

Testimony of Evelyn F. Murphy
Before the
United States House of Representatives Subcommittee on Workforce Protections
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Chairwoman Woolsey, Congresswoman DeLauro, members of the House Subcommittee on Workforce Protections, thank you for the opportunity to testify on H.1338, the Paycheck Fairness Act.

I am Evelyn Murphy, a Ph. D. economist, President of The WAGE Project, a national nonprofit organization dedicated to eliminating the gender wage gap, author of Getting Even: Why Women Don't Get Paid Like Men and What To Do About It, Resident Scholar at the Women's Studies Research Center at Brandeis University, a corporate director, and former Lt. Governor of Massachusetts.

Gender Discrimination in Today's Workplaces and Its Cost to Working Women.

As an economist, I have been interested in the gender wage gap for almost four decades. Over those years, as I watched more women graduating from college, and more women working throughout their lives, I just assumed that we would catch up with men's wages. I was startled in the mid-1990s when I realized that we were nowhere near parity. I have been single-mindedly scrutinizing this wage gap ever since.

My book, *Getting Even* -- the result of eight years of research accumulating evidence of gender wage discrimination never before assembled -- reveals the extent to which this discrimination permeates the entire United States economy.

You can read about employers of all kinds who, in recent years, had to pay women employees or former employees to settle claims of gender discrimination; or judges and juries ordered them to pay up. These consequences and our current laws have not ended workplace discrimination. There continue to be barriers to hiring and promoting qualified women; financial penalties imposed arbitrarily on pregnant women; sexual harassment by bosses and co-workers; failure to pay women the same money as men for doing the same jobs; and biases and stereotyping which may seem slight or aggravating setbacks to a woman at the time, yet also cut into her paycheck.

Inequitable treatment takes money out of a woman's paycheck, which accumulates into serious financial losses over the 35 years that she typically works: the young woman graduating from high school this spring will make \$700,000 less than the young man receiving his high school diploma at the same time; the woman graduating

from college this spring will lose \$1.2 million compared to the man getting his degree along with her; and the woman with the newly minted MBA, law degree or medical degree will make \$2 million less.

Women don't realize the enormous sums that they lose to wage discrimination because they never see big bites taken out of their paychecks at any one time. Instead, little nicks in a 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's going home to cook dinner for her family, her request for a different shift to escape a sexual harasser—all add up, over time to become: \$700,000, \$1.2 million and \$2 million.

Also, women do not realize how much wage discrimination hurts them because we -- Congress, policy analysts, researchers -- have yet to adequately understand and address the gender wage gap. Statisticians, try as they might, have not been able to fully "explain" the gap. Why? Isn't it time to conclude that we are looking at inadequate data to explain this gap? The gender wage gap is not just about *worker* characteristics, ie. the data provided by the Bureau of Labor Statistics and Census Bureau; it's about *workplace* characteristics, too. It's time to collect data as extensively about workplaces as workers.

H. 1338 is important because it finally points public attention to the right place: the American workplace, and initiates an expanded collection of workplace data. This bill, with its emphasis on altering workplace pay practices, creates the appropriate conditions for American women to achieve gender pay equity. Working women are not looking for pay equity to be handed to them. Women can and will take responsibility for ensuring they're paid and treated fairly. Yet employers must also take responsibility to ensure that their pay policies and practices are fair and equitable. H. 1338 helps women and employers achieve these common goals and initiates the collection of workplace pay data essential to eliminating workplace discrimination.

Prompt Action Is Important.

Prompt passage of H 1338 is very important to working women. Here's why.

The WAGE Project surveyed working women through collaborations with several national women's organizations -- 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. Almost 800 working women responded. These women work in every state in the nation and in every sector of the economy. They take home small paychecks as waitresses, modest paychecks as office managers and technicians, and relatively large paychecks as senior executives, professors and physicians. While this is not a random sample of working women, their voices offer a candid window into today's working conditions and their recent experiences with pay inequity.

The loudest message of this survey is that women fear retaliation if they talk about their pay at work. The nonretaliation clause in Section 3 will help many women who fear firing or demotion. One college educated woman in her late 40's said: "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... The Vice President advised me that if I told what I found out I could be fired."

The fear factor is real. This bill will help women now silenced by fear of retaliation. Besides, fair-minded employers should want employees who suspect unfair pay to raise their questions before suspicion hardens into grievances and lawsuits and erodes their productivity.

Three out of four survey respondents reported some recent experience with unfair treatment or pay. Passage of H.1338 will give those women and others hope that working conditions will become more equitable where they *now* work and that they don't have to leave their jobs. A 37 year old case worker in a nonprofit organization said "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." She did nothing about this "because I have to keep my job to feed my children. I am, however, looking for another job." Typically, when women encountered blatant pay inequity, they said they decided to leave: "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 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 pressure to bring in a paycheck forces them to settle for a lesser position.

For 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, engrained in the practices of the employer and the culture of their workplace. *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.

Passage of H. 1338 will send working women an important message: Congress recognizes their situation, is taking action to bring them data with which they can safely raise pay equity concerns with their employers, and is pressing employers to be more accountable for pay equity among their employees. In the absence of pay equity hearings, much less legislation, over the last decade, many women have lost hope that their employers feel pressure to exercise oversight and vigilance about compliance with Title VII of the Civil Rights Act and the Equal Pay Act.

Finally, there's the future. I urge you to pass H.1338 to avoid an unwanted, painful legacy. We couldn't close the wage gap even one penny from 1994 to 2004, even

with the boom years of the late 1990s! The fact that the gender wage gap has been stuck 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*. If we do not act, we will pass on to the next generation, and the next after that—to your daughters, 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. Is that a legacy you want to pass on to them? 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.

Some Important Recommended Changes to Specific Language in the Bill.

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. H. 1338 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.

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 Congressional 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. Clarifying language to this section might not necessarily exclude these other

topics involving a woman's finances, but rather, establish that priority funding goes to 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 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. The intent of this bill, as I understand it, is to help women achieve pay equity. That, in itself, will be a significant outcome.

Finally, (c) Report. I recommend that the report include 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". An assessment of which training programs actually advance women's earnings and which do not is essential.

Section 7. Technical Assistance and Employer Recognition Program.

(a) Guidelines. Voluntary guidelines are just that: voluntary. The adoption of such guidelines by *every* employer would dramatically advance pay equity. I urge the committee to strengthen language in this section such that employers are incentivized to adopt these guidelines and conversely, disincentivized for not adopting these guidelines after some specified 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 validates this point. Minnesota achieved pay equity --women employees are now paid 97 cents for every dollar men employees earn-- without one man losing a job or losing money in his paycheck. Pay equity can be achieved not a men's expense.

Section 8. Establishment of the National Award for Pay Equity in the Workplace. (b)(1)

I urge the committee to add language which requires applicants for this award to disclose the salaries by gender and job category which were made more equitable. The language now makes it possible for an employer to describe worthy efforts but not report what, if any, actual effects its pay equity initiative had. Without documented advances, no applicant should be eligible to receive this prestigious award.

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 urge the committee to specifically guarantee 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, broad based access to pay data collected in Section 9 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 appears the most likely means to collect pay information by gender and job title, 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. The need for confidentiality concerning company specific data must be respected, but, *with adequate resources*, the EEOC can devise ways to enable more researchers and practitioners to access EEO-1 data. Limited access to EEO-1 data has seriously limited public debate and policy formulation about the gender wage gap. 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 has not only the mandate but also the 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. In the last decade, our nation's progress toward reaching these goals has stalled. Prompt passage of The Paycheck Fairness Act can and will reactivate momentum.

The 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 promise contained in this bill.

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

Thank you.