

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

September 23, 2008

Statement of Chairman Patrick Leahy

Senate Judiciary Committee

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

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This is another in a series of hearings we have held highlighting how court decisions affect Americans' everyday lives. Today, in addition to the Supreme Court, we will examine the importance of the Federal Courts of Appeal, since the Supreme Court hears only about 75 cases per year.

Equal pay for equal work should be a given in this country. Unfortunately, the reality is still far from this basic principle. As Jill Biden reminded us all recently, American women still earn only 77 cents for every dollar earned by a male counterpart and that decreases to 62 cents on the dollar for African-American women and just 53 cents on the dollar for Hispanic-American women. She is right to say that equal pay is not just a women's issue, it is a family issue.

I am pleased to welcome to today's hearing a brave woman who is a champion for equal pay. Lilly Ledbetter embodies the classic American story. She was a working mother in a Goodyear Tire plant. After decades of service, she learned through an anonymous note that her employer had been discriminating against her for years. She was repeatedly deprived of equal pay for equal work. That affected her family, and this discrimination continues to affect her retirement benefits.

A jury of her peers found that Lilly Ledbetter had been deprived of over \$200,000 in pay, and ordered the corporation to pay her additional damages for their blatant misconduct. Incredibly, the United States Supreme Court overturned her jury verdict, created a bizarre interpretation of our civil rights laws, and ignored the realities of the American workplace. Ms. Ledbetter's employer, Goodyear Tire, will never be held accountable for its illegal actions. The Court's ruling sends a signal to other corporations

that they too can discriminate with impunity, so long as they keep their illegal actions hidden long enough.

The current Supreme Court seems increasingly willing to overturn juries who heard the factual evidence and decided the case. In employment discrimination cases, statistics show that the Federal Courts of Appeal are five times more likely to overturn an employee's favorable trial verdict against her employer than they are to overturn a verdict in favor of the corporation. That is a startling disparity for those of us who expect employees and employers to be treated fairly by the judges sitting on our appellate courts.

Set to be argued before the Supreme Court this fall are several more cases affecting women whose very livelihoods hang in the balance. In addition to cases involving domestic violence protections and Title IX, they will consider cases that involve: (1) whether retired employees should be penalized for leave they took related to their pregnancies; (2) whether a children's musician who had her arm amputated has any right to recover against the drug company who caused her injury; and (3) whether an employee asked to participate in an internal sexual harassment investigation could be fired for simply reporting sexual harassment in her workplace.

When corporations discriminate against women paycheck after paycheck, it should not be tolerated. The civil rights protections enacted by Congress must be made real by enforcement. That means equal pay for equal work.

Our courts are an essential mechanism to enforce the civil rights laws that Congress has passed - laws that protect women, the elderly, minorities, and the disabled. Those laws are reduced to hollow words on a page if judges issue rulings like the one rendered by the Supreme Court in Lilly Ledbetter's case.

A few months ago when the Senate tried to correct the Supreme Court's unjust decision in the Ledbetter case, we fell just a few votes short of breaking through the Republican filibuster of that legislation. A senior Republican Senator who was not present for the vote, and who thus effectively supported the filibuster, claimed that the real problem is not discrimination, but that women just need more training. For those of us who know that women are more educated and better trained than ever before, this was a surprising perspective. Despite their training women still receive only 77 cents for every dollar men make for the same work. I hope that today's hearing will be a chance to recognize the realities of the American workplace, the importance of fairness and the indispensable role that our Federal courts play making sure that all Americans receive equal pay for equal work.

As the economy continues to worsen, many Americans are struggling to put food on the table, gas in their cars, and money in their retirement funds. It is sad that recent decisions handed down by the

Supreme Court and Federal appellate courts have contributed to the financial struggles of so many women and their families.

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