

Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
June 11, 2008

Statement Of Senator Patrick Leahy
Chairman, Senate Judiciary Committee
Hearing On
"Short-change For Consumers And Short-shrift For Congress?
The Supreme Court's Treatment Of Laws
That Protect Americans' Health, Safety, Jobs, And Retirement"
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I called this hearing today to shine a light on how the Supreme Court's decisions affect Americans' everyday lives. Often, the Court's rulings come into focus when they involve divisive cultural issues. Lately, however, many Court observers have noticed that business interests have been the big winners, over workers and consumers. In this worsening economy, mothers and fathers are struggling with health care coverage, the uncertainty of retirement, credit card payments and mortgages. Congress has passed laws to protect Americans in these areas, but in many cases, the Supreme Court has ignored the intent of Congress in passing these measures, oftentimes turning these laws on their heads, and making them protections for big business rather than for ordinary citizens.

For almost two decades, Lilly Ledbetter worked as the sole female supervisor in a major, national corporation. Her diligence helped send her children to college, and helped her and her husband plan for the future. Before her retirement, Ms. Ledbetter received an anonymous note showing the salaries of her male counterparts. Even the lowest paid male supervisor was earning 20 percent more than she was for the same job, despite having far less experience and seniority than she did. She would later learn that the pay difference was even greater, because she was also shortchanged on bonuses, retirement benefits, and overtime pay. Ms. Ledbetter clearly proved to the jury that she had been illegally discriminated against. But the Supreme Court reversed the verdict, and created a bizarre interpretation of the law. Her employer will never be held accountable for its illegal actions. The Court's ruling tells other corporations that they can discriminate with impunity, so long as they keep their illegal actions hidden long enough. A majority of Senators support overturning the Court's decision, but 43 Senators on the other side of the aisle are preventing us from even proceeding to consider this remedy. By filibustering the Lilly Ledbetter bill, those Senators are standing behind the Supreme Court's terrible interpretation of our anti-discrimination laws.

At today's hearing, we will focus on several laws designed to protect Americans' health, safety and retirement. We will hear testimony today from two brave women who, like Ms. Ledbetter, have or will be denied relief and justice as a result of Supreme Court rulings. There are thousands more like them outside this hearing room who have been adversely affected by rulings which slam the courthouse door shut and encourage corporate misconduct. Years ago Congress passed a landmark law known as ERISA to ensure that workers with employer-sponsored health insurance or retirement benefits could count on them when they needed them. But the Court has so distorted this law that it provides no relief for individual beneficiaries, when the companies and insurers entrusted with administering their benefit plans violate the law or the terms of the employees' plans. Moreover, the Court has held that it was the intent of Congress to take away pre-existing state law remedies for workers. The result: Congress' monumental effort to safeguard workers and their families has literally left them more vulnerable than they were before the law was passed. Great jurists from the late Justice White to Justice Ginsburg have decried how preposterous, unjust, and incompatible with Congress' true intent this result is. The late Judge Ed Becker, former Chief Judge of the Third Circuit, best captured the impact of this line of cases when he observed that the interpretation had devolved from the protection of ordinary Americans that was intended into a catch-22 and "into a shield that insulates HMOs from liability for even the most egregious acts of dereliction...directly contrary to the intent of Congress."

The Supreme Court has narrowly interpreted another law designed to protect Americans who rely on medical devices to keep them alive. Unfortunately, here again, the Supreme Court's interpretation has transformed the law into one that takes away protections from people by extinguishing long-standing state law remedies which hold corporations accountable when they are aware of potential dangers but hide them from consumers. As a result, Americans are not only deprived of a remedy under state law but are offered no replacement remedy under Federal law.

The last set of laws to be examined here today involves lending institutions used by Americans to finance their homes, and credit cards used for everyday purchases. In this context as well, the Court has interpreted Federal legislation in such a way that strips consumers of the right to benefit from more protective state laws. These decisions also serve to shield corporations from their misconduct. This affects everyone's pocketbook.

These Supreme Court rulings have occurred with little public attention, but have had a tremendous impact on the lives of many Americans. There has been plenty of academic discussion about the radical changes that this Court is making to preemption and federalism. But the health and retirement guarantees provided by Congress were not meant to be merely rhetorical commitments. They are essential to give every American the chance to lead a rich and full life.

In light of the troubling Supreme Court rulings we will examine today, Congress may be again required to step in with remedial action to clarify our intent, as was done in 2006 with the Voting Rights Act reauthorization. Congress is seeking to do the same with the Lilly Ledbetter bill. To paraphrase my friend and civil rights hero Congressman John Lewis, in our system of checks and balances we must meet every judicial step backward with a legislative step forward. The problem, however, with any legislative fix is that the Supreme Court might again strip it of its purpose. I hope today's hearing will be a first step in contributing to the understanding of the impact the Supreme Court has on our daily lives. I look forward to the testimony of our witnesses and thank them for traveling to be with us today.

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