

LILLY LEDBETTER FAIR PAY ACT
OF 2009

Mr. REID. Madam President, I ask unanimous consent that all postcloture time be yielded back and the Senate adopt the motion to proceed; that upon adoption of the motion, the Senate then proceed to the consideration of S. 181; that once the bill is reported, Senator HUTCHISON be recognized to offer an amendment; that no amendments be in order to the Hutchison amendment prior to a vote in relation to the amendment.

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

The clerk will report the bill by title.

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.

AMENDMENT NO. 25

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON] proposes an amendment numbered 25.

Mrs. HUTCHISON. 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: In the nature of substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Title VII Fairness Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Filing limitations periods serve important functions. They ensure that all claims are promptly raised and investigated, and, when remediation is warranted, that the violations involved are promptly remediated.

(2) Limitations periods are particularly important in employment situations, where unresolved grievances have a singularly corrosive and disruptive effect.

(3) Limitations periods are also particularly important for a statutory process that favors the voluntary resolution of claims through mediation and conciliation. Promptly raised issues are invariably more susceptible to such forms of voluntary resolution.

(4) In instances in which that voluntary resolution is not possible, a limitations period ensures that claims will be adjudicated on the basis of evidence that is available, reliable, and from a date that is proximate in time to the adjudication.

(5) Limitations periods, however, should not be construed to foreclose the filing of a claim by a reasonable person who exercises due diligence regarding the person's rights but who did not have, and should not have

been expected to have, a reasonable suspicion that the person was the object of unlawful discrimination. Such a person should be afforded the full applicable limitation period to commence a claim from the time the person has, or should be expected to have, a reasonable suspicion of discrimination.

SEC. 3. FILING PERIOD FOR CHARGES ALLEGING UNLAWFUL EMPLOYMENT PRACTICES.

Section 706(e) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)) is amended by adding at the end the following:

"(3)(A) This paragraph shall apply to a charge if—

"(i) the charge alleges an unlawful employment practice involving discrimination in violation of this title; and

"(ii) the person aggrieved demonstrates that the person did not have, and should not have been expected to have, enough information to support a reasonable suspicion of such discrimination, on the date on which the alleged unlawful employment practice occurred.

"(B) In the case of such a charge, the applicable 180-day or 300-day filing period described in paragraph (1) shall commence on the date when the person aggrieved has, or should be expected to have, enough information to support a reasonable suspicion of such discrimination.

"(C) Nothing in this paragraph shall be construed to change or modify the provisions of subsection (g)(1).

"(D) Nothing in this paragraph shall be construed to apply to a charge alleging an unlawful employment practice relating to the provision of a pension or a pension benefit."

SEC. 4. FILING PERIOD FOR CHARGES ALLEGING UNLAWFUL PRACTICES BASED ON AGE.

Section 7(d) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(d)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(2) by striking "(d)" and inserting "(d)(1)";

(3) in the third sentence, by striking "Upon" and inserting the following:

"(2) Upon"; and

(4) by adding at the end the following:

"(3)(A) This paragraph shall apply to a charge if—

"(i) the charge alleges an unlawful practice involving discrimination in violation of this Act; and

"(ii) the person aggrieved demonstrates that the person did not have, and should not have been expected to have, enough information to support a reasonable suspicion of such discrimination, on the date on which the alleged unlawful practice occurred.

"(B) In the case of such a charge, the applicable 180-day or 300-day filing period described in paragraph (1) shall commence on the date when the person aggrieved has, or should be expected to have, enough information to support a reasonable suspicion of such discrimination.

"(C) Nothing in this paragraph shall be construed to change or modify any remedial provision of this Act.

"(D) Nothing in this paragraph shall be construed to apply to a charge alleging an unlawful practice relating to the provision of a pension or a pension benefit."

SEC. 5. APPLICATION TO OTHER LAWS.

(a) AMERICANS WITH DISABILITIES ACT OF 1990.—Section 706(e)(3) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(e)(3)) shall apply (in the same manner as such section applies to a charge described in subparagraph (A)(i) of such section) to claims of discrimination brought under title I and section 503 of the Americans with Disabilities Act of 1990 (42

U.S.C. 12111 et seq., 12203), pursuant to section 107(a) of such Act (42 U.S.C. 12117(a)), which adopts the powers, remedies, and procedures set forth in section 706 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5).

(b) CONFORMING AMENDMENTS.—

(1) CIVIL RIGHTS ACT OF 1964.—Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) is amended by adding at the end the following:

"(f)(1) Subject to paragraph (2), section 706(e)(3) shall apply (in the same manner as such section applies to a charge described in subparagraph (A)(i) of such section) to complaints of discrimination under this section.

"(2) For purposes of applying section 706(e)(3) to a complaint under this section, a reference in section 706(e)(3)(B) to a filing period shall be considered to be a reference to the applicable filing period under this section."

(2) AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—

(A) IN GENERAL.—Section 15(f) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(f)) is amended by striking "of section" and inserting "of sections 7(d)(3) and".

(B) APPLICATION.—For purposes of applying section 7(d)(3) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(d)(3)) to a complaint under section 15 of that Act (29 U.S.C. 633a), a reference in section 7(d)(3)(B) of that Act to a filing period shall be considered to be a reference to the applicable filing period under section 15 of that Act.

Mrs. HUTCHISON. Madam President, my amendment, which I offer along with Senators VOINOVICH, MARTINEZ, GRASSLEY, ENZI, CORKER, ALEXANDER, CORNYN, BURR, MURKOWSKI, and THUNE, is a substitute for the underlying bill that is before us, S. 181. I hope we will, now that we have taken up the bill, fully discuss and hopefully have some amendments that will make the Fair Pay Act a bill that will serve all of the needs of our country. Paramount is the right of an employee to have redress, if that employee is experiencing discrimination. We also need to make sure that our small businesses and medium-sized businesses know what their underlying liabilities might be. That is part of business planning.

I have certainly been a person who has known discrimination. I want everyone who believes they have a cause of action to have that right.

I have also been a business owner. I know how important it is that our businesses know what their potential liabilities are. That is why statutes of limitation were put into the laws of the country, so that one could have a defense, so that there would be timely filings of claims, so that there would be witnesses who would have the memory or the records or the documents to defend against a claim.

My substitute amendment allows the person who is aggrieved, when that person knows or should have known that there was discrimination, to have 180 days, approximately 6 months, to file that claim so that there will be records, there will be notice, and there will be the ability for a defense and for the person to have the fair trial with the people who would be relevant to her or his case.

To do that, we have to have that time limit that the Supreme Court has said is a reasonable time limit, if it is 6 months after the person knew or should have known. We are putting back in or we are actually codifying for all of the districts of the country that standard.

It is also important that we have the ability for that person to get into court, because that is the person who has the grievance. It is that person who should be testifying rather than someone who might have had an effect but is not the person who knows if they believe they were discriminated against. These are the things that my amendment addresses.

We are not going to debate, although I know the distinguished Senator from Maryland is going to rebut, but I hope to have the time for us to fully debate this amendment when we take it up and when all of our Members are here.

There will be Members on my side who want to speak, I am sure Members on her side who want to speak, so I wanted to lay the amendment down so everyone is on notice and has the document and can read the amendment. Then I look forward to discussing it when the majority leader decides we will take this bill up, hopefully, next week.

Thank you, Madam President.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Madam President, I want to acknowledge that we will not be debating this amendment this evening. Senator HUTCHISON has laid down her substitute. What I am so excited about is that we are actually going to be debating the Lilly Ledbetter Act and also amendments and substitutes therein.

I know the Senator from Texas has a plane she is going to try to make; otherwise, we would have had a more amplified debate tonight. But I am so excited this moment has finally come, that we are actually going to debate what is the most effective way we can end wage discrimination in our country and keep the courthouse door open to legitimate claimants.

I am also excited that, once again, the Senate will return to a regular order. What do I mean by "a regular order"? We are actually going to bring up bills. We are not going to get lost in some quagmire of parliamentary procedure where we entangle ourselves and strangle ourselves. This debate, that actually begins tonight, is the signal of a new day returning to some of the old ways the Senate operated, which was a regular order where we could offer amendments, debate amendments, and vote on amendments.

This is what doing legislation is all about. Before I actually, briefly, comment on the merits, to affirm the process: We said to our colleagues on the other side of the aisle, we are going to give you the opportunity to offer amendments and to debate them. We are keeping that promise. In the way

HUTCHISON and MIKULSKI are kicking it off now, we are showing we are keeping our promise.

Second, this affirms the way we, the women of the Senate, want to operate. Senator HUTCHISON and I agree on the goal: ending wage discrimination and keeping the courthouse door open. Senator HUTCHISON and I absolutely disagree on what is the best way to achieve that goal. I have our legislation. She has her substitute. But though we disagree, you will see on Wednesday, as we pick up an amplified discussion, we can disagree without being disagreeable.

It is time to return to civility. It is time to show that good manners produce good legislation. We look forward to a robust and amplified way of discussing this issue.

So we are going to debate Lilly Ledbetter and also the Hutchison substitute and other amendments. We will do it, if there is more tonight, and we will also do it tomorrow, if there are Senators who wish to offer it. I will be here. But we will be able to do it.

We strongly disagree with the Hutchison amendment. But rather than debate it, without her being here, I am going to reserve my remarks for when she is here, and we are going to show that good politics starts with good manners and a good process.

I thank the Republican leader for being so cooperative to help us set the stage for doing it.

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Florida). The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I want to proceed for a few minutes as in morning business. I know Senator MURRAY is then anxious to be recognized. I ask unanimous consent that she be recognized at the conclusion of my remarks.

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

TARP FUNDING

Mr. MCCONNELL. Mr. President, with regard to the TARP issue we just dealt with on the floor, I voted for the disapproval resolution.

Three months ago, I voted in favor of Government action to rescue the Nation's financial system. The early indications suggest that our actions did have a stabilizing effect. But the problems persist. And based on what we know about our current financial situation, it is clear the full \$700 billion we voted for in October is still needed.

Republicans have insisted from the beginning that the outgoing administration agree to strict oversight and taxpayer protections related to the Troubled Asset Relief Program, the TARP. And we asked for similar assurances from the incoming administration this week when it requested the second round of TARP funds.

In response, the incoming administration graciously agreed to meet with Senators, and spent a good deal of time explaining to Republicans last night

how they plan to use these funds. I want to express publicly our appreciation for their time and for their efforts.

After last night's conversation, Republicans asked for one more thing: a public assurance from the incoming administration that these funds would be used in a manner consistent with the original purpose of the TARP. And, today, the incoming administration again graciously responded to our request by providing a letter of intent for the second round of TARP funds.

I want to be very clear that I appreciate the incoming administration's assurance in that letter that these funds for the original purpose of stabilizing the economy and preventing a systemic economic collapse—they agree that is what the funds were for. However, the incoming administration also indicated it would use the money in ways I cannot support.

The letter explicitly states that they will pursue a policy of "cram down," both by amending the bankruptcy laws and by forcing banks that receive TARP funds to write down mortgages. This will result in higher mortgage rates for everyone who seeks a home loan.

The letter states that the Federal Government will require banks that receive TARP funds to make loans—require banks to make loans. And while we want banks to resume lending, forcing them to make loans is exactly how this crisis started in the first place. We need to show that we have learned from past mistakes.

The letter also states that participating firms will need Federal approval before issuing dividends. I fear this will hamstring their ability to raise capital and thus perpetuate their dependence on Federal funds. We should encourage firms to raise private money, but that will be impossible if they cannot promise investors a return on investment.

Again, I do want to express my appreciation to the incoming administration for its responsiveness to Republican concerns. Every time we asked a question, it was promptly answered. So far, Republican interactions with the incoming administration have been quite encouraging and appreciated. While I voted on the losing side, I hope the new administration will consider some of my concerns and our concerns on this side. We hope their stewardship of these funds is successful in stabilizing the markets according to the original purpose of the TARP, and we will continue to work with them to strengthen our Nation's economy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for 12 minutes, and that following my remarks the Senator from Georgia be recognized.

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

Mrs. MURRAY. Mr. President, I also ask unanimous consent that my statement be printed in the RECORD prior to the previous vote.

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

(The remarks of Mrs. MURRAY and Mr. ISAKSON are printed in today's RECORD during the consideration of S.J. Res. 5.)

Mr. ISAKSON. I yield the floor and note the absence of a quorum.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

COMMITTEE ASSIGNMENTS

Mr. REID. Mr. President, over the course of the past several months, we have been working to complete negotiations on making our committee assignments so that all the new members will be able to attend committee meetings and be active participants. In some instances, I understand that chairmen have invited new Members to attend meetings and be involved in the process.

I am happy to report that earlier this week, the Republican leader and I agreed to what the committee ratios will be for the 111th Congress. This process of give and take is tedious, and the giver always feels that they have given more, while the taker believes that they deserve more. We had to increase the size of some of the committees during these deliberations. In any event we have reached agreement on ratios, and I ask unanimous consent that a copy of that agreement be printed in the RECORD.

Committee Ratio Agreement

Agriculture	12/9
Judiciary	11/8
Appropriations	17/13
Intel	8/7
Armed Services	15/11
Aging	12/9
Banking	12/9
Budget	13/10
Commerce	14/11
Indian Aff	9/6
Energy	13/10
JEC	6/4
EPW	11/8
Rules	11/8
Finance	13/10
Small Bus	11/8
For. Relations	11/8
Veterans	9/6
HELP	13/10
Homeland	10/7

(Ethics Committee remains at 3/3)

Mr. REID. With respect to the Democratic membership, we have had a meeting of our Democratic Steering Committee and they have ratified the proposed membership slate. Additionally, the Democratic Caucus has also

given its stamp of approval to the slate.

Therefore, Mr. President, the majority is ready to proceed ahead with Senate action on considering an organizational resolution which appoints committee membership. However, I understand from the Republican leader that they still need to complete their process. So, I fully expect that when we return after the inauguration, the Senate will act on an organizational resolution.

COMMITTEE FUNDING

Mr. McCONNELL Mr. President. We have included language for the 111th Congress which keeps Republican Committee budgets from going below the funding allocation for fiscal year 2008.

Upon enactment of a full year appropriation for the legislative branch, the Rules Committee has agreed to authorize \$100,000,000 annually for committee majority and minority staff salary baselines to be allocated at a 60 percent to 40 percent ratio, majority/minority respectively, during the 111th Congress.

Additionally, upon the enactment of a full year appropriation for the legislative branch, the authorization will provide for salary baselines to be adjusted by future cost-of-living adjustment, COLA, increases as approved by the President Pro Tempore of the Senate. Further, the majority leader and the chairman of the Rules Committee have agreed that 89 percent of special reserves is available to each chair/ranking member for administrative expenses, if requested, to be allocated at a 60 percent to 40 percent ratio, majority/minority respectively. Special reserves, which have been available to committees since 2001, shall not exceed historic levels.

While fiscal constraints have made this process very difficult, I appreciate the good faith effort made by the majority leader to fulfill the commitment we entered into at the beginning of the 110th Congress to keep minority staff salary baselines from going below funding levels allocated to the Republicans in the 109th Congress. The agreement we have reached provides the ability for minority committee budgets to be funded no less than the allocation in the 110th Congress.

Mr REID. I concur with the remarks of the Republican leader. The baseline was not reduced for Democratic staff in the 108th Congress and this agreement allows for a similar accommodation for the Republicans in the 111th Congress.

I ask unanimous consent that a joint leadership letter be printed in the RECORD.

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

We mutually commit to the following for the 111th Congress:

Upon enactment of a full year appropriation for the legislative branch, the majority and minority staff salary baselines for the committees of the Senate, including Joint

and Special Committees, and all other subgroups, shall be apportioned at a 60 percent to 40 percent ratio, majority/minority respectively, based on an authorization of \$100,000,000 annually. Additionally, upon enactment of a full year appropriation for the legislative branch, the authorization will provide for salary baselines to be adjusted by future cost of living adjustment, COLA, increases as approved by the President Pro Tempore of the Senate. Further, the majority leader and the chairman of the Rules Committee have agreed that 89 percent of special reserves is available to each chair/ranking member for administrative expenses, if requested, to be allocated at a 60 percent to 40 percent ratio, majority/minority respectively.

This will allow individual minority committee funding levels to remain unchanged, if special reserves are requested. Therefore, no committee budget shall be allocated to reduce the minority committee budget below that of fiscal year 2008.

Funds for committee expenses shall be available to each chairman consistent with the Senate rules and practices of the 110th Congress.

The chairman and ranking member of any committee, may, by mutual agreement, modify the apportionment of committee funding, and/or space.

The division of committee office space shall be commensurate with the 60 percent to 40 percent ratio.

MORNING BUSINESS

Mr. REID. I ask unanimous consent that the Senate proceed to a period of morning business, with Senators allowed to speak therein for up to 10 minutes each.

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

OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009

Mr. DODD. Mr. President, I rise today to commend the Senate for its passage of the Quinebaug and Shetucket Rivers Valley National Heritage Corridor Amendments Act, which was included as part of S. 22, the Omnibus Public Land Management Act of 2009. First, I would like to thank Senators LIEBERMAN, KERRY, and KENNEDY, who joined me in introducing a stand-alone version of this bill last week and have worked with me for many years to preserve this beautiful part of New England. I would also like to thank the chairman of the Energy and Natural Resources Committee, Senator BINGAMAN, for his tireless work to pass all of the critically important public lands bills included in S. 22. Because of his efforts, hundreds of thousands of acres of pristine wilderness will be added to the National Wilderness Preservation System, and many new ecologically unique and culturally significant sites will receive Federal protection under the National Wild and Scenic Rivers System, the National Trails System, and the National Heritage Area program.

I have long felt that as Senators, one of our most important obligations is to ensure that our Nation's vast array of