

Testimony of
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In SUPPORT of the Evelyn Gandy Fair Pay Act
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Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center ("NWLC"). NWLC has been working for nearly 50 years at the federal level and in states across the country to help enact long overdue updates to equal pay laws. Our goal has been to address the deficiencies and loopholes in the law that have made existing federal laws—the Equal Pay Act and Title VII of the Civil Rights Act of 1964—inadequate at stopping pay discrimination and closing racial and gender pay gaps.

More than 55 years after the passage of the Equal Pay Act, women are still paid less than men in all 50 states and in nearly every occupation and industry. Nationally, in 2019,¹ a woman working full-time, year-round was typically paid just 82 cents for every dollar paid to a man working full-time, year-round.² Women working full time, year-round were paid just 83 cents for every dollar paid to men in 2020 but this apparent narrowing of the wage gap fails to account for the massive job losses workers experienced during this time.

The gender pay gap is even wider for women of color. Black women are typically paid 63 cents, Native American women 60 cents, and Latinas just 55 cents for every dollar paid to white, non-Hispanic men.³ Asian American women working full-time, year-round were typically paid only 87 cents for every dollar paid to non-Hispanic, white men, and the wage gap is substantially larger for some subgroups of Asian American women.⁴

Persistent and pervasive pay discrimination is one factor driving the wage gap for women. Women's overrepresentation in low-paid jobs and underrepresentation in higher-paying, "non-traditional" jobs is another. In low-paid jobs, where women of color are especially overrepresented, the absence of workplace supports like paid family and sick leave and flexible schedules, also contribute to racial and gender wage gaps by forcing working women to cut back on their hours; take unpaid leave; or forcing them out of the workforce altogether.

Wage gaps vary from state to state, and Mississippi has one of the highest gender wage gaps in the country.⁵ Black women in Mississippi are paid just 56 cents for every dollar paid to white, non-Hispanic men. Latinas are paid just 55 cents on the dollar; Asian women 61 cents; Native American women 60 cents; and white women 75 cents. In part, because of these pay disparities and the absence of workplace and public policies to removes barriers to economic security and pay equity, Mississippi has the highest poverty rate in the country for women overall at nearly 20%.⁶ For Black women, who often experience discrimination and biases based on

their gender and race, the poverty rate is 30.3%, more than two times the rate for white women (12.9%) in the state.⁷

The impact of the wage gaps goes far beyond individual pay checks. Money lost to the gender pay gap means less money for food, childcare, and rent. For example, if the median wage of 63 cents for Black women does not close, Black women stand to lose \$2,009 each month or \$24,110 each year. This annual wage gap could have paid for seven months of food, six months of childcare, and one year of rent.⁸

In a state like Mississippi, where women are economic drivers for their families and the boarder Mississippi economy, achieving pay equity should be top priority but Mississippi remains the only state within its own equal pay law. Accordingly, it is time or Mississippi to pass comprehensive, common sense equal pay legislation aimed at closing Mississippi's sizable gender and racial pay gaps. For reasons explained below, the Evelyn Gandy Fair Pay Act is the comprehensive equal pay legislation Mississippi needs to truly advance equal pay in the state.

I. THE NEED FOR A STRONG STATE EQUAL PAY BILL IN MISSISSIPPI IS MORE URGENT THAN EVER DUE TO THE COVID-19 HEALTH AND ECONOMIC CRISIS.

The COVID-19 pandemic and the resulting economic crisis have exposed how the work performed primarily by women, and particularly women of color, continues to be synonymous with underpaid and undervalued work, even as the rest of the country is depending on it, more so now than ever. In Mississippi, women—disproportionately Black women and Latinas—are 67.7% of front-line workers risking their lives in low-paid jobs and being shortchanged compared to their male counterparts.⁹ Women are also being hit hardest by job loss and, nationally, an unprecedented 2.1 million women left the labor force from January to December 2020, including 564,000 Black women and 317,000 Latinas.¹⁰

Even before the pandemic, many women, particularly women of color, older women, women with disabilities, and single-parent households, struggled to make ends meet. Women typically loose more than \$10,000 per year to the gender wage gap with even higher losses for women of color.¹¹ Earnings lost to the wage gap have exacerbated the financial effects of the COVID-19 pandemic, falling particularly hard on women of color and the families that depend on their paychecks to put food on their tables.

For many women, the longstanding gender and racial wage gaps have left them with little to no financial cushion or savings to weather the COVID-19 economic crisis. When recovery from the pandemic is fully underway and the women who left the labor force during the pandemic return to work, existing racial and gender pay gaps may be even wider than they were pre-pandemic, as long spells out of work tend to depress wages when individuals do go back to work.¹²

II. THE EVELYN GANDY FAIR PAY ACT GIVES EMPLOYEES AND EMPLOYERS THE TOOLS THEY NEED TO CLOSE THE WAGE GAP.

Loopholes and inadequacies have arisen in federal equal pay laws and states have been driving the efforts to address equal pay by passing and strengthening their own equal pay laws. It is time for Mississippi to join those states. The Evelyn Gandy Fair Pay Act closely tracks federal law but takes important and necessary steps to address the loopholes left by federal law and close Mississippi's wage gap, in a few ways:

A. The Evelyn Gandy Fair Pay Act includes equal pay protections for other critical protected classes.

Under the federal Equal Pay Act, it is illegal for employers to pay unequal wages to men and women who perform substantially equal work. However, to fully address existing wage gaps, state equal pay laws can't just protect against sex-based wage discrimination but should also protect against racial discrimination in pay and discrimination based on other protected characteristics. While the Evelyn Gandy Fair Pay Act includes protections from pay discrimination based on race and gender alone, it is equally important to include the full spectrum of protected classes, including race, religion, sex, sexual orientation, gender identity or expression, disability, age, or national origin, because inclusion of these characteristics will help root out other discriminatory wage gaps, in addition to those based on gender. Including protections for other protected classes will also more effectively address intersectional pay discrimination that individuals may experience based on, for example, their race and gender or their disability and gender combined.

Including the full spectrum of protected classes assures that employees have the tools to address the full array of pay discrimination, including intersecting discrimination. If Mississippi extends protections against pay discrimination to other protected classes, it will join states like Alabama,¹³ Illinois, Colorado, Oregon, New Jersey, and New York, which have recently amended their laws to provide equal pay protections not only based on sex, but also race, ethnicity, and other protected characteristics.

B. The Evelyn Gandy Fair Pay Act prohibits reliance on salary history to set pay.

The Evelyn Gandy Fair Pay Act prohibits employers from relying on a prospective employee's wage history, so that pay discrimination and disparities will no longer follow women and people of color from job to job. Because women in Mississippi are systematically paid less than men, employers who rely on salary history to select job applicants and to set new hires' pay will tend to perpetuate gender- and race-based disparities in their workforce, condemning women to perpetually depressed salaries throughout their career. According to a recent study by Harvard Business Review, a significant percentage of employers who conduct pay equity audits found that relying on applicants' salary history is a key driver of gender pay gaps within their companies.¹⁴

Use of salary history as a pay-setting mechanism not only perpetuates these gender- and race-based disparities in the workforce, but it is also an imperfect proxy for an applicant's value or interest in a position. For example, particularly relevant as COVID-19 has driven millions of

women out of the workforce, extended time out of the workforce further limits the relevance of an applicant's salary history. Relying on salary history to set pay can lead to depressed wages for individuals who have previously worked in the public sector or in non-profits and are moving into the private sector. It can also deprive senior individuals with higher salaries who are looking to change jobs or re-enter the workforce the opportunity to be considered for lower paying jobs they might seek.

Fortunately, recent research shows that state salary history bans are helping to narrow gender and racial wage gaps, including increasing employer transparency when it comes to pay.¹⁵ According to a Boston University analysis of the effects of salary history bans in several states, these bans have resulted in higher wages for job-changers by an average of 8% for women and 13% for African Americans compared to control groups.¹⁶

By prohibiting employers from requiring job applicants to provide their salary history or from relying on job applicants' salary history in considering applicants for employment or determining their wages, Mississippi will be joining a national state-led movement to ban reliance on salary history. Since just 2016, Delaware, New Jersey, New York, Illinois, Maryland, Massachusetts, Connecticut, Vermont, Maine, Maryland, Oregon, Hawaii, California, Colorado, Washington, and Rhode Island, have passed similar salary history bans—all with bipartisan support. In 2019, Mississippi's neighbor, Alabama, passed its own legislation to address the impact of salary history on the pay gap: prohibiting employers from refusing to interview, hire, promote, or retaliate against job applicants for refusing to provide their salary history.¹⁷

Strong equal pay laws address reliance on salary history and these laws don't just benefit employees but businesses as well. In particular, the salary history prohibition in the Evelyn Gandy Fair Pay Act is good for Mississippi businesses, and in turn the state economy. Prohibiting reliance on salary history will help employers more accurately and equitably hire, negotiate, and set pay. It will also help Mississippi businesses attract and retain talent by ending a practice that is shown to limit talent pools.¹⁸

As a human resources professional stated in Forbes magazine, the practice of asking for salary history is "intrusive and heavy-handed . . . It's a Worst Practice . . . It hurts an employer's brand and drives the best candidates away."¹⁹ Businesses like Amazon, American Express, Bank of America, Cisco Systems, Facebook, Google, GoDaddy, Progressive, Starbucks, and Wells Fargo have all recently announced that they are no longer asking applicants to provide their salary history, recognizing that doing so perpetuates persistent gender and racial wage gaps.

C. The Evelyn Gandy Fair Pay Act also promotes pay transparency by including protections from retaliation for employees who discuss their pay.

One of the reasons that pay discrimination is so difficult to root out is that employers often institute policies or practices prohibiting or discouraging employees from discussing their compensation with their co-workers. A recent survey found that 60% of workers in the for-profit, private sector reported being formally prohibited or discouraged from discussing their wages.²⁰

You can't remedy pay discrimination if you have no idea that you are making less than the man across the hall. When workers fear retaliation or punishment for talking about their pay, any pay discrimination they face continues to go undiscovered and unchecked.

The Evelyn Gandy Fair Pay Act stops employers from prohibiting or punishing employees for asking about, discussing, or disclosing information about pay and makes clear that employees cannot contract away or waive their rights to discuss and disclose pay. At least twenty states—including Maryland, Virginia, Massachusetts, Connecticut, New Hampshire, New York, New Jersey, and Vermont—and the District of Columbia have enacted such protections in recent years.

III. Conclusion

Because the wage gap has barely budged in more than a decade, Mississippi needs to act now. The Evelyn Gandy Fair Pay Act promises to make a real difference in closing the race and gender pay gaps that have shortchanged too many in Mississippi for far too long. We urge your support of the Evelyn Gandy Fair Pay Act. Mississippi needs Mississippi-specific solutions to equal pay, and this bill offers those solutions.

¹ 2019 is the last year for which we have complete data available. Since wage gaps capture full-time, year-round workers, this year's data cannot fully capture what happened to wages in 2020. It is not possible to compare this year's data to previous years since it fails to account for the massive job losses workers, and especially low-paid workers, experienced in 2020. And 2020 wage gap data is not available for some subcategories of women. Sarah Javaid, NWLC, *Why We Cannot Take The 2020 Wage Gap and Health Insurance Data at Face Value* (Sept. 2021), <https://nwlc.org/blog/why-we-cannot-take-the-2020-wage-gap-and-health-insurance-data-at-face-value/>.

² See NWLC, *THE WAGE GAP: THE WHO, HOW, WHY, AND WHAT TO DO* (Oct. 2020), <https://nwlc.org/resources/the-wage-gap-the-who-how-why-and-what-to-do/>.

³ *Id.*

⁴ *Id.*

⁵ NWLC, *State by State: Mississippi* (2021), <https://nwlc.org/state/mississippi/>.

⁶ *Id.*

⁷ NWLC, *Black Women Wage Gap State by State*, <https://nwlc.org/wp-content/uploads/2021/03/Black-Women-Wage-Gap-State-By-State-2021-v2.pdf>

⁸ Jasmine Tucker, *It's Time to Pay Black Women What They're Owed*, NWLC (July 2021), <https://nwlc.org/wp-content/uploads/2020/07/BWEPD-2021-7.26.21.pdf>.

⁹ NWLC calculations using 2014-2018 American Community Survey (ACS), 5-year sample, using IPUMS-USA, available at <https://usa.ipums.org/usa/>. Front-line workforce defined using methodology outlined in Hye Jin Rho, Hayley Brown, & Shawn Fremstad, Center for Economic Policy Research, *A Basic Demographic Profile of Workers in Frontline Industries* (Apr. 2020), available at <https://cepr.net/a-basic-demographic-profile-of-workers-in-frontline-industries/>.

¹⁰ NWLC COVID-19 Jobs Day Report, <https://nwlc.org/resources/2020-jobs-day-reports/>

¹¹ See *supra* note 2.

¹² While the wage gap may have shrunk recently by some measures, it has done so for the wrong reasons. An analysis of weekly earnings data during the pandemic reveals although the wage gap narrowed in 2020, it was because the lowest paid women were more likely to lose their jobs during the COVID-19 pandemic, meaning they are no longer counted when calculating women's median weekly earnings. *Equal Pay Day 2021: The Results of a*

COVID-Impacted Economy, INST. WOMEN'S POL'Y RESEARCH (Mar. 24, 2021), <https://iwpr.org/media/in-the-lead/equal-pay-day-2021-the-results-of-a-covid-impacted-economy>.

¹³ Alabama's equal pay law prohibits wage discrimination on the basis of sex or race. Code of Ala. § 25-1-30 (2019).

¹⁴ See HARV. BUS. REV. ANALYTIC SERVS., *Pulse Survey: Navigating the Growing Pay Equity Movement: What Employers Need to Know About What To Do 5* (2019), <https://resources.trusaic.com/pay-equity-resources-hub/harvard-business-review-trusaic-pulse-survey>.

¹⁵ Benjamin Hansen & Drew McNichols, *Information and the Persistence of the Gender Wage Gap; Early Evidence from California's Salary History Ban* (Feb. 1, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3277664; Bessen, James; Meng, Chen; Denk, Erich, *Perpetuating Inequality: What Salary History Bans Reveal About Wages* (June 24, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628729.

¹⁶ Bessen, James; Meng, Chen; Denk, Erich, *Perpetuating Inequality: What Salary History Bans Reveal About Wages* (June 24, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3628729.

¹⁷ NWLC, *Progress in the States for Equal Pay* (Nov. 2020), <https://nwlc.org/wp-content/uploads/2019/11/State-Equal-Pay-Laws-2020-11.13-v2.pdf#:~:text=WASHINGTON%3A%20Washington%20amended%20its%20equal%20pay%20law%20to,making%20a%20position%20transfer%2C%20or%20making%20the%20promotion.19>.

¹⁸ Moshe A. Barach & John J. Horton, *How do Employers Use Compensation History: Evidence From a Field Experiment* (CESifo, Working Paper No. 6559, 2017), <http://moshebarach.com/wp-content/uploads/2017/06/WageHistory.pdf>.

¹⁹ Liz Ryan, *When Someone Demands Your Salary History, Give Your Salary Requirements Instead*, *Forbes* (Jan. 16, 2017), <https://www.forbes.com/sites/lizryan/2017/01/16/when-they-demand-your-salary-history-give-your-salary-requirement-instead/#944ba255a8bb>.

²⁰ *On the Books, Off the Record: Examining the Effectiveness of Pay Secrecy Laws in the U.S.* (Jan. 2021), <https://iwpr.org/wp-content/uploads/2021/01/Pay-Secrecy-Policy-Brief-v4.pdf>.