

Testimony of Evelyn F. Murphy, President of The WAGE Project, Inc.
Before the
United States Senate Committee on Health, Education, Labor and Pensions
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Senator Clinton, Senator Harkin, members of the Committee, thank you for the opportunity to testify today on S.766, the Paycheck Fairness Act.

By way of introduction, I am Evelyn Murphy, a Ph. D. economist, author of Getting Even: Why Women Don't Get Paid Like Men and What To Do About It and President of The WAGE Project, a national nonprofit organization dedicated to eliminating the gender wage gap. I am also a Resident Scholar at the Women's Studies Research Center at Brandeis University, Vice Chair of the Board of SBLI USA Mutual Life Insurance Company, a Director of Citizens Energy Corporation, a Director of The Commonwealth Institute, and a Trustee of Regis College. Earlier in my career I served as Lt. Governor of Massachusetts, Secretary of Environmental Affairs and Secretary of Economic Affairs. After public office, I became Executive Vice President of Blue Cross and Blue Shield of Massachusetts and a corporate director of several publicly traded financial institutions.

I outline this to explain that my remarks today combine three parts of my career. First, as an economist, I have had an interest in the gender wage gap for almost four decades. Over decades, as I watched more and more women graduating from college and entering careers, I just assumed that we would catch up with men's wages in a fairly short period of time. So, I was startled in the mid-1990s when I realized that we were nowhere near parity. I have been examining the wage gap ever since. More about that in a moment. As a former public official, I know what government can and cannot do. Government cannot regulate this nation into pay equity. We will simply never appropriate sufficient funds to supervise the pay practices of every employer. Finally, from my experience in business I know that the President, the CEOs, the boss -- whatever that top person is called -- has the responsibility and authority, but not yet sufficient accountability, to insure pay equity for all his or her employees.

With these perspectives, let me turn to my analysis of today's gender wage gap by highlighting material from my book.

The essence of Getting Even -- the product of eight years of research in which I accumulated evidence of gender wage discrimination never before assembled -- is that practically all 23 cents of the gender wage gap is caused by inequitable treatment of

working women simply because we are women. That's unfair. It is also illegal: it is discrimination.

Inequitable treatment takes money out of a woman's paycheck, which accumulates into serious financial losses over the 35 years that she typically works. Over the course of their working lives, a young woman graduating from high school this spring will make \$700,000 less than the young man standing in line alongside her receiving his high diploma. A young woman graduating from college this spring will lose \$1.2 million compared to the man getting the same degree at the same time. A woman earning an MBA, law degree or medical degree will make \$2 million less.

Because we have heard the gender wage gap ratio bandied about for decades, it has lost meaning. It has become simply a number. But once a woman personalizes this ratio by calculating what she is losing over her lifetime, I can tell you that every woman I talk to daily about this subject starts listening with laser beam intensity about why she is losing so much money. Through grassroots organizing that The WAGE Project is doing to establish WAGE Clubs – groups of women who gather to discuss their pay and treatment at work – large numbers of women are figuring out their own personal wage gap and are intent on stemming their financial losses.

Women do not realize the enormous price that they pay for gender wage discrimination because they do not see big bites taken out of their paychecks at any one time. Rather, little nicks in a woman's paycheck—a promotion delayed because she is pregnant and her boss guesses (wrongly) that she intends to shift to part-time work, a sales call she misses because her boss assumes she has gone home to cook dinner for her family, a request she makes for reassignment to escape a sexual harasser, leaving the bonus she earned behind -- all add up, over time, to become \$700,000, \$1.2 million, \$2 million.

In Getting Even you will read about employers of all kinds—businesses, corporations, government offices, nonprofit institutions, in localities throughout America, who had to pay women employees or former employees to settle claims of gender discrimination or judges and juries ordered them to pay up. The behavior of these employers vividly illustrate the commonplace forms of today's wage discrimination: barriers to hiring and promoting qualified women; arbitrary financial penalties imposed on pregnant women; sexual harassment by bosses and co-workers; failure to pay women and men the same amount of money for doing the same jobs. You will read about everyday discrimination, that is, the biases and stereotypes which influence manager's decisions about women. Acts of everyday discrimination may seem slight to a woman at the time, aggravating but certainly not worth legal action, yet these biases, too, cut into women's paychecks over time.

While all these pay-nicking activities occur daily in workplaces -- sometimes

intentional, other times simply unreflected biases – in recent years, public discourse has tried to explain away the gender wage gap as mothers opting out to raise families, women choosing low-paying professions, women preferring flex-time and part-time work. I would be glad to refute each of these as causes of the gender wage gap in our discussion. These so-called “causes” simply cannot withstand close scrutiny and commonsense as causes of the wage gap. Please do not misinterpret this point. We need pay equity AND better working conditions for working mothers. These are not trade-offs.

The gender wage gap – the fact that women earn 77 cents for every dollar that men earn—has been stuck for 14 years. Think about that. Women have been graduating from college at the same rate as men or higher for a quarter century. More and more women are the sole financial providers for themselves and their families. Women work as hard as men; women are as committed to their jobs as men. Women need their paychecks just as much as men. So if all the reasons about merit which I heard when I started work (when women earned only 59 cents for a man’s dollar!) were right, the gap today should be, in essence, zero!

Since the gap has not closed even a penny in more than a decade with women essentially equal to men by traditional measures of merit, then we have to conclude that we are looking in the wrong places to explain the gender wage gap. The gap is now not about *women’s* characteristics, it’s about *workplace* characteristics -- the policies and practices of employers and the cultures that employers sanction.

What gives me great hope today is the fact that the Paycheck Fairness Act points public attention and policy to the right place: the American workplace. This bill, with its emphasis on altering workplace pay practices, creates the appropriate conditions for American women to achieve gender pay equity once and for all. Working women are not looking to have pay equity handed to them. Women can and will take responsibility for ensuring they’re paid and treated fairly. But employers must also take responsibility to ensure that their pay policies and practices are fair and equitable. S.766 helps women and employers achieve this common goal.

So, in my time today, I would call your attention to two matters: first, the need for prompt passage of S.766; and second, consideration of specific language in the current bill.

1. The Need for Prompt Passage of The Paycheck Fairness Act

First and foremost, I urge you to act promptly on this bill because working women need help—no special treatment, no special breaks--simply the kind of help that this bill offers them. Let me explain.

Several months ago, The WAGE Project initiated a modest survey of working women. We secured their participation through collaborations with national women's organizations, specifically, the National Committee on Pay Equity, The Business and Professional Women, The Young Women's Christian Association, the American Association of University Women, and the National Organization for Women. Using these networks almost 800 working women have filled out this survey. They work in every state in the nation. They work in large corporations and small businesses, in manufacturing and financial service outfits, in nonprofit health care agencies and hospitals, social service organizations, colleges and universities and in municipal, state and federal agencies. They take home small paychecks as waitresses, modest paychecks as office managers and technicians, and relatively large salaries as senior executives, professors and physicians. While this is not a randomly selected sample of working women, their voices offer a candid window into today's working conditions and their recent experiences with pay inequity.

We asked women to respond to three questions—tell us of any recent experience(s) at work when you have been paid or treated unfairly; second, on what basis—with what data and facts—do you conclude that this treatment was inequitable or unfair; and third, what, if anything, did you do about it.

The responses are now being analyzed and a full report will be released, as planned, on Equal Pay Day, April 24, 2007. However, because the survey has direct bearing on this hearing, I would like to draw upon some survey responses to illustrate what women face and how S. 766 can assist and support them.

For example, one college educated woman in her late 40's living in the South reported: "About three years ago I worked for a major corporation in a supervisory capacity. My staff was 47 people and my male colleague's staff was 12. His salary was \$28,000, mine was \$22,500." She knew this because "I helped the manager calculate the salary increases for upcoming year. The Vice President advised me that if I told what I found out I could be fired."

The Paycheck Fairness Act would help this woman. The nonretaliation clause in Section 3 would enable this woman to raise her objections to the inequity she sees without worrying that she will be fired.

She is not alone. Many women in this survey reported fears of firing or retaliation in explaining why they chose not to act even though they had solid documentation of unfair pay. One woman said: "stayed silent. Would obtain worse treatment if confronted him," said one woman. Another: "I need this job. My husband is sick and cannot work." Another explained: "I need my salary and benefits." A former Vice President in a financial services institution, with a title and job you'd think would make her secure in raising an objection to unfair pay, explained in some detail: "I took too long to speak up.

I feared being fired. When I finally did, I was given the cold treatment. It was an awful environment to work in and since I value my health, I decided to find another career.”

Another survey respondent, a Vice President in a call center said “in the 23 years I have worked here, I have never been paid the same pay as the male managers” How did she know this? “I have total access to payroll records.”

If her company adopted the guidelines which the Secretary of Labor develops in Section 7 to enable employers to evaluate job categories based on objective criteria, this woman could use these measures to initiate an objective discussion about her pay compared with others in her job category and equivalent jobs where she works. Even if her company does not adopt these guidelines, the existence and availability of the guidelines enables women to access some objective external data to make their case about pay equity for their particular jobs with their bosses.

The survey shows that all too often, even though women can document unfair treatment, there are other reasons that they do not act. For example: they have lost hope that they can rectify their circumstances or change the culture of their workplace. One woman said: “That’s the way it has always been here.” “Just the facts of life!” exclaimed a 50 year old office manager in the Midwest. “They don’t care about the unempowered.” “I tried once, and nothing happened.”

Passage of S.766 sends these women a message: that the federal government recognizes that they are experiencing unfair and inequitable treatment and pay, is taking action to bring them external data on which to raise their objections with their employers. and is pressing employers to be more accountable for pay equity among their employees. In the absence of federal legislation for decades, many women have lost hope that their employers feel any pressure to do more to comply with anti-discrimination laws.

Financially, the passage of S.766 would give women hope that working conditions will become more equitable where they *now* work. They would not have to leave their jobs. Listen to this woman, a 37 year old case worker in a nonprofit organization. “They just hired a male and asked me to train him. He is starting out making more than me. There is (sic) certain criteria you must meet for this position which he does not meet. Then they want me to train him to do the same job I am doing.” In response to the question “what did you do about it?” she replied “Nothing, because I have to keep my job to feed my children. I am, however, looking for another job.” Her response is indicative of many others: when women encountered blatant pay inequity, often they decide to leave. Women said: “I quit.” “I gave notice and left one month later.” “I used up my vacation time and never went back.”

Don’t miss the financial point: it costs women money when they have to leave a job in order to be paid and treated fairly. They may lose several months of income until

they find another job. They lost whatever seniority they had built up with the last employer. They may have to take a pay cut if the pressure to bring in a paycheck forces them to settle for a lesser position.

One other reason why women do not act can be found in this woman's account: "I challenged it and all I received was a hostile work environment, harassment, suspension with trumped up charges. Found a law firm to take the case.... it is almost cost prohibitive to take this on. I am at \$20 thousand and counting and I haven't even gotten through the investigative phase... This is why I feel that most women do nothing. They can't get the finances to do it." I can tell you from all the women whom I've interviewed, most women who pursue litigation to the very end lose their jobs, lose their careers, lose their husbands, lose their mental health. Lose, lose, lose. The only reason they stick it out through years of litigation, they say, is because they believe they just might make their employer treat other women better. This is not the price we as a society should ask women to pay to make workplaces more equitable.

Some women did speak up, but few reported reaching an equitable resolution. "I spoke my piece about how unfair it was but nothing ever came of it." "I spoke with personnel but it was swept under the carpet" After seeing a male colleagues' pay stub left out on her desk and learning that he, with fewer credentials and less seniority, was earning 40% more than she was, "I approached HR and was told paychecks are private and I shouldn't have looked at it. I decided not to pursue it any further for fear of backlash".

The Secretary's guidelines for evaluating pay for job categories can help these women make their cases for pay equity and protect them from retaliation as well.

For all women whose employers adopt and enforce the Secretary's guidelines for pay equity, they will be working in a workplace where pay equity is not only the law, but also, where the practice of the employer and the values the employer embeds in the daily culture of the workplace. Let me be very clear, every employer should adopt the guidelines to be developed by the Secretary of Labor. That is the surest way to establish pay equity in every American workplace in the near future.

And, speaking of the future, I also urge you to promptly pass S.766 to avoid an unintended, painful legacy. Think about the economy during the last 14 years. In the late 1990s, this nation enjoyed unprecedented economic advances. Yet we couldn't close the gap through that time! Not even a penny much less all 23 cents. The fact that the gender wage gap has been stuck for 14 years tells us that there is nothing inevitable about the wage gap going away on its own *if we continue to rely only on current laws and their implementation*. We will pass on to the next generation, and the next after that—to your daughters, Senators, and your granddaughters, nieces, aunts, and all the younger women in your families whom you love and respect—the same financial losses working women

face today. Personalize that loss for your daughter or granddaughter or niece. Is that a legacy you want to pass on? Of course not. None of us wants to. But that will happen if no action is taken to address today's discriminatory treatment of women at work.

2. Specific language in the current bill.

Now I would like to draw your attention to language in several sections of the current draft.

2a. Section 3 Enhanced Enforcement of Equal Pay Requirements. (d) Nonretaliation provision.

I have already illustrated how important this provision is to help working women act on their own behalf without fear of retaliation. Some employers may resist open discussion among employees about their salaries and pay scales as this woman confirms: "my employer intimidates us. We don't dare talk about what we earn while we're working." But those employers who do treat and pay women equitably have nothing to hide. Open discussions among employees and their employer about pay and pay scales can enable *all* employees to feel fairly and adequately compensated. As I have listened to working women, they are thoughtful and fair minded about pay. More transparency about pay and pay scales in America's workplaces would be beneficial for employers and employees alike. S.766 promises to open up workplaces to healthy discussions about who gets paid what and why. I urge the committee to insist on this language in the final bill.

2b. Section 5. Negotiation Skills Training for Girls and Women.

Here are my concerns. I leave to staff to wordsmith this section.

First, I would urge language which clarifies that the intent is to focus on negotiation skills directly related to salary and total compensation matters, including not only skills in bargaining and communicating, but also, benchmarking techniques. It would be easy for rules and regulations to interpret the current language of this section to permit a broader set of negotiating skills in financial planning, flex time and other workplace conditions. These are important matters. But the key here is to maintain the priority and focus on negotiations skills training which bear directly on a woman's earnings. That is a hard task to accomplish through negotiation training and would be easy to avoid unless specifically given priority. Clarifying language to amend this section might not necessarily exclude these other topics involving a woman's finances, just establish that priority is given to funding training which bears directly on women's paychecks.

Secondly, in (a) (5) Use of Funds. In the second sentence, I would suggest substituting the words “equitable salaries and fair, equitable compensation packages for themselves” for the current language “higher salaries and the best compensation packages possible for themselves”. The purpose of this bill is to establish pay equity. Training which focuses on women getting paid what they should, what is fair compared with others where they work given their job, experience, responsibility, etc fits with the purpose of the bill. The current language suggests women training women to get promotions (higher salaries) and the most money (compensation package) they can. I have no doubt that once women get trained to negotiate for fair pay they will have the necessary skills for gaining more pay. But the intent of this bill as I understand it, is for women to achieve pay equity first. That, in itself, will be a significant outcome.

Finally, (c) Report. I hope the report includes not only “describing activities conducted under this section” but also “and an evaluation of the effectiveness of these activities in enhancing equity in women’s paychecks”. In these times of limited funds for domestic initiatives, some assessment of which training programs actually advance women’s earnings and which do not is essential. I hope the committee will require an evaluation of training programs.

2c. Section 7. Technical Assistance and Employer Recognition Program.

(a) Guidelines. The time available to prepare for this hearing did not allow me to reflect on this section in detail. So, I cannot offer suggested changes in language. But I do want to express my hopes for revised language in this section. Voluntary guidelines are just that: voluntary. However, the adoption of such guidelines by *every* employer would dramatically advance pay equity. I ask the committee to strengthen this section so that employers are incentivized to adopt these guidelines and/or conversely, face disincentives for not adopting these guidelines over some period of time.

(b) (2) Please insert “or layoffs of employees” after men in the clause (...lowering wages paid to men). Women need men as allies in achieving fair and equitable treatment where they work. This clause is intended to make clear that neither layoffs nor lowered wages are an acceptable means for employers to achieve pay equity. The experience of the State of Minnesota is illuminating on this point. Minnesota achieved pay equity (97 cents on the dollar) without one man losing a job or losing money in his paycheck. Pay equity can be achieved not a men’s expense.

2d. Section 8. Establishment of the National Award for Pay Equity in the Workplace.

(b)(1)

I would urge the committee to add language which requires applicants for this prestigious award to disclosure the relevant salaries by gender by job category which were made more equitable. The language now makes it possible for an employer to

describe worthy efforts but not report what actual effects their pay equity initiative had. Without measurable and measured advances, I would argue, no applicant should be eligible to receive this award,

2e. Section 9. Collection of Pay Information by the Equal Opportunity Employment Commission.

This section of the bill is extremely important. It has the potential to provide breakthroughs in the nation's understanding of pay inequities in today's workplaces and in the nation's capability to eliminate the discrimination which underlies pay inequity.

I hope the committee will specify access and availability of the pay information gathered under this section to researchers, public policy analysts, and social service organizations. These professionals need this data to advance our understanding of workplace discrimination and what to do about it. While the Secretary of Labor may perform studies and inform the public under Section 6, insuring access to a larger audience would stimulate the cross checks and debates of data which only develop when many and varied professionals look at the same data. The standard here ought to be the accessibility that professionals now have to data gathered by Census Bureau and the Bureau of Labor Statistics.

The designation of the EEOC as lead agency for surveying available data and determining data needed to enhance their enforcement activities is appropriate. Anticipating that some adaptation of the EEO-1 form to capture pay information appears the most likely means to collect pay information, I call to your attention how limited the availability of EEO-1 data has been to this larger community of interests. Until 2000, EEO-1 data was unavailable to almost everyone and even now, only a handful of academics have access. I respect the need for confidentiality concerning company specific data, but believe that, *with adequate resources*, the EEOC could devise ways to enable more researchers and practitioners to access EEO-1 data. The difficulty in gaining EEO-1 data has seriously limited public debate, policy formulation, and even enforcement remedies. I have tremendous sympathy for extensive enforcement mandate the EEOC implements and I do not intend this as criticism of the agency. Rather I want to ensure that, if the EEOC, becomes the collector of pay information, that the agency as the mandate and resources to make this data available to a large community of analysts and practitioners.

In summary.

Forty years ago, Title VII of the Civil Rights Act and the Equal Pay Act made gender discrimination illegal in America's workplaces and embraced the principle that

women should be paid like men when they do the same work. More recently, in the 14 years since the last Congressional hearings on pay equity, one fact stands out: our nation's progress toward reaching these goals has stalled. Prompt passage of The Paycheck Fairness Act can and will reactivate momentum.

Paycheck Fairness Act sends a strong message to working women that this nation intends to eliminate paycheck discrimination in the foreseeable future. At the same time, the Paycheck Fairness Act sends just as strong a message to employers that they can and should *pay for the job, not who does the job*. If employers do that – pay for the job, not who does the job – we will eliminate pay discrimination not just for women, but for minorities, older workers, and handicapped workers. That is the power of concepts in this bill.

I commend you on your leadership on this bill and offer to help in whatever you wish.

Thank you.