

the Court's decision and restores the law to what it was for decades. The bill makes clear that when an employee shows that discrimination was a "motivating factor" behind a decision, the burden is properly on the employer to show it complied with the law.

The act is modeled on part of the Civil Rights Act of 1991, which passed the Senate 93-5. As under title VII of the Civil Rights Act, once a plaintiff establishes that age was a motivating factor, the burden shifts to the employer. If the employer establishes that the same decision would have been made regardless of discrimination, the employer remains liable, but remedies are limited.

Only the employer is in a position to know his or her own mind and offer an explanation as to why a decision that involves discrimination was actually motivated by legitimate reasons. By putting the entire burden on the worker to demonstrate the absence or insignificance of other factors, the Court in effect gave employers license to discriminate, so long as they do not actually say they are singling out an employee solely because of age.

Finally, the Protecting Older Workers Against Discrimination Act makes clear that the "motivating factor" framework applies to all antidiscrimination and antiretaliation laws.

In Gross, Justice Thomas defended the Court's radical departure from well-established law by noting that the Court "cannot ignore Congress' decision to amend title VII's relevant provisions but not make similar changes to the ADEA." In other words, the Court found that because Congress, in the Civil Rights Act, codified the "motivating factor" framework for title VII of the Civil Rights Act, but not for the ADEA, Congress somehow must have intended Price Waterhouse not to apply to any statute but title VII. This is a serious misreading of the intent of Congress.

Unfortunately, this reasoning in Gross has already had reverberations in other civil rights cases since many antidiscrimination and antiretaliation statutes utilize similar language as title VII and the ADEA. As the Seventh Circuit recently held, "[Gross] holds that, unless a statute (such as the Civil Rights Act of 1991) provides otherwise, demonstrating but-for causation is part of the plaintiff's burden in all suits under federal law."

The Protecting Older Workers Against Discrimination Act, therefore makes clear that Congress is in no way questioning the "motivating factor" framework in other antidiscrimination and antiretaliation statutes.

The aim of this bill is very simple. It reiterates what Congress said 40 years ago when it passed the ADEA: When an employer makes an employment decision it is illegal for age to be a factor. A person should not be judged arbitrarily because he or she was born on or before a certain year, despite the fact that he or she still has the ability

to contribute as much, or more, as the next person. This bill will help ensure that all our citizens have an opportunity commensurate with their abilities, for productive employment.

#### AMERICA'S ECONOMIC STATE OF MIND

Mr. BARRASSO. Mr. President, I rise today to submit for the RECORD a letter I received from the mayor of Evanston, WY, William Davis.

Evanston is a wonderful community located in the Bear River Valley of southwest Wyoming. The town was founded in the 1800's during construction of the First Transcontinental Railroad. Today, over 11,000 people call Evanston home.

Mayor Davis wrote to me last week. He wanted me to know that individuals and communities across Wyoming are feeling the impact of America's current economic times. This does not come as a surprise. What I found of particular interest in Mayor Davis' letter was his observations regarding the primary factor driving our economy: Americans' anxiety about the future.

Like Mayor Davis, I hear regularly from the people of Wyoming who are concerned about the future of our country. They are anxious about the changes being proposed in Washington. They are concerned about losing control over their own lives to Federal bureaucracies. They are angry about the financial train wreck called the Federal deficit that is picking up steam and headed their way.

Mr. President, the mayor's sentiments are shared by thousands of people across Wyoming. I would ask that his letter be printed in the RECORD.

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

CITY OF EVANSTON, WYOMING,  
September 28, 2009.

Senator MIKE ENZI,  
Russell Senate Office Building,  
Washington, DC.  
Senator JOHN BARRASSO,  
Dirksen Senate Office Building,  
Washington, DC.  
Representative CYNTHIA LUMMIS,  
Longworth House Office Building,  
Washington, DC.

DEAR SIRS AND MADAM, you have already heard that sales tax revenues in Wyoming have been plunging for quite some time as the economic times continue to challenge the people who live and work here. I am also confident that you are all well aware of the impact that these lost taxes have on local governments in the state— Uinta County's sales taxes for this fiscal year are down nearly 35% from this same time last year. Evanston's last distribution from the Department of Revenue was 48% less than for this same month last year!

It goes without saying that we are spending many hours looking into our budgets for ways to provide city services to our residents and citizens while facing head on the loss of such important revenues. We will survive but it will be painful to say the least.

This brings me to the reason for this letter. I have been giving much thought and consideration to the reasons that people are

not spending their money on those items that generate sales taxes that the local governments depend so heavily upon. Without trying to pick a fight I think that Congress shares much of the burden for the fears and feelings that are keeping citizens and businesses from spending money.

Every day we hear the news of a new \$800 billion program here or a \$1 trillion overhaul of the healthcare system. Seniors hear about a potential loss of Medicare benefits that will cost them more out of pocket for many of their daily needs. Young families see the prices of groceries and utilities on the rise. It is harder for them to afford the basic needs of their children when it comes to school supplies and new clothes. They hear that energy costs to heat their homes and drive their cars are going to go up because of a new cap and trade bill already passed by the House and awaiting action in the Senate. Businesses are stagnant as well while their owners and managers wait to see just what the federal government is going to change that will affect the way they do business. What costs will increase? Will I have to pay even more out from my shrinking bottom line to cover increased costs of unemployment? Healthcare? Utilities? With shrinking sales can I even afford to keep my current employees let alone hire anyone additional? The list just seems to go on and on.

Why would a business seek to expand or hire someone else until these issues are all ironed out? Why would a mother and father plan a vacation or purchase almost anything that is not a necessity when there is so much that is unknown about their future? Will there be an income? Will I have any benefits? Will the prices continue to rise? How can I save for my kids education expenses? What will my taxes be in the future? How much higher can my credit card interest rate go?

These are the questions in the real world that I live in everyday. I don't have to travel back to Wyoming to get this perspective. I hear about it everyday when I go the store or out to dinner. People share their fears and anxieties with me almost everywhere I go these days. Try as I might to offer some assurances that we can work together to make things better my efforts are not very successful.

My quick solution to these problems? Tell Congress to back off for awhile. Certainly there are many problems that need to be addressed on the national level. We all want to have a clean and healthy environment but we all want to have a job as well. All of us would like to see roads and bridges improved and made safer but we also need food to eat and clothes to wear. No one wants to see someone suffer because they don't have adequate health insurance but no one wants to lose that benefit themselves because their employer just laid people off or, worse yet, just closed the doors. In most communities people are used to rallying and supporting their neighbors when they face a sudden illness or get a terminal diagnosis, but if they can't pay the rent they can't do much for their neighbor either.

They read that the national debt ceiling just had to be raised but only by a couple of trillion dollars, so not that much more. The people that talk to me aren't stupid. They know the day of reckoning for all of this spending is coming. They are trying their best to be ready for it but they also know that they won't be able to save enough today to be ready for that tomorrow. They see the treasury print more money or sell more of our debt to a foreign nation and they know that this is not good. They used to be able to get some money to cover their debts from their house but this has gone away. They used to have some retirement funds in the market but this has gone away. They used to

think about retirement at some point in their lives but now figure they will be working much longer now than they had once thought.

Their decisions to not spend money really hurt on the local level in Wyoming. I suspect the same is true in many other states because we (local governments) do not have the means to reach directly into their pockets to get the necessary funds for our services like the federal and state governments do.

People and businesses are hunkered down and holding tight while they wait to see when the Congress is going to quit proposing massive and expensive changes to the entire landscape of the country. If this were a battlefield I would say that the current strategies being employed are a well thought out and all encompassing assault. We are effectively being surrounded. We have no open flanks to escape through. Almost every aspect of our lives appears to be exposed and we have no way to cover it up.

I ask the question then: are we creating more panic and fear with all that is going on? If we just settled down and got out of crisis mode would businesses begin to expand on their own? Would people once again shop without fear this could be their last shopping trip for awhile? If everyone just stopped and took in a very deep breath and exhaled slowly would the increased flow of oxygen into the body bring clearer thoughts and a more relaxing mood?

It is almost the first of October. It just doesn't seem to me that we need to disarm and dismantle all of the world's nuclear arms; create a massive overhaul of the world's best healthcare system; return the atmosphere to a pre 1950's condition; balance a federal budget; save every endangered species; find a cure for H1N1 virus; create a vaccine for HIV/AIDS; declare what is left of the public lands in the west as wilderness; save the polar ice cap; become energy self sufficient; tear down all of the coal fired generation facilities; replace every incandescent light bulb with a fluorescent one; paint every roof top in the United States white; and do everything else that is being talked about and have it all done by the end of this year. It makes no sense to me and I don't think it makes much sense to anyone else.

I realize that none of you belong to the party currently "in power" (such an awful term), but there may be something that you can do to just slow things down some. The people of this country need time to catch their breath.

Thank you for letting me share my thoughts with you. We will continue to do the best we can at picking up the pieces that are left to us. We will also continue to hope for bigger pieces to come our way.

Respectfully yours,

WILLIAM R. DAVIS,  
*Mayor.*

#### ADDITIONAL STATEMENTS

##### TRIBUTE TO DR. FORREST M. BIRD

• Mr. CRAPO. Mr. President, today I am proud to honor and congratulate Idaho resident Dr. Forrest M. Bird for a lifetime of service and achievement. I had the pleasure today of meeting with Dr. Bird and his wife Pam, and very much enjoyed that short visit. Dr. Bird is well and widely known around the world for his lifesaving inventions: the Bird Mark 7 respirator, which was the first reliable and low-cost respirator in

the world; and the Baby Bird respirator, which has greatly decreased infant mortality rates. In addition to being a brilliant inventor and scientist, Dr. Bird is a former pilot and founder of the Bird Aviation Museum and Invention Center, which is located in Sagle, ID, where his company, Percussionaire Corporation, produces his lifesaving medical devices. He has been the recipient of numerous awards, including two Lifetime Scientific Achievement awards, and has been inducted into the National Inventors Hall of Fame. In 2008, he was awarded the Presidential Citizens Medal by President Bush and received the National Medal of Technology and Innovation by President Obama just this week.

Dr. Bird's interest in aviation and his invention of the world-renowned Bird respirators are remarkably intertwined. His father served as a pilot in World War I, and, after earning a degree in aeronautics, Dr. Bird served as an Army Air Corps pilot in WWII. At the time, airplanes were designed to reach higher altitudes, but pilots were increasingly unable to breathe as the altitude increased. Dr. Bird's consideration of this problem, and his attendance at medical school after the war, eventually led him to the invention of the famous Bird respirator. In 2007, his twin interests of aviation and invention led him to open the Bird Aviation Museum and Invention Center.

Clearly there is good reason for the impressive list of honors that Dr. Bird has received throughout his life. It has been a life of service that has made an incredible mark upon the world. His inventions have touched, transformed, enhanced and saved the lives of millions around the world. His museum provides a great service to his community by educating and inspiring young visitors and by bringing long-lost memories alive for older visitors. For his groundbreaking contributions to America and the world, Idaho is proud to have produced such an impressive citizen. We appreciate and honor his remarkable achievements.●

##### REMEMBERING BRIGADIER GENERAL MILDRED INEZ CAROON BAILEY

• Mrs. HAGAN. Mr. President, today I honor a woman of great character; a woman who provided unquestionable leadership to our Nation and a woman who proudly hailed from North Carolina. Our State motto, "Esse Quam Videri," "To be, rather than to seem," richly describes BG Mildred Inez Caroon Bailey; a trailblazer who thrived on challenges, especially when she was told, "it can't be done." As a member of the Senate Armed Services Committee, I am proud to recognize General Bailey's contributions to the U.S. Army in this Chamber today.

Brigadier General Bailey was born in 1919 in Fort Barnwell, NC, and raised in nearby Kinston. Inez, as she was known

to her friends, directed the Women's Army Corps, WAC, from 1971 to 1975. Enlisting at a time when a woman's role in uniform was unclear, she experienced unquestionable changes for women in the military throughout her 33-year career. General Bailey was the third female to be promoted to brigadier general, a rank she never sought, but would never have thought to turn down.

When she wasn't studying her favorite subject, French, Inez worked in her parents' grocery store. Upon graduation, she enrolled in Flora McDonald College in Red Springs, NC, and later transferred to the Woman's College of the University of North Carolina—now the University of North Carolina at Greensboro. She graduated in 1940 with a degree in education and one professional goal—to be a French teacher. She eventually accepted a job teaching French in Taylorsville, NC.

When World War II broke out, this North Carolina French teacher thought a job in the Army Air Corps might be interesting, but it wasn't until a friend dragged her along to Fort Bragg that she really gave the military a second thought. The Army needed women to take the place of male soldiers who worked nonbattlefield jobs in order to free them for service on the front lines. Six months after Pearl Harbor, Inez joined the Women's Army Auxiliary Corps, WAAC, the predecessor to WAC, at Fort Bragg. Although her parents were unhappy about her decision, they supported her nonetheless. Although women held primarily administrative, clerical and supply-type positions, she was encouraged to discover that women were also packing parachutes and were even mechanics. Due to her college degree, General Bailey was eligible for officer candidate school.

Her first unit command was at George Field Army Air Base in Illinois. There, she became very good at marching. She said, "I didn't know any women who didn't like marching. We thought it was fun and we were proud of our marching, we could keep a good beat with the Colonel Bogey March!" They even added words to the march, "Duty is calling you and me. We have a date with destiny. Ready, the WACs are ready. Our hearts are steady, the world to set free. Service, we're in it heart and soul. Victory is our only goal. We love our country's honor, and we'll defend it against any foe."

Eventually the Army made use of her background as a French teacher, assigning her to teach English to freed French prisoners of war who had been held in Morocco. She was thrilled to teach the soldiers because they were excited to learn, unlike the high school students she taught before joining the Army. At the end of the war, the debate about women serving in the military continued. Brigadier General Bailey could have left, but by then she was married and making, as she recalled, "a magnificent sum of \$166.60 and 2/3 cents a month—much more than a