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Testimony of Susan Frietsche, Senior Staff Attorney, on House Bill 1890 Before the House Labor and Industry Committee September 18, 2014

On behalf of the Women's Law Project and the women we serve, I wish to thank Chairman Scavello, Chairman Keller, and the members of the House Labor and Industry Committee for convening the first public hearing before a standing committee of the state legislature on Pennsylvania's Equal Pay Law in over fifty years.

I am a senior staff attorney of the Women's Law Project, a nonprofit legal advocacy organization with offices in Philadelphia and Pittsburgh. Our mission is to advance the legal and economic status of women and girls through litigation, public policy advocacy, public education, and individual counseling. Our work includes a focus on sex discrimination in the workplace. In our 2012 publication, *Through the Lens of Equality: Eliminating Sex Bias to Improve the Health of Pennsylvania's Women*, the Women's Law Project examined the health consequences of workplace discrimination on women. These consequences include a host of physical, emotional, and psychological problems which are exacerbated by the loss of health insurance and lack of access to health care that accompanies low wages and unemployment. Ensuring that women are paid fairly will promote both the economic security and the health of Pennsylvania women and their families.

Gender-based wage discrimination is unfortunately alive and persistent in Pennsylvania. The numbers say it clearly. Women working full time, year round in Pennsylvania are paid 76 cents to the dollar paid to men.¹ This means that annually, a Pennsylvania woman working full time, year round, is paid \$11,916 less a year than a man working full time, year round.² Pennsylvania's gender wage gap is the 12th largest in the country.³ For women of color the gender differences are larger. African American women are paid 64 cents to the dollar paid to white non-Hispanic men.⁴ Latina women are paid barely half— 54 cents— of each dollar paid to white non-Hispanic men.⁵

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It is more than 50 years after equal pay became the law in this country. It is 55 years since it became law in Pennsylvania. More women are working than ever before, breaking into fields which were historically closed to them, and exceeding men in educational gains. Yet, progress in closing the gender wage gap that commenced in the 1960s has slowed considerably in the last decade. The ratio of women's pay to men's pay narrowed only by 1.7 percent between 2004 and 2013.⁶ If this trend continues, women will not achieve parity with men until 2058.⁷

Unequal pay harms women — and their families — on a daily basis throughout their lives. In almost two-thirds of families with children, women are breadwinners or co-breadwinners. Women are primary breadwinners in more than 41% of families with children; they are co-breadwinners in another 23% of families with children, bringing in at least a quarter of the family income in those families.⁸ Families that are low-income are the most likely to have female primary breadwinners.⁹ For these women and families, pay discrimination means less money for food, clothing, housing, health care, and other necessities of life. It also means reduced retirement security as retirement benefits are often based on earnings. From the health perspective, sex discrimination and poverty mean greater stress which leads to a higher incidence of depression, immune dysfunction, diabetes, and cardiovascular disease among other negative health outcomes for women.¹⁰

Some people say disparities in pay between men and women are not based on gender discrimination. They say any differences in pay are due to non-gender factors, which they identify as differences in jobs, education, experience, hours of work, and time off for babies. They say these are all voluntary choices by women. They are wrong. First, it is clear these factors do not explain away the pay gap; research has found a gender pay gap remains even after controlling for these factors.¹¹ To the extent these factors have any impact on the gender pay gap, it is because they are inherently influenced by gender bias.

Let's start with occupational differences. Research shows that even in the same occupation, women make less than men. Women's median weekly earnings are lower than men's in the same occupation regardless of whether the occupation is predominantly held by women, predominantly held by men, or held by a mix of men and women.¹² One study of available data for both women's and men's median weekly earnings for full-time work for 112 occupations found that women made less than men in 109 of the 112.¹³ Typically, women were paid from 5 to 25 cents less per dollar than men. Another study found that out of 265 major occupations, men's median salaries exceeded women's in all but one.¹⁴

This pattern is true in the highest and lowest paying occupations. On the high end is the medical profession. Although women now represent nearly half of medical students in the United States, research shows a starting salary gap of \$16,819 between men and women who graduated from medical school in New York State between 1999 and 2008.¹⁵ This gap cannot be explained by gender differences in on-the-job productivity or in choice of medical specialty. On the low end, in the male-dominated occupation of janitors and building cleaners, a male earns \$511 weekly, while a woman makes only \$408 weekly. In the female-dominated occupation of maids, housekeeping and cleaners, men still make more, getting paid \$425 a week while women are paid only \$395 a week. Same job, different pay.¹⁶ Not a woman's choice she is paid less.

New studies are revealing additional examples of how women are being paid less for the same job. An August 2014 study focused on the food service industry, and found that women are paid less than men in all but one of eleven categories of food service jobs. The hourly wage gap grows as the job increases in responsibility and pay. The difference is pennies for cashiers and several dollars for managers.¹⁷

While we no longer segregate our “help wanted” ads by gender, we still have fields that are dominated by one sex or the other. In 2012, only 6% of women were employed in nontraditional occupations for women, and only 5% of men were employed in jobs that are nontraditional for men. In fact, since the late 1990s, the reduction in job segregation has stalled.¹⁸

The impact of gender segregation in jobs falls on women-dominated occupations and more heavily on jobs occupied by individuals with less education.¹⁹ That jobs dominated by men pay more and that this disparity contributes to the pay gap are not debatable.²⁰ Only two of the 25 occupations with the highest median weekly earnings for full-time workers are majority female.²¹ In the most common occupations for women and for men, women make less money than men.²² And twice as many women than men work for poverty wages.²³

Is this gender segregation something women have chosen voluntarily? Of course not. Sex discriminatory hiring and pay practices exclude women from male-dominated jobs and confine them in women-dominated jobs. Practices pervade our labor market that are influenced by stereotypes and assumptions about appropriate work for, productivity of, and commitment to work by women and mothers. Take for example the managers at Walmart who paid women less because men “are working as the heads of their households, while women are just working for the sake of working” and to earn extra money.²⁴ These discriminatory practices lead to lower pay for women, lower wage brackets for jobs dominated by women, refusal to hire women for jobs historically held by men, and employer tolerance of coworker harassment of women who try to break through these barriers.²⁵ Whether it’s a female firefighter, construction worker, or police officer, women are driven out of higher paying jobs held mostly by men.²⁶

Nor does experience justify the differentials in pay. Research that controlled for experience and other measurable qualifications still found pay differences between men and women.²⁷

Differences in education also do not explain away discrimination. Women do not stop attending school any earlier than men. In the 2009-2010 academic year, women earned the majority of bachelor’s, graduate, and professional degrees. Nonetheless, as early as their first year out of college, they experience a wage gap. Women who graduated from college in 2008 with first-time bachelor’s degrees and were working full-time one year later had annual earnings at 82% of their male counterparts.²⁸ Although the gap varies depending on the type of institution from which they graduated, women earn less than men one year after graduation across the board.²⁹

As women grow older, they experience a widening pay gap, according to a Pew Research Center report issued in December 2013. The Pew researchers examined cohorts of women in

different age groups over time, starting with those between 25 and 34 in 1980, and found that for each cohort, the gap grew over time.³⁰

Women are paid 69-77% of what their male counterparts are paid in each educational bracket, from those who did not complete high school to those who have a doctorate degree. For those who do not complete high school, women are paid 69% of what men are paid; women with a bachelor's degree are paid 74% of men's pay, and women with doctorates are paid 77% of what men with doctorates are paid.³¹

Nor is the gap accounted for by differences in hours worked, a claim asserted by those who say the gap is caused by the choices women make to work part-time in order to be home for their kids. Although mothers do tend to work fewer paid hours than fathers, research has shown that mothers suffer an unwarranted motherhood penalty. Mothers are denied promotions and wage increases based on an employer's expectation that mothers will quit or take time off. It is the use of stereotypes by employers rather than choices by mothers that reduces women's pay. When women do request part-time work, they are often paid less than men who request the same flexibility. A public defender in Blair County, for example, was paid less as a full-time public defender than her full-time male colleague; when she returned to work part-time after the birth of her child, she was paid less than her male part-time colleagues.³²

While pregnancy does not justify pay differences, women are often penalized for simply having the capacity to become pregnant. Employers pay women less from the moment of hire and deny them promotions because they automatically presume women will have children and then will commit less time and dedication to their jobs.³³ Once they become mothers, they are further penalized for motherhood. Mothers earn only 69% of what fathers earn,³⁴ and experience a per-child wage penalty of approximately 5%.³⁵ Mothers are also considered less competent and committed to paid work than women without children, and are therefore subjected to discrimination by employers making hiring and salary decisions. Fathers, on the other hand, experience a bonus when they become fathers; they are seen as more committed to paid work and are offered higher starting salaries. In addition, women are judged more harshly than men with respect to punctuality and flexibility in work schedules.³⁶

Another charge leveled at women for causing the gender wage gap is that they don't negotiate for better wages like men do. But women do ask for higher pay, and when they do, they are penalized for doing so, while men are rewarded. Both men and women (women to a lesser extent) respond more negatively to women who initiate pay negotiations than to men who initiate negotiations. Research has shown people of both genders are less likely to want to hire and work with women who ask for raises; they also are more likely to rate women who ask for raises as more demanding and uncooperative. Men who asked for raises caused no change in perception among evaluators.³⁷ To the extent that women initiate negotiation less often than men, they are most likely responding to very real social disincentives for women to negotiate.

Our courts continue to get complaints from women who are paid less than men in the same job. In the last decade, these cases included: the female vice president whose salary was ten to twenty thousand less than the other three vice presidents, all of whom received higher bonuses than she;³⁸ the senior consultant who was hired at a salary \$15,000 less than the man

hired one month after her;³⁹ a high school principal paid \$10,000-\$15,000 less than equally positioned male principals;⁴⁰ and a female manager who was fired when she complained about being paid \$14,000 less than a similarly situated male coworker.⁴¹

While these cases were filed and allowed to proceed in the face of employer opposition, they likely represent only a fraction of the instances in which women are paid less than a comparable man. Many women are unable to challenge their pay at all. Some are unaware of being shortchanged, due to employer bans on talking about wages and fear of retaliation. Some appropriately fear retaliation and loss of employment for challenging pay disparities. For others, court rulings have limited their ability to successfully challenge pay disparities that are based on their former salary or market forces, even though such factors are in fact sex-related.

HB 1890 will diminish the impact of gender stereotypes on wages and improve pay equity enforcement by amending Pennsylvania's equal pay law to require greater scrutiny of pay differences to insure that any differences that exist are in fact based on a bona fide factor other than sex that is job-related and consistent with business necessity. It will also remove the pay secrecy obstacle that prevents women from finding out if they are being paid differently. It expands Pennsylvania's equal pay law to cover all employees in Pennsylvania. Right now, our research indicates that Pennsylvania is the only state whose Equal Pay law covers only people who are not covered by the federal Equal Pay Act. As HB 1890 will make Pennsylvania's law stronger than the current federal law, we want to make sure all Pennsylvanians can benefit from it. Finally, HB 1890 expands the remedies a court can order to include reinstatement to employment, compensatory damages, and, if the employer has been intentionally or recklessly underpaying female employees, punitive damages.

Additional proposals in the Pennsylvania Agenda for Women's Health will also advance working women's economic equality and health. By approving HB 1892, the Pennsylvania General Assembly can ensure that pregnant women benefit from reasonable accommodations that will allow them to continue working during their pregnancy. Adoption of sanitary nursing accommodations provided by HB 1895 will help mothers return to and keep their jobs as will adoption of legislation to provide paid family leave and prohibit familial status discrimination. Increasing the minimum wage and taking steps to elevate pay levels for women-dominated jobs are important to achieve parity for women.

Thank you for convening this hearing. I look forward to working with you to eradicate the gender wage gap and to finally give our daughters the equal chance to thrive and succeed at work that our Commonwealth has long promised them.

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² Id., National Women's Law Center, *The Wage Gap by State for Women Overall* (November 27, 2013) available at <http://www.nwlc.org/resource/wage-gap-state-women-overall-0>, available at

<http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/americas-women-and-the-wage-gap.pdf> (hereinafter “The Wage Gap Overall”).

³ National Partnership for Women and Families, *America’s Women and the Wage Gap* (April 2014), available at <http://www.nationalpartnership.org/research-library/workplace-fairness/fair-pay/americas-women-and-the-wage-gap.pdf>; *The Wage Gap Overall*, *supra* note 2.

⁴ *Pennsylvania Women and the Wage Gap*, *supra* note 1.

⁵ *Id.*

⁶ Institute for Women’ Policy Studies, *The Gender Wage Gap: 2013 Differences by Race and Ethnicity No Growth in Real Wages for Women* (March, 2013), available at <http://www.iwpr.org/publications> (hereinafter “The Gender Wage Gap”)

⁷ *Id.*

⁸ Sarah Jane Glynn, *The New Breadwinners: 2010 Update: Rates of Women Supporting Their Families Economically Increased Since 2007*, Center for American Progress 2 (Apr. 2012), available at <http://www.americanprogress.org/wp-content/uploads/issues/2012/04/pdf/breadwinners.pdf>.

⁹ Wendy Wang, Kim Parker & Paul Taylor, *Breadwinner Moms: Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children; Public Conflicted About the Growing Trend*, 1 (Pew Research Center, May 2013), available at http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf.

¹⁰ Terry L. Fromson, Amal Bass, Carol E. Tracy, Susan Frietsche, *Through the Lens of Equality: Eliminating Sex Bias to Improve the Health of Pennsylvania’s Women, 65-95*, 117-136 (2012), available at http://www.womenslawproject.org/resources/Through_the_Lens_Equality.pdf.

¹¹ Francine D. Blau and Lawrence M. Kahn, *The Gender Pay Gap, Have Women Gone as Far as they Can?* 21 *Academy of Management Perspectives* 843 (2007) (hereinafter “The Gender Pay Gap”).

¹² Institute for Women’s Policy Studies, *The Gender Wage Gap by Occupation 2013 and by Race and Ethnicity* (April 2014), available at <http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-and-by-race-and-ethnicity-2013>.

¹³ *Id.*

¹⁴ Frank Bass, *Shining Shoes Best Way Wall Street Women Outearn Men*, *Bloomberg Businessweek*, (Mar. 16, 2012), available at <http://www.businessweek.com/news/2012-03-16/the-gender-pay-disparity>.

¹⁵ Anthony T. Lo Sasso, et. al., *The \$16,819 Pay Gap For Newly Trained Physicians: The Unexplained Trend Of Men Earning More Than Women*, 30 *Health Aff.* 193 (Feb. 2011), available at <http://content.healthaffairs.org/content/30/2/193.full.pdf+html>.

¹⁶ National Women’s Law Center, *Fifty Years and Counting: The Unfinished Business of Achieving Fair Pay 8* (2013), available at http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_equal_pay_report.pdf, (relying on Current Population Survey, Annual Social and Economic Supplement (2012); figures for full-time, year-round workers). (hereinafter “Fifty Years and Counting”)

¹⁷ Heidi Shierholz, *Low Wages and Few Benefits Mean Many Workers Can’t Make Ends Meet*, *Economic Policy Institute Briefing Paper #383*, 14 (Aug. 21, 2014) available at <http://www.epi.org/publication/restaurant-workers/>

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¹⁹ *Id.* at 4-7.

²⁰ *Fifty Years and Counting* *supra* note 16 at 5-6; *Occupational Segregation* *supra* note 18 at 13.

²¹ *Fifty Years and Counting*, *supra* note 16 at 5.

²² *The Gender Wage Gap*, *supra* note 6 at 1-2.

²³ *Id.*

²⁴ *Fifty Years and Counting*, *supra* note 16 at 4.

²⁵ *The Gender Pay Gap*, *supra* note 11 at 847-851; *Fifty Years and Counting*, *supra* note 16 at 6-7; *Occupational Segregation* *supra* note 18 at 848-850.

²⁶ *Fifty Years and Counting*, *supra* note 16 at 6-7.

²⁷ *The Gender Pay Gap*, *supra* note 11 at 843, 846-47.

²⁸ Christianne Corbett & Catherine Hill, *Graduating to a Pay Gap: The Earnings of Women and Men One Year After College Graduation* 21, AM. ASS'N OF UNIV. WOMEN (2012), available at <http://www.aauw.org/files/2013/02/graduating-to-a-pay-gap-the-earnings-of-women-and-men-one-year-after-college-graduation.pdf>.

²⁹ *Id.* at 22.

³⁰ Pew Research Center, *On Pay Gap, Millennial Women Near Parity—For Now, Despite Gains, Many See Roadblocks Ahead*, 17-18 (Dec. 11, 2013), available at http://www.pewsocialtrends.org/files/2013/12/gender-and-work_final.pdf.

³¹ *Fifty Years and Counting*, *supra* note 16 at 2-3.

³² *Kerrin Rector v. Cnty of Blair, Pa*, 2011 U.S. Dist. LEXIS 128849 (W.D. Pa.).

³³ Ariane Hegewisch, Cynthia Deitch & Evelyn Murphy, *Ending Sex and Race Discrimination in the Workplace*, Institute for Women's Policy Research, at 20 (2011), available at <http://www.iwpr.org/publications/pubs/ending-sex-and-race-discrimination-in-the-workplace-legal-interventions-that-push-the-envelope-1>; Shelley J. Correll, Stephan Benard, and In Paik, "Getting a Job: Is There a Motherhood Penalty?" 112 *American Journal of Sociology*, 1297-1339 (Mar. 2007) available at http://gender.stanford.edu/sites/default/files/motherhoodpenalty_0.pdf; Joan C. Williams & Stephanie Bornstein, *Caregivers in the Courtroom: The Growing Trend of Family Responsibility Discrimination*, 41 U. S. F. L. Rev. 171, 177-78 (2006); Vicki Schultz, *Life's Work*, 100 *Colum. L. Rev.* 1881, 1894-96 (2000); Joan C. Williams & Stephanie Bornstein, *The Evolution of 'FRD': Family Responsibilities Discrimination and Developments in the Law of Stereotyping and Implicit Bias*, 59 *Hastings L.J.* 1311, 1326 (2008).

³⁴ National Women's Law Center, *How the Wage Gap Hurts Women and Families 1* (April 2014) available at http://www.nwlc.org/sites/default/files/pdfs/wage_gap_hurts_women_and_families.pdf.

³⁵ Shelley J. Correll, Stephan Benard, and In Paik, "Getting a Job: Is There a Motherhood Penalty?" *American Journal of Sociology*, *supra* note 33.

³⁶ *Id.*

³⁷ Linda Babcock, Hannah Riley Bowles, Lei Lai, *Social Incentives for Gender Differences to Initiate Negotiations: Sometimes It Does Hurt to Ask*, 103 *Org. Behav. And Hum. Resources* 84 (2007).

³⁸ *Lorri Sue Wildi v. Alle-Kiski Medical Center*, 659 F. Supp. 2d 640 (W.D. Pa. 2009).

³⁹ *Jean Ford v. Skipping Stone, Inc.*, 2003 U.S. Dist. LEXIS 5892 (E.D. Pa. 2003).

⁴⁰ *Deborah M. Vereen v. Woodland Hills School District*, 2008 U.S. Dist. LEXIS 23075 (W.D. Pa. 2008).

⁴¹ *Sandra Marriott v. Audiovox Corp.*, 2006 U.S. Dist. LEXIS 92796 (W.D. Pa. 2006).