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 reinvestment 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 President, I ask unanimous consent that the order for the quorum call be rescinded.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 at the EEOC, 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 longstanding 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 hardworking, 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	Shelby	Voinovich
Risch	Specter	Wicker
Roberts	Thune	
Sessions	Vitter	

NAYS—55

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

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. Philip 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 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 proceed 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 contribute 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 alternative 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 commonsense 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. Proportionally, 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 employer'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 be 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 predominately 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
Burris	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. INOUYE), 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
Burris	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

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
Burris	Kerry	Reed
Byrd	Klobuchar	Reid
Cantwell	Kohl	Rockefeller
Cardin	Landrieu	Sanders
Carper	Lautenberg	Schumer
Casey	Leahy	Shaheen
Conrad	Levin	Snowe
Dodd	Lieberman	Stabenow
Dorgan	Lincoln	Tester
Durbin	McCaskill	Udall (CO)
Udall (NM)	Warner	Whitehouse
		Wyden

NAYS—41

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

NOT VOTING—1

Kennedy

The motion was agreed to.

AMENDMENT NO. 29

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

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

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

The motion was agreed to.

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

The motion to lay on the table was agreed to.

CERTIFICATE OF APPOINTMENT

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

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

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

STATE OF COLORADO

CERTIFICATE OF APPOINTMENT

To the President of the Senate of the United States:

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

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

By the Governor:

BILL RITTER, Jr.,
Governor.

BERNIE BUESCHER,
Secretary of State.

[State Seal Affixed]

ADMINISTRATION OF OATH OF OFFICE

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

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

(Applause, Members standing.)

APPOINTMENT

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

The PRESIDING OFFICER. The majority leader is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

LILLY LEDBETTER FAIR PAY ACT OF 2009—Continued

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

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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