

**Testimony of Marcia Greenberger  
Co-President  
National Women's Law Center**

**U.S. House of Representatives Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
“Impact of Ledbetter v. Goodyear on the  
Effective Enforcement of Civil Rights Laws”  
June 28, 2007**

Ms. GREENBERGER. Thank you. I am Marcia Greenberger, co-president of the National Women's Law Center, and I very much appreciate the opportunity to testify here today on behalf of the Leadership Conference on Civil Rights to discuss the important ramifications of the *Ledbetter* decision. And I would ask that the full statement of Wade Henderson, the president and CEO of the Leadership Conference, who was unable to be here today, be submitted and be part of the record.

Mr. NADLER. Without objection.

Ms. GREENBERGER. Thank you very much. As has been discussed and, Mr. Chairman, as you have eloquently described, the *Ledbetter* decision has had enormous adverse implications for those who face discrimination on the basis of their sex, race, national origin, age, disability and religion, and, certainly, I think it is very difficult for anyone sitting in this room not to be moved by the courage that was shown by Ms. Ledbetter and the injustice——

Mr. NADLER. Apparently, it was not for the 20 Members of the Education and Labor Committee.

Ms. GREENBERGER. Well, it is very distressing that that is the case, and I have to say in response to that that it is all well and good for those to say that they oppose discrimination in the workplace, but if they also oppose having laws that actually give us the tools to eliminate that discrimination, then those words of support for the ultimate goal ring hollow, and that is what I think those who unfortunately oppose the legislation that was marked up in the Committee yesterday would cause to happen.

What we have here and we have been talking about is a statute of limitations. In fact, there is a statute of limitations that would apply in title VII cases and would remain unchanged. Plaintiffs who suffer discrimination can only recover for a limited period of time, going back just a few years from the time that they complain of the pay discrimination at issue, and that would have been and was a limitation in the amount that Ms. Ledbetter was awarded by the jury and by the judge below. What is at issue here, obviously, is when the actual complaint of the discrimination has to be made, and I must say, with all due respect to Mr. Mollen, that what we have here is a situation of Goodyear benefiting every paycheck month after month, year after year. How could Goodyear justify

the fact that it knew it was paying all of its male employees similarly situated to Ms. Ledbetter so much more money every month than Goodyear was paying her? As Ms. Ledbetter pointed out, not only is she suffering those consequences today with lower pension benefits, with Goodyear pocketing the amount of money that she and her family should be having right now, but, for all those years, Goodyear was pocketing the amount of money they should have paid her that she should have been able to accumulate in her savings and use for herself or her family, and they are the ones who have been enriched by this decision unfairly, and they are the ones who are not being held accountable for their current actions by this 5-4 decision by the Supreme Court.

I have a second point I want to make, and that is in bringing a lawsuit, it is the plaintiff who has a very high burden to show that discrimination, to prove the discrimination. It is not the defendant who has the burden of proving that the discrimination did not exist. It is the plaintiff, especially in the courts these days, who has an extremely difficult burden of showing that the discrimination did exist.

The fact that Ms. Ledbetter was able to show such severe and unfair discrimination that she suffered and that was reflected in the jury award and the judge's—the trial judge who heard the testimony—own comments and reaction to the case is testimony to how strong her case was, how she was able to meet that burden, how weak the case was for Goodyear, not based on one manager, but based on each time that she was getting that paycheck and each time that Goodyear had to know—someone had to know—that they were working out a paycheck that was lower for her, and, obviously, someone gave her that anonymous piece of paper because it was known by Goodyear up until the present time when she filed that complaint.

I have another point to make, and that has to do with the issue of retaliation. Mr. Mollen properly pointed to the fact that we would like employees to come forward and to try to work out claims of discrimination and file complaints, but we know, all of us who live in the real world, that if one is the only woman in the job and is suffering retaliation and is dealing with harassment, to willy nilly expect this person to file a complaint with the Equal Employment Opportunity Commission while she is trying to keep her job and without her having a sense that she has a slam-dunk case, as we have heard that term being used, to just see if she can rely upon the goodwill of Goodyear to work it out is very naive, and, therefore, simply filing early complaints is not realistic.

And I would like to close also with respect to this damages issue. The caps have not only allowed Goodyear to take a pitiful amount of money, \$300,000, a billion-dollar company, as a cost of doing business, a piddling cost of doing business, to continue to pocket that discriminatory pay, but also that cap reduces the ability for each kind of discrimination, not just the pay decimation, but any subsequent retaliation would have been able to be done to Ms. Ledbetter and other employees like her all within the cap. So they could retaliate with impunity.

And, therefore, that is why this whole case shows that the 180- day fix needs to be made and that these arbitrary caps which reduce the ability to get full relief and have full

enforcement of title VII also have to be changed.

And finally, if you would indulge me for one last very quick point, we do not have caps right now for certain victims of employment discrimination under section 1981, but we do have caps for other victims. It has become a defense for women of color to be told by employers, “Oh, no, we are not discriminating against you on the basis of your race. We are discriminating against you on the basis of your gender, and that is why we do not owe you a full recompense for the injury you suffered.” That is simply unacceptable. Thank you.

Mr. NADLER. Thank you.