

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

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

I yield the floor.

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

LILLY LEDBETTER FAIR PAY ACT

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

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

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

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

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

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

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

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

CONCLUSION OF MORNING BUSINESS

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

LILLY LEDBETTER FAIR PAY ACT OF 2009

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

The legislative clerk read as follows:

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

Pending:

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

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

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

Enzi amendment No. 28, to clarify standing.

Enzi amendment No. 29, to clarify standing.

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

The Senator from Maryland is recognized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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