

STATEMENT OF
SABRINA L. SCHAEFFER
EXECUTIVE DIRECTOR, INDEPENDENT WOMEN'S FORUM
BEFORE THE
SENATE BUDGET COMMITTEE
ON
EXPANDING ECONOMIC OPPORTUNITY FOR WOMEN AND THEIR FAMILIES

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Chairman Murray, Ranking Member Sessions, and Members of the Committee: Thank you for inviting me to be here today and for the opportunity to discuss the so-called wage gap, the very serious shortcomings of the proposed Paycheck Fairness Act, and workplace fairness.

My name is Sabrina L. Schaeffer, and I am the executive director of the Independent Women's Forum. We are a nonprofit organization, and our mission is to improve the lives of Americans by increasing the number of women who value free markets and personal liberty. And we respond to those who seek to convince women that society – and especially the workplace – is inherently unfair to women because it's simply not true.

Perpetuating the myth that women are a victim class harms women by making them feel weak, and it distracts them from learning effective ways to increase their earnings, expand their influence in the workplace, and pursue the lives they want.

But I come at this issue not just as the head of a free market think tank, but also as a mother. I am the mother of 3 young children ages 6, 5, and 2, so I am familiar with the very real need for plentiful jobs, fair wages, and workplace flexibility. I'm aware of the many factors that people, but particularly women, must weigh when making decisions about what types of jobs to pursue and how to balance work and family responsibilities.

It's those decisions and tradeoffs that are at the heart of the discussion about workplace fairness. Proponents of the Paycheck Fairness Act usually begin their argument by citing the faulty 77-cent wage gap statistic – that women only make 77 cents for every dollar a man earns. But to have an honest conversation about the workplace and about women's earnings, we need to stop blindly repeating this number.

We all know that this “77 cents on the dollar” statistic is grossly overstated, as every serious study – *including* those done by liberal groups like the American Association of University Women and the CONSAD Research commissioned by the Department of Labor in 2009 during this administration – has demonstrated.

The Department of Labor statistic compares the earnings of the average full-time working man to the average full-time working woman, which shows that women earn about 81 percent of what men earn. This isn’t the equivalent of comparing coworkers performing the same job. It’s a comparison of averages, and it’s equivalent to comparing apples to oranges.

This basic comparison doesn’t take into consideration any of the many important factors – from college major, work history, industry, specialty, hours spent working each day, to name but a few – which have a significant impact on how much someone earns. When those factors are taken into account, the pay gap shrinks to as little as 4 cents.

Some of this remaining gap may be explained by discrimination, although there could be other causes, such as women being more reluctant than men to negotiate starting salaries and to ask for raises. That's why it's important to have a fact-based conversation. Because I can do something to help close that small remaining wage gap by being more proactive on my own behalf and by teaching my daughters to be comfortable talking about money.

This year, even the White House conceded on “Equal Pay Day” that the wage gap statistic is misleading. Betsey Stevenson, a member of the White House Council of Economic Advisers said she “completely misspoke” when suggesting that the 77-cent wage gap statistic was evidence of discrimination.

Nevertheless, President Obama, Democrats here in Congress, and liberal women’s groups continue to use this faulty statistic to try to convince women that they are *routinely* suffering massive wage discrimination and to justify growing government in the name of protecting women.

That's how they sell the Paycheck Fairness Act. They suggest that it would advance the cause of pay equity and help women earn more; but the bill’s sponsors rarely mention what the legislation would *actually* do and who it would *really* benefit. That’s probably because the legislation’s focus isn’t on increasing economic opportunity for women – it’s facilitating more lawsuits against employers.

Consider what would happen if this law were to pass. Employees would be forced to opt out of, rather than into, class action suits, making it easier for lawyers to get a class certified and increasing the potential for a jackpot award. The Paycheck Fairness Act also raises current caps to make the potential payouts from lawsuits much larger.

Under existing law, victims of workplace discrimination are already protected and can receive back-pay for the earnings they were denied, as well as punitive damages of up to \$300,000 when discrimination is found to be intentional. But the Paycheck Fairness Act would allow *unlimited* punitive damage awards, including for *unintentional* discrimination. This dramatically increases the motivation for both lawyers and employees to sue in hopes of windfall payouts.

Most importantly, the proposed law would also dramatically limit how employers could justify their compensation decisions. Under current law, businesses can justify differences in pay based on experience, job responsibilities, performance, and business necessity. But under the Paycheck Fairness Act, employers would only be justified in paying male and female employees differently if they can prove to the government it's a "business necessity."

For example: A retail store needs to hire a floor manager. A male manager on the 3rd floor has a college degree and is being paid more because the retailer thinks it's valuable to them. The female manager on the 2nd floor doesn't have a college degree, so they are paying her less. But the retailer is exposed because Washington doesn't think that a college degree is a "business necessity" to be a floor manager.

The ambiguity in the law and this definition would be an open invitation to trial lawyers. Employers would be targets to potential lawsuits for essentially *any* compensation decision – whether that's making a counter-offer to retain a valued employee, giving a bonus for superior performance, or offering an employee more flexible hours in exchange for reduced compensation.

The bottom line is that the Paycheck Fairness Act would not create either "fairness" or equal pay; it would simply expand the definition of "wage discrimination," making it easier, as with the *Lilly Ledbetter Fair Pay Act*, to file lawsuits, and open businesses up to greater litigation and uncertainty—all of which would be devastating to workplace flexibility and job creation and bad for both men and women. Though ultimately, the Paycheck Fairness Act would hurt women more, by becoming more costly to employ, and by forcing employers to worry about the increased risk of litigation.

Let's remember that equal pay is *already* the law. There are two federal laws in place to protect employees from gender-based wage discrimination—the Equal Pay Act (1963), and the Civil Rights Act (1964). Also, the Lilly Ledbetter Fair Pay Act, which the president signed into law in 2009, further extends the amount of time a worker has to bring a discrimination suit against her employer.

Even the *Washington Post's* editorial board agrees that the Paycheck Fairness Act is a flawed approach to job bias. And the Committee should consider how the Paycheck Fairness Act would provide a tremendous incentive to employers to create rigid, one-size-fits-all compensation packages, and may even encourage them to reduce their workforce altogether to limit their legal exposure. And in this down economy

businesses would be wasting more of their resources on lawyers while spending less investing in new workers to grow their core business.

So what's the *alternative* to this approach to pay equity? How can we make sure women *are* being paid fairly?

Let's remember women make up nearly 50 percent of the workforce today, and are incredibly valuable to businesses. What's more the workplace is changing – quickly and for the better. Providing fair pay, sensible leave policies, and more generous benefit packages are increasingly being used to attract and retain women.

And where businesses may still lag behind, there is a robust private industry devoted to helping women achieve higher pay. Sheryl Sandberg was not the first woman to write the “rules for success.” A cursory search on Amazon will bring up dozens of other books that teach women how to negotiate and how to improve their standing in the workplace.

Hosts of organizations like 85 Broads, Negotiating Women, She Negotiates, and C4CM (Center for Competitive Management) work to help women maximize their success at work: Conferences, networking events, corporate training programs, individual training courses, video seminars.

In short there is an entire industry devoted to not just helping women *sue* like the Paycheck Fairness Act would do, but to actually overcoming remaining hurdles in the workplace.

Government can make it easier for women (and men) by encouraging job creation and reducing the burdens they place on businesses.

Rather than advancing new laws like the Paycheck Fairness Act, which is unfair and will be a jobs killer, policymakers should work to ensure that there is a robust job market, streamline the tax system to ensure families can keep more of their take-home pay, and allow men and women to make the choices about how best to balance their career, family, and other life goals.

The goal of public policy ought to be to give women and men equal *opportunities* to pursue their vision of happiness. We shouldn't be fixated on creating equal outcomes. Some people will choose to take lower paying jobs that they find personally fulfilling, some are willing to work 80 hour weeks to maximize their pay, and others cut back hours so they can be in the house when their kids get home everyday after-school. Those are individual decisions that ought to be made by free people, and Congress should be creating a business environment that encourages companies to create that kind of diversity of work opportunities.

Job creation and growth—not more lawsuits—is the real key to expanding

economic opportunity for women and their families.

Thank you again for your time, and I look forward to your questions.