press releases, or in speeches outside the Senate. And, in all of our endeavors, Melvin has been forever guided by a deep commitment to the protection of our Nation and our values.

It would be incomplete, however, to talk only about Melvin at work. A



glance at his wall of photographs, an opportunity to hear him talk about his family, and the chance to meet his wife and two daughters, make it clear that Melvin and his wife Kristine Johnson are loving and imaginative parents, and that Melvin's priorities have always been right on the mark. As may often be the case when someone leaves the Senate for the private sector, daughters Katrina and Eliza may find that Dad is able to get home a little earlier to join them at dinner.

With gratitude for his service to the Senate and the Nation, for myself and the many others who have benefited from it, I wish Melvin the best in the time ahead.

#### RETIREMENT OF H. JAMES SAXTON

Mr. MENENDEZ. Mr. President, I am honored to rise today in recognition of the Honorable H. James Saxton, on the occasion of his retirement from the U.S. House of Representatives after 24 years of remarkable service to our country.

As a Representative for New Jersey's diverse Third District, Mr. Saxton was truly an advocate not only for his constituents but for New Jersey's interests, as well. Throughout his tenure, he remained an exceptional voice for environmental protection and conservation, and was a fervent advocate for our service men and women and the military bases situated in his district.

Encompassing the Jersey Shore, Pinelands Preservation, suburban communities, and countless areas of open space, the landscape of the Third District is special and complex. Mr. Saxton was a tireless fighter for protecting our waterways, preserving our open spaces, and maintaining the health of our oceans.

While New Jersey is now home to the Nation's first Mega Base, including Fort Dix, McGuire Air Force Base, and Lakehurst Naval Air Engineering Station, such an installation would not be possible without the contributions of Mr. Saxton. Twice the Defense Base Closure and Realignment Commission chose to close down one of our bases and twice Mr. Saxton defended and defeated the measure. With the many jobs that were saved as a result of this reversal, the new Mega Base will reenergize our communities by adding even more opportunities to the area.

In addition to these and many more accomplishments, Mr. Saxton honorably served on the Armed Services Committee, the Air and Land Forces Subcommittee, the Terrorism and Unconventional Threats and Capabilities Subcommittee, the Natural Resources Committee, the Subcommittee on Fisheries, Wildlife, and Oceans, and the Joint Economic Committee. His dedication and commitment on behalf of his constituents has earned him the respect and admiration of his peers and colleagues.

Mr. President, I would like to recognize, commend, and applaud Mr.

Saxton in light of his extraordinary service to the U.S. House of Representatives and his unwavering dedication to the people of New Jersey's Third District.

#### IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. President, in mid-June, I asked Idahoans to share with me how high energy prices are affecting their lives, and they responded by the hundreds. The stories, numbering well over 1,200, are heartbreaking and touching. While energy prices have dropped in recent weeks, the concerns expressed remain very relevant. To respect the efforts of those who took the opportunity to share their thoughts, I am submitting every e-mail sent to me through an address set up specifically for this purpose to the CONGRESSIONAL RECORD. This is not an issue that will be easily resolved, but it is one that deserves immediate and serious attention, and Idahoans deserve to be heard. Their stories not only detail their struggles to meet everyday expenses, but also have suggestions and recommendations as to what Congress can do now to tackle this problem and find solutions that last beyond today. I ask unanimous consent to have today's letters printed in the RECORD.

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

Why are we still paying foreign aid to the oil-rich [countries]? First, cut off all foreign aid, then charge them \$136 a bushel for the grain we sell them at the present price of \$7. One fact is for certain—when the food starts disappearing from our supermarket shelves, the politicians will see just how fed up we the people really are. I predict that this will be the year of the lowest voter turn-out in the history of this country, as we have no one to choose from for the office of President. Why anyone would want to lead this country into disaster is beyond me. Our government is far too big and corrupt to be changed by a mere vote. Big oil money under the table, personal agendas and the Golden Fleece retirement plan for politicians rule this country. The average citizen has been led to believe that his or her vote matters when it does not. As a sixty-year-old male who has no vision of retirement, and will surely lose my home due to foreclosure, and who will never see Social Security, I, for one, am fed up with this country and [those who seem not to care] about their voters.

GARY, Boise.

The idea of exploring and using our own energy resources is a fantastic idea and should have been done long ago. If we use our own resources, in which we have many (capped oil wells all over Texas, drilling in Alaska, Shale oil (which, by the way, is not as expensive as the oil companies claim; they just do not want to lose the revenue they are getting from the failing and antiquated system they are now using, a better Idea would be to reinstitute government control over energy and utility sectors.) I, for one, would feel a great deal better by keeping American dollars at home instead of paying billions to the oil-rich sheiks of the Mid-east (in which I have no doubt what so ever that some of those funds end up in terrorists

hands.) It is far past the time for American and Americans to take control of our economic and energy future. We have the reserves and resources to do this. The big oil companies have made billions in profit the past couple of years and yet we have not seen nor have we heard anything about refitting the system so the devastation that happened with Katrina does not happen again. Our economy is driven by fuel. Fuel prices go up and the manufacturer pass that cost to the consumer, the consumer is then left with the burden of paying \$3.50 for a gallon of milk, \$2 for a dozen eggs. It was not too long ago that a gallon of gas was \$1.20. Regrettably we will never see that price again. It seems that gas prices do go down but never lower than what it was a year ago.

The big oil companies are making billions while we sit by and "watch" our economy crumble. If measures are not taken to stop this, and I mean measures in the very very near future (not five years down the road as Sen. McCain is suggesting) I fear that we will find ourselves in the midst of another great depression. Mark my words, sir, the writing is on the wall, but this time we, and by we, I mean the American people, the Senate, and Congress can do something about it. We can start using our resources and support our economy rather than stuffing the linings of those that already have more money than God. When and where does it stop. Foreign countries already own more of America the America does. We are about to have a rude awakening and it will not be a pretty one if steps are not taken to prevent a hostile takeover of American commerce by foreign companies. All driven by the ridiculous and unnecessarily high price of fuel. I believe that it is only 14 percent of all imported fuel is turned into gas and heating oil. If that is true, why is not the cost of plastics and other petroleum-based products not skyrocketing at all? Natural gas is plentiful yet the energy companies say it costs too much to transport it. Solar power is abundant and never-ending, and the technology is fairly inexpensive, yet people do not use it. Idaho has great expanses to set up solar and wind farms. A nuclear energy company is willing to build a plant in Elmore or Owyhee County (I cannot remember which). The nuclear power plant would supply as much as 75 percent of the states, mind you, the state, not a couple of counties but the entire State of Idaho, power needs. Yet no one wants it because of all the disinformation and propaganda. The French had found a way to recycle the spent fuel rods years ago; yet, we still bury ours. The technology is out there and available. We just need to get the big oil companies hands out of the cookie jar so to speak.

I am sorry if it sounds like I am rambling on. I am just a frustrated citizen who is tired of getting the run around from the government as well as big business. Then time for talk has been over for a long time. Now is the time for action.

Thank you and God bless,

JOSE.

I work out of my home/office and not as directly impacted as 99 percent of the folks in America who commute, but our food prices are going up due to the ethanol failed policies as it do not make sense to appease mid-west farmers when more efficient Idaho sugar is better (less votes though for liberals). Here is a good summary from Center for individual freedom: (Please be a Fighter.)

When it comes to the price Americans are paying for gasoline at the pump, will conservative in Congress fight tooth and nail to increase domestic production or will they allow liberals to choke off your supply of oil and increase gas prices even higher?

That is the question that hangs like a storm cloud over each of us . . . over our children . . . and over our grandchildren. Some in Congress have already tried repeatedly to increase the price we pay at the pump, even as the price of a gallon of gasoline rose to more than \$4.00!

As you know, Harry Reid and others in the Senate tried to sneak the Boxer Climate Bill past the American people. That legislation, according to Senate Minority Leader Mitch McConnell would have raised the price at the pump as much as \$1.40 a gallon—that is on top of the more than \$4 you are already paying!

When the Boxer Climate bill failed, liberals tried again last Tuesday to ram through additional taxes on gasoline. On Thursday, Representative John Peterson proposed a measure that would have lifted the ban on oil exploration in areas between 50 to 200 miles off the United States coast, a restriction that had been in place since 1981! On a straight party-line vote, Democrats on the House Appropriations Subcommittee killed the measure dead!

Then, on Saturday, Senator Barack Obama joined with other Democrats and called for a “windfall profits tax” on gasoline—a tax for which consumers will undoubtedly end up footing the bill!

And make no mistake—some in Congress, bowing to the radical environmental groups that openly support higher gas prices will not quit! They will not stop until they have raised the price of gasoline even more!

But what about conservatives? And what about the American people for that matter? As prices continue to rise at the pump, will they cave to the opposition that is simply using this situation as an excuse to tax us even more? Or will they finally fight?

BRUCE.

I live in rural eastern Idaho. I work a fulltime job to which I commute and I also operate a small cattle ranch. The energy crisis is greatly reducing my expendable income as travel costs have more than doubled and is putting me out of the agricultural business.

The oil prices have increased my operating costs in several aspects. The cost of fertilizer has tripled since last year, so this year I could not afford to put fertilizer on my pasture. The cost of electricity is up 50 percent due to the loss of the BPA credits and increased power generation costs and the cost of gasoline for the trucks and tractors has more than doubled.

Then to make things worse, the nation's efforts to turn corn into fuel have resulted in a reduction in the amount of hay being grown with the result being that the cost of hay to feed my cattle through the winter has more than doubled in the last year to over \$200 dollars a ton.

With the cost of feed up, the cost of cattle has dropped. When all this is added up, there is no profit in my operation. I am at the point where I have to decide if I can subsidize my operation from my salary in hopes that things will even out or I will be forced out of business entirely. I have been in the livestock business for over 30 years, producing food for this nation, and this is the first time I have been faced with going completely out of business.

I saw this crisis coming several years ago and I wonder why my government did not. This country has let the environmental extremists and political expediency push us into the current situation. We have not built a nuclear reactor for decades. We have not built enough refineries, we have not developed our oil and coal deposits. Now we are in a crisis that will continue to get worse because it will take a decade or more to develop the resources and build the infrastruc-

ture if we started today. Projects of this magnitude take forward planning and anticipation, they aren't done overnight.

We cannot survive a decade unless something is done quickly, because the costs will continue to go up and bring the economy to a standstill!

The menial efforts at alternative sources of energy are doing very little and are not the solution. Ethanol is reducing our food production, driving food costs up and still has to be subsidized to make it worth doing. Wind power is noble in the view of some, but will not make a large enough difference to reduce the cost of power.

The oil companies, U.S. and foreign, fertilizer companies and ethanol producers are posting record profits as they rape the income of U.S. citizens. CEOs across the nation are receiving record income, while the average people are lining up at soup kitchens just to stay alive. What is wrong with that picture?

The spineless Congress needs to take on the environmentalists, get past the global warming scare and start drilling off shore and in ANWAR instead of worrying about future elections. An aggressive effort also needs to be taken to build nuclear reactors and coal fired plants with clean coal technologies. The technology exists to develop these resources without significant environmental impact. Doing so would help us take control of our destiny instead of being held hostage forever.

Science knows that the volcanic eruptions across the planet are spewing much more greenhouse gasses into the atmosphere than is being produced by people. I am also amazed that legislators are actually listening to studies about cattle belching.

I am just one small operator in the agricultural world, but the economics are the same for the large operators. No one will miss me when I go out of business this year, but a flood starts with a few drops of rain, and the flood is coming if something is not done soon! If this nation does not act soon, the U.S. will be at the mercy of other countries for food just as we are for oil and life as we know it will never be the same.

It is time that Congress gets off their posteriors and shows some leadership! Take definitive action and do it now, while we have a chance to salvage this situation!

Congress apparently has no effective influence over the ever increasing cost of oil or gasoline at the pump. As a Senior Companion, I am compelled to drive as far as necessary to visit the elderly clients. The Public Health Service attempts to reimburse us for fuel mileage driven at a reasonable rate to compensate us for the fuel used. We understand that the reimbursement rate is going to have to be reduced because of budgetary constraints. Well, if it is as impossible as it appears to be to control fuel costs, perhaps it would be possible to find the funds to increase the mileage rate to compensate those of us who have to provide service to our clients despite high fuel prices.

GEORGE.

As the wife of a farmer, the economy is strong in the sense of commodity prices, but yet they are at their weakest when it comes to our fuel prices. Several of our neighbors have had to sell their semis that they used to use to haul grain for themselves and others in the community, just to pay their fuel bills for those trucks. With the price of fuel as well, my husband is not able to take as much income off from the farm, because there is not much left. There are 3 families that depend upon the farm to support them.

On the home front, I have had to make the choice for a while now, whether to buy groceries, or put gas in our vehicles. I drive a minivan that averages 23-25 miles to the gal-

lon. At the current cost of gas right now, it costs me on average \$90 to fill it up. That is one week's worth of groceries at our house. There are four of us in the home, 2 adults and 2 children with another due in November. We have a limited income right now, because of the weather our growing season has been affected. So for the last few months, we have lived off of about \$1800 a month. We do not drive the newest vehicles, our newest vehicle is my 1998 minivan that we purchased in 2007 after our other vehicle was totaled in a car accident. My husband has his 1995 farm truck which is gas, and the family truck which is diesel. We are only paying on one of these vehicles. Sad to say, but the 1995 diesel truck is the one we are paying on, even though with the price of diesel, it sits in the driveway, unless we have to haul hay or cattle. We have our mortgage payment which is not outrageous, \$646 a month. With me expecting, my doctor's appointments are over an hour away, about 100 miles plus roundtrip once a month for right now. I am also the parts pickup person for our farming operation. In the last week, I have made 3 trips out of town for parts to different stores, because not all of them carried the same parts. My brother has been in and out of the hospital for cancer treatments to get rid of a tumor that is otherwise inoperable. I have had to help my mother out with his care as well, as he needs someone with him 24/7. Living in a rural community as I do, our grocery prices have been affected by fuel costs as well. I pay \$4 a gallon for milk, where elsewhere it is about \$3.00. Bread is about \$3.00 a loaf, whereas elsewhere I have purchased the same bread for \$1.59 a loaf. Cheese is currently a want and not a need at our house, with a 2 pound loaf of cheese costing \$10 where a year ago, it was \$6.99. Those are our main staples in our home, especially the milk with two young kids at home ages 4 and 5. We could apply for WIC, but then someone else has to foot the bill to feed our family, and I was not raised that way. There is no money leftover at the end of the month for savings for just in case circumstances, which is very unsettling for me and my husband.

The best thing that Congress can do is to allow more options for drilling in the U.S., and quit depending on the foreign oil. There are numerous opportunities in the United States, which would create jobs, instead of sending them across the border to Mexico, as well as force the price of oil down. The other thing too, is if Congress would put the control of prices back into the oil companies' hands, I feel they would do a much better job at forcing the prices lower. Our country is rich in abundance of oil, if Congress would allow it. Why do you think that in Saudi Arabia, and Iraq fuel prices have not affected their country! They have an over abundance of oil. We have more than them, but yet we aren't allowed to utilize it because of such ridiculous restrictions Congress has imposed on companies. Which is fueled by environmentalists who are still using more energy than the average American family (Al Gore and his followers). We would not be destroying anything by drilling in these locations, obviously if we weren't meant to have the oil that is there, the good Lord would not have put it there for our responsible use!

TANSY, Malad.

Because of the huge rise in gas prices it now costs me \$90 to fill up my gas tank not to mention my husband's van. We now have no money for emergencies or any extras because of the huge increase in the price of gas. It has hurt our income a lot more than we had anticipated. I would suggest having incentives for gas preservation and I appreciate everything you plan on doing to help keep the cost of gas prices down. You have my vote this year because you really care

What happens to the people of Idaho including finding ways to keep gas prices from continuing to rise.

Keep up the good work, Senator.

CARLA.

I appreciate you asking for thoughts on energy. I believe we need to embrace and pursue alternatives to oil. Honda today unveiled a hydrogen powered car. What does Detroit offer? Something that really galls me is that the U.S. gives billions to countries that hate us, why? I am not a fan of welfare, but every dollar going to the poor in this country is spent here, how much of the money given to foreign countries is spent here? I know it is not that simple. I appreciate your efforts for Idaho and the U.S.

JACK, Boise.

#### ADDITIONAL STATEMENTS

##### 60TH ANNIVERSARY OF THE AIR FORCE JUDGE ADVOCATE GENERAL'S CORPS

• Mr. GRAHAM. Mr. President, I wish to congratulate the men and women of the Air Force Judge Advocate General's Corps on the occasion of its 60th anniversary. On January 25, 1949, under the authority of the Air Force Military Justice Act, the Air Force issued General Order 7 creating the Air Force Judge Advocate General's Department, later changed to Judge Advocate General's Corps.

Since that time, the men and women of the Judge Advocate General's Corps have become the living embodiment of their guiding principles of wisdom, valor, and justice. They have provided countless commanders, policymakers, and clients with the benefit of invaluable professional, candid, and independent counsel. Further, they have done so while living the core values of the Air Force: integrity, service before self and excellence in all they do.

The hallmark of their service to this great country is a profound respect for, and adherence to, the rule of law. Their steadfast dedication to the rule of law allows the U.S. Air Force to conduct itself in the best traditions of America and retain the highest moral ground.

The men and women who currently serve in the Judge Advocate General's Corps, and those that came before them, can be exceptionally proud of their service and the contributions they have made to our national security. As a former active duty Judge Advocate and current reserve Judge Advocate, I am intensely proud of my association with the Judge Advocate General's Corps. I am pleased to acknowledge this great achievement and congratulate the Corps for their service to this Nation.●

##### HONORING SIVAD PRODUCTIONS, INC.

• Ms. SNOWE. Mr. President, this week, our country celebrated two historic events. On Monday, we commemorated the life and accomplishments of Dr. Martin Luther King, Jr.,

on what would have been his 80th birthday. The following day, January 20, our Nation's first African-American President, Barack Obama, was inaugurated on the west front of the U.S. Capitol. During this special and remarkable week, I rise to celebrate an African-American owned small business in my home State of Maine that has consistently sought to make a difference in people's lives, and has succeeded every step of the way.

Sivad Productions, Inc., located in Portland, offers its clients a wide variety of general contracting services. From administrative services and video production, to real estate and information technology, Sivad provides customers with superior quality and years of knowledge and experience. In March of 2008, Sivad Productions was named a Small Business Administration certified 8(a) firm. The 8(a) program is a business development tool that assists small disadvantaged businesses to compete in the Federal marketplace by helping them gain a myriad of procurement opportunities.

One of the most innovative projects that Sivad Productions' president, Dudley Davis, has been a part of is the Youth News & Entertainment Television, or YNETV. YNETV produces youth programming, and involves young adults in the process of producing, directing, and creating the shows. In nearly a decade and a half, students of high school and college age have created over 600 television episodes seen on many of the Maine affiliate stations of major networks.

Of YNETV's television shows, its most popular is Youth in Politics. Area high school and college students from across Maine debate the pressing issues facing Maine and America by engaging in thoughtful and substantive discussions and hosting candidate forums. The show's goal is the civic education and wider political participation of Maine's young adults. YNETV frequently features an equal number of college Democrats and college Republicans to provide balance, and deals with issues as varied as the war in Iraq to academic freedom.

Mr. Davis has forged a reputation as someone who has contributed immensely to the betterment of the community in southern Maine. He has long been associated with the YES! Summer Basketball League and The Basketball Academy, which seek to provide young athletes with an outlet to participate in sports in a positive environment. Parents and students alike have praised Mr. Davis's "exceptional ability to inspire, motivate and teach," and commended his admirable contributions to Maine's children. Mr. Davis has also been honored by the Maine Commission for Community Service for his motivated and exceptional service to Maine youth programs.

President Obama has made a passionate and eloquent plea for increased community service on the part of all

Americans. It is a call that Dudley Davis heard long ago. Mr. Davis's determination to effectuate positive change for the youth of southern Maine is laudable, and his tremendous work has certainly not gone unnoticed. I thank Mr. Davis for his passion and dedication, and wish everyone at Sivad Productions, Inc., much success in the years to come.●

#### MESSAGES FROM THE HOUSE

At 11:25 a.m., a message from the House of Representatives, delivered by Mr. Zapata, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 384. An act to reform the Troubled Assets Relief Program of the Secretary of the Treasury and ensure accountability under such Program.

At 3:10 p.m., a message from the House of Representatives, delivered by Mr. Zapata, one of its reading clerks, announced that pursuant to sections 5580 and 5581 of the revised statutes (20 U.S.C. 42-43), and the order of the House of January 6, 2009, the Speaker appoints the following Members of the House of Representatives to the Board of Regents of the Smithsonian Institution: Mr. BECERRA of California, Ms. MATSUI of California, and Mr. SAM JOHNSON of Texas.

The message also announced that pursuant to 15 U.S.C. 1024(a), and the order of the House of January 6, 2009, the Speaker appoints the following Members of the House of Representatives to the Joint Economic Committee: Mrs. MALONEY of New York and Mr. BRADY of Texas.

#### MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 384. An act to reform the Troubled Assets Relief Program of the Secretary of the Treasury and ensure accountability under such Program; to the Committee on Finance.

#### EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-527. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Revision of the Hawaiian and Territorial Fruits and Vegetables Regulations" (Docket No. APHIS-2007-0052) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC-528. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, a report relative to the funding transfers made during fiscal year 2008; to the Committee on Armed Services.

EC-529. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting a report on the approved

retirement of Lieutenant General Michael D. Maples, United States Army, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

EC-530. A communication from the Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Defense Federal Acquisition Regulation Supplement; Responsible Prospective Contractors" (RIN0750-AG20) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Armed Services.

EC-531. A communication from the Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Defense Federal Acquisition Regulation Supplement; List of Firms Owned or Controlled by the Government of a Terrorist Country" (RIN0750-AG22) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Armed Services.

EC-532. A communication from the Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Defense Federal Acquisition Regulation Supplement; DoD Law of War Program" (RIN0750-AF82) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Armed Services.

EC-533. A communication from the Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Defense Federal Acquisition Regulation Supplement; Removal of North Korea from the List of Terrorist Countries" (RIN0750-AG18) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Armed Services.

EC-534. A communication from the Secretary of Energy, transmitting, pursuant to law, a report entitled "Strategies for the Commercialization and Deployment of Greenhouse Gas Intensity Reducing Technologies and Practices"; to the Committee on Energy and Natural Resources.

EC-535. A communication from the Assistant Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report entitled "National Water Quality Inventory: Report to Congress, 2004 Reporting Cycle"; to the Committee on Environment and Public Works.

EC-536. A communication from the Director, Regulatory Management Division, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "National Priorities List, Final Rule" (RIN2050-AD75) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Environment and Public Works.

EC-537. A communication from the Deputy Under Secretary for International Affairs, Department of Labor, transmitting, pursuant to law, a report entitled "Progress in Implementing Capacity-Building Provisions under the Labor Chapter of the Dominican Republic—Central America—United States Free Trade Agreement"; to the Committee on Finance.

EC-538. A communication from the Director, Defense Procurement, Acquisition Policy, and Strategic Sourcing, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Defense Federal Acquisition Regulation Supplement; U.S.-International Atomic Energy Agency Additional Protocol" (RIN0750-AF98) received in the Office of the President of the Senate on

January 16, 2009; to the Committee on Foreign Relations.

EC-539. A communication from the Secretary of Labor, transmitting, pursuant to law, a report entitled "Citizens' Report: FY 2008 Summary of Performance and Financial Results"; to the Committee on Health, Education, Labor, and Pensions.

EC-540. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled "Investment Advice—Participants and Beneficiaries" (RIN1210-AB13) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC-541. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled "Civil Penalties Under ERISA Section 502(c)(4)" (RIN1210-AB24) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC-542. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled "Interpretive Bulletin Relating to Exercise of Shareholder Rights" (RIN1210-AB28) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC-543. A communication from the Assistant Secretary, Employee Benefits Security Administration, Department of Labor, transmitting, pursuant to law, the report of a rule entitled "Interpretive Bulletin Relating to Investing in Economically Targeted Investments" (RIN1210-AB29) received in the Office of the President of the Senate on January 16, 2009; to the Committee on Health, Education, Labor, and Pensions.

EC-544. A communication from the Director, Office of Counternarcotics Enforcement, Department of Homeland Security and the Deputy Associate Attorney General, transmitting, pursuant to law, a report relative to the Southwest Border Counternarcotics Strategy due to Congress by April 2009; to the Committee on Homeland Security and Governmental Affairs.

EC-545. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, a report relative to the Administration's compliance with the Sunshine Act during calendar year 2008; to the Committee on Homeland Security and Governmental Affairs.

EC-546. A communication from the Assistant Attorney General for Administration, Department of Justice, transmitting, pursuant to law, an annual report relative to the Department's competitive sourcing efforts during fiscal year 2008; to the Committee on the Judiciary.

#### EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mrs. BOXER for the Committee on Environment and Public Works.

\*Lisa Perez Jackson, of New Jersey, to be Administrator of the Environmental Protection Agency.

\*Nancy Helen Sutley, of California, to be a Member of the Council on Environmental Quality.

By Mr. BAUCUS for the Committee on Finance.

\*Timothy F. Geithner, of New York, to be Secretary of the Treasury.

\*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

#### INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CHAMBLISS (for himself, Mr. CORNYN, Mr. COBURN, and Mr. ISAKSON):

S. 296. A bill to promote freedom, fairness, and economic opportunity by repealing the income tax and other taxes, abolishing the Internal Revenue Service, and enacting a national sales tax to be administered primarily by the States; to the Committee on Finance.

By Mr. NELSON of Florida:

S. 297. A bill to amend the Act entitled "An Act authorizing associations of producers of aquatic products" to include persons engaged in the fishery industry as charter boats or recreational fishermen, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. ISAKSON (for himself, Mr. CONRAD, and Mr. CHAMBLISS):

S. 298. A bill to establish a Financial Markets Commission, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SPECTER:

S. 299. A bill to establish a pilot program in certain United States district courts to encourage enhancement of expertise in patent cases among district judges; to the Committee on the Judiciary.

By Mr. GREGG:

S. 300. A bill to enable the Assistant Secretary for Communications and Information of the Department of Commerce to resume timely processing and distribution of TV converter box coupons by increasing its fiscal authority to make payments, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. GRASSLEY (for himself, Mr. KOHL, and Ms. KLOBUCHAR):

S. 301. A bill to amend title XI of the Social Security Act to provide for transparency in the relationship between physicians and manufacturers of drugs, devices, biologicals, or medical supplies for which payment is made under Medicare, Medicaid, or SCHIP; to the Committee on Finance.

By Mr. CORNYN (for himself and Mrs. HUTCHISON):

S. 302. A bill to authorize the International Boundary and Water Commission to reimburse State and local governments for expenses incurred by such governments in designing, constructing, and rehabilitating the Lower Rio Grande Valley Flood Control Project; to the Committee on Foreign Relations.

By Mr. VOINOVICH (for himself, Mr. LIEBERMAN, and Mr. CARPER):

S. 303. A bill to reauthorize and improve the Federal Financial Assistance Management Improvement Act of 1999; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DORGAN:

S. 304. A bill to amend the Internal Revenue Code of 1986 to stimulate business investment, and for other purposes; to the Committee on Finance.

By Mr. SCHUMER (for himself and Mr. VITTER):

S. 305. A bill to amend title IV of the Public Health Service Act to create a National Childhood Brain Tumor Prevention Network to provide grants and coordinate research with respect to the causes of and risk factors associated with childhood brain tumors, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. NELSON of Nebraska (for himself, Mr. CRAPO, Mr. WYDEN, Mr. THUNE, Mr. BROWN, Mr. JOHANNIS, and Ms. STABENOW):

S. 306. A bill to promote biogas production, and for other purposes; to the Committee on Finance.

By Mr. WYDEN (for himself and Mr. CRAPO):

S. 307. A bill to amend title XVIII of the Social Security Act to provide flexibility in the manner in which beds are counted for purposes of determining whether a hospital may be designated as a critical access hospital under the Medicare program and to exempt from the critical access hospital inpatient bed limitation the number of beds provided for certain veterans; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. TESTER, Mr. THUNE, Mr. CONRAD, Mr. CRAPO, and Mr. BROWN):

S. 308. A bill to amend title 23, United States Code, to improve economic opportunity and development in rural States through highway investment, and for other purposes; to the Committee on Environment and Public Works.

By Mr. BAUCUS (for himself, Mr. TESTER, Mr. THUNE, Mr. CRAPO, and Mr. CONRAD):

S. 309. A bill to amend title 23, United States Code, to improve highway transportation in the United States, including rural and metropolitan areas; to the Committee on Environment and Public Works.

By Mrs. BOXER:

S. 310. A bill to amend the Public Health Service Act to ensure that safety net family planning centers are eligible for assistance under the drug discount program; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. BOXER:

S. 311. A bill to prohibit the application of certain restrictive eligibility requirements to foreign nongovernmental organizations with respect to the provision of assistance under part I of the Foreign Assistance Act of 1961; to the Committee on Foreign Relations.

By Mr. CARDIN (for himself and Mr. ENSIGN):

S. 312. A bill to amend the Internal Revenue Code of 1986 to allow a refundable credit against income tax for the purchase of a principal residence by a first-time homebuyer; to the Committee on Finance.

#### ADDITIONAL COSPONSORS

S. 45

At the request of Mr. ENSIGN, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 45, a bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

S. 85

At the request of Mr. VITTER, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. 85, a bill to amend title X of the

Public Health Service Act to prohibit family planning grants from being awarded to any entity that performs abortions.

S. 96

At the request of Mr. VITTER, the names of the Senator from Alabama (Mr. SESSIONS) and the Senator from Florida (Mr. MARTINEZ) were added as cosponsors of S. 96, a bill to prohibit certain abortion-related discrimination in governmental activities.

S. 98

At the request of Mr. VITTER, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. 98, a bill to impose admitting privilege requirements with respect to physicians who perform abortions.

S. 138

At the request of Mr. KERRY, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 138, a bill to amend the Internal Revenue Code of 1986 to repeal alternative minimum tax limitations on private activity bond interest, and for other purposes.

S. 144

At the request of Mr. KERRY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 144, a bill to amend the Internal Revenue Code of 1986 to remove cell phones from listed property under section 280F.

S. 167

At the request of Mr. KOHL, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 167, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to enhance the COPS ON THE BEAT grant program, and for other purposes.

S. 169

At the request of Mr. ISAKSON, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 169, a bill to provide for a biennial budget process and a biennial appropriations process and to enhance oversight and the performance of the Federal Government.

S. 181

At the request of Ms. MIKULSKI, the name of the Senator from Delaware (Mr. KAUFMAN) was added as a cosponsor of S. 181, a bill to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

S. 250

At the request of Mr. SCHUMER, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 250, a bill to amend the Internal Revenue Code of 1986 to provide a

higher education opportunity credit in place of existing education tax incentives.

S. 252

At the request of Mr. AKAKA, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. 252, a bill to amend title 38, United States Code, to enhance the capacity of the Department of Veterans Affairs to recruit and retain nurses and other critical health-care professionals, to improve the provision of health care for veterans, and for other purposes.

S. 253

At the request of Mr. ISAKSON, the names of the Senator from Florida (Mr. MARTINEZ) and the Senator from Louisiana (Mr. VITTER) were added as cosponsors of S. 253, a bill to amend the Internal Revenue Code of 1986 to expand the application of the homebuyer credit, and for other purposes.

S. 271

At the request of Ms. CANTWELL, the names of the Senator from Iowa (Mr. HARKIN) and the Senator from New Jersey (Mr. MENENDEZ) were added as cosponsors of S. 271, a bill to amend the Internal Revenue Code of 1986 to provide incentives to accelerate the production and adoption of plug-in electric vehicles and related component parts.

#### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY (for himself, Mr. KOHL, and Ms. KLOBUCHAR):

S. 301. A bill to amend title XI of the Social Security Act to provide for transparency in the relationship between physicians and manufacturers of drugs, devices, biologicals, or medical supplies for which payment is made under Medicare, Medicaid, or SCHIP; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I rise to introduce a bill today. Over the past several years, I have worked to establish greater transparency in the financial relationships and financial disclosure requirements between physicians and manufacturers of drugs, of biologics, and medical devices.

In the last Congress, the 110th, Senator HERB KOHL of Wisconsin and I introduced what is entitled the Physician Payments Sunshine Act, which is intended to bring some much-needed transparency to these relationships between physicians and manufacturers.

To explain why this bill is so important, let me point to a number of investigations I have conducted in the depth and scope of these relationships between physicians on the one hand, and manufacturers of drugs, biologics, and medical devices on the other hand.

My findings to date are troubling and reveal significant undisclosed financial ties between physicians and industry. Some examples: These relationships, at times, resulted in annual incomes of over \$1 million to individual physicians from just one company.

Another example. My investigations determined that several prominent physicians at major universities had failed to disclose large sums of money to their research institutions. That was despite institutional as well as Federal requirements that these reportings take place.

This was also despite these physicians' involvement with Federal research study products made by the various drugmakers with whom they have financial relationships.

This Federal research has involved billions of dollars in taxpayers' money to fund this research.

My oversight has confirmed the need for a consistent, easy-to-understand national system of disclosure, as opposed to a patchwork of disclosure requirements at State and institutional levels, although I compliment States that have such laws on the books.

Today I am here to introduce, along with Senator KOHL, the Physician Payment Sunshine Act of 2009. The Physician Payment Sunshine Act would require that manufacturers of drugs, biologics, and medical devices disclose, on an annual basis, any financial relationships that they have with physicians. That information would be posted online by the Secretary of Health and Human Services in a format that is searchable, that would be clear and easy for the public to understand.

Whether the relationship is as simple as buying a doctor's dinner or as complex as a multimillion-dollar consulting arrangement, these relationships may affect prescribing practices and may influence research.

More importantly, they can obscure the most important issue existing between doctors and patients, and that is a question every doctor and patient has to consider: What is best for the patient?

This legislation Senator KOHL and I are introducing today closely parallels the version I circulated last year and follows some recent MedPAC recommendations.

MedPAC recommended a lower annual reporting threshold of \$100—in the previous bill, it was higher—no de minimis exceptions for payments and a tighter preemption provision.

MedPAC will publish their final recommendations in their March report to Congress. I will take those recommendations into consideration and intend to continue pursuing policies that go beyond the transparency in health care than even the existing bill does.

There is a greater need for this legislation, and that greater need is demonstrated by a witness testifying at the Finance Committee hearing on health reform last year that industry and physician relationships are pervasive.

Drug and device companies spend billions and billions every year on marketing, product development, and research, and much of this money goes directly to doctors.

Last year, the Des Moines Register wrote:

Your doctor's hand may be in the till of a drug company. So how can you know whether the prescription he or she writes is in your interest or the best interest of a drug company?

That is a pretty good question that we all ought to be looking at.

Many of these relationships are beneficial and appropriate. That is why we don't outlaw any of these relationships. What we do is make them be reported. And some of these should be reported on a more regular basis than they are even without this legislation.

Physicians play important roles in inventing and refining new devices or in conducting medical research. They are hired to educate other doctors. We don't do anything in this legislation to end those professional relationships.

But as is often the case, a few bad apples can spoil the whole barrel. It is clear Congress needs to act now to pass disclosure legislation.

Currently, drug and device makers have to comply with a number of State requirements, each State giving its own definition and own rules.

Patients as well as other doctors have no way to learn about these important relationships. This information should not only be available to those few Americans lucky enough to live in a State already requiring some level of disclosure.

Even in the States currently requiring disclosure, most do not apply that law to medical device companies. Some States do not even make public the information they collect, which is of little value to patients who might want to know if their doctors have a relationship with a drug company or a medical device company about which they ought to know.

Now, this bill isn't adding new burdens to the industry. By creating a central reporting system, the legislation actually relieves burdens. In addition, I am hopeful that this bill will enjoy the same wide-ranging support as the prior legislation that Senator KOHL and I put in during the 110th Congress.

I want to be clear—and this is the second time I am being clear on this point—this legislation does not regulate the business of drug and device companies. Let the people in industry do their business since they have the training and the skills to get the job done. But keep the American people apprised of the business you are doing and how you are doing it. After all, what is at risk isn't merely private interest but the health and well-being of all Americans who depend upon the drugs and medical devices to sustain and to improve their lives.

In this process of what we call transparency, in this process that we call sunshine legislation, I often quote from an opinion of Justice Brandeis, I think in 1914, where he said: "Sunlight is the best disinfectant." And that is what Senator KOHL and I are aiming to accomplish with this Physician Payment Sunshine Act, just a little sunlight so the public is better informed.

Mr. KOHL. Mr. President, I rise today to reintroduce the Physician Payments Sunshine Act, along with my colleague Senator GRASSLEY. This legislation will be a great step forward in increasing transparency of the relationships between pharmaceutical and medical device companies and our Nation's physicians, for the benefit of their patients.

I want to begin by underscoring the fact that industry payments to physicians for research purposes or products they have helped develop are completely legitimate. Medical breakthroughs as a result of research have saved countless lives and could not have been achieved without the diligence of these medical professionals. We must acknowledge, however, that conflicts of interest do exist in some cases. Transparency will help to illuminate the difference between legitimate and questionable relationships.

It has been estimated that the drug industry spends \$19 billion annually on marketing to physicians in the form of gifts, lunches, drug samples and sponsorship of education programs. Americans pay the price as through unnecessarily high drug costs and skyrocketing health insurance premiums. Rising drug prices hurt us all by undermining our private and public health systems, including Medicare and Medicaid.

Even more alarming is the notion that these gifts and payments can compromise physicians' medical judgment by putting their financial interest ahead of the welfare of their patients. Recent studies show that the more doctors interact with drug marketers, the more likely doctors are to prescribe the expensive new drug that is being marketed to them.

As a businessman, I understand that companies have the right to spend as much as they choose to promote their products. But as the largest payer of prescription drug costs, the Federal Government has an obligation to examine and take action when companies attempt to manipulate the market.

I believe the Physician Payments Sunshine Act presents a long overdue solution to combat this potentially harmful influence. The legislation would require manufacturers of pharmaceutical drugs, devices and biologics to disclose the amount of money they give to doctors through payments, gifts, honoraria, travel and other means. These disclosures would be registered in a national, publicly accessible online database, managed by the U.S. Department of Health and Human Services. Those companies who fail to report will be subject to financial penalty.

In the year and a half since the Sunshine bill was first introduced, several States have passed their own laws forcing disclosure, and several leading pharmaceutical companies have voluntarily implemented disclosure guidelines. A comprehensive national bill would create a one-stop information



vault, here patients could easily gain access to data about these relationships. It is my hope that this online database will encourage patients to discuss any concerns they may have with their doctors.

A great deal of money changes hands in the health care field, and a good percentage of it is helping Americans live healthier lives. The Physician Payments Sunshine Act will provide the transparency necessary to raise that percentage. We deserve nothing less.

By Mr. VOINOVICH (for himself, Mr. LIEBERMAN, and Mr. CARPER):

S. 303. A bill to reauthorize and improve the Federal Financial Assistance Management Improvement Act of 1999; to the Committee on Homeland Security and Governmental Affairs.

Mr. VOINOVICH. Mr. President, I rise today to introduce the Federal Financial Assistance Management Improvement Act of 2009 with Senator LIEBERMAN and Senator CARPER.

When I came to the Senate in 1999, I introduced the Federal Financial Assistance Management Improvement Act of 1999 with Senators LIEBERMAN, Thompson and DURBIN because as a former mayor and governor, I had seen first-hand the problems and complications that existed in the federal grant making process.

Congress enacted our legislation to improve the effectiveness and performance of Federal financial assistance programs, simplify Federal financial assistance application and reporting requirements, improve the delivery of services to the public and coordinate the delivery of those services, and progress was made under the law, which is commonly known as “P.L. 106-107.” A 2005 Government Accountability Office, GAO, report noted that “[m]ore than 5 years after passage of P.L. 106-107, cross-agency work groups have made some progress in streamlining aspects of the early phases of the grants life cycle and in some specific aspects of overall grants management . . . .” However, GAO also noted that work remained to be done and in 2006 suggested that Congress consider reauthorizing the Federal Financial Assistance Management Improvement Act of 1999, which expired in 2007.

I believe that Congress should heed GAO’s advice and reauthorize this important law, so last year I introduced S. 3341 with Senator LIEBERMAN to reauthorize the Federal Financial Assistance Management Improvement Act and make improvements to that Act based on the 2005 and 2006 recommendations of GAO. The bill passed the Senate in September 2008.

Today we are reintroducing that legislation, which requires the Director of the Office of Management and Budget, OMB, to improve the grants.gov website or develop another public website that allows grant applicants to search and apply for grants, report on the use of grants, and provide required

certifications and assurances for grants. I believe such a website will enhance the transparency required by the Federal Funding Accountability and Transparency Act that Congress enacted in 2007.

The bill also requires the Director of OMB to develop a strategic plan for an end-to-end electronic capability for non-Federal entities to manage the Federal financial assistance they receive and requires each Federal agency to plan actions to implement that strategic plan. Each federal agency would be required to report to OMB on progress made in achieving its objectives under the OMB strategic plan, and the Director of OMB would be required to report to Congress biennially on progress made in implementing the Federal Financial Assistance Management Improvement Act.

In 1999 I said the Federal Financial Assistance Management Improvement Act was an important step toward detangling the web of duplicative Federal grants available to States, localities and community organizations. Last year I said that while some progress was made under that law to detangle the web, work remained to be done. I hope that Congress will quickly reauthorize this law so that OMB and Federal agencies continue their efforts to simplify and streamline the Federal grant process.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 303

*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 “Federal Financial Assistance Management Improvement Act of 2009”.

#### SEC. 2. REAUTHORIZATION.

Section 11 of the Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is amended—

(1) in the section heading, by striking “and sunset”; and

(2) by striking “and shall cease to be effective 8 years after such date of enactment”.

#### SEC. 3. WEBSITE RELATING TO FEDERAL GRANTS.

Section 6 of the Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively;

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

“(e) WEBSITE RELATING TO FEDERAL GRANTS.—

“(1) IN GENERAL.—The Director shall establish and maintain a public website that serves as a central point of information and access for applicants for Federal grants.

“(2) CONTENTS.—To the maximum extent possible, the website established under this subsection shall include, at a minimum, for each Federal grant—

“(A) the grant announcement;

“(B) the statement of eligibility relating to the grant;

“(C) the application requirements for the grant;

“(D) the purposes of the grant;

“(E) the Federal agency funding the grant; and

“(F) the deadlines for applying for and awarding of the grant.

“(3) USE BY APPLICANTS.—The website established under this subsection shall, to the greatest extent practical, allow grant applicants to—

“(A) search the website for all Federal grants by type, purpose, funding agency, program source, and other relevant criteria;

“(B) apply for a Federal grant using the website;

“(C) manage, track, and report on the use of Federal grants using the website; and

“(D) provide all required certifications and assurances for a Federal grant using the website.”; and

(3) in subsection (g), as so redesignated, by striking “All actions” and inserting “Except for actions relating to establishing the website required under subsection (e), all actions”.

#### SEC. 4. REPORT ON IMPLEMENTATION.

The Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is amended by striking section 7 and inserting the following:

#### “SEC. 7. EVALUATION OF IMPLEMENTATION.

“(a) IN GENERAL.—Not later than 9 months after the date of enactment of the Federal Financial Assistance Management Improvement Act of 2009, and every 2 years thereafter until the date that is 15 years after the date of enactment of the Federal Financial Assistance Management Improvement Act of 2009, the Director shall submit to Congress a report regarding the implementation of this Act.

“(b) CONTENTS.—

“(1) IN GENERAL.—Each report under subsection (a) shall include, for the applicable period—

“(A) a list of all grants for which an applicant may submit an application using the website established under section 6(e);

“(B) a list of all Federal agencies that provide Federal financial assistance to non-Federal entities;

“(C) a list of each Federal agency that has complied, in whole or in part, with the requirements of this Act;

“(D) for each Federal agency listed under subparagraph (C), a description of the extent of the compliance with this Act by the Federal agency;

“(E) a list of all Federal agencies exempted under section 6(d);

“(F) for each Federal agency listed under subparagraph (E)—

“(i) an explanation of why the Federal agency was exempted; and

“(ii) a certification that the basis for the exemption of the Federal agency is still applicable;

“(G) a list of all common application forms that have been developed that allow non-Federal entities to apply, in whole or in part, for multiple Federal financial assistance programs (including Federal financial assistance programs administered by different Federal agencies) through a single common application;

“(H) a list of all common forms and requirements that have been developed that allow non-Federal entities to report, in whole or in part, on the use of funding from multiple Federal financial assistance programs (including Federal financial assistance programs administered by different Federal agencies);

“(I) a description of the efforts made by the Director and Federal agencies to communicate and collaborate with representatives

of non-Federal entities during the implementation of the requirements under this Act;

“(J) a description of the efforts made by the Director to work with Federal agencies to meet the goals of this Act, including a description of working groups or other structures used to coordinate Federal efforts to meet the goals of this Act; and

“(K) identification and description of all systems being used to disburse Federal financial assistance to non-Federal entities.

“(2) SUBSEQUENT REPORTS.—The second report submitted under subsection (a), and each subsequent report submitted under subsection (a), shall include—

“(A) a discussion of the progress made by the Federal Government in meeting the goals of this Act, including the amendments made by the Federal Financial Assistance Management Improvement Act of 2009, and in implementing the strategic plan submitted under section 8, including an evaluation of the progress of each Federal agency that has not received an exemption under section 6(d) towards implementing the strategic plan; and

“(B) a compilation of the reports submitted under section 8(c)(3) during the applicable period.

“(c) DEFINITION OF APPLICABLE PERIOD.—In this section, the term ‘applicable period’ means—

“(1) for the first report submitted under subsection (a), the most recent full fiscal year before the date of the report; and

“(2) for the second report submitted under subsection (a), and each subsequent report submitted under subsection (a), the period beginning on the date on which the most recent report under subsection (a) was submitted and ending on the date of the report.”.

#### SEC. 5. STRATEGIC PLAN.

(a) IN GENERAL.—The Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is amended—

(1) by redesignating sections 8, 9, 10, and 11 as sections 9, 10, 11, and 12, respectively; and

(2) by inserting after section 7, as amended by this Act, the following:

#### “SEC. 8. STRATEGIC PLAN.

“(a) IN GENERAL.—Not later than 18 months after the date of enactment of the Federal Financial Assistance Management Improvement Act of 2009, the Director shall submit to Congress a strategic plan that—

“(1) identifies Federal financial assistance programs that are suitable for common applications based on the common or similar purposes of the Federal financial assistance;

“(2) identifies Federal financial assistance programs that are suitable for common reporting forms or requirements based on the common or similar purposes of the Federal financial assistance;

“(3) identifies common aspects of multiple Federal financial assistance programs that are suitable for common application or reporting forms or requirements;

“(4) identifies changes in law, if any, needed to achieve the goals of this Act; and

“(5) provides plans, timelines, and cost estimates for—

“(A) developing an entirely electronic, web-based process for managing Federal financial assistance, including the ability to—

“(i) apply for Federal financial assistance;

“(ii) track the status of applications for and payments of Federal financial assistance;

“(iii) report on the use of Federal financial assistance, including how such use has been in furtherance of the objectives or purposes of the Federal financial assistance; and

“(iv) provide required certifications and assurances;

“(B) ensuring full compliance by Federal agencies with the requirements of this Act,

including the amendments made by the Federal Financial Assistance Management Improvement Act of 2009;

“(C) creating common applications for the Federal financial assistance programs identified under paragraph (1), regardless of whether the Federal financial assistance programs are administered by different Federal agencies;

“(D) establishing common financial and performance reporting forms and requirements for the Federal financial assistance programs identified under paragraph (2), regardless of whether the Federal financial assistance programs are administered by different Federal agencies;

“(E) establishing common applications and financial and performance reporting forms and requirements for aspects of the Federal financial assistance programs identified under paragraph (3), regardless of whether the Federal financial assistance programs are administered by different Federal agencies;

“(F) developing mechanisms to ensure compatibility between Federal financial assistance administration systems and State systems to facilitate the importing and exporting of data;

“(G) developing common certifications and assurances, as appropriate, for all Federal financial assistance programs that have common or similar purposes, regardless of whether the Federal financial assistance programs are administered by different Federal agencies; and

“(H) minimizing the number of different systems used to disburse Federal financial assistance.

“(b) CONSULTATION.—In developing and implementing the strategic plan under subsection (a), the Director shall consult with representatives of non-Federal entities and Federal agencies that have not received an exemption under section 6(d).

“(c) FEDERAL AGENCIES.—

“(1) IN GENERAL.—Not later than 6 months after the date on which the Director submits the strategic plan under subsection (a), the head of each Federal agency that has not received an exemption under section 6(d) shall develop a plan that describes how the Federal agency will carry out the responsibilities of the Federal agency under the strategic plan, which shall include—

“(A) clear performance objectives and timelines for action by the Federal agency in furtherance of the strategic plan; and

“(B) the identification of measures to improve communication and collaboration with representatives of non-Federal entities on an on-going basis during the implementation of this Act.

“(2) CONSULTATION.—The head of each Federal agency that has not received an exemption under section 6(d) shall consult with representatives of non-Federal entities during the development and implementation of the plan of the Federal agency developed under paragraph (1).

“(3) REPORTING.—Not later than 2 years after the date on which the head of a Federal agency that has not received an exemption under section 6(d) develops the plan under paragraph (1), and every 2 years thereafter until the date that is 15 years after the date of enactment of the Federal Financial Assistance Management Improvement Act of 2009, the head of the Federal agency shall submit to the Director a report regarding the progress of the Federal agency in achieving the objectives of the plan of the Federal agency developed under paragraph (1).”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 5(d) of the Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note) is amended by inserting “, until the date on which the Fed-

eral agency submits the first report by the Federal agency required under section 8(c)(3)” after “subsection (a)(7)”.

By Mr. DORGAN:

S. 304. A bill to amend the Internal Revenue Code of 1986 to stimulate business investment, and for other purposes; to the Committee on Finance.

Mr. DORGAN. Mr. President, today I am introducing legislation called the Main Street Recovery Act to boost business investment and help jumpstart the ailing U.S. economy. We are facing our most serious financial challenge since the Great Depression and we must respond aggressively. Our financial services sector is in shambles and other business sectors are suffering.

Employers have been slashing jobs at an alarming rate—including 2.6 million jobs last year—to reduce operating costs. Some economists are predicting that the unemployment rate could jump to 10-percent or more this year in many parts of the country.

The manufacturing and construction sectors have been particularly hard hit during this downturn. The manufacturing sector laid off 791,000 workers in 2008. The unemployment rate among construction workers in December was 15.3 percent, eight percentage points higher than for the economy as a whole. More than 1.4 million experienced construction workers are currently unemployed.

I believe immediate action is needed to prevent our economy from sliding into a deeper recession that would lead to more bankrupt businesses and massive layoffs of workers across the country. That is why I will support a stimulus program that will create jobs by investing in infrastructure projects such as roads, bridges, water projects and more.

But I also think we need to provide some targeted tax incentives to encourage the business community to consider making capital investments even during the economic slowdown. The legislation I am introducing today includes the following tax incentives that I believe can stimulate business investment: a temporary 15-percent investment tax credit. To encourage manufacturers and producers not to wait on making crucial equipment and machinery purchases, we should give them every incentive to make these purchases now or in the near future when these investments will most benefit the economy.

We can accomplish this by offering a temporary, 15-percent tax credit through June 30, 2010 for businesses that purchase new equipment and machinery that is used as an integral part of manufacturing or production. Investment tax credits have been proven to work and will help generate growth and jobs in the nation's manufacturing and construction sectors.

Enhanced 50-percent bonus depreciation. To promote business investment now, when the economy needs it most,

we should extend the expiring 50-percent bonus depreciation for eligible assets placed in service over the next 18 months. This will help businesses make capital investments during the economic downturn by allowing businesses to write-off a larger share of their eligible business investments more quickly from their federal income taxes.

Increased \$250,000 small business expensing. To help small businesses buy the equipment and machinery they need to weather this economic storm and begin to grow again, we should extend the expiring expensing provision that allows small businesses to expense, i.e. immediately deduct, up to \$250,000 of their equipment and machinery purchases over the next year and a half.

In addition, there are many business owners that do not require new equipment or machinery but instead want to build a new business—maybe a restaurant, perhaps a retail shop or make interior and other improvements to such properties. Expanding the bonus depreciation and small business expensing provisions outlined above to cover investments in commercial real property will help provide business owners with the financial assistance they need to build that building or make long overdue improvements.

I am very pleased to have the support of the U.S. Chamber of Commerce and the National Restaurant Association for my proposals as part of a robust economic stimulus package.

The Senate is working on a large economic recovery package and I am optimistic that the package will include these important provisions. I am told that the Senate Finance Committee plans to mark up the tax portion of this package next week, and I am pleased that Chairman BAUCUS has recognized the need to help our Main Street businesses. In my judgment, including the tax incentives I have proposed will help stimulate much-needed economic activity and get our economy growing and creating jobs once again.

By Mr. WYDEN (for himself and Mr. CRAPO):

S. 307. A bill to amend title XVIII of the Social Security Act to provide flexibility in the manner in which beds are counted for purposes of determining whether a hospital may be designated as a critical access hospital under the Medicare program and to exempt from the critical access hospital inpatient bed limitation the number of beds provided for certain veterans; to the Committee on Finance.

Mr. WYDEN. Mr. President, I am pleased to be joined today by my colleague Senator MIKE CRAPO, to introduce this important piece of legislation for America's rural hospitals. I first introduced this legislation in 2007 with Senator Smith, and I am proud to continue our fight for rural hospitals in this Congress. Today, my fellow Oregonian, Representative GREG WALDEN, is introducing this same bill in the House of Representatives.

The Medicare program is turning rural communities into "health care sacrifice" zones. Under current law, critical access hospitals either have to risk their financial viability or their patient's health if a 26th patient walks in their door. Rural hospitals need greater flexibility from the Medicare program to fulfill their obligations to their communities—especially, but not limited to, their veterans—in times of public health emergencies.

The Balanced Budget Act of 1997 merged a Montana initiative, the medical assistance facility demonstration, and the Rural Primary Care Hospital program into a new category of hospitals called critical access hospitals CAH. By design, the Critical Access Hospital program in Medicare ensures that rural communities have access to acute care and emergency services 24 hours a day, 7 days a week.

In order to obtain this designation, hospitals must meet certain requirements, such as being located more than 35 miles from any other hospital, or receiving certification by the state to be a "necessary provider." Critical access hospitals must also provide 24-hour emergency care services.

As a designated critical access hospital, Medicare pays these hospitals based on its reported costs. Each critical access hospital receives 101 percent of its costs for outpatient, inpatient, laboratory, and therapy services. There are nearly 1,300 hospitals across the United States in 47 states that operate under a critical access hospital designation. Twenty-five of them are in Oregon.

One requirement of this program is that there be no more than 25 beds occupied by patients at any one time. This requirement has proven to be too constricting for facilities during times of unexpected need, such as during an influenza outbreak or an influx of tourism to the community.

Critical access hospital administrators in Oregon, especially Dennis Burke from Good Shepherd Medical Center in Hermiston and Jim Mattes at Grande Ronde Hospital in LaGrande, have expressed to me how this restriction has led to unnecessary risks to patient safety and health. Hospital administrators have been forced to divert the 26th and 27th patient in their hospitals to a hospital much farther from their homes and families.

This legislation makes two important changes to the Medicare Critical Access Hospital Program. First, this bill will provide the flexibility necessary for a critical access hospital to either choose to meet either the 25-bed-per-day limit or work with a limit of 20-beds-per-day averaged throughout the year. During times of spikes in public health need, these hospitals would be able to care for more patients even if the hospital would exceed the use of 25 beds.

Second, this bill exempts beds used by veterans whose care is paid for or coordinated by the Department of Vet-

erans Affairs, VA, from counting against the 25-bed limit or 20-bed yearly average. This change gives CAHs the flexibility they need to treat America's military veterans at a time when the VA has divested in hospital care for our rural veterans, forcing them into these already tightly restricted community hospitals.

This bill also ensures that these hospitals are meeting the requirements under the law without breaking the bank. This new yearly average of 20 beds is set lower than the daily limit, 25 beds, to ensure that Medicare does not inappropriately expand this program. For example, Grande Ronde Hospital would save Medicare an average of \$100,000 each year for ambulance transfers of Medicare/Medicaid patients, all of whom could be treated within their facility had it been able to be flexible on counting bed days.

I believe that these simple changes in the current law are critically important to keeping our rural hospitals open and their communities' health care needs served. As we look to expand access to health coverage, this bill will ensure that the nearly 1,300 critical access hospitals in the country have the flexibility they need to remain open for the millions of Americans who depend on them.

I hope my colleagues will join me in supporting this bill, and I look forward to working with Chairman BAUCUS and Ranking Member GRASSLEY and other members of the Finance Committee to secure passage of this important bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 307

*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 "Critical Access Hospital Flexibility Act of 2009".

#### SEC. 2. FLEXIBILITY IN THE MANNER IN WHICH BEDS ARE COUNTED FOR PURPOSES OF DETERMINING WHETHER A HOSPITAL MAY BE DESIGNATED AS A CRITICAL ACCESS HOSPITAL UNDER THE MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1820(c)(2)(B) of the Social Security Act (42 U.S.C. 1395i-4(c)(2)(B)) is amended—

(1) in clause (iii), by inserting "(or 20, as determined on an annual, average basis)" after "25"; and

(2) by adding at the end the following flush sentence:

"In determining the number of beds for purposes of clause (iii), only beds that are occupied shall be counted."

(b) EFFECTIVE DATE.—The amendments made by this section take effect on January 1, 2010.

#### SEC. 3. CRITICAL ACCESS HOSPITAL INPATIENT BED LIMITATION EXEMPTION FOR BEDS PROVIDED TO CERTAIN VETERANS.

(a) IN GENERAL.—Section 1820(c) of the Social Security Act (42 U.S.C. 1395i-4(c)) is amended by adding at the end the following new paragraph:

“(3) EXEMPTION FROM BED LIMITATION.—For purposes of this section, no acute care inpatient bed shall be counted against any numerical limitation specified under this section for such a bed (or for inpatient bed days with respect to such a bed) if the bed is provided for an individual who is a veteran and the Department of Veterans Affairs referred the individual for care in the hospital or is coordinating such care with other care being provided by such Department.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to cost reporting periods beginning on or after the date of the enactment of this Act.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 37. Mr. ISAKSON (for himself and Mr. CHAMBLISS) submitted an amendment intended to be proposed by him to the bill S. 181, to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such Acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes.

#### TEXT OF AMENDMENTS

SA 37. Mr. ISAKSON (for himself and Mr. CHAMBLISS) submitted an amendment intended to be proposed by him to the bill S. 181, to amend title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and to modify the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973, to clarify that a discriminatory compensation decision or other practice that is unlawful under such acts occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice, and for other purposes; as follows:

On page 7, strike lines 11 through 20 and insert the following:

#### SEC. 6. EFFECTIVE DATE.

(a) IN GENERAL.—This Act, and the amendments made by this Act, take effect on the date of enactment of this Act, except as provided in subsection (b).

(b) CLAIMS.—This Act, and the amendments made by this Act, shall apply to each claim 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, if—

(1) the claim results from a discriminatory compensation decision, and

(2) the discriminatory compensation decision is adopted on or after that date of enactment.

#### AUTHORITY FOR COMMITTEES TO MEET

##### COMMITTEE ON FINANCE

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to

meet during the session of the Senate on Thursday, January 22, 2009, at 10 a.m., in room 215 of the Dirksen Senate Office Building.

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

##### COMMITTEE ON FOREIGN RELATIONS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, January 22, 2009, at 9:30 a.m.

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

##### COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet, during the session of the Senate, to conduct a hearing entitled “What States are Doing to Keep us Healthy” on Thursday, January 22, 2009. The hearing will commence at 10 a.m. in room 430 of the Dirksen Senate Office Building.

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

##### SELECT COMMITTEE ON INTELLIGENCE

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, January 22, 2009 at 10 a.m.

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

#### UNANIMOUS-CONSENT AGREEMENT—EXECUTIVE SESSION

Mr. REID. Mr. President, I ask unanimous consent that on Monday, at 4 p.m., the Senate proceed to Executive Session to consider the nomination of Calendar No. 3, Timothy Geithner to be Secretary of the Treasury; that there be 2 hours of debate with respect to the nomination, equally divided and controlled between the chair and the ranking member of the Finance Committee or their designee; that at 6 p.m., with no intervening action or debate, the Senate proceed to vote on confirmation of the nomination; that upon confirmation, the motion to reconsider be laid upon the table; that there be no further motions in order, the President be immediately notified of the Senate’s action and the Senate resume legislative session.

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

#### UNANIMOUS-CONSENT AGREEMENT—H.R. 2

Mr. REID. Mr. President, I ask unanimous consent that upon disposition of the Geithner nomination and resuming legislative session, the Senate proceed to Calendar No. 18, H.R. 2, the Children’s Health Insurance Program Improvements Act.

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

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR— NOMINATION’S DISCHARGED

Mr. DURBIN. Mr. President, I ask unanimous consent that the Senate proceed to Executive Session to consider Calendar Nos. 1, 2, 4 and 5, and that the Banking Committee be discharged of PN64-4, PN65-14; that the Commerce Committee be discharged of PN64-10; that the Senate proceed to their consideration, en bloc; that the nominations be confirmed, and the motions to reconsider be laid upon the table, en bloc; that no further motions be in order, and any statements relating to the nominations be printed in the Record; that the President be immediately notified of the Senate’s action and the Senate return to Legislative Session.

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

The nominations considered and confirmed en bloc are as follows:

##### DEPARTMENT OF STATE

Susan E. Rice, of the District of Columbia, to be the Representative of the United States of America to the United States of America to the United Nations, with the rank and status of Ambassador Extraordinary and Plenipotentiary, and the Representative of the United States of America in the Security Council of the United Nations.

Susan E. Rice, of the District of Columbia, to be Representative of the United States of America to the Sessions of the General Assembly of the United Nations during her tenure of service as Representative of the United States of America to the United Nations.

##### ENVIRONMENTAL PROTECTION AGENCY

Lisa Perez Jackson, of New Jersey, to be Administrator of the Environmental Protection Agency.

##### EXECUTIVE OFFICE OF THE PRESIDENT

Nancy Helen Sutley, of California, to be a Member of the Council on Environmental Quality.

##### HOUSING AND URBAN DEVELOPMENT

Shaun L.S. Donovan, of New York, to be Secretary of Housing and Urban Development.

##### SECURITIES AND EXCHANGE COMMISSION

Mary L. Schapiro, of the District of Columbia, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 2014.

##### DEPARTMENT OF TRANSPORTATION

Ray LaHood, of Illinois, to be Secretary of Transportation.

##### NOMINATION OF SHAUN DONOVAN

Mr. DODD. Mr. President, today we are considering the nomination of Mr. Shaun Donovan, Commissioner of the New York City Department of Housing Preservation and Development to become the Secretary of the Department of Housing and Urban Development, HUD.

Mr. Donovan, has been nominated for a job fraught with significant challenges yet, for that very reason, imbued with great opportunities.

For the past 3 or 4 years, the country has been facing a growing housing

problem that had its origins in the scourge of predatory lending that has resulted in record high foreclosure rates.

This housing crisis has been a primary cause of the deepening recession to which none of us are immune. Across the country, between 9,000 and 10,000 homeowners face foreclosure every day. Foreclosures in my State were up over 71 percent since last year, and it is expected that we will have more than 13,000 subprime foreclosures in the next two years. Nationwide, cities such as Bridgeport, which had inordinately high rates of subprime loans, are struggling to keep themselves afloat as those loans reset one-by-one and families find themselves with nowhere to turn.

I recently met with leaders in my State where I heard about the toll this crisis is taking on our minority communities. Some say this crisis will result in a net loss in homeownership rates for African Americans, wiping out a generation of wealth, gains and opportunities.

But let there be no doubt that this crisis today affects every American in one way or another. In all, by some counts, we can expect some 8 million homes to go into foreclosure absent some form of additional action.

Unfortunately, the previous administration was slow to acknowledge the housing problem, and when it finally did, timid in its response. Even as we witnessed foreclosures tear apart neighborhoods and wreak havoc upon our economy, the Administration refused to use the authority or funds we gave it in the Emergency Economic Stabilization Act to tackle the foreclosure crisis head on—despite the Congress's crystal clear intent in writing that law.

Surprisingly—and unfortunately, in my opinion—HUD has not played a central role in addressing the housing crisis. Frankly, it has been, to quote *National Journal*, “at best, a second string player . . .” following in the wake of other government departments with far less expertise in housing than the professionals at HUD (January 10, 2009).

Indeed, as the cover page of *CQ Weekly* says, “The housing crisis remains at the core of the economy's woes . . .” (January 12, 2009).

Put simply, we cannot address our economic crisis until we address the underlying housing crisis.

And to do that, we need an active, aggressive, and well-run HUD with leadership that is confident in its mission and unafraid to act. As President Obama has himself said, “HUD's role has never been more important.”

Unfortunately, HUD has been mismanaged and ridden with scandal in the last several years. Let me be clear that these problems did not arise under the able leadership of our colleague, then-Secretary Martinez. I would also say that in recent weeks, Secretary Preston has made some improvements.

But fundamentally, HUD has been left adrift at a time when bold leadership and a clear direction were never more important.

Just a week or two ago, we learned about the Wrights—a middle-class family in Windsor, Connecticut in danger of losing their home. Like thousands of families across the country, the Wrights were lured into a mortgage they were assured they could afford but couldn't—not because they acted irresponsibly but because they became pregnant with their second child, and Mrs. Wright ran out of the paid sick time she was afforded as a teacher.

This is the kind of story being repeated in every community across America today. With the right leadership, I believe HUD can be an effective partner in helping families like the Wrights. That is the opportunity Mr. Donovan has—to restore HUD as a leading voice in addressing the crisis facing our country today.

I would say to my colleagues that Mr. Donovan is the most experienced nominee for HUD secretary that Senate has considered in my long experience. In addition to his degrees in architecture and public administration from Harvard, Mr. Donovan has run the multifamily program at the Federal Housing Administration and was, for a time, the Acting Housing Commissioner. He has worked in the private nonprofit sector as a housing developer and he has worked as a managing director of a large, multi-family mortgage company.

Since 2004, Mr. Donovan has been the commissioner of New York City's Department of Housing Preservation and Development. In that role, he managed 2,800 employees and helped develop and manage Mayor Bloomberg's “New Housing Marketplace Plan,” one of the most ambitious local housing plans in the nation. The \$7.5 billion plan calls for the creation or preservation of 165,000 units of affordable housing, about half of which has been accomplished to date.

Beyond the statistics and the numbers that so dramatically underscore Mr. Donovan's accomplishments, I want to welcome him for the kind of leadership and vision I am confident he will bring to the Department at a time when such leadership is needed so desperately.

For example, as early as 2004, long before most of the rest of the country was focused on the subprime crisis and the foreclosures they would lead to, Mr. Donovan told a *Newsday* reporter that he was worried about the coming “flood of foreclosures” and the impact it would have on homeowners and neighborhoods.

Mr. Donovan sees the role of HUD as being more than a caretaker for physical housing structures, or as a mortgage insurance company. He understands the danger of stove-piping within this arena, and sees HUD as the Federal Government's primary tool to help build communities—an agency that

helps to provide housing opportunities for homeowners and for renters along a spectrum of incomes and ages. He understands the need to coordinate housing with transportation, including public transportation and transit, to improve access to jobs and other economic opportunities—and we need someone with that vision at the helm.

Finally, Mr. Donovan is a man of the utmost integrity who has shown a proven ability to work constructively with all interested parties. His nomination is being supported, enthusiastically, I want to add, by a wide variety of housing groups, from the Realtors, to the Homebuilders, to the Low Income Housing Coalition, to many nonprofit organizations and many, many others.

I want to express my thanks to Mr. Donovan for the leadership he will bring to this critically important department and, more importantly, the hope he will offer to millions of families at this uncertain moment.

I urge my colleagues to support the nomination of Mr. Donovan to be Secretary of the Department of Housing and Urban Development.

#### CONFIRMATION OF RAYMOND LAHOOD

Mrs. HUTCHISON. Mr. President, I come to the Floor today as the ranking member of the Senate Commerce, Science and Transportation Committee in support of the nomination of Raymond LaHood to be the 16th Secretary of Transportation.

As a former 7-term Member of Congress representing the 18th District of Illinois, and a former member of the House committee on Transportation and Infrastructure, Congressman LaHood is well-qualified for this position.

This week, the Commerce Committee held a full committee hearing to consider his nomination. To Congressman LaHood's credit, and with the cooperation of Chairman ROCKEFELLER, our committee quickly discharged his nomination in order to fill this important Cabinet position.

I am pleased that our committee moved expeditiously on Congressman LaHood's nomination and I am hopeful the full Senate will move just as quickly.

As my colleagues know, the range of problems confronting the new Secretary of Transportation are amongst the most difficult that any new department leader has faced in quite some time.

In a few short months, important policy, budgetary and regulatory decisions will need to be made on several transportation and infrastructure issues. I am confident that Congressman LaHood is up to the task and will hit the ground running.

As my colleagues know, the existing highway program expires at the end of September. Until then, Congress and the new administration will have to work very hard on a reauthorization. This will be a very difficult process due

to the current fiscal state of the highway trust fund and because of the current formula's disparate treatment between the States.

In addition, we desperately need to create stability in our aviation infrastructure programs by passing a full fiscal year 2009 FAA extension, along with completing a multiyear FAA Authorization bill. I have encouraged Representative LaHood to support a full fiscal year extension of the current FAA Reauthorization bill, through September 30, 2009, along with committing to work with him on a new FAA Authorization bill.

Without congressional and administration cooperation, the FAA's plan to modernize our air traffic control system—known as NextGen—could squander precious time and resources. Our Nation's skies and airports are severely congested; we need a Secretary in place immediately to oversee and manage the funding, implementation, and transition to NextGen.

I am also confident the DOT will have a renewed focus and appreciation for our Nation's Amtrak and high speed rail system. This is an area we have neglected too long. While the Amtrak reauthorization that was just signed into law was an important step, we need strong leadership at the Department to ensure that we have a national passenger rail system that works. Congressman LaHood is a strong advocate for Amtrak and I look forward to working with him to implement the priorities of that important legislation.

I encourage my colleagues to support Representative Hood's nomination.

Mr. DURBIN. Mr. President, one of the nominations just confirmed was that of Ray LaHood, former Congressman from the State of Illinois who, by this action, will become our next Secretary of Transportation in the Obama Cabinet. It was my great honor to introduce Congressman LaHood to the Senate Commerce Committee yesterday, along with former House Republican Leader Bob Michel. I had asked President Obama to consider this nomination because of my high regard for Ray LaHood, both personally and politically.

We served together for many years. He has represented my hometown of Springfield. Despite our clear partisan differences, we have become not only fast friends but real allies. Ray LaHood is an extraordinary person. Born and raised in Peoria, IL, he served as a schoolteacher before coming to work for Bob Michel in Washington, where he served as his chief of staff. He then succeeded Bob Michel as a Congressman from the district which had Peoria as its major city and proceeded to represent large portions of north central Illinois and most of the former congressional district of former Congressman Abraham Lincoln.

Ray LaHood is a person whom I not only respect but like very much. His word is good. He is a hard worker. He

has the right values and politics. When politics in Washington became so corrosive and divisive, Ray LaHood led an effort in the House to establish dialogue between Democrats and Republicans. When I have worked with him on issues such as the Abraham Lincoln Presidential Library in Springfield, the future of the 183rd Air National Guard unit in Springfield's capital airport, and a variety of other issues, I have found him to be hardworking, diligent, and committed to the public good.

I believe President Obama has made an extraordinarily good choice for Secretary of Transportation. It is a department which will be very busy because the new Recovery and Reinvestment Act understands that we need new bridges, roads, airports, and mass transit so that America's economy can get back on track and grow. Ray LaHood is a great person to be heading up that department.

His wife Kathy and family were with him yesterday before the Commerce Committee. They are a great group. He is very proud of his children and should be. They have done extraordinarily good things in their lives as well. I am glad we moved quickly on this nomination for Ray LaHood as Secretary of Transportation. I know he is probably following this proceeding, and I wish him the very best. I know he is going to be exceptional in his service not only to President Obama in the Cabinet but also to the United States of America.

#### UNANIMOUS CONSENT AGREEMENT—S. RES. 18

Mr. DURBIN. Mr. President, I ask unanimous consent that with respect to S. Res. 18, the following be the order of listing:

Rules: names will be listed as: SCHUMER, DODD, BYRD, INOUE, FEINSTEIN, DURBIN, NELSON of Nebraska, MURRAY, PRYOR, UDALL of New Mexico, WARNER;

Small Business: the last two names appear SHAHEEN and HAGAN.

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

#### APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to Public Law 94-304, as amended by Public Law 99-7, appoints the following Senator as a member of the Commission on Security and Cooperation in Europe during the 111th Congress: the Senator from Maryland, Mr. CARDIN.

The Chair, on behalf of the Vice President, pursuant to Public Law 94-304, as amended by Public Law 99-7, appoints the following Senator as Chairman of the Commission on Security and Cooperation in Europe during the 111th Congress: the Senator from Maryland, Mr. CARDIN.

The Chair, on behalf of the Vice President, pursuant to the provisions of 20 U.S.C., sections 42 and 43, appoints

the Senator from Mississippi, Mr. COCHRAN, as a member of the Board of Regents of the Smithsonian Institution for the 111th Congress.

#### ORDERS FOR MONDAY, JANUARY 26, 2009

Mr. DURBIN. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 2 p.m. Monday, January 26; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and there then be a period of morning business until 4 p.m., with Senators permitted to speak for up to 10 minutes each; further, that at 4 p.m. the Senate proceed to executive session as under the previous order.

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

#### PROGRAM

Mr. DURBIN. Mr. President, under the previous order, at 6 p.m. Monday the Senate will proceed to a rollcall vote on the confirmation of the executive nomination of Timothy Geithner to be Secretary of the Treasury.

#### ADJOURNMENT UNTIL MONDAY, JANUARY 26, 2009, AT 2 P.M.

Mr. DURBIN. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 7:31 p.m., adjourned until Monday, January 26, 2009, at 2 p.m.

#### DISCHARGED NOMINATIONS

The Senate Committee on Commerce, Science, and Transportation was discharged from further consideration of the following nomination by unanimous consent and the nomination was confirmed:

RAY LAHOOD, OF ILLINOIS, TO BE SECRETARY OF TRANSPORTATION.

The Senate Committee on Banking, Housing, and Urban Affairs was discharged from further consideration of the following nominations by unanimous consent and the nominations were confirmed:

SHAUN L. S. DONOVAN, OF NEW YORK, TO BE SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

MARY L. SCHAPIRO, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR A TERM EXPIRING JUNE 5, 2014.

#### CONFIRMATIONS

Executive nominations confirmed by the Senate Thursday, January 22, 2009:

##### DEPARTMENT OF STATE

SUSAN E. RICE, OF THE DISTRICT OF COLUMBIA, TO BE THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS, WITH THE RANK AND STATUS OF AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY, AND THE REPRESENTATIVE OF THE



UNITED STATES OF AMERICA IN THE SECURITY COUNCIL OF THE UNITED NATIONS.

SUSAN E. RICE, OF THE DISTRICT OF COLUMBIA, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE SESSIONS OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS DURING HER TENURE OF SERVICE AS REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE UNITED NATIONS.

ENVIRONMENTAL PROTECTION AGENCY

LISA PEREZ JACKSON, OF NEW JERSEY, TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.

EXECUTIVE OFFICE OF THE PRESIDENT

NANCY HELEN SUTLEY, OF CALIFORNIA, TO BE A MEMBER OF THE COUNCIL ON ENVIRONMENTAL QUALITY.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SHAUN L. S. DONOVAN, OF NEW YORK, TO BE SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

DEPARTMENT OF TRANSPORTATION

RAY LAHOOD, OF ILLINOIS, TO BE SECRETARY OF TRANSPORTATION.

SECURITIES AND EXCHANGE COMMISSION

MARY L. SCHAPIRO, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION FOR A TERM EXPIRING JUNE 5, 2014.