money can buy strays so far from what our democracy is supposed to be. So that's number one on my list. Number two would be the part of the health care decision that concerns the commerce clause. Since 1937, the Court has allowed Congress a very free hand in enacting social and economic legislation.

I thought that the attempt of the Court to intrude on Congress's domain in that area had stopped by the end of the 1930s. Of course health care involves commerce. Perhaps number three would be Shelby County, involving essentially the destruction of the Voting Rights Act. That act had a voluminous legislative history. The bill extending the Voting Rights Act was passed overwhelmingly by both houses, Republicans and Democrats, everyone was on board. The Court's interference with that decision of the political branches seemed to me to be out of order. The Court should have respected the legislative judgment. Legislators know much more about elections than the Court does. And the same was true of Citizens United. I think members of the legislature, people who have to run for office, know the connection between money and influence on what laws get passed.

And one last note, almost a year later, Justice Ginsburg's opinion hadn't changed. Let me read from a New York Times report about the remarks she delivered at Duke Law School:

In expansive remarks on Wednesday evening, Justice Ruth Bader Ginsburg named the ''most disappointing'' Supreme Court decision in her 22-year tenure, discussed the future of the death penalty and abortion rights, talked about her love of opera and even betrayed a passing interest in rap music.

The Court's worst blunder, she said, was its 2010 decision in Citizens United ''because of what has happened to elections in the United States and the huge amount of money it takes to run for office.''

She was in dissent in the 5–4 decision.

The evening was sponsored by Duke University School of Law, and Justice Ginsburg answered questions from Neil S. Siegel, a professor there, and from students and alumni.

Echoing a dissent last month, she suggested that she was prepared to vote to strike down the death penalty, saying that the capital justice system is riddled with errors, plagued by bad lawyers, and subject to racial and geographic disparities.

She added that she despaired over the state of abortion rights.

''Reproductive freedom is in a sorry situation in the United States,'' she said.

''Poor women don't have choice.''

That was our Ruth Ginsburg, concerned to the very end about how law affects all of the people it touches.

Ruthie, we will miss you.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Madam President, I come to the floor tonight to join my colleagues to honor the life of Justice Ruth Bader Ginsburg. Before I do, though, I would like to first of all thank my colleague from Massachusetts for reviewing the many legal decisions that Justice Ginsburg had been involved in and their significance.

I am so glad to be out here tonight as you took time in your perspective on the importance of those cases. We definitely need to remember that these decisions, these words, set the stage for so many things to come before the American people and for working families. Thank you for that.

## SAVANNA'S ACT

Ms. CANTWELL. Madam President, before I do, I wanted to say just a word about Savanna's Act, which, I can tell you, Justice Ginsburg would probably be happy that the House has now passed and, previously, the Senate had passed Savanna's Act, legislation that would help protect the rights and help move forward on changes to law enforcement that would better protect missing and murdered indigenous women.

This legislation—originally sponsored by my colleagues Heidi Heitkamp and LISA MURKOWSKI, and most recently cosponsored by Senator MURKOWSKI, Senator CORTEZ MASTO, and myself—I believe is on its way to the President's desk, and I am hoping that the President will sign this important legislation as soon as possible.

Indigenous women deserve to have the same rights and same protections under the law, but they need to have people who are tracking these heinous crimes that are happening because they are the victims of these crimes at a much higher rate than the general population.

You ask yourself: Well, how can that be? When you think about these women being abducted and murdered and missing, you have to have law enforcement who are going to follow these cases, track individuals, track the court process, and this is what better protocols, better statistics, and a better system is going to do with the passage of Savanna's Act. It will give us those tools that we need for indigenous women.

So I thank all of my colleagues for helping with the passage of that important legislation. It is on its way to the President's desk, and, again, I hope he will sign it as soon as possible.

## REMEMBERING JUSTICE RUTH BADER GINSBURG

Ms. CANTWELL. Madam President, I join my colleagues tonight to come here and honor the life of Justice Ruth Bader Ginsburg. As many people have said tonight already, what an unbelievable hero she was—a trailblazer, a deep thinker. And there are the things she did on the Court to do so many important things for the rights of Americans.

When I first met her in 2001, I had just come to Washington, DC, in my first year here in the U.S. Senate, and I just happened to go to a play at the Shakespeare Theatre, here near the Capitol, and had seats right next to her in the theater. I had probably already heard about her and knew of her, of course. That was of great significance even in 2001. But during the play, I noticed, just as I do in a dark situation, oftentimes falling asleep a little bit, and I thought, wow, I don't know, this woman is so petite and so tiny. And I had heard that she had been sick. I literally sat there in the dark concerned for her future.

What a lesson about Ruth Bader Ginsburg, because that was 2001. And in 2020, she was going strong. This is not a woman to ever, ever, ever underestimate. She took her tools and applied them for the betterment of American women and American society overall. People across the United States of America are reeling from her passing because they want to know who is going to stand up for their rights now that she is gone.

There is something about that diminutive figure with so much might and wisdom that succeeded on that groove of a Court with all those men and had the courage and the tenacity to read her dissent in the Lilly Ledbetter legislation from the bench—the unusual move of saying: I might not have the decision I want today, but, by God, you are going to listen to what is wrong with gender inequality in America, and we are going to get on a path to fix it.

When I think about that unbelievable moment that in her quiet, soft voice set the stage that we heard our colleague Senator WARREN talk about tonight, it is pretty amazing. That is why we need to have women in these places. We need to have them so you have the voice of diversity there to tell you what it is like. And I guarantee you—when she said that statement, ''I don't ask anything from my brother other than to get your foot off my neck,'' I guarantee you, she knew what that was like, and that is why she says it with such conviction.

That is what she represented. That is what she represented as an icon to so many people, and now they are mourning. I have had 2,000 calls in just a few days to our office about her passing.

One constituent, Lynn from Shelton, WA, said: I am old enough to have grown up experiencing the subtle and not so subtle discrimination aimed at girls and women that have limited our self-expression, our participation in sports, in politics, college accessibility and workplace, and even in my family life and reproduction. She continues: It has been slow progress for each of us to achieve increased equality. And so we have so much to thank Ruth Bader Ginsburg for. I am deeply saddened and frightened—frightened by her passing. As you know, our democracies, freedom, integrity and the rule of law are threatened and are even at greater risk.

Eileen, from Issaquah, wrote: Justice Ginsburg fought so valiantly for our rights as women. As women, we provide so much for the Washington economy.

I agree with her. Women provide a lot for our economy in the State of Washington.

She continues: I am a business owner myself, and I am terrified that gender protections are in grave danger. Ensuring civil liberties is not just the moral

thing to do, but it makes sound economic policy as well. Allowing more people more opportunities does not take away from those with power, but it grows our economy as a State and as a country and allows all of us to be more prosperous together. That includes reproductive rights, which is the keystone to allowing women full economic opportunity as men.

I have to say that letter basically sums it all up. That is what the fight with Lilly Ledbetter was. I thank Lilly Ledbetter. I thank Lilly Ledbetter for having the courage to file that case and stand up to that discrimination and basically fight a long process that people still don't understand. We do not have pay equity in America yet. We still are not making the same amount as men.

Ruth Ginsburg made a decision that set the course for the Lilly Ledbetter law, which basically says that instead of saying our time to file a case for discrimination runs out after a year when we don't even know we have been discriminated against, we should have a longer period of time to file that case. All we are going to get is our day in court.

I thank both Lilly Ledbetter and Justice Ginsburg for that because they were women standing up in an incredible environment, with men surrounding them, and speaking truth to power about what needed to happen, as my constituent says here, for full economic opportunities for all people.

I can't tell you how many men I have heard say: I want equal pay for women. I want equal pay for women because I want my wife to make a decent salary. I want her to bring home as much as she can bring home. I don't want her discriminated against.

Yet when Justice Ginsburg set us up for the Lilly Ledbetter legislation and we came here to the Senate floor, I heard the most unbelievable speeches here on the Senate floor. Colleagues of ours basically said things like: Well, if you would just be as qualified as a man, we will pay you as much as a man.

The disconnect still exists. The pay inequity still exists. But the course of action has been set by Justice Ginsburg, and we just have to pick up the torch and carry this to the finish line because it is good for our economy. It is good for our society. It is good for women to have the type of participation that—when you are paid equally to a man, you can continue to contribute in society.

Already, 2,000 people have written to me. It is unbelievable what she has done to touch the hearts of Americans.

A father from Bellingham wrote: Mostly, I mourn for the future of my 4-year-old daughter. The prospects of women losing their right to choose and an erosion of gender equality is frightening.

Another constituent, Katie, wrote: Even though the air this morning looks relatively clear again in Seattle—a little reference to all our fire and smoke—our future is foggier than ever. While I mourn the death of Justice Ginsburg, I cannot help but feel tremendous anxiety about the future of existing laws in effect that protect all people's rights, from legal abortions to access to healthcare, to laws that protect our votes and our freedom of speech and laws that Justice Ginsburg protected.

That is really what is going on here in America. This movement about RBG is saying: You stood up to protect us, and now you are gone, and what is going to happen?

I definitely pause in this for a little comment about our Senate schedule. I don't get it. We can sit here and argue back and forth about what people said when and how and all of that. What I don't understand is this: It takes time to review the record of someone for a lifetime appointment to the Supreme Court in which these important issues to working families and whether they have as much power and as much clout and as much standing as a corporation in America—people want to know where they stand.

Somehow, people are already talking about schedules. I don't understand. How can you decide what the schedule is when you haven't even heard the name of a person? How do you move forward with a schedule when you don't even know—maybe this person is going to end up being Harriet Miers. Maybe you are going to look at their record and say: It is Harriet Miers, and I don't want to move forward because I looked at her record, and I decided maybe this is not the jurist I want at this point in time.

All I am saying is, I don't understand how somebody can set a course of action in a schedule when you don't even know who the person is, what the process is going to be, or the length of time. You are setting a horrible precedent. You are saying to people that it doesn't even matter what the name is; you already have a schedule. It doesn't matter how long it is going to take to review.

It is very hard here to not have frustration when my citizens have fought so hard for these rights, and Justice Ginsburg's passing has upset them so much that they need to hear from us about how a fair and deliberative process—the last wishes of Justice Ginsburg—is going to be honored.

I would like to add in the RECORD the full dissent that was read from the bench from Justice Ginsburg in the Lilly Ledbetter case.

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

SUPREME COURT OF THE UNITED STATES, LILLY M. LEDBETTER, PETITIONER v. THE GOODYEAR TIRE & RUBBER COMPANY, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT—MAY 29, 2007

Justice Ginsburg, with whom Justice Stevens, Justice Souter, and Justice Breyer join, dissenting.

Lilly Ledbetter was a supervisor at Goodyear Tire and Rubber's plant in Gadsden, Alabama, from 1979 until her retirement in 1998. For most of those years, she worked as an area manager, a position largely occupied by men. Initially, Ledbetter's salary was in line with the salaries of men performing substantially similar work. Over time, however, her pay slipped in comparison to the pay of male area managers with equal or less seniority. By the end of 1997, Ledbetter was the only woman working as an area manager and the pay discrepancy between Ledbetter and her 15 male counterparts was stark: Ledbetter was paid $3,727 per month; the lowest paid male area manager received $4,286 per month, the highest paid, $5,236. See 421 F. 3d 1169, 1174 (CAl 1 2005); Brief for Petitioner 4.

Ledbetter launched charges of discrimination before the Equal Employment Opportunity Commission (EEOC) in March 1998. Her formal administrative complaint specified that, in violation of Title VII, Goodyear paid her a discriminatorily low salary because of her sex. See 42 U.S.C. §2000e–2(a)(1) (rendering it unlawful for an employer ''to discriminate against any individual with respect to [her] compensation . . . because of such individual's . . . sex''). That charge was eventually tried to a jury, which found it ''more likely than not that [Goodyear] paid [Ledbetter] a[n] unequal salary because of her sex.'' App. 102. In accord with the jury's liability determination, the District Court entered judgment for Ledbetter for backpay and damages, plus counsel fees and costs.

The Court of Appeals for the Eleventh Circuit reversed. Relying on Goodyear's system of annual merit-based raises, the court held that Ledbetter's claim, in relevant part, was time barred. 421 F. 3d, at 1171, 1182–1183. Title VII provides that a charge of discrimination ''shall be filed within [180] days after the alleged unlawful employment practice occurred.'' 42 U.S.C. §2000e–5(e)(1). Ledbetter charged, and proved at trial, that within the 180-day period, her pay was substantially less than the pay of men doing the same work. Further, she introduced evidence sufficient to establish that discrimination against female managers at the Gadsden plant, not performance inadequacies on her part, accounted for the pay differential. See, *e.g.*, App. 36–47, 51–68, 82–87, 90–98, 112–113. That evidence was unavailing, the Eleventh Circuit held, and the Court today agrees, because it was incumbent on Ledbetter to file charges year-by-year, each time Goodyear failed to increase her salary commensurate with the salaries of male peers. Any annual pay decision not contested immediately (within 180 days), the Court affirms, becomes grandfathered, a *fait accompli* beyond the province of Title VII ever to repair.

The Court's insistence on immediate contest overlooks common characteristics of pay discrimination. Pay disparities often occur, as they did in Ledbetter's case, in small increments; cause to suspect that discrimination is at work develops only over time. Comparative pay information, moreover, is often hidden from the employee's view. Employers may keep under wraps the pay differentials maintained among supervisors, no less the reasons for those differentials. Small initial discrepancies may not be seen as meet for a federal case, particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves.

Pay disparities are thus significantly different from adverse actions ''such as termination, failure to promote, . . . or refusal to hire,'' all involving fully communicated discrete acts, ''easy to identify'' as discriminatory. See *National Railroad Passenger Corporation* v. *Morgan*, 536 U.S. 101, 114 (2002). It

is only when the disparity becomes apparent and sizable, *e.g.*, through future raises calculated as a percentage of current salaries, that an employee in Ledbetter's situation is likely to comprehend her plight and, therefore, to complain. Her initial readiness to give her employer the benefit of the doubt should not preclude her from later challenging the then current and continuing payment of a wage depressed on account of her sex.

On questions of time under Title VII, we have identified as the critical inquiries: ''What constitutes an 'unlawful employment practice' and when has that practice 'occurred'?'' *Id.*, at 110. Our precedent suggests, and lower courts have overwhelmingly held, that the unlawful practice is the current payment of salaries infected by gender-based (or race-based) discrimination—a practice that occurs whenever a paycheck delivers less to a woman than to a similarly situated man. See *Bazemore* v. *Friday*, 478 U.S. 385, 395 (1986) (Brennan, J., joined by all other Members of the Court, concurring in part).

I.

Title VII proscribes as an ''unlawful employment practice'' discrimination ''against any individual with respect to his compensation . . . because of such individual's race, color, religion, sex, or national origin.'' 42 U.S.C. §2000e–2(a)(1). An individual seeking to challenge an employment practice under this proscription must file a charge with the EEOC within 180 days ''after the alleged unlawful employment practice occurred.'' §2000e–5(e)(1). See *ante*, at 4; *supra*, at 2, n. 1.

Ledbetter's petition presents a question important to the sound application of Title VII: What activity qualifies as an unlawful employment practice in cases of discrimination with respect to compensation. One answer identifies the pay-setting decision, and that decision alone, as the unlawful practice. Under this view, each particular salary-setting decision is discrete from prior and subsequent decisions, and must be challenged within 180 days on pain of forfeiture. Another response counts both the pay-setting decision and the actual payment of a discriminatory wage as unlawful practices. Under this approach, each payment of a wage or salary infected by sex-based discrimination constitutes an unlawful employment practice; prior decisions, outside the 180–day charge-filing period, are not themselves actionable, but they are relevant in determining the lawfulness of conduct within the period. The Court adopts the first view, see *ante*, at 1, 4, 9, but the second is more faithful to precedent, more in tune with the realities of the workplace, and more respectful of Title VII' s remedial purpose.

A

In *Bazemore*, we unanimously held that an employer, the North Carolina Agricultural Extension Service, committed an unlawful employment practice each time it paid black employees less than similarly situated white employees. 478 U.S., at 395 (opinion of Brennan, J.). Before 1965, the Extension Service was divided into two branches: a white branch and a ''Negro branch.'' *Id.*, at 390. Employees in the ''Negro branch'' were paid less than their white counterparts. In response to the Civil Rights Act of 1964, which included Title VII, the State merged the two branches into a single organization, made adjustments to reduce the salary disparity, and began giving annual raises based on nondiscriminatory factors. *Id.*, at 390–391, 394–395. Nonetheless, ''some preexisting salary disparities continued to linger on.'' *Id.*, at 394 (internal quotation marks omitted). We rejected the Court of Appeals' conclusion that the plaintiffs could not prevail because the lingering disparities were simply a continuing effect of a decision lawfully made prior to the effective date of Title VII. See *Id.*, at 395–396. Rather, we reasoned, ''[e]ach week's paycheck that delivers less to a black than to a similarly situated white is a wrong actionable under Title VII.'' *Id.*, at 395. Paychecks perpetuating past discrimination, we thus recognized, are actionable not simply because they are ''related'' to a decision made outside the charge-filing period, cf. *ante*, at 17, but because they discriminate anew each time they issue, see *Bazemore*, 478 U.S., at 395–396, and n. 6; *Morgan*, 536 U.S., at 111–112.

Subsequently, in *Morgan*, we set apart, for purposes of Title VII's timely filing requirement, unlawful employment actions of two kinds: ''discrete acts'' that are ''easy to identify'' as discriminatory, and acts that recur and are cumulative in impact. See *Id.*, at 110, 113–115. ''[A] [d]iscrete ac[t] such as termination, failure to promote, denial of transfer, or refusal to hire,'' *Id.*, at 114, we explained, '' 'occur[s]' on the day that it 'happen[s].' A party, therefore, must file a charge within . . . 180 . . . days of the date of the act or lose the ability to recover for it.'' *Id.*, at 110; see *Id.*, at 113 (''[D]iscrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges. Each discrete discriminatory act starts a new clock for filing charges alleging that act.'').

''[D]ifferent in kind from discrete acts,'' we made clear, are ''claims . . . based on the cumulative effect of individual acts.'' *Id.*, at 115. The *Morgan* decision placed hostile work environment claims in that category. ''Their very nature involves repeated conduct.'' *Ibid.* ''The unlawful employment practice'' in hostile work environment claims, ''cannot be said to occur on any particular day. It occurs over a series of days or perhaps years and, in direct contrast to discrete acts, a single act of harassment may not be actionable on its own.'' *Ibid.* (internal quotation marks omitted). The persistence of the discriminatory conduct both indicates that management should have known of its existence and produces a cognizable harm. *Ibid.* Because the very nature of the hostile work environment claim involves repeated conduct,

''[i]t does not matter, for purposes of the statute, that some of the component acts of the hostile work environment fall outside the statutory time period. Provided that an act contributing to the claim occurs within the filing period, the entire time period of the hostile environment may be considered by a court for the purposes of determining liability.'' *Id.*, at 117.

Consequently, although the unlawful conduct began in the past, ''a charge may be filed at a later date and still encompass the whole.'' *Ibid.*

Pay disparities, of the kind Ledbetter experienced, have a closer kinship to hostile work environment claims than to charges of a single episode of discrimination. Ledbetter's claim, resembling Morgan's, rested not on one particular paycheck, but on ''the cumulative effect of individual acts.'' See *id.*, at 115. See also Brief for Petitioner 13, 15–17, and n. 9 (analogizing Ledbetter's claim to the recurring and cumulative harm at issue in *Morgan*); Reply Brief for Petitioner 13 (distinguishing pay discrimination from ''easy to identify'' discrete acts (internal quotation marks omitted)). She charged insidious discrimination building up slowly but steadily. See Brief for Petitioner 5–8. Initially in line with the salaries of men performing substantially the same work, Ledbetter's salary fell 15 to 40 percent behind her male counterparts only after successive evaluations and percentage-based pay adjustments. See *supra*, at 1–2. Over time, she alleged and proved, the repetition of pay decisions undervaluing her work gave rise to the current discrimination of which she complained. Though component acts fell outside the charge-filing period, with each new paycheck, Goodyear contributed incrementally to the accumulating harm. See *Morgan*, 536 U.S., at 117; *Bazemore*, 478 U.S., at 395–396; cf. *Hanover Shoe, Inc.* v. *United Shoe Machinery Corp.*, 392 U.S. 481, n. 15 (1968).

B

The realities of the workplace reveal why the discrimination with respect to compensation that Ledbetter suffered does not fit within the category of singular discrete acts ''easy to identify.'' A worker knows immediately if she is denied a promotion or transfer, if she is fired or refused employment. And promotions, transfers, hirings, and firings are generally public events, known to co-workers. When an employer makes a decision of such open and definitive character, an employee can immediately seek out an explanation and evaluate it for pretext. Compensation disparities, in contrast, are often hidden from sight. It is not unusual, decisions in point illustrate, for management to decline to publish employee pay levels, or for employees to keep private their own salaries. See, *e.g.*, *Goodwin* v. *General Motors Corp.*, 275 F. 3d 1005, 1008–1009 (CA10 2002) (plaintiff did not know what her colleagues earned until a printout listing of salaries appeared on her desk, seven years after her starting salary was set lower than her co-workers' salaries); *McMillan* v. *Massachusetts Soc. for the Prevention of Cruelty to Animals*, 140 F. 3d 288, 296 (CA1 1998) (plaintiff worked for employer for years before learning of salary disparity published in a newspaper). Tellingly, as the record in this case bears out, Goodyear kept salaries confidential; employees had only limited access to information regarding their colleagues' earnings. App. 56–57, 89.

The problem of concealed pay discrimination is particularly acute where the disparity arises not because the female employee is flatly denied a raise but because male counterparts are given larger raises. Having received a pay increase, the female employee is unlikely to discern at once that she has experienced an adverse employment decision. She may have little reason even to suspect discrimination until a pattern develops incrementally and she ultimately becomes aware of the disparity. Even if an employee suspects that the reason for a comparatively low raise is not performance but sex (or another protected ground), the amount involved may seem too small, or the employer's intent too ambiguous, to make the issue immediately actionable—or winnable.

Further separating pay claims from the discrete employment actions identified in *Morgan*, an employer gains from sex-based pay disparities in a way it does not from a discriminatory denial of promotion, hiring, or transfer. When a male employee is selected over a female for a higher level position, someone still gets the promotion and is paid a higher salary; the employer is not enriched. But when a woman is paid less than a similarly situated man, the employer reduces its costs each time the pay differential is implemented. Furthermore, decisions on promotions, like decisions installing seniority systems, often implicate the interests of third-party employees in a way that pay differentials do not. Cf. *Teamsters* v. *United States*, 431 U.S. 324, 352–353 (1977) (recognizing that seniority systems involve ''vested . . . rights of employees'' and concluding that Title VII was not intended to ''destroy or water down'' those rights). Disparate pay, by contrast, can be remedied at any time solely at the expense of the employer who acts in a discriminatory fashion.

C

In light of the significant differences between pay disparities and discrete employment decisions of the type identified in *Morgan*, the cases on which the Court relies hold no sway. See *ante*, at 5–10 (discussing *United Air Lines. Inc.* v. *Evans*, 431 U.S. 553 (1977), *Delaware State College* v. *Ricks*, 449 U.S. 250 (1980), and *Lorance* v. *AT&T Technologies, Inc.*, 490 U.S. 900 (1989)). *Evans* and *Ricks* both involved a single, immediately identifiable act of discrimination: in *Evans*, a constructive discharge, 431 U.S., at 554; in *Ricks*, a denial of tenure, 449 U.S., at 252. In each case, the employee filed charges well after the discrete discriminatory act occurred: When United Airlines forced Evans to resign because of its policy barring married female flight attendants, she filed no charge; only four years later, when Evans was rehired, did she allege that the airline's former no-marriage rule was unlawful and therefore should not operate to deny her seniority credit for her prior service. See *Evans*, 431 U.S., at 554–557. Similarly, when Delaware State College denied Ricks tenure, he did not object until his terminal contract came to an end, one year later. *Ricks*, 449 U.S., at 253–254, 257–258. No repetitive, cumulative discriminatory employment practice was at issue in either case. See *Evans*, 431 U.S., at 557–558; *Ricks*, 449 U.S., at 258.

*Lorance* is also inapposite, for, in this Court's view, it too involved a one-time discrete act: the adoption of a new seniority system that ''had its genesis in sex discrimination.'' See 490 U.S., at 902, 905 (internal quotation marks omitted). The Court's extensive reliance on *Lorance*, *ante*, at 7–9, 14, 17–18, moreover, is perplexing for that decision is no longer effective: In the 1991 Civil Rights Act, Congress superseded *Lorance*'s holding. 112, 105 Stat. 1079 (codified as amended at 42 U.S.C. §2000e–5(e)(2)). Repudiating our judgment that a facially neutral seniority system adopted with discriminatory intent must be challenged immediately, Congress provided:

''For purposes of this section, an unlawful employment practice occurs . . . when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.'' *Ibid*.

Congress thus agreed with the dissenters in *Lorance* that ''the harsh reality of [that] decision,'' was ''glaringly at odds with the purposes of Title VII.'' 490 U.S., at 914 (opinion of Marshall, J.). See also §3, 105 Stat. 1071 (1991 Civil Rights Act was designed ''to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination'').

True, §112 of the 1991 Civil Rights Act directly addressed only seniority systems. See *ante*, at 8, and n. 2. But Congress made clear (1) its view that this Court had unduly *contracted* the scope of protection afforded by Title VII and other civil rights statutes, and (2) its aim to generalize the ruling in *Bazemore*. As the Senate Report accompanying the proposed Civil Rights Act of 1990, the precursor to the 1991 Act, explained:

''Where, as was alleged in *Lorance*, an employer adopts a rule or decision with an unlawful discriminatory motive, each application of that rule or decision is a new violation of the law. In *Bazemore* . . . , for example, . . . the Supreme Court properly held that each application of th[e] racially motivated salary structure, *i.e.*, each new paycheck, constituted a distinct violation of Title VII. Section 7(a)(2) generalizes the result correctly reached in *Bazemore*.'' Civil Rights Act of 1990, S. Rep. No. 101–315, p. 54 (1990).

See also 137 Cong. Rec. 29046, 29047 (1991) (Sponsors' Interpretative Memorandum) (''This legislation should be interpreted as disapproving the extension of *[Lorance]* to contexts outside of seniority systems.''), But cf. *ante*, at 18 (relying on *Lorance* to conclude that ''when an employer issues paychecks pursuant to a system that is facially nondiscriminatory and neutrally applied'' a new Title VII violation does not occur (internal quotation marks omitted)).

Until today, in the more than 15 years since Congress amended Title VII, the Court had not once relied upon *Lorance*. It is mistaken to do so now. Just as Congress' ''goals in enacting Title VII . . . never included conferring absolute immunity on discriminatorily adopted seniority systems that survive their first [180] days,'' 490 U.S., at 914 (Marshall, J., dissenting), Congress never intended to immunize forever discriminatory pay differentials unchallenged within 180 days of their adoption. This assessment gains weight when one comprehends that even a relatively minor pay disparity will expand exponentially over an employee's working life if raises are set as a percentage of prior pay.

A clue to congressional intent can be found in Title VII's backpay provision. The statute expressly provides that backpay may be awarded for a period of up to two years before the discrimination charge is filed. 42 U.S.C. §2000e–5(g)(1) (''Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission.''). This prescription indicates that Congress contemplated challenges to pay discrimination commencing before, but continuing into, the 180-day filing period. See *Morgan*, 536 U.S., at 119 (''If Congress intended to limit liability to conduct occurring in the period within which the party must file the charge, it seems unlikely that Congress would have allowed recovery for two years of backpay.''). As we recognized in *Morgan*, ''the fact that Congress expressly limited the amount of recoverable damages elsewhere to a particular time period [*i.e.*, two years] indicates that the [180–day] timely filing provision was not meant to serve as a specific limitation . . . [on] the conduct that may be considered.'' *Ibid*.

D

In tune with the realities of wage discrimination, the Courts of Appeals have overwhelmingly judged as a present violation the payment of wages infected by discrimination: Each paycheck less than the amount payable had the employer adhered to a nondiscriminatory compensation regime, courts have held, constitutes a cognizable harm. See, *e.g.*, *Forsyth* v. *Federation Employment and Guidance Serv.*, 409 F. 3d 565, 573 (CA2 2005) (''Any paycheck given within the [charge-filing] period . . . would be actionable, even if based on a discriminatory pay scale set up outside of the statutory period.''); *Shea* v. *Rice*, 409 F. 3d 448, 452—453 (CADC 2005) (''[An] employer commit[s] a separate unlawful employment practice each time he pa[ys] one employee less than another for a discriminatory reason'' (citing *Bazemore*, 478 U.S., at 396)); *Goodwin* v. *General Motors Corp.*, 275 F. 3d 1005, 1009–1010 (CA10 2002) (''*[Bazemore]* has taught a crucial distinction with respect to discriminatory disparities in pay, establishing that a discriminatory salary is not merely a lingering effect of past discrimination instead it is itself a continually recurring violation . . . . [E]ach race-based discriminatory salary payment constitutes a fresh violation of Title VII.'' (footnote omitted)); *Anderson* v. *Zubieta*, 180 F. 3d 329, 335 (CADC 1999) (''The Courts of Appeals have repeatedly reached the . . . conclusion'' that pay discrimination is ''actionable upon receipt of each paycheck.''); accord *Hildebrandt* v. *Illinois Dept. of Natural Resources*, 347 F. 3d 1014, 1025–1029 (CA7 2003); *Cardenas* v. *Massey*, 269 F. 3d 251, 257 (CA3 2001); *Ashley* v. *Boyle's Famous Corned Beef Co.*, 66 F. 3d 164, 167–168 (CA8 1995) (en banc); *Brinkley-Obu* v. *Hughes Training, Inc.*, 36 F. 3d 336, 347–349 (CA4 1994); *Gibbs* v. *Pierce County Law Enforcement Support Agency*, 785 F. 2d 1396, 1399–1400 (CA9 1986).

Similarly in line with the real-world characteristics of pay discrimination, the EEOC—the federal agency responsible for enforcing Title VII, see, *e.g.*, 42 U.S.C. §§2000e–5(f)—has interpreted the Act to permit employees to challenge disparate pay each time it is received. The EEOC's Compliance Manual provides that ''repeated occurrences of the same discriminatory employment action, such as discriminatory paychecks, can be challenged as long as one discriminatory act occurred within the charge filing period.'' 2 EEOC Compliance Manual §2–IV–C(1)(a), p. 605:0024, and n. 183 (2006); cf. *id.*, §10–III, p. 633:0002 (Title VII requires an employer to eliminate pay disparities attributable to a discriminatory system, even if that system has been discontinued).

The EEOC has given effect to its interpretation in a series of administrative decisions. See *Albritton* v. *Potter*, No. 01A44063, 2004 WL 2983682, *2 (EEOC Office of Fed. Operations, Dec. 17, 2004) (although disparity arose and employee became aware of the disparity outside the charge-filing period, claim was not time barred because ''[e]ach paycheck that complainant receives which is less than that of similarly situated employees outside of her protected classes could support a claim under Title VII if discrimination is found to be the reason for the pay discrepancy.'' (citing *Bazemore*, 478 U.S., at 396)). See also *Bynum-Doles* v. *Winter*, No. 01A53973, 2006 WL 2096290 (EEOC Office of Fed. Operations, July 18, 2006); *Ward* v. *Potter*, No. 01A60047, 2006 WL 721992 (EEOC Office of Fed. Operations, Mar. 10, 2006). And in this very case, the EEOC urged the Eleventh Circuit to recognize that Ledbetter's failure to challenge any particular pay-setting decision when that decision was made ''does not deprive her of the right to seek relief for discriminatory paychecks she received in 1997 and 1998.'' Brief of EEOC in Support of Petition for Rehearing and Suggestion for Rehearing En Banc, in No. 03–15264–GG (CA11), p. 14 (hereinafter EEOC Brief) (citing *Morgan*, 536 U.S., at 113).

II

The Court asserts that treating pay discrimination as a discrete act, limited to each particular paysetting decision, is necessary to ''protec[t] employers from the burden of defending claims arising from employment decisions that are long past.'' *Ante*, at 11 (quoting *Ricks*, 449 U.S., at 256–257). But the discrimination of which Ledbetter complained is *not* long past. As she alleged, and as the jury found, Goodyear continued to treat Ledbetter differently because of sex each pay period, with mounting harm. Allowing employees to challenge discrimination ''that extend[s] over long periods of time,'' into the charge-filing period, we have previously explained, ''does not leave employers defenseless'' against unreasonable or prejudicial delay. *Morgan*, 536 U.S., at 121. Employers disadvantaged by such delay may raise various defenses. *Id.*, at 122. 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.'' *Id.*, at 121 (quoting *Zipes* v. *Trans World Airlines, Inc.*, 455 U.S. 385, 398 (1982)); see 536 U.S., at 121 (defense of laches may be invoked to block an employee's suit ''if he unreasonably delays in filing [charges] and as a result harms the defendant''); EEOC Brief 15 (''[I]f

Ledbetter unreasonably delayed challenging an earlier decision, and that delay significantly impaired Goodyear's ability to defend itself . . . Goodyear can raise a defense of laches . . . .'').

In a last-ditch argument, the Court asserts that this dissent would allow a plaintiff to sue on a single decision made 20 years ago ''even if the employee had full knowledge of all the circumstances relating to the . . . decision at the time it was made.'' *Ante*, at 20. It suffices to point out that the defenses just noted would make such a suit foolhardy. No sensible judge would tolerate such inexcusable neglect. See *Morgan*, 536 U.S., at 121 (''In such cases, the federal courts have the discretionary power . . . to locate a just result in light of the circumstances peculiar to the case.'' (internal quotation marks omitted)).

Ledbetter, the Court observes, *ante*, at 21, n. 9, dropped an alternative remedy she could have pursued: Had she persisted in pressing her claim under the Equal Pay Act of 1963 (EPA), 29 U.S.C. §206(d), she would not have encountered a time bar. See *ante*, at 21 (''If Ledbetter had pursued her EPA claim, she would not face the Title VII obstacles that she now confronts.''); cf. *Corning Glass Works* v. *Brennan*, 417 U.S. 188, 208–210 (1974). Notably, the EPA provides no relief when the pay discrimination charged is based on race, religion, national origin, age, or disability. Thus, in truncating the Title VII rule this Court announced in *Bazemore*, the Court does not disarm female workers from achieving redress for unequal pay, but it does impede racial and other minorities from gaining similar relief.

Furthermore, the difference between the EPA's prohibition against paying unequal wages and Title VII's ban on discrimination with regard to compensation is not as large as the Court's opinion might suggest. See *ante*, at 21. The key distinction is that Title VII requires a showing of intent. In practical effect, ''if the trier of fact is in equipoise about whether the wage differential is motivated by gender discrimination,'' Title VII compels a verdict for the employer, while the EPA compels a verdict for the plaintiff. 2 C. Sullivan, M. Zimmer, & R. White, Employment Discrimination: Law and Practice §7.08[F][3], p. 532 (3d ed. 2002). In this case, Ledbetter carried the burden of persuading the jury that the pay disparity she suffered was attributable to intentional sex discrimination. See *supra*, at 1–2; *infra*, this page and 18.

III

To show how far the Court has strayed from interpretation of Title VII with fidelity to the Act's core purpose, I return to the evidence Ledbetter presented at trial. Ledbetter proved to the jury the following: She was a member of a protected class; she performed work substantially equal to work of the dominant class (men); she was compensated less for that work; and the disparity was attributable to gender-based discrimination. See *supra*, at 1–2.

Specifically, Ledbetter's evidence demonstrated that her current pay was discriminatorily low due to a long series of decisions reflecting Goodyear's pervasive discrimination against women managers in general and Ledbetter in particular. Ledbetter's former supervisor, for example, admitted to the jury that Ledbetter's pay, during a particular one-year period, fell below Goodyear's minimum threshold for her position. App. 93–97. Although Goodyear claimed the pay disparity was due to poor performance, the supervisor acknowledged that Ledbetter received a ''Top Performance Award'' in 1996. *Id.*, at 90–93. The jury also heard testimony that another supervisor—who evaluated Ledbetter in 1997 and whose evaluation led to her most recent raise denial—was openly biased against women. *Id.*, at 46, 77–82. And two women who had previously worked as managers at the plant told the jury they had been subject to pervasive discrimination and were paid less than their male counterparts. One was paid less than the men she supervised. *Id.*, at 51–68. Ledbetter herself testified about the discriminatory animus conveyed to her by plant officials. Toward the end of her career, for instance, the plant manager told Ledbetter that the ''plant did not need women, that [women] didn't help it, [and] caused problems.'' *Id.*, at 36. After weighing all the evidence, the jury found for Ledbetter, concluding that the pay disparity was due to intentional discrimination.

Yet, under the Court's decision, the discrimination Ledbetter proved is not redressable under Title VII. Each and every pay decision she did not immediately challenge wiped the slate clean. Consideration may not be given to the cumulative effect of a series of decisions that, together, set her pay well below that of every male area manager. Knowingly carrying past pay discrimination forward must be treated as lawful conduct. Ledbetter may not be compensated for the lower pay she was in fact receiving when she complained to the EEOC. Nor, were she still employed by Goodyear, could she gain, on the proof she presented at trial, injunctive relief requiring, prospectively, her receipt of the same compensation men receive for substantially similar work. The Court's approbation of these consequences is totally at odds with the robust protection against workplace discrimination Congress intended Title VII to secure. See, *e.g.*, *Teamsters* v. *United States*, 431 U.S., at 348 (''The primary purpose of Title VII was to assure equality of employment opportunities and to eliminate . . . discriminatory practices and devices. . . .'' (internal quotation marks omitted)); *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 418 (1975) (''It is . . . the purpose of Title VII to make persons whole for injuries suffered on account of unlawful employment discrimination.'').

This is not the first time the Court has ordered a cramped interpretation of Title VII, incompatible with the statute's broad remedial purpose. See *supra*, at 10–12. See also *Wards Cove Packing Co.* v. *Atonio*, 490 U.S. 642 (1989) (superseded in part by the Civil Rights Act of 1991); *Price Waterhouse* v. *Hopkins*, 490 U.S. 228 (1989) (plurality opinion) (same); 1 B. Lindemann & P. Grossman, Employment Discrimination Law 2 (3d ed. 1996) (''A spate of Court decisions in the late 1980s drew congressional fire and resulted in demands for legislative change[,]'' culminating in the 1991 Civil Rights Act (footnote omitted)). Once again, the ball is in Congress' court. As in 1991, the Legislature may act to correct this Court's parsimonious reading of Title VII.

* * *

For the reasons stated, I would hold that Ledbetter's claim is not time barred and would reverse the Eleventh Circuit's judgment.

Ms. CANTWELL. In that dissent, Justice Ginsburg said:

The problem of concealed pay discrimination is particularly acute where the disparity arises not because the female employee is flatly denied a raise but because male counterparts are given larger raises. Having received a pay increase, the female employee is unlikely to discern at once that she has experienced an adverse employment decision. She may have little reason to suspect discrimination until a pattern develops incrementally and she ultimately becomes aware of the disparity.

Again, I think of what bravery Justice Ginsburg showed in saying to our colleagues that this dissent was so important, to read it from the bench.

Not everything in the legislative or legal process is easy. It takes bringing awareness to our colleagues, and clearly there is a lot of awareness that needs to continue to happen here. This is about working families and their desire to have healthcare coverage for preexisting conditions, protection of reproductive rights, hundreds of thousands of Dreamers wanting to know what the future looks like, and obviously LGBTQ rights and whether they are going to be set back.

I think of the other time that I had a great interaction with Justice Ginsburg. When I also first got here, we had this dinner every year. The Senator from Hawaii will find this interesting. We in the Senate would be invited—Democrats and Republicans—to have dinner with the Supreme Court. It was a great night. We would go over to the Court, and we would have dinner.

Actually, the Justices would open up their offices, and we could tour around. I thought it was really interesting. If you know anything about people, you can almost see how their mind works by the desk they keep. Some people keep a messy desk, but they know where every piece of paper is on the desk. Other people have a very neat desk.

The whole thing—letting us into their Chambers, talking about the decorum of the Supreme Court, how they shook hands every day, how they all worked with each other to try to keep comity among the decisions when you are going to disagree every day—was very interesting.

We usually had some entertainment. But it was kind of a moment where we all said: We are in this together, and we are going to keep moving forward.

Several years later—I am not sure whose decision it was—I think maybe around—I am not sure what year they disbanded that. They decided: We are not doing that anymore.

I asked: Why aren't we doing this?

This is one of the greatest things we have done around here because Democrats and Republicans would get together with the members of the Court and other people relevant to our associations, and we would share a meal and talk and say that this was about civility and working together—obviously a very divided branch as it relates to the Senate and the judiciary.

But nonetheless I so appreciated the fact that even though that was disbanded, Justice Ginsburg invited the women for dinner. She invited the women Senators to come over for dinner. I think we might have invited a few of our ex-colleagues. I think Olympia Snowe, the former Congresswoman from Maine, might have been there. So we invited some of our old colleagues. It might have been a dinner for a newly added Justice to the Court. Nonetheless, guess what we got with dinner. Great opera. Great opera. In fact, she had I think two singers there that evening and entertained us.

It is that kind of spirit of people working together and showing that. I think that was probably what her relationship was with Antonin Scalia. It was probably, yes, we are not always going to agree, but we are going to work together, and we are going to figure out how to make the best of this situation and move forward.

I remember that. Even though this thing had been disbanded, she still took the time—at least with the women—to say: Do you know what? We can all still work together.

Whoever said the statement ''Good things come in small packages'' had it down when it came to Justice Ginsburg because in that very small package came a lot of wisdom that got applied to the rights particularly of women in the United States of America with a calm but forceful voice that has moved this ball down the road. It is up to all of us to continue her legacy and get equal pay for equal work and continue to protect these rights that are well established in the United States of America.

My thoughts and prayers are with the Ginsburg family.

I yield the floor.

The PRESIDING OFFICER (Mr. HOEVEN). The Senator from Hawaii.

Mr. SCHATZ. Mr. President, we know that on Saturday the President is likely to announce his nominee for the Supreme Court, and we don't know who that is going to be, but we do know a couple of things. We know, according to the chairman of the Judiciary Committee, that they already have the votes.

What an extraordinary thing to already know how you are going to vote on a nominee who has not yet been nominated. What an extraordinary thing to turn ''advise and consent'' into ''agreeing in advance.'' What an extraordinary thing.

There is another thing that we know about this nominee. No matter who it is, we know that this person is going to come from a list provided by the Federalist Society, an organization that has worked for decades to remake the Federal judiciary in its image. It has a long history of advancing a certain agenda of seeking to roll back progress on civil rights, diminish environmental protections, and eliminate a woman's right to choose. It is an organization that believes in the power of executive authority and advances a particular, unique, novel theory called the unitary executive, which is something that Alan Dershowitz proffered on the Senate floor during the impeachment trial.

It essentially says that the executive branch is the President and that extensions of the President's authority can only go so far because the President is a whole branch of government unto himself or herself. The Federalist Society also fights for the corporations and the rich individual donors who quietly fund their work.

As Amanda Hollis-Brusky says, who studies this organization from a nonpartisan academic perspective as a professor at Pomona College: ''The idea of the Federalist Society was to train, credential, and socialize a generation of alternative elites.''

That is how we know that any nominee they put forth will have views so far out of the mainstream and far to the right of even the existing Supreme Court. So it is not a rhetorical flourish, and it is not a partisan statement to say that Trump's nominee will not be committed to ensuring our most basic and fundamental rights: the right to privacy, reproductive rights, the right to vote, the right to marry who you love, and even equal justice under the law.

Perhaps what is most worrisome is that the President has made clear that whomever he nominates to the Supreme Court will be in favor of striking down the Affordable Care Act. With the Court's hearing yet another challenge to the ACA on November 10, it is not an exaggeration to say that the law will likely be gutted. It is a real risk.

Let's be clear about what this means. The whole architecture of our healthcare system could be destroyed during the worst public health crisis in a century. This will, of course, disproportionately impact our most vulnerable communities—communities of color, low-income, indigenous, Alaska Native, and Native Hawaiian communities. We are talking about repealing Medicaid expansion—the policy that allows people under the age of 26 to stay on their parents' health insurance—and, most importantly, protections for preexisting conditions.

Let's be clear about this, too: If you have gotten COVID, you now have a preexisting condition. So, if you have gotten COVID because of President Trump's inaction and then if his nominee is confirmed to the Supreme Court, your insurance company will be permitted to kick you off of your healthcare plan or at least to increase your rate so high that you will not be able to afford coverage.

Ripping away healthcare from at least 20 million Americans and denying coverage to people with preexisting conditions is a crazy and horrific thing to do in normal times, but it is particularly cruel during a pandemic that has already claimed the lives of more than 200,000 Americans, especially because, despite the recent promises and despite the endless promises from both the President and members of the Republican Party, they have no alternative healthcare plan. We cannot and must not impose this catastrophe on the American people.

In moments when our country feels torn apart, the traditional role of the Senate is supposed to be to calm tensions and solve our problems, but instead of dealing with the tough issues, the majority leader and the Republican Party are going to inflict procedural violence on the legislative branch with many Republicans pre-announcing their support for the nominee without even knowing who she or he may be.

''President Trump will nominate a well-qualified justice and we will uphold our Constitution and protect our freedoms''—the Senator from Montana.

''I will support President Trump in any effort to move forward regarding the recent vacancy''—the chairman of the Committee on the Judiciary.

''It is critical that the Senate takes up and confirms that successor before election day''—the junior Senator from Texas.

What makes this coordinated effort to stack the Supreme Court even worse is that we heard the majority leader say specifically that he felt no sense of urgency to move on COVID relief. He felt no sense of urgency to move on COVID relief. I believe this was in May. I think it was in May when the House passed the Heroes Act. The House passes a bill, and the Republicans say it is too much. The majority leader decides: Do you know what? We are the cooling saucer. We are the upper Chamber. We are just going to chill out here during this pandemic and see how things play out economically and in terms of public health.

Well, things have played out pretty badly economically and in terms of public health; yet there has been no sense of urgency, no deal, no negotiation. Forget a deal for a second. There has not even been a serious attempt to negotiate between the parties or between the branches of government—nothing.

Yet, when a Supreme Court vacancy happens—when Justice Ginsburg tragically passes—there is a tremendous sense of clarity, a tremendous sense of alacrity, a determination to fill that seat so that, on November 10, they can take your healthcare away. That is the sense of urgency that the majority leader feels in the middle of a pandemic, and it is a shame.

I yield the floor.

(At the request of Mr. MCCONNELL, the following statement was ordered to be printed in the RECORD.)

## TRIBUTE TO ERICA SONGER

• Mr. TILLIS. Mr. President, as chairman of the Senate Judiciary Committee Subcommittee on Intellectual Property, I want to thank Erica Songer for her service in the Senate and in particular for her service as the subcommittee's minority chief counsel. The Intellectual Property Subcommittee has been the most active subcommittee's in the Senate, in no small part due to Erica's work. We have worked in a bipartisan fashion to modernize our intellectual property system through forward-looking legislative reforms. Across numerous hearings on various aspects of intellectual property law, as well as several bills, Erica has been a vital resource to my team and me.

During this session, Erica has served the subcommittee in countless ways. From promoting women in the intellectual property field to reforming our