

Title: The UO Senate opposes any further efforts by the UO Administration to limit the availability of the Equal Pay Act's protections in professional settings

Number: US20/21-10

Date of Notice: Moved on 3/25/2021, Resolution

Co-Sponsors: Bill Harbaugh (Economics and Senator), Beatrice Dohrn (Law), Avinnash Tiwari (English), Josh Razink (Career Research Senator), Jay Butler (Staff Senator), Dare Baldwin (Psychology), Gina Psaki (RL), Jason Silveira (Music and Dance), Pedro Garcia-Caro (RL), David Wacks (RL), Gina Herrmann (RL), Jennifer Presto (Comp Lit), Deborah Green (Religious Studies), Maram Epstein (EALL), Kate Thornhill (Libraries), Juanita Deveraux (RL), Robert Davis (RL), Gabriele Hayden (Libraries and Senator), Dave Fowler (Libraries), Franny Gaede (Libraries), Mary Greci (Libraries), Elizabeth Peterson (Libraries), Kristy Bryant-Berg (English and CAS Hum Senator), Elizabeth Wheeler (English), Amalia Gladhart (RL), Courtney Thorsson (English), Annie Zeidman-Karpinsk (Libraries), Jenna Travers (ASUO Senator), Julia Lesage (English Emerita), Mary Greci (Libraries), Sarah Adam-Schoen (Law), Ellen Herman (History), John Bonine (Law), Susan Gary (Law Emerit), Michelle McKinley (Law), Merle Weiner (Law), Kristen Bell (Law), Lynn Stephen (Anthropology), Dare Baldwin (Psychology), Margaret Sereno (Psychology), Lous Moses (Psychology Emerit), Paul Slovic (Psychology), Jenny Ellis (LCB), Debra Merskin (Journalism), Lamia Karim (Anthropology), Autumn Shafer (Journalism), CJ Pascoe (Sociology), Allen Malony (Computer and Information Science), Tina Boscha (English), Dan Tichenor (Political Science), Alison Gash (Political Science), Rebecca Dinwoodie Flynn (Wayne Morse Center), Jocelyn Hollander, (Sociology), Roberta Mann (Law), Ellen Scott (Sociology), Elizabeth Tippet (Law), Nathan Whalen (RL), Edward Davis (Museums and Senator), Colin Koopman (Philosophy and Senator), Holly Arrow (Psychology), Paul Dassonville (Psychology), Dominick Vetri (Law, Emerit), Priscilla Yamin (Political Science), Michael Dreiling (Sociology), Kara Clevinger (English), Kata Bahnsen-Reinhardt (CRES), Jessica Vasquez-Tokos (Sociology), Erin Beck (Political Science), Mike Urbancic (Economics), Madonna Moss (Anthropology), Mary Jaeger (Classics), Joanna Goode (Education), Kristin Yarris (Global Studies), Marie Vitulli (Math Emerit), Amanda Powell (RL Emerit), Sara Hodges (Psychology), Jeff Todahl (Education), Marc Vanscheeuwijck (Musicology), Kristin Buxton (Libraries), Gordon Lafer (LERC), Ibrahim Gassama (Law), Michael Fakhri (Law), Kari Marie Norgaard (Sociology), Fabienne Moore (RL), Leah Middlebrook (COLT/RL), Gyoung-Ah Lee (Anthropology), Beata Stawarska (Philosophy), Carol Silverman (Anthropology), Janis Weeks (Biology Emerit), Julie Wiese (History), Annika Mayne (ASUO Senator).

Preamble:

This resolution by the University of Oregon Senate states the Senate's support for the outcome of the March 15th 2021 judgment of the Ninth Circuit Court of Appeals which required a trial on the issue of whether UO Professor of Psychology Emerit Jennifer Freyd is entitled to relief under Equal Pay Act, and it states the Senate's opposition to the Administration seeking to establish a precedent that would limit faculty and other professionals from redress of pay discrimination under the Equal Pay Act by requesting review at the US Supreme Court.

Background links: 9th Circuit Opinion [here](#). Video of oral arguments [here](#). AAUP Amicus brief etc [here](#). COACHE study of gender bias in retention raises [here](#).

Motion:

Section I

1.1 Whereas: Psychology Professor Jennifer Freyd has brought a case against the University of Oregon alleging that she is paid substantially less than male colleagues in the Psychology Department who hold the same full professor position, have less seniority, and are no more accomplished.

1.2 Whereas: The University took the position that the case should be dismissed without a trial to weigh the evidence, arguing that the Equal Pay Act's requirement of nondiscrimination does not apply to professors of the same rank and seniority, because their jobs are not similar enough, and also arguing that gender differences in pay caused by the way it handles retention raises are necessary to "retain talent," and that it would be too expensive to take account of retention raises and pay equitable salaries to all faculty.

1.3 Whereas: The initial court decision dismissed the suit, holding that the Equal Pay Act does not apply to university professors, Professor Freyd appealed to the Ninth Circuit Court of Appeals. Forty-seven civil rights groups and the AAUP filed briefs in support, detailing the broad injury the University Administration's position would cause to pay equity if professors (and by extension most other professionals) were foreclosed from making a factual case of entitlement to equal pay and having a jury weight the individual facts.

1.4 Whereas: On March 15, 2021, the Ninth Circuit Court of Appeals said that the UO's argument "would gut the Equal Pay Act for all but the most perfunctory of tasks" and ruled that university professors should not, as a matter of law, be excluded from the

protection of the Equal Pay Act; and that Professor Freyd should have the chance to present her case in court.

1.5 Whereas: The University's request for hearing by the full 9th Circuit was denied on April 23, 2021. The Administration previously announced that it would consider seeking review by the US Supreme Court in this event. Regardless of the ultimate outcome, should the effort to gain further review of the 9th Circuit decision be successful, the University of Oregon's name, reputation, and brand will be forever associated with a position on the wrong side of history.

Section II

2.1 Therefore be it moved that: The University Senate declares its belief that university professors should not be excluded from the protection of the Equal Pay Act, and in particular that if women professors believe that the policies and procedures followed by any university have resulted in them receiving lower pay for equal work, they should have the right to present their case in a court of law and to challenge policies and procedures that result in inequitable pay.

2.2 Be it also moved that: The University Senate rejects the suggestion that it is a legitimate "business necessity" to engage in practices with discriminatory results, as the university has argued in this case with respect to retention raises.

2.3 Be it finally moved that: The University of Oregon Senate asks the University President to direct its counsel not to seek further review, and the senate wants all to know that the University of Oregon Administration's and its attorney's efforts to create a legal precedent that would prevent faculty and other professionals from using the Equal Pay Act to sue for redress of discrimination are **not done in our name**.