



January 22, 2008

The Honorable Edward Kennedy
Chair, Committee on Health, Education, Labor and Pensions
United States Senate
Washington, DC 20510

The Honorable Michael Enzi
Ranking Member, Committee on Health, Education, Labor and Pensions
United States Senate
Washington, DC 20510

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Re: ACLU urges the Committee to support S. 1843, the “Fair Pay Restoration Act”

Dear Chairman Kennedy and Ranking Member Enzi:

On behalf of the American Civil Liberties Union (ACLU), and its hundreds of thousands of members, activists, and fifty-three affiliates nationwide, we thank the Committee for holding a hearing on S. 1843, the “Fair Pay Restoration Act.” S. 1843, whose companion measure, H.R. 2831, passed the House of Representatives July 31, 2007, is necessary to ensure that victims of workplace discrimination receive effective remedies. We urge the Committee to support S. 1843 in order to fix a recent Supreme Court decision that undermines protections against discrimination in compensation that have been bedrock principles of civil rights laws for decades.

On May 29, 2007, the Supreme Court ruled in *Ledbetter v. Goodyear* that workers cannot sue for the later effects of past wage discrimination. According to the 5-4 decision, the majority held that Ms. Ledbetter did not have a valid claim of wage discrimination because she had not filed her complaint within 180 days of Goodyear’s initial discriminatory pay decision, even though her salary clearly reflected years of discriminatory actions by her employer. The majority’s holding is true regardless of when an employee discovers the discrimination, and despite the fact that each subsequent paycheck carries forward an employer’s intentionally discriminatory wage decisions. For Ms. Ledbetter, not only was it not immediately apparent to her when the pay discrimination began, but her employer kept it secret, preventing her from gathering the information that would have been necessary to file a complaint within 180 days of the original discriminatory decision.

The Supreme Court’s decision to sharply limit workers’ opportunities to address wage discrimination jeopardizes the robust application of our civil rights laws, which are intended to ensure that salary decisions are not infected by discrimination. The decision is also at odds with the realities of the workplace. As Supreme Court Justice Ruth Bader Ginsburg discussed in her dissent, the realities of a place of employment may prevent employees from detecting pay

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discrimination when it first occurs – it might take years to discover or happen by accident. Indeed, the majority of workers may never know the salaries of their coworkers. Many employers instruct employees not to share financial information at all. According to a recent study, only one in ten private sector employers has adopted a pay openness policy. Moreover, often pay disparities occur in small increments building up slowly, but steadily in an insidious way. Cause to suspect discrimination is at work may happen over time.

The Court's decision has implications beyond Title VII, including for pay discrimination claims brought under the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act. S. 1843, which addresses wage disparity based on race, color, religion, sex, national origin, age, and disability, clarifies that such discrimination is not a one-time occurrence that starts and ends with a pay decision, but that each paycheck represents a continuing violation by the employer.

Critically, this legislation will ensure employers do not profit from years of discrimination simply because their employees were unaware of it. Far from imposing a new rule on employers, however, reversing the *Ledbetter* decision would restore Congress' legislative intent, as well as the law that prevailed in the majority of federal circuits and at the EEOC before the Supreme Court's ruling. It reaffirms the fundamental principle that our civil rights protections are intended to have a broad remedial purpose – to make persons whole for injuries suffered because of unlawful employment discrimination.

This bill is a modest and logical fix. American workers should know that they are protected from wage discrimination and are able to challenge such discrimination when it is known to them. The ACLU strongly urges the Committee to support this legislation.

If you have any questions please contact Deborah J. Vagins at (202) 715-0816 or dvagins@dcacclu.org.

Sincerely,



Caroline Fredrickson
Director



Deborah J. Vagins
Policy Counsel for Civil Rights
and Civil Liberties

cc: Members of the Senate Committee on Health, Education, Labor and Pensions