



Elections & Laws for Life

June 8, 2021

Dear Senator,

I write to advise you that Susan B. Anthony List, on behalf of our more than 900,000 members, opposes H.R. 7, the Paycheck Fairness Act, which was amended in the House to add a definition of sex that could force employers to cover elective abortion through employee benefits under the guise of fairness.

H.R. 7 amends the Fair Labor Standards Act of 1938 by adding “pregnancy, childbirth, or a related medical condition” to the definition of “sex,” which courts have interpreted broadly to include abortion.

The abortion implications are buried in layers of court interpretations and regulations of the Equal Employment Opportunity Commission (EEOC). The Fair Labor Standards Act (FLSA) prohibits sex discrimination in the area of employee wages. And while the FLSA does not explicitly include benefits like health coverage in its definition of wages, the EEOC has interpreted wages to include benefits. The EEOC states that the Equal Pay Act, part of the FLSA, “requires that men and women in the same workplace be given equal pay for equal work.”¹ The Department of Labor² and the EEOC further stipulate that equal pay includes benefits, and the EEOC allows a person to go straight to court with claims this provision has been violated. There is nothing preventing a person from claiming sex discrimination if an employer provides health coverage for all of men’s health services but does not pay for coverage for abortion services for women.

When the terms “pregnancy, childbirth, or related medical condition” were used in the Pregnancy Discrimination Act four decades ago, the terms were accompanied by language stating that employers could not be forced to cover abortion in health insurance benefits except to save the life of the mother. While H.R. 7 does not override that limited safeguard, it does fail to extend equivalent safeguards to address its much broader, more sweeping reach. Without abortion neutral language in H.R. 7, this legislation opens the door for employers to be sued for sex discrimination by simply refraining from funding abortion on demand in employee health plans.

Susan B. Anthony List opposes and will score against the cloture vote to proceed to H.R. 7. If cloture is invoked, we will score final passage of the Paycheck Fairness Act.

Sincerely,

Marjorie Dannenfelser
President
Susan B. Anthony List

¹ Equal Pay/Compensation Discrimination. <https://www.eeoc.gov/equal-paycompensation-discrimination>

² DOL: Equal Pay for Equal Work. [https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/internal/policies/equal-pay-for-equal-work#:~:text=The%20Equal%20Pay%20Act%20\(EPA,for%20travel%20expenses%2C%20and%20benefits](https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/internal/policies/equal-pay-for-equal-work#:~:text=The%20Equal%20Pay%20Act%20(EPA,for%20travel%20expenses%2C%20and%20benefits)