



KEY VOTE

January 21, 2009

United States Senate
Washington, D.C. 20510

Dear Senator:

On behalf of Associated Builders and Contractors (ABC) and its more than 25,000 general contractors, subcontractors, material suppliers and construction related firms across the United States, I would like to take this opportunity to voice our strong support of an amendment offered today by Senator David Vitter (S.A. 34) to the "*Lilly Ledbetter Fair Pay Act of 2009*" (S. 181) that eliminates discrimination and ensures fairness in federal procurement by forbidding union-only project labor agreements (PLAs) on federal and federally funded construction projects. In addition, this amendment protects taxpayers and ensures fair and open competition on contracts for all federal infrastructure projects. We urge you to support the Vitter Amendment to the "*Lilly Ledbetter Fair Pay Act of 2009*" (S.181) when it comes up for a vote in the U.S. Senate. **ABC will consider your vote on S.A. 34 a "key vote" for our 111th Congressional Scorecard.**

Equal opportunity and open competition in federal contracting are critical issues to consider as the federal government explores various solutions, including significant infrastructure spending, to stimulate our ailing economy. Congress must ensure federal and federally funded infrastructure projects paid for by taxpayers are administered in a manner that is free from favoritism and discrimination while efficiently spending federal tax dollars. These interests would not be served if Congress were to require union-only requirements, commonly known as union-only PLAs, on federal construction projects. The Vitter Amendment would protect taxpayers from costly and discriminatory union-only PLA requirements on federal construction contracts.

A union-only PLA is a contract that requires a construction project to be awarded to contractors and subcontractors that agree to: recognize unions as the representatives of their employees on that jobsite; use the union hiring hall to obtain workers; pay union wages and benefits; obtain apprentices through union apprenticeship programs; and obey the union's restrictive work rules, job classifications and arbitration procedures.

Construction contracts subject to union-only PLAs almost always are awarded exclusively to unionized contractors and their all-union workforces. According to the most recent data from the U.S. Department of Labor's Bureau of Labor Statistics, only 13.9 percent of America's construction workforce belongs to a union. This means union-only PLAs would discriminate against almost nine out of 10 construction workers who would otherwise work on construction projects if not for a union-only PLA.

This discrimination is particularly harmful to women and minority-owned construction businesses – whose workers traditionally have been under-represented in unions, mainly due to artificial and societal barriers in union membership and union apprenticeship and training programs.

In closing, we strongly urge you to eliminate discrimination and guarantee equal opportunity and open competition in federal construction procurement by supporting the Vitter Amendment (S.A. 34) to the "*Lilly Ledbetter Fair Pay Act of 2009*" (S. 181).

Sincerely,

Geoffrey G. Burr
Vice President, Government Affairs
Associated Builders and Contractors



News Release

ABC URGES PRESIDENT OBAMA TO PRESERVE OPEN COMPETITION ON FEDERAL CONSTRUCTION CONTRACTS

Contact: Gail Raiman, (703) 812-2073
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For Immediate Release
January 21, 2009

WASHINGTON, D.C. – Associated Builders and Contractors (ABC) today issued the following statement by 2009 ABC National Chairman Jerry Gorski, president of Gorski Engineering, Inc., Collegeville, Pa., urging President Barack Obama to preserve Executive Order 13202 barring federal agencies from requiring union-only project labor agreements on federal and federally funded construction projects:

“We need to heed President Obama’s remarks in yesterday’s historic inaugural address calling for investment in our nation’s infrastructure that will help rebuild America’s roads, bridges and schools. President Obama tempered those same remarks with his warning that those ‘who manage the public’s dollars’ must also ‘spend wisely’ and ‘reform bad habits,’” Gorski said.

“With those principles in mind, President Obama can ensure that federal dollars are being administered responsibly by maintaining the principles of open competition in awarding federal and federally funded construction projects, as is required by Executive Order 13202. This directive has fostered a federal procurement environment for construction contracts rich with free and open competition without costly and discriminatory government-mandated, union-only project labor agreements.

“Repealing Executive Order 13202 undoubtedly would harm small and women- and minority-owned construction businesses. The National Black Chamber of Commerce President Harry Alford recently said, ‘a project labor agreement is a license to discriminate against black workers.’ These businesses, their employees and all construction craft workers deserve to be included in federal contracting opportunities,” said Gorski.

Meanwhile, Sen. David Vitter (R-La.) offered an amendment (S.A. 34) to the Lilly Ledbetter Fair Pay Act of 2009 (S. 181) being debated in the U.S. Senate. The measure would codify into law Executive Order 13202 and permanently protect taxpayers from costly and discriminatory union-only PLA requirements on federal and federally funded construction contracts. ABC strongly supports this legislation.

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Associated Builders and Contractors (ABC) is a national association representing 25,000 merit shop construction and construction-related firms in 79 chapters across the United States. Visit us at www.abc.org

January 21, 2009

United States Senate
Washington, D.C. 20510

Dear Senator:

The undersigned organizations call on you to support an amendment offered today by Senator David Vitter (S.A. 34) to the "*Ledbetter Fair Pay Act of 2009*" (S. 181) that eliminates discrimination and ensures fairness in federal procurement by forbidding union-only project labor agreements (PLAs) on federal and federally funded construction projects. In addition, this amendment protects taxpayers and ensures fair and open competition on contracts for all federal infrastructure projects. We urge you to support the Vitter Amendment to the "*Ledbetter Fair Pay Act of 2009*" (S.181) when it comes up for a vote in the U.S. Senate.

Equal opportunity and open competition in federal contracting are critical issues to consider as the federal government explores various solutions, including significant infrastructure spending, to stimulate our ailing economy. Congress must ensure federal and federally funded infrastructure projects paid for by taxpayers are administered in a manner that is free from favoritism and discrimination while efficiently spending federal tax dollars. These interests would not be served if Congress were to require union-only requirements, commonly known as union-only PLAs, on federal construction projects. The Vitter Amendment would protect taxpayers from costly and discriminatory union-only PLA requirements on federal construction contracts.

A union-only PLA is a contract that requires a construction project to be awarded to contractors and subcontractors that agree to: recognize unions as the representatives of their employees on that jobsite; use the union hiring hall to obtain workers; pay union wages and benefits; obtain apprentices through union apprenticeship programs; and obey the union's restrictive work rules, job classifications and arbitration procedures.

Construction contracts subject to union-only PLAs almost always are awarded exclusively to unionized contractors and their all-union workforces. According to the most recent data from the U.S. Department of Labor's Bureau of Labor Statistics, only 13.9 percent of America's construction workforce belongs to a union. This means union-only PLAs would discriminate against almost nine out of 10 construction workers who would otherwise work on construction projects if not for a union-only PLA.

This discrimination is particularly harmful to women and minority-owned construction businesses – whose workers traditionally have been under-represented in unions, mainly due to artificial and societal barriers in union membership and union apprenticeship and training programs.

In closing, we strongly urge you to eliminate discrimination and guarantee equal opportunity and open competition in federal construction procurement by supporting the Vitter Amendment (S.A. 34) to the "*Ledbetter Fair Pay Act of 2009*" (S. 181).

Sincerely,

Associated Builders and Contractors
Independent Electrical Contractors
National Association of Minority Contractors – Northeast Region
National Association of Small Disadvantaged Businesses
National Black Chamber of Commerce
National Federation of Independent Business
Women Construction Owners and Executives, USA

result has been great progress towards increasing equal opportunity and equal justice for all our people, and we will never abandon this basic goal.

Despite our past efforts to end pay discrimination, too many of our citizens still put in a fair day's work, but go home with less than a fair day's pay. Women, for example, bring home only 78 cents for each dollar earned by men. African American workers make only 80 percent of what White workers make and Latino workers make only 68 percent. Many qualified older workers and workers with disabilities also bear the burden of an unlawful pay gap. They are paid less than their coworkers for reasons that have nothing to do with their performance on the job.

Confronting pay discrimination is about addressing the real challenges faced by real Americans to make ends meet. These challenges have been mounting in recent months, as millions of American workers struggle even harder each day to provide for their families in this troubled economy.

Pay discrimination makes their struggle even harder. In these dire economic times, workers and their families can't afford to lose more economic ground—but that is just what is happening to thousands of Americans who still face pay discrimination.

With the economy in a severe recession, we cannot afford to wait to fix this problem. With women and minorities still making less than White men for the same work, we can't be complacent. With thousands of workers facing discrimination because of their race, their sex, their national origin, their age, their religion, and their disability every year, we must continue the battle to end this national disgrace.

Lilly Ledbetter's own case demonstrates the financial toll that pay discrimination can take. Lilly made 20 percent less than her lowest paid, least experienced male colleague and almost 40 percent less than her highest paid male colleague. For Lilly and other victims like her, the cost of pay discrimination over time is large. A recent study estimates that women lose an average of \$434,000 over the course of their career because of the pay gap. Not only that, but their lower wages also mean their pension benefits and their Social Security benefits are lower as well. Unless we act, thousands of American workers will continue to face the same injustice that Lilly Ledbetter has endured.

It is our common responsibility to attack this problem with every tool at our disposal. Unfortunately, the challenge has been made more difficult because of the Supreme Court's decision last May that pulled the rug out from under victims of pay discrimination by making it harder for them to stand up for their rights.

In *Ledbetter v. Goodyear Tire & Rubber Company*, the Supreme Court reversed decades of established law by reinterpreting existing law on equal pay and ruling that workers must file

claims of pay discrimination within 180 days after an employer first acts to discriminate. Never mind that many workers, such as Ms. Ledbetter, do not know at first that they are being discriminated against. Never mind that workers often have no way to learn of the discrimination against them or gather evidence to support their suspicions because employers keep salary information confidential. Never mind that the discrimination continues each and every time an employee receives an unfair paycheck.

The Ledbetter decision means that many workers across our country will be forced to live without any reasonable way to hold employers accountable when they violate the law. Employers will have free rein to continue their illegal activity, and the workers who are unfairly discriminated against will have no remedy. This result defies both justice and common sense.

The American people have made clear that they are yearning for a government that promotes, not defies, justice and common sense. We can answer this call for change by quickly passing the Lilly Ledbetter Fair Pay Act and restoring a clear and reasonable rule addressing how pay discrimination actually occurs in the workplace. The 180-day time period for filing a pay discrimination claim begins again on each date when a worker receives a discriminatory paycheck.

By doing so, the Lilly Ledbetter Fair Pay Act ensures that employers can actually be held accountable when they break the law. Under this bill, workers can challenge ongoing discrimination as long as it continues. As long as the injustice and the damage of the discrimination continue, the right to challenge it should continue too.

The bill before us restores the rules that employers and workers had lived with for decades, until the Supreme Court upended the law in the Ledbetter case. We know these rules are fair and workable. They were the law in most of the land and had the support of the EEOC under both Democratic and Republican administrations until the Ledbetter decision. There won't be any surprises after this bill passes. As the Congressional Budget Office has stated, the bill will not increase litigation costs.

Congress must stand with American workers to reverse the Supreme Court's Ledbetter decision. Civil rights groups, labor unions, disability advocates, and religious groups from across the country support this legislation. Many responsible business owners also support it, especially, the members of the U.S. Women's Chamber of Commerce. The American people want us to act.

In her stirring dissent in the Ledbetter case, Justice Ruth Bader Ginsburg wrote that "Once again, the ball is in Congress's court." Nearly 2 years after she wrote those words, the ball is still in Congress's court. The House passed this important legisla-

tion last year, but the Senate dropped the ball. Now we have a new Congress and a new opportunity to master the challenge that Justice Ginsburg put to us, and we have a new President who is strongly committed to equal pay and to ending pay discrimination. I ask my colleagues to enable the march of progress on civil rights to continue. Together, let us stand with working people. Let us pass the Lilly Ledbetter Fair Pay Act.●

The PRESIDING OFFICER. The Senator from Louisiana.

AMENDMENT NO. 34

Mr. VITTER. Mr. President, I call up amendment No. 34.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. VITTER] proposes an amendment numbered 34.

Mr. VITTER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects)

At the appropriate place, insert the following:

SEC. __. GOVERNMENT NEUTRALITY IN CONTRACTING.

(a) PURPOSES.—It is the purpose of this section to—

(1) promote and ensure open competition on Federal and federally funded or assisted construction projects;

(2) maintain Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded or assisted construction projects;

(3) reduce construction costs to the Federal Government and to the taxpayers;

(4) expand job opportunities, especially for small and disadvantaged businesses; and

(5) prevent discrimination against Federal Government contractors or their employees based upon labor affiliation or the lack thereof, thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects.

(b) PRESERVATION OF OPEN COMPETITION AND FEDERAL GOVERNMENT NEUTRALITY.—

(1) PROHIBITION.—

(A) GENERAL RULE.—The head of each executive agency that awards any construction contract after the date of enactment of this Act, or that obligates funds pursuant to such a contract, shall ensure that the agency, and any construction manager acting on behalf of the Federal Government with respect to such contract, in its bid specifications, project agreements, or other controlling documents does not—

(i) require or prohibit a bidder, offeror, contractor, or subcontractor from entering into, or adhering to, agreements with 1 or more labor organization, with respect to that construction project or another related construction project; or

(ii) otherwise discriminate against a bidder, offeror, contractor, or subcontractor because such bidder, offeror, contractor, or subcontractor—

(I) became a signatory, or otherwise adhered to, an agreement with 1 or more labor

organization with respect to that construction project or another related construction project; or

(II) refuse to become a signatory, or otherwise adhere to, an agreement with 1 or more labor organization with respect to that construction project or another related construction project.

(B) APPLICATION OF PROHIBITION.—The provisions of this subsection shall not apply to contracts awarded prior to the date of enactment of this Act, and subcontracts awarded pursuant to such contracts regardless of the date of such subcontracts.

(C) RULE OF CONSTRUCTION.—Nothing in subparagraph (A) shall be construed to prohibit a contractor or subcontractor from voluntarily entering into an agreement described in such subparagraph.

(2) RECIPIENTS OF GRANTS AND OTHER ASSISTANCE.—The head of each executive agency that awards grants, provides financial assistance, or enters into cooperative agreements for construction projects after the date of enactment of this Act, shall ensure that—

(A) the bid specifications, project agreements, or other controlling documents for such construction projects of a recipient of a grant or financial assistance, or by the parties to a cooperative agreement, do not contain any of the requirements or prohibitions described in clause (i) or (ii) of paragraph (1)(A); or

(B) the bid specifications, project agreements, or other controlling documents for such construction projects of a construction manager acting on behalf of a recipient or party described in subparagraph (A) do not contain any of the requirements or prohibitions described in clause (i) or (ii) of paragraph (1)(A).

(3) FAILURE TO COMPLY.—If an executive agency, a recipient of a grant or financial assistance from an executive agency, a party to a cooperative agreement with an executive agency, or a construction manager acting on behalf of such an agency, recipient, or party, fails to comply with paragraph (1) or (2), the head of the executive agency awarding the contract, grant, or assistance, or entering into the agreement, involved shall take such action, consistent with law, as the head of the agency determines to be appropriate.

(4) EXEMPTIONS.—

(A) IN GENERAL.—The head of an executive agency may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of 1 or more of the provisions of paragraphs (1) and (2) if the head of such agency determines that special circumstances exist that require an exemption in order to avert an imminent threat to public health or safety or to serve the national security.

(B) SPECIAL CIRCUMSTANCES.—For purposes of subparagraph (A), a finding of “special circumstances” may not be based on the possibility or existence of a labor dispute concerning contractors or subcontractors that are nonsignatories to, or that otherwise do not adhere to, agreements with 1 or more labor organization, or labor disputes concerning employees on the project who are not members of, or affiliated with, a labor organization.

(C) ADDITIONAL EXEMPTION FOR CERTAIN PROJECTS.—The head of an executive agency, upon application of an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of such entities, may exempt a particular project from the requirements of any or all of the provisions of paragraphs (1) or (2) if the agency head finds—

(i) that the awarding authority, recipient of grants or financial assistance, party to a cooperative agreement, or construction manager acting on behalf of any of such entities had issued or was a party to, as of the date of the enactment of this Act, bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions set forth in paragraph (1)(A); and

(ii) that one or more construction contracts subject to such requirements or prohibitions had been awarded as of the date of the enactment of this Act.

(5) FEDERAL ACQUISITION REGULATORY COUNCIL.—With respect to Federal contracts to which this subsection applies, not later than 60 days after the date of enactment of this Act, the Federal Acquisition Regulatory Council shall take appropriate action to amend the Federal Acquisition Regulation to implement the provisions of this subsection.

(6) DEFINITIONS.—In this subsection:

(A) CONSTRUCTION CONTRACT.—The term “construction contract” means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(B) EXECUTIVE AGENCY.—The term “executive agency” has the meaning given such term in section 105 of title 5, United States Code, except that such term shall not include the Government Accountability Office.

(C) LABOR ORGANIZATION.—The term “labor organization” has the meaning given such term in section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

Mr. VITTER. Mr. President, this is my amendment, No. 34 the Government neutrality in contracting amendment. It is very simple; it is very straight forward. It would provide true equal opportunity and open competition in national contracting.

Congress has a duty to ensure that infrastructure projects paid for by taxpayers are free from favoritism, and these interests would not be served if Congress were to require union-only Project Labor Agreements or PLAs for construction projects in the 111th Congress.

According to a January 2008 report issued by the Bureau of Labor Statistics, only 13.9 percent of America’s private construction work force belongs to a labor union. So this means that union-only PLAs discriminate against well over 8 out of 10 construction workers in America who would otherwise be able to work on those projects.

Given the debate on the current legislation, I believe this amendment is particularly important for the following reasons: Minorities are particularly negatively impacted by union-only PLAs. This discrimination is harmful to women and minority-owned construction businesses whose workers have traditionally been underrepresented in unions, mainly due to artificial and societal barriers to union apprenticeship and training programs.

Requirements under a PLA can be so burdensome that many women and minority-owned businesses are deterred from even bidding on construction projects. A PLA could force these employers to have to abandon their own

employees in favor of union workers, to pay into union and pension health plans, even if they already have their own plans.

Not being able to bid on a public project because of a PLA is very detrimental to small disadvantaged companies who rely on these contracts for much of their growth.

Again, this amendment would provide equal opportunity and open competition in Federal contracting. It would codify the status quo right now, which is to bar Federal agencies from requiring union-only PLAs on Federal construction projects. This sort of equal opportunity nondiscrimination is important and certainly is consistent with the spirit of this underlying bill.

Let me also mention in closing that this amendment has the full support of many national groups such as Associated Builders and Contractors, The Associated General Contractors of America, the National Association of Minority Contractors, Independent Electrical Contractors, the National Association of Disadvantaged Businesses, the National Black Chamber of Commerce, the National Federation of Independent Business, Women Construction Owners and Executives, and others.

I ask unanimous consent to have printed in the RECORD a letter making clear that support from a broad-based group of organizations.

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

JANUARY 21, 2009.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The undersigned organizations call on you to support an amendment offered today by Senator David Vitter (S.A. 34) to the “Ledbetter Fair Pay Act of 2009” (S. 181) that eliminates discrimination and ensures fairness in federal procurement by forbidding union-only project labor agreements (PLAs) on federal and federally funded construction projects. In addition, this amendment protects taxpayers and ensures fair and open competition on contracts for all federal infrastructure projects. We urge you to support the Vitter Amendment to the “Ledbetter Fair Pay Act of 2009” (S.181) when it comes up for a vote in the U.S. Senate.

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This discrimination is particularly harmful to women and minority-owned construction businesses whose workers traditionally have been under-represented in unions, mainly due to artificial and societal barriers in union membership and union apprenticeship and training programs.

In closing, we strongly urge you to eliminate discrimination and guarantee equal opportunity and open competition in federal construction procurement by supporting the **Vitter** Amendment (S.A. 34) to the "Ledbetter Fair Pay Act of 2009" (S. 181).

Sincerely,

Associated Builders and Contractors; Independent Electrical Contractors; National Association of Minority Contractors—Northeast Region; National Association of Small Disadvantaged Businesses; National Black Chamber of Commerce; National Federation of Independent Business; Women Construction Owners and Executives, USA.

Mr. VITTER. I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I want to be clear that I object to the Vitter amendment. I do it on both policy and procedural grounds.

First, on procedure, this amendment has nothing to do with the Lilly Ledbetter Fair Pay Act. The Lilly Ledbetter Fair Pay Act focuses on wage discrimination. The Vitter amendment focuses on project labor agreements by Federal agencies. It deals with contracting. It deals with construction work. It does not deal with wages in that category.

The great thing about today is that we have not become locked in a debate on process. I thank my colleagues on the other side of the aisle for the amendments they offered. They were focused. They were clear. It was primarily about wage discrimination.

When we look at the Vitter amendment, it would prohibit Federal dollars from being used for something called project labor agreements. These agreements, which contractors and labor organizations establish to set the terms of employment for large construction projects, benefit both the Government and workers. History has shown they produce high-quality jobs, high-quality work that is completed efficiently and effectively, on time, and meeting the bottom line of the bid.

When we talk about project labor agreements, it is not true that PLAs require union-only labor. Project labor agreements have been used for years to help construction companies run effectively and efficiently. State and local governments often use these agree-

ments because they know they are going to get a good job at the price that has been bid. These agreements help keep costs predictable and under control. That is critical for large Federal projects.

It is also a preventive strategy. Often, they prevent labor disputes and assure a steady supply of high-quality workers.

Project labor agreements benefit workers and communities. Now more than ever, we need to be creating high-quality jobs. Project labor agreements ensure that wages and benefits and working conditions are simply fair. Instead of embracing these benefits, the Vitter amendment would prohibit the use of it.

Then there is another issue—executive authority. This would take away longstanding executive authority. It would tie the hands of a President. I certainly don't want to tie the hands of our new President, but I don't want to tie the hands of any President under the Executive authority to do PLAs. Our Nation's Executive has always had the authority over Federal contracting. There is no reason to shift the balance of power. That could result in all kinds of lawsuits, et cetera.

Senator VITTER says that project labor agreements restrict competition, but that is not true. Under President Clinton, both union and nonunion contractors were able to win bids. Non-union workers were not excluded. All construction workers could work on projects governed by project labor agreements. That is what I am going to repeat: Project labor agreements do not require union-only labor. That is a myth. It has no basis in reality. It has no basis in statute.

I know the time is growing late. I also thank the Senator from Louisiana for agreeing to a time agreement. I think I have made the essence of our argument. I will reserve the remainder of my time for a wrap-up statement and some individuals I would like to acknowledge, some of the people who have worked so hard on this bill.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. How much time remains on both sides?

The PRESIDING OFFICER. The Senator from Louisiana has just under 6½ minutes. The Senator from Maryland has 30 seconds.

Mr. VITTER. Mr. President, let me again underscore that it has been clearly demonstrated that project labor agreements, union-only project labor agreements, do hurt women and minorities and also hurt women- and minority-owned businesses. They are often shut out or disadvantaged through those agreements because of historical factors. That is one reason, among many, why all of those organizations I cited, including organizations representing minority- and women-owned businesses, strongly support my stand-alone bill and strongly support my amendment.

In addition, the distinguished Senator from Maryland talked about cost. PLAs do impact cost. They push up cost. If they make cost reliable, they only make them reliably high. A good example is the \$2.4 billion project right here to replace the Wilson Bridge between suburban Maryland and Virginia. When a union-only PLA requirement was pushed by former Maryland Governor Glendening, that threw a wrench into the project and drove costs up 78 percent. After that, President Bush issued an Executive order to do away with those PLAs, and phase 1 of the bridge project was rebid. Multiple bids were received, and the winning bids came in significantly below engineering estimates. Today, with that rule against the PLA requirement, the project is almost complete and substantially under budget. I have example after example such as that, where union-only PLAs do jack up the cost to the taxpayer.

In addition, since we are talking about discrimination issues, PLAs do cut out and harm and put at a disadvantage many women and minorities, certainly including women- and minority-owned businesses.

With that, I urge all of my colleagues to support this amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that my remarks be extended by 1 minute for the purpose of acknowledgment and thanking people.

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

Ms. MIKULSKI. Mr. President, I thank someone who is not with us tonight for his steadfast work on this bill, our beloved Senator KENNEDY. We can't wait to have him back. I thank the distinguished ranking member, Senator ENZI, for his wonderful cooperation in enabling us to move this bill and to proceed with civility and focus and, I might add, timeliness. I thank all of my colleagues, Judiciary Committee as well as HELP Committee members. I thank the Kennedy staff who worked with me on doing this—Sharon Block, Portia Wu, and Charlotte Burrows—and my own staff: Ben Gruenbaum and Priya Ghosh Ahola.

I want to, then, proceed to the first bill the Senate will actually vote on since the inauguration of our new President. I think this debate shows we can change the tone. Let's keep that up.

I move to table the Vitter amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 34. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The PRESIDING OFFICER (Mr. BEGICH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 59, nays 38, as follows:

[Rollcall Vote No. 13 Leg.]

YEAS—59

Akaka	Hagan	Nelson (FL)
Baucus	Harkin	Nelson (NE)
Bayh	Inouye	Pryor
Begich	Johnson	Reed
Bennet	Kaufman	Reid
Bingaman	Kerry	Rockefeller
Boxer	Klobuchar	Sanders
Brown	Kohl	Schumer
Burris	Landrieu	Shaheen
Byrd	Lautenberg	Specter
Cantwell	Leahy	Stabenow
Cardin	Levin	Tester
Carper	Lieberman	Udall (CO)
Casey	Lincoln	Udall (NM)
Conrad	McCaskill	Voinovich
Dodd	Menendez	Warner
Dorgan	Merkley	Webb
Durbin	Mikulski	Whitehouse
Feingold	Murkowski	Wyden
Feinstein	Murray	

NAYS—38

Alexander	Crapo	Lugar
Barrasso	DeMint	Martinez
Bennett	Ensign	McCain
Bond	Enzi	McConnell
Brownback	Graham	Risch
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Hutchison	Snowe
Cochran	Inhofe	Thune
Collins	Isakson	Vitter
Corker	Johanns	Wicker
Cornyn	Kyl	

NOT VOTING—1

Kennedy

The motion was agreed to.

Mrs. MURRAY. Mr. President, I move to reconsider the vote.

Mr. CARDIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the clerk will read the title of the bill for the third time.

The bill was read the third time.

Mr. MENENDEZ. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 61, nays 36, as follows:

[Rollcall Vote No. 14 Leg.]

YEAS—61

Akaka	Bennet	Burris
Baucus	Bingaman	Byrd
Bayh	Boxer	Cantwell
Begich	Brown	Cardin

Carper	Kohl	Reid
Casey	Landrieu	Rockefeller
Collins	Lautenberg	Sanders
Conrad	Leahy	Schumer
Dodd	Levin	Shaheen
Dorgan	Lieberman	Snowe
Durbin	Lincoln	Specter
Feingold	McCaskill	Stabenow
Feinstein	Menendez	Tester
Hagan	Merkley	Udall (CO)
Harkin	Mikulski	Udall (NM)
Hutchison	Murkowski	Warner
Inouye	Murray	Webb
Johnson	Nelson (FL)	Whitehouse
Kaufman	Nelson (NE)	Wyden
Kerry	Pryor	
Klobuchar	Reed	

NAYS—36

Alexander	Crapo	Lugar
Barrasso	DeMint	Martinez
Bennett	Ensign	McCain
Bond	Enzi	McConnell
Brownback	Graham	Risch
Bunning	Grassley	Roberts
Burr	Gregg	Sessions
Chambliss	Hatch	Shelby
Coburn	Inhofe	Thune
Cochran	Isakson	Vitter
Corker	Johanns	Voinovich
Cornyn	Kyl	Wicker

NOT VOTING—1

Kennedy

The PRESIDING OFFICER. Under the previous order, three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the bill is passed.

The bill (S. 181) was passed, as follows:

S. 181

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Lilly Ledbetter Fair Pay Act of 2009”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Supreme Court in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), significantly impairs statutory protections against discrimination in compensation that Congress established and that have been bedrock principles of American law for decades. The *Ledbetter* decision undermines those statutory protections by unduly restricting the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress.

(2) The limitation imposed by the Court on the filing of discriminatory compensation claims ignores the reality of wage discrimination and is at odds with the robust application of the civil rights laws that Congress intended.

(3) With regard to any charge of discrimination under any law, nothing in this Act is intended to preclude or limit an aggrieved person’s right to introduce evidence of an unlawful employment practice that has occurred outside the time for filing a charge of discrimination.

(4) Nothing in this Act is intended to change current law treatment of when pension distributions are considered paid.

SEC. 3. DISCRIMINATION IN COMPENSATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN.

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) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory

compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

“(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.”

SEC. 4. DISCRIMINATION IN COMPENSATION BECAUSE OF AGE.

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

(1) in the first sentence—

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

(B) by striking “(d)” and inserting “(d)(1)”; and

(2) in the third sentence, by striking “Upon” and inserting the following:

“(2) Upon”; and

(3) by adding at the end the following:

“(3) For purposes of this section, an unlawful practice occurs, with respect to discrimination in compensation in violation of this Act, when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to a discriminatory compensation decision or other practice, or when a person is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.”

SEC. 5. APPLICATION TO OTHER LAWS.

(a) AMERICANS WITH DISABILITIES ACT OF 1990.—The amendments made by section 3 shall apply to claims of discrimination in compensation 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) REHABILITATION ACT OF 1973.—The amendments made by section 3 shall apply to claims of discrimination in compensation brought under sections 501 and 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794), pursuant to—

(1) sections 501(g) and 504(d) of such Act (29 U.S.C. 791(g), 794(d)), respectively, which adopt the standards applied under title I of the Americans with Disabilities Act of 1990 for determining whether a violation has occurred in a complaint alleging employment discrimination; and

(2) paragraphs (1) and (2) of section 505(a) of such Act (29 U.S.C. 794a(a)) (as amended by subsection (c)).

(c) CONFORMING AMENDMENTS.—

(1) REHABILITATION ACT OF 1973.—Section 505(a) of the Rehabilitation Act of 1973 (29 U.S.C. 794a(a)) is amended—

(A) in paragraph (1), by inserting after “(42 U.S.C. 2000e–5 (f) through (k))” the following: “(and the application of section 706(e)(3) (42 U.S.C. 2000e–5(e)(3)) to claims of discrimination in compensation);” and

(B) in paragraph (2), by inserting after “1964” the following: “(42 U.S.C. 2000d et

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This follows the [site updates](#) announced last month.




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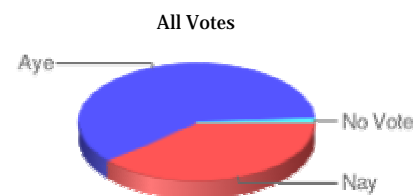
Senate Vote #13 (Jan 22, 2009)

*On the Motion to Table (Motion to Table Vitter Amdt. No. 34)***Vote Number:** Senate Vote #13 in 2009 [\[primary source\]](#)**Date:** Jan 22, 2009 5:54PM**Result:** Motion to Table Agreed to**Related Amendment:** [S.Amdt. 34: To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects.](#) amending [S. 181: Lilly Ledbetter Fair Pay Act of 2009](#)

Overview

The Motion to Table is used to kill a legislative matter. An Aye vote in favor of the motion is a vote against the bill or amendment.

	Totals	Democrats	Republicans	Independents
Yea:	59 (60%)	51	3	2
Nay:	38 (39%)	0	38	0
Present:	0 (0%)	0	0	0
Not Voting:	1 (1%)	1	0	0
Required:	Simple Majority of 97 votes (=49 votes)			
				
	(Vacancies in Congress may affect vote totals.)			



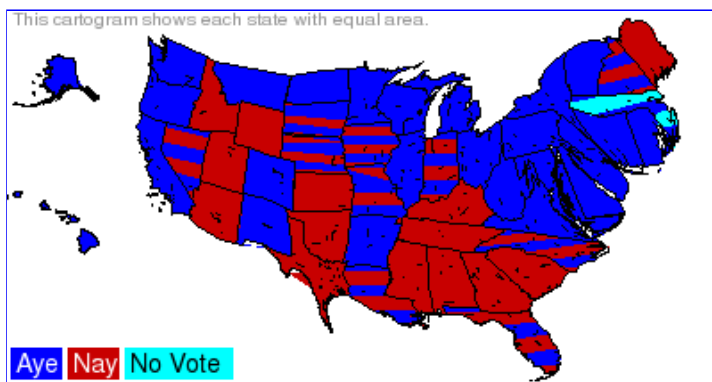
Please note that there is a slight glitch in this voting record. GovTrack could not identify all of the voters from the original source data. Some voters are listed as 'Unknown Person', and the Party Breakdown table may be inaccurate.

Votes

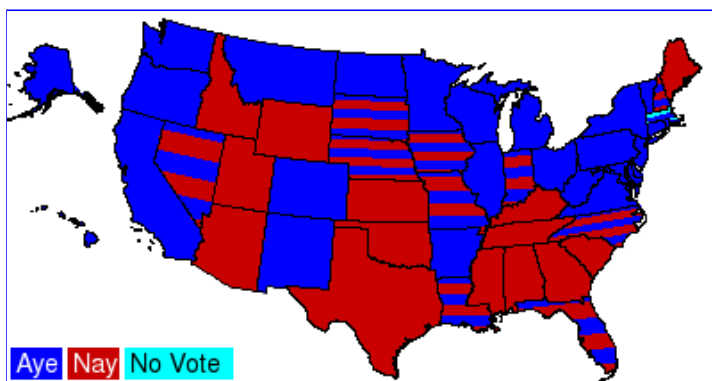
Vote	State	Representative
[Sort]	[Sort]	[Sort by Name] [Sort by Party]
<i>Alabama</i>		
Nay	AL	Sessions, Jefferson [R]
Nay	AL	Shelby, Richard [R]
<i>Alaska</i>		
Yea	AK	Begich, Mark [D]
Yea	AK	Murkowski, Lisa [R]
<i>Arizona</i>		
Nay	AZ	Kyl, Jon [R]

Cartogram

Nay	AZ	McCain, John [R]
Arkansas		
Yea	AR	Lincoln, Blanche [D]
Yea	AR	Pryor, Mark [D]
California		
Yea	CA	Boxer, Barbara [D]
Yea	CA	Feinstein, Dianne [D]
Colorado		
Yea	CO	Udall, Mark [D]
Connecticut		
Yea	CT	Dodd, Christopher [D]
Yea	CT	Lieberman, Joseph [I]
Delaware		
Yea	DE	Carper, Thomas [D]
Florida		
Yea	FL	Nelson, Bill [D]
Nay	FL	Martinez, Mel [R]
Georgia		
Nay	GA	Chambliss, C. [R]
Nay	GA	Isakson, John [R]
Hawaii		
Yea	HI	Akaka, Daniel [D]
Yea	HI	Inouye, Daniel [D]
Idaho		
Nay	ID	Crapo, Michael [R]
Nay	ID	Risch, James [R]
Illinois		
Yea	IL	Durbin, Richard [D]
Indiana		
Yea	IN	Bayh, B. [D]
Nay	IN	Lugar, Richard [R]
Iowa		
Yea	IA	Harkin, Thomas [D]
Nay	IA	Grassley, Charles [R]
Kansas		
Nay	KS	Brownback, Samuel [R]
Nay	KS	Roberts, Pat [R]
Kentucky		
Nay	KY	Bunning, Jim [R]
Nay	KY	McConnell, Mitch [R]
Louisiana		
Yea	LA	Landrieu, Mary [D]
Nay	LA	Vitter, David [R]
Maine		
Nay	ME	Collins, Susan [R]
Nay	ME	Snowe, Olympia [R]
Maryland		
Yea	MD	Cardin, Benjamin [D]
Yea	MD	Mikulski, Barbara [D]
Massachusetts		
Yea	MA	Kerry, John [D]
Not Voting	MA	Kennedy, Edward [D]



Standard Projection



Horizontal bars indicate the two senators from a state voted differently.

Cartograms give an equal area in an image to an equal number of votes by distorting the image. Senate vote cartograms are shown with each state stretched or shrunk so that the states each take up an equal area because each state has two votes. For House votes, it is each congressional district which is stretched or shrunk.

Michigan

Yea MI [Levin, Carl \[D\]](#)
 Yea MI [Stabenow, Debbie Ann \[D\]](#)

Minnesota

Yea MN [Klobuchar, Amy \[D\]](#)

Mississippi

Nay MS [Cochran, Thad \[R\]](#)
 Nay MS [Wicker, Roger \[R\]](#)

Missouri

Yea MO [McCaskill, Claire \[D\]](#)
 Nay MO [Bond, Christopher \[R\]](#)

Montana

Yea MT [Baucus, Max \[D\]](#)
 Yea MT [Tester, Jon \[D\]](#)

Nebraska

Yea NE [Nelson, Ben \[D\]](#)
 Nay NE [Johanns, Mike \[R\]](#)

Nevada

Yea NV [Reid, Harry \[D\]](#)
 Nay NV [Ensign, John \[R\]](#)

New Hampshire

Yea NH [Shaheen, Jeanne \[D\]](#)
 Nay NH [Gregg, Judd \[R\]](#)

New Jersey

Yea NJ [Lautenberg, Frank \[D\]](#)
 Yea NJ [Menendez, Robert \[D\]](#)

New Mexico

Yea NM [Bingaman, Jeff \[D\]](#)
 Yea NM [Udall, Tom \[D\]](#)

New York

Yea NY [Schumer, Charles \[D\]](#)

North Carolina

Yea NC [Hagan, Kay \[D\]](#)
 Nay NC [Burr, Richard \[R\]](#)

North Dakota

Yea ND [Conrad, Kent \[D\]](#)
 Yea ND [Dorgan, Byron \[D\]](#)

Ohio

Yea OH [Brown, Sherrod \[D\]](#)
 Yea OH [Voinovich, George \[R\]](#)

Oklahoma

Nay OK [Coburn, Thomas \[R\]](#)
 Nay OK [Inhofe, James \[R\]](#)

Oregon

Yea OR [Merkley, Jeff \[D\]](#)
 Yea OR [Wyden, Ron \[D\]](#)

Pennsylvania

Yea PA [Casey, Robert \[D\]](#)
 Yea PA [Specter, Arlen \[R\]](#)

Rhode Island

Yea RI [Reed, John \[D\]](#)
 Yea RI [Whitehouse, Sheldon \[D\]](#)

South Carolina

Nay SC [DeMint, Jim \[R\]](#)
Nay SC [Graham, Lindsey \[R\]](#)

South Dakota

Yea SD [Johnson, Tim \[D\]](#)
Nay SD [Thune, John \[R\]](#)

Tennessee

Nay TN [Alexander, Lamar \[R\]](#)
Nay TN [Corker, Bob \[R\]](#)

Texas

Nay TX [Cornyn, John \[R\]](#)
Nay TX [Hutchison, Kay \[R\]](#)

Utah

Nay UT [Bennett, Robert \[R\]](#)
Nay UT [Hatch, Orrin \[R\]](#)

Vermont

Yea VT [Leahy, Patrick \[D\]](#)
Yea VT [Sanders, Bernard \[I\]](#)

Virginia

Yea VA [Warner, Mark \[D\]](#)
Yea VA [Webb, Jim \[D\]](#)

Washington

Yea WA [Cantwell, Maria \[D\]](#)
Yea WA [Murray, Patty \[D\]](#)

West Virginia

Yea WV [Byrd, Robert \[D\]](#)
Yea WV [Rockefeller, John \[D\]](#)

Wisconsin

Yea WI [Feingold, Russell \[D\]](#)
Yea WI [Kohl, Herbert \[D\]](#)

Wyoming

Nay WY [Barrasso, John \[R\]](#)
Nay WY [Enzi, Michael \[R\]](#)



Construction Labor ReportTM

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54 CLR 3102

Compensation

Senate Tables Vitter Amendment to Codify Executive Order 13202 Into 'Ledbetter' Bill

The Senate voted 59-38 to table an amendment offered by Sen. David Vitter (R-La.) to the Lilly Ledbetter Fair Pay Act, to codify a Bush administration executive order that prohibited making project labor agreements a bid specification on federal construction projects, before the bill was approved on a 61-36 vote late Jan. 22.

An amendment offered by Sen. Jim DeMint (R-S.C.), relating to union organizing, was also tabled before the overall bill was approved.

The Ledbetter legislation (S. 181) is designed to overturn a U.S. Supreme Court decision that limited the time frame for bringing pay discrimination claims.

The Senate needed 60 votes to approve the bill because Senate Majority Leader Harry Reid (D-Nev.) received a possible filibuster threat, congressional aides said.

Vitter Amendment Tabled.

The Vitter amendment was described as maintaining open competition and neutrality for federal government contractors on federal, and federally funded, construction projects.

Vitter said his amendment "would provide real equal opportunity and open competition" in federal contracting.

Language in the amendment would have prohibited the head of any executive agency that either awarded construction contracts or obligated funds that would be awarded, from:

- requiring or prohibiting a bidder, offeror, contractor, or subcontractor from entering into, or adhering to, collective bargaining agreements for the construction project; or
- otherwise barring a bidder from a contract because of their decision to either sign or refuse to sign an agreement.

The Associated Builders and Contractors, in a Jan. 21 statement, expressed its support for the amendment, which the open shop contractors association said "would codify into law Executive Order 13202 and permanently protect taxpayers from costly and discriminatory union-only PLA requirements on federal and federally funded construction contracts."

President Bush issued Executive Order 13202 shortly after he became president to prohibit making a project labor agreement a bid specification on a federal construction project. However, a successful bidder on a federal project may elect to perform the work under a project agreement once the contract has been awarded.

ABC National Chairman Jerry Gorski, president of Gorski Engineering, Inc., Collegeville, Pa., urged President Barack Obama to preserve Executive Order 13202, saying that the administration could ensure that federal dollars are being administered responsibly by maintaining the principles of open competition in awarding federal and federally funded construction projects. "This directive has fostered a federal procurement environment for construction contracts rich with free and open competition without costly and discriminatory government-mandated, union-only project labor agreements," Gorski said.

Mark Ayers, president of the Building and Construction Trades Department, AFL-CIO, commended the Senate for tabling the amendment, which he said, would have prohibited project labor agreements on federal construction projects. The Senate's action, he said, "offers hope for the re-birth of a pragmatic approach to governance."

According to Ayers, the Vitter amendment "[W]as exactly the type of special interest-driven politics and policy that

American voters rejected overwhelmingly last November." He called it a " wrong-headed idea."

Ayers also commended Republican Sens. Arlen Specter (Pa.), Lisa Murkowski (Alaska) and George Voinovich (Ohio) for joining Senate Democrats to defeat the amendment.

Project labor agreements, by definition, are designed to give maximum benefit to all parties involved—construction users; union and non-union workers; union and non-union contractors; and lenders and insurance companies, Ayers said. "And PLAs are frequently negotiated to address a wide range of local and social needs, including the assurance of hiring of local residents, and outreach programs designed to offer local residents the opportunity for a career in the skilled trades," he added.

Mikulski Said Amendment Not Germane.

Sen. Barbara Mikulski (D-Md.) said the amendment "has nothing to do with the Lilly Ledbetter Fair Pay Act" and opposed the language.

"It deals with contracting," Mikulski said. "It deals with construction work. It does not deal with wages in that category."

The bill now will have to be reconciled with the House's version of the bill (H.R. 11), approved on a 247-171 vote Jan. 9. At that time, the House moved to combine the Ledbetter bill with the Paycheck Fairness Act (H.R. 12) after that was approved on a 256-163 vote. H.R. 12 seeks to enhance remedies for sex-based pay disparities.

Since the Senate did not act on the paycheck fairness portion of the legislation and does not intend to do so until later in the session, according to Sen. Barbara Mikulski (D-Md.), S. 181 and H.R. 11 will have to be reconciled before legislation can be sent to a supportive President Obama.

Bill Responds to High Court Ruling.

In May 2007, the Supreme Court ruled in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 100 FEP Cases 1025 (2007) that the time limits for filing a discrimination charge with the Equal Employment Opportunity Commission start to run when the employer makes a discriminatory decision about the employee's compensation, not each time the employee receives a paycheck affected by discrimination.

Aimed at reversing the *Ledbetter* ruling, the bill would amend Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act to provide that the charge-filing periods—300 days in most states and 180 days in the few states that do not have a fair employment agency—would be triggered whenever an employee is affected by application of a discriminatory compensation decision or practice.

The case involves Lilly Ledbetter, a former supervisor at a Goodyear tire plant in Alabama, who discovered that she had been receiving less pay than her male counterparts who were doing the same work. She discovered this by an anonymous note after working for the company for nearly 20 years.

Bill supporters, including Senate Health, Education, Labor, and Pensions Committee Chairman Kennedy, argue that the *Ledbetter* ruling could encourage employers to hide illegal pay decisions for 180 days, and then be "free to discriminate" by paying less wages to women, minorities, and the elderly.

Bill opponents, including committee ranking member Michael Enzi (R-Wyo.), argue that the legislation would lead to large amounts of litigation, creating "massive new opportunities to sue."

DeMint Right to Work Amendment Tabled.

The Senate also approved, on a 67-30 vote, a motion to table an amendment offered by Sen. Jim DeMint (R-S.C.) that sought to preserve the choice of individual employees to form, join or assist labor organizations, or to refrain from such activities.

"One of the biggest forms of discrimination in this country today is when we force an American worker to join a union," DeMint said. "My amendment is a right-to-work amendment."

Sen. Lamar Alexander (R-Tenn.), in opposition, said DeMint's amendment would "take away from states the right to decide whether or not they wanted to be a right-to-work state."

By Derrick Cain and Sheila R. Cherry