

Statement of

The Honorable Russ Feingold

United States Senator

Wisconsin

September 23, 2008

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Senate Judiciary Committee

Hearing on "Barriers to Justice: Examining Equal Pay for Equal Work"

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Mr. Chairman, thank you for holding this hearing, and I want to commend Lilly Ledbetter for her courage and for the tremendous work she is doing to combat discrimination.

I know many of my colleagues, both on and off this Committee, share my disappointment and frustration that, despite all the gains women have made since gaining the right to vote 100 years ago, they still make 77 cents on the dollar compared to their male counterparts. It is hard to believe that this pay disparity continues to exist in the 21st century. Unfortunately, the pay disparity not only exists, but is even larger in my state of Wisconsin, which has one of the biggest wage gaps in the nation. According to data gathered by the Institute for Women's Policy Research (IWPR), in 2002, women's salaries were approximately seventy-one percent of men's salaries in Wisconsin. The wage gap gets even larger when you look at the earnings of minority women throughout Wisconsin. In 1999, African American women's salaries were only around 63 percent of white men's' salaries while Hispanic women's salaries were only 59 percent of white men's' salaries according to an analysis of Wisconsin's wages by IWPR.

These troubling wage gaps exist throughout the country and, thanks to the flawed Supreme Court decision in Ms. Ledbetter's case, it is now even more difficult for hard working Americans to seek legal redress for this inequity in the workplace.

As Mr. Mehri notes in his testimony, Lilly Ledbetter's experience 'typifies the uphill battle that American workers face' in efforts to right the wrong of pay discrimination. After she found out that she was being paid less than her male counterparts, she filed a complaint with the EEOC and then brought a lawsuit in federal court in Alabama. The federal district court ruled in her favor, but last year, the Supreme Court

ruled that Ms. Ledbetter had filed her lawsuit too long after her employer originally decided to give her unequal pay. Under Title VII of the Civil Rights Act of 1964, an individual must file a complaint of wage discrimination within 180 days of the alleged unlawful employment practice. Before the Ledbetter decision, the courts had held that each time an employee received a new paycheck, the 180-day clock was restarted because every paycheck was considered a new unlawful practice.

The Supreme Court changed this long-standing rule. It held that an employee must file a complaint within 180 days from when the original pay decision was made. Ms. Ledbetter found out about the decision to pay her less than her male colleagues well after 180 days from when the company had made the decision. Under the Supreme Court's decision, Ms. Ledbetter was just too late to get back what she had worked for. It did not matter that she only discovered that she was being paid less than her male counterparts many years after the inequality in pay had begun. And it did not matter that there was no way for her to find out she was being paid less until someone told her that was the case.

In Ms. Ledbetter's case, to put it simply, the Supreme Court got it wrong. It ignored the position of the Equal Employment Opportunity Commission and the decisions of the vast majority of lower courts that the issuance of each new paycheck constitutes a new act of discrimination. It ignored the fact that Congress had not sought to change this longstanding interpretation of the law.

The Court's decision also ignores realities of the American workplace. Perhaps we lose sight of this in Congress, since our own salaries are a matter of public record, but the average American has no way of knowing the salary of his or her peers. As Ms. Ledbetter noted, there are many places across the country where even asking your coworkers about their salary would be grounds for dismissal.

The Fair Pay Restoration Act, which has been pending in the Senate since shortly after the Supreme Court's erroneous decision, re-establishes a reasonable timeframe for filing pay discrimination claims. It returns the law to where it was before the Court's decision, with the time limit for filing pay discrimination claims beginning when a new paycheck is received, rather than when an employer first decides to discriminate. Under this legislation, as long as workers file their claims within 180 days of a discriminatory paycheck, their complaints will be considered.

This bill also maintains the current limits on the amount employers owe once they have been found to have committed a discriminatory act. Current law limits back pay awards to two years before the worker filed a job discrimination claim. This bill retains this two-year limit, and therefore does not make employers pay for salary inequalities that occurred many years ago. Workers thus have no reason to delay filing a claim. Doing so would only make proving their cases harder, especially because the burden of proof is on the employee, not the employer.

Opponents say that this bill will burden employers by requiring them to defend themselves in costly litigation. This is simply not the case. Most employers want to do right by their employees and most employers pay their employees fair and equal wages. This legislation will only affect those employers who underpay and discriminate against their workers, hoping that employees, like Ms. Ledbetter, won't find out in time. The Congressional Budget Office has also reported that restoring the law to where it was before the Ledbetter decision will not significantly affect the number of filings made with the EEOC, nor will it significantly increase the costs to the Commission or to the federal courts.

The impact of pay discrimination continues throughout a person's life, lowering not only wages, but also Social Security and other wage-based retirement benefits. This places a heavy burden on spouses and children who rely on these wages and benefits for life's basic necessities like housing, education, healthcare, and food. This discrimination can add up to thousands, even hundreds of thousands, of dollars in lost income and retirement benefits. In these challenging economic times, the Congress and the courts need to do all they can to ensure that the wages and retirement savings of American men and women are protected and not subject to attack by flawed court decisions or legislative inaction.

Mr. Chairman, thank you again for holding this hearing to examine yet another mistaken Court decision that threatens the livelihood of hardworking American families. I am a proud co-sponsor of the Fair Pay Restoration Act, and I was disappointed when it failed in the Senate by just four votes earlier this year. I hope we will pass it quickly in the next Congress. Of course, women are not the only group that faces pay discrimination and we need to do more to protect the employment rights of minorities, people with disabilities, and other protected groups of workers. I stand ready to work with you and others on this Committee on this important issue.