

STATEMENT OF BETTY DUKES, LEAD  
PLAINTIFF IN *WAL-MART, INC. V. DUKES*,  
BEFORE THE COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE

BARRIERS TO JUSTICE: HOW THE SUPREME  
COURT'S RECENT RULINGS WILL AFFECT  
CORPORATE BEHAVIOR

JUNE 29, 2011

On June 20th, the United States Supreme Court ruled that the class action against Wal-Mart Stores, Inc., that I have led for the past decade, in which we allege widespread sex discrimination in pay and promotions, cannot go forward as a single case. We have an overwhelming amount of evidence that Wal-Mart's policy of letting its managers use their personal biases, rather than merit, to make pay and promotion decisions was the same in each store. But the Supreme Court said our claims were not sufficiently similar to be tried together. In the short run, this decision will force us to break up our case into pieces, bringing smaller class cases where we can do so while leaving tens of thousands of women to pursue their claims individually. Most of the women who were part of this class cannot afford their own lawyer or are just hesitant to sue the biggest company in America. If they don't fit within the smaller cases we plan to bring, then these women will never have their day in court. And this decision will also mean that, while this case is already 10 years old, we may have to wait several more years just to prove our case, much less to get the relief we deserve. Meanwhile, Wal-Mart can continue to discriminate against its women workers without being accountable to any court in this country.

I have been a Wal-Mart employee for over 17 years. I started working for Wal-Mart as a part-time cashier in the Pittsburg, California store. I came to Wal-Mart with nearly 25 years of retail experience. At Wal-Mart, I felt like there would be opportunities for me to advance upwardly in the company, especially in the area of management. From the very start, I told my store manager that I was interested in advancement and asked for additional training. My first obstacle that I had to overcome was a 90 day probationary period for new hires. My store manager explained to me that I was not eligible for any advancement until that time period had expired. But I did notice that that requirement did not hold back some of the male employees from getting a promotion.

I also noticed that as time went by, my store rarely posted any in-store opportunities for promotions. When management did post opportunities before this lawsuit was filed, I only saw postings for hourly positions, never for management positions. Yet, I was keenly aware how some of the men in my store were moving upwardly in various positions that would lead to management. In most cases, when management went through the motion of putting a sign-up sheet for hourly positions on the wall, by the time the sheet went up those positions normally had already been given away.

After 17 years of working in the same place, I have encountered and seen many disparities and many ways in which women have been treated differently than men. I am aware of men who were hired in my store with little to no training who were making more per hour than women who had much more seniority and were fully trained to do the same job. In fact, after the lawsuit began, I found out that two men who had been hired long after I was were paid more as Greeters than I was. Wal-Mart allowed its managers broad discretion in making pay raise and promotion decisions based on their own personal biases.

In fact, the only promotion I ever received at Wal-Mart was to a position that hadn't been posted. After speaking frequently of my interest in advancement, I was promoted in June 1997 to the position of Customer Service Manager, an hourly, non-managerial job. Two years later, after suffering from discipline for actions which men were free to take without punishment, I was demoted to a cashier position and my pay was cut. In my nearly 25 years of working in retail before coming to Wal-Mart, I had never been disciplined even once. I remained a cashier for several years until I was reassigned to the position of Greeter.

Notwithstanding the many challenges I have faced personally at Wal-Mart, I am determined not to let Wal-Mart force me out of my job. As a result, I still work at a store in Pittsburg, California, where I have been my entire Wal-Mart career. I remain a Greeter today.

Because I was aware that the disparities in treatment that I saw affected many more women than just me, I decided to bring this lawsuit. I filed this class action lawsuit in June 2001. Through the lawsuit, we have found a lot of evidence that Wal-Mart managers and executives have viewed women as less valuable workers than men. Managers at stores around the country, for example, have openly explained they were paying men more than women because they believe men have families to support while women do not. Managers have also justified their preference for selecting men for management jobs by telling women that men make better managers in retail work and that women should stay home with their families.

In fact, when another of the plaintiffs who worked at a different store found out a male co-worker in the same position was making \$10,000 a year more, she was told to bring in her household budget so her manager could decide

whether she deserved to receive as much pay as the co-worker. Even then her salary remained far below his.

The fact gathering in this case also uncovered evidence that top executives said and did things that showed they held similar views of women. The executive who headed the SAMS Club division, that provides discount, bulk merchandise, repeatedly referred to the women employees as Janie Qs and girls. The program that all employees who become managers must complete tells them that the reason there have been so few women in top management is because men are more aggressive in seeking advancement. And the head of Wal-Mart's human resources department wrote to these top executives for years warning them that there were fewer women in management than expected, even saying one year that Wal-Mart was behind the rest of the world in its treatment of women.

I wasn't surprised when my attorneys shared with me that Wal-Mart's workforce data showed men were promoted into management much faster than women and that women were paid less than men with the same qualifications who were doing the same work at the same stores. As of 2004, when the court allowed the case to go forward as a class, this data showed that about 65% of all hourly employees in the stores were women but only 33% of the managers, and only 14% of the store managers, were women. It has taken women nearly twice as long to get promoted into management than men. This data also shows that women working at Wal-Mart stores were paid less than men in every one of the 41 regions in this country and that the pay gap has widened over time in favor of men.

Notwithstanding this evidence and mountains more like it, the Supreme Court ruled that our claims, challenging sex discrimination in pay and promotions, can't go to trial together. This case was brought to stop widespread discrimination at Wal-Mart, to change the company's culture, and to get paid the wages we lost because we were treated differently than men. The Supreme Court's decision will make it much harder and more expensive for us to achieve any of those goals. Instead of challenging these practices in a single case, we're going to have to bring multiple cases challenging the same practices in courts around the country. It's going to be much more expensive for us to try multiple cases, instead of one. And we won't be able to try our case in one place, before one court or jury and have a single determination made whether Wal-Mart has been discriminating against its women employees. Many women will have to file cases on their

own, and there are tens of thousands or hundreds of thousands more who will never have their day in court. These women will never have an opportunity to determine whether they were subjected to discrimination during their employment with Wal-Mart.

I also believe our civil rights are only as valuable as the means exist to protect them. By making it much harder to bring civil rights class actions, I believe the Supreme Court has weakened our rights to be protected against sex discrimination altogether.

Justice Ginsburg was right that this decision has stopped this case, and others like it, at the starting gate. We just want our chance to prove our case and to bring together the claims of the women who want to challenge the same discriminatory practices. I certainly understood that when Congress passed the laws that ban job discrimination, it expected that those laws could, and often would, be enforced by groups of workers who claim to have been subject to the same kind of discrimination. I hope this Committee will look into whether legislation is needed to put the law back to where it permitted class actions that could challenge company-wide discrimination.

We will press on with our case against Wal-Mart for ourselves and for the women who have worked there and continue to work there, despite the roadblocks that the Supreme Court has erected. Our fight is not over. The Supreme Court did not rule on the merits of our case. But, there is no doubt in my mind, that the Supreme Court has made it much easier for companies like Wal-Mart to avoid accountability for their unlawful and discriminatory behavior.