

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

R. BRUCE JOSTEN
EXECUTIVE VICE PRESIDENT
GOVERNMENT AFFAIRS

1615 H STREET, N.W.
WASHINGTON, D.C. 20062-2000
202/463-5310

July 14, 2008

The Honorable George Miller
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

The Honorable Howard "Buck" McKeon
Ranking Member
Committee on Education and Labor
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Miller and Ranking Member McKeon:

On behalf of the U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector and region, urges you to oppose H.R. 1338, the "Paycheck Fairness Act," which the Committee may markup in the near future. This bill would, among other things, expand remedies under the Equal Pay Act to include *unlimited* punitive and compensatory damages and empower the Labor Department to issue guidelines for the purposes of evaluating the pay systems of every employer in the country.

This bill is a solution in search of a problem. Title VII of the 1964 Civil Rights Act already provides adequate remedies for sex discrimination in employment, including any claim that equal pay is being denied based on sex. These remedies include punitive and compensatory damages (plus lost back pay and jury trials) capped at between \$50,000 and \$300,000, depending on the size of the employer. These provisions were adopted by Congress as part of the Civil Rights Act of 1991, after two years of hearings and contentious debate. Notably, Congress rejected provisions for unlimited damages for employment discrimination that had been contained in earlier versions of the legislation. Furthermore, it should be noted that the Equal Pay Act does not require a showing of intent. Consequently, under H.R. 1338, unlimited compensatory and punitive damages would be available for even unintentional pay disparities.

H.R. 1338 would also make significant amendments to the defenses available to employers under the Equal Pay Act. For example, employers could no longer justify paying individuals differently because they work at separate establishments, even if they were in different parts of the country with radically different costs of living. In addition, the bill would modify existing rules concerning collective actions filed under the Equal Pay Act, making it easier for plaintiffs' attorneys to mount class action suits.

Further, the bill's authorization of pay system guidelines is a thinly veiled attempt to inject the concept of "comparable worth" into discrimination law. This would involve the government second guessing employers as to the relative worth of different job types and responsibilities. The courts have long rejected this theory as both inconsistent with the law and

unworkable, potentially plunging the government into a morass of questions which are entirely subjective in nature, and thus best left to the marketplace.

In addition to significant compliance costs, H.R. 1338 would only result in increased litigation and backlogs in the courts. Litigation in employment discrimination has already exploded since inclusion of compensatory and punitive damages under Title VII. The only parties that benefit from this are the trial lawyers.

Finally, the bill makes a number of regulatory changes at the Labor Department related to equal employment opportunity requirements for federal contractors. For example, the bill appears to require the Labor Department to resume its flawed Equal Opportunity Survey instrument, even though an independent study confirmed that, with respect to employers it targeted for enforcement, 93 percent were false positives. It also appears to require the agency to use dubious statistical models for determining whether employers engage in systemic compensation discrimination, when more robust and accurate models are available and now in common use.

For these reasons, the Chamber urges you to oppose H.R. 1338 and asks that it not be voted out of Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten", written in a cursive style.

R. Bruce Josten

Cc: Members of the Committee on Education and Labor