

Over Ginsburg's Dissent, Court Limits Bias Suits

By Robert Barnes
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A Supreme Court once again split by the thinnest of margins ruled yesterday that workers may not sue their employers over unequal pay caused by discrimination alleged to have occurred years earlier.

The court ruled 5 to 4 that Lilly Ledbetter, the lone female supervisor at a tire plant in Gadsden, [Ala.](#), did not file her lawsuit against Goodyear Tire and Rubber Co. in the timely manner specified by Title VII of the Civil Rights Act of 1964.

The decision moved Justice [Ruth Bader Ginsburg](#) to read a dissent from the bench, a usually rare practice that she has now employed twice in the past six weeks to criticize the majority for opinions that she said undermine women's rights.

Speaking for the three other dissenting justices, Ginsburg's voice was as precise and emotionless as if she were reading a banking decision, but the words were stinging.

"In our view, the court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination," she said.

Last month, Ginsburg rebuked the same five-justice majority for upholding the federal Partial Birth Abortion Ban Act and for language in the opinion that she said reflected "ancient notions about women's place in the family and under the Constitution -- ideas that have long since been discredited."

Yesterday she said that "Title VII was meant to govern real-world employment practices, and that world is what the court today ignores." She called for Congress to correct what she sees as the court's mistake.

In a case that [Justice Samuel A. Alito Jr.](#) said was easily decided on the statute "as written," her statement from the bench was noteworthy.

Marcia Greenberger, co-president of the National Women's Law Center, said Ginsburg's attention-getting dissents are a "clarion call to the American people that this slim majority of the court is headed in the wrong direction." She noted Ginsburg's background as a feminist legal activist who helped establish women's legal rights and added: "To see them being dismantled is especially troubling."

While Greenberger and others said the court's decision in *Ledbetter v. Goodyear Tire and Rubber Co.* was a "setback for women and a setback for civil rights," business groups applauded the "fair decision" that, in the words of the [U.S. Chamber of Commerce](#), "eliminates a potential wind-fall against employers by employees trying to dredge up stale pay claims."

A jury had originally awarded Ledbetter more than \$3.5 million because it found "more likely than not" that sex discrimination during her 19-year career led to her being paid substantially less than her male counterparts.

An appeals court reversed, saying the law requires that a suit be filed within 180 days "after the alleged unlawful employment practice occurred," and Ledbetter could not prove discrimination within that time period.

She had argued that she was discriminated against throughout her career, receiving smaller raises than the men received, and that each paycheck that was less was a new violation.

Alito wrote for the majority that "current effects alone can't breathe life into prior, uncharged discrimination." He was joined by Chief Justice John G. Roberts Jr. and Justices [Anthony M. Kennedy](#), [Antonin Scalia](#) and [Clarence Thomas](#). Thomas is a former chairman of the [Equal Employment Opportunity Commission](#).

"We apply the statute as written, and this means that any unlawful employment practice, including those involving compensation, must be presented . . . within the period prescribed by the statute," Alito said.

Robin Conrad, executive vice president of the National Chamber Litigation Center, said: "If the court ruled the opposite way, employers could have been hauled into court on decades-old claims of discrimination."

But Ginsburg, joined by Justices [John Paul Stevens](#), [David H. Souter](#) and [Stephen G. Breyer](#), said the decision sets up a sometimes impossible barrier. "Pay disparities often occur, as they did in Ledbetter's case, in small increments; only over time is there strong cause to suspect that discrimination is at work," she wrote.

Even when unequal pay is discovered, she wrote, women may be reluctant to go to federal court over small amounts: "An employee like Ledbetter, trying to succeed in a male-dominated workplace, in a job filled only by men before she was hired, understandably may be anxious to avoid making waves."

Ginsburg's empathetic statement added that "the same denial of relief" would apply to those alleging discrimination based on race, religion, age, national origin or disability.

Ledbetter, like Ginsburg a woman in her 70s, said she was "disappointed, very, very disappointed" with the decision. "I worked a lot of years doing the hard work and not to get paid as much as the men will affect me every day in the future" in the form of lower retirement benefits, she said.

Judith L. Lichtman, a senior adviser to the National Partnership for Women and Families, said that is what Ginsburg's dissents speak to.

"She talks about the real-world consequences of Supreme Court decisions on the lives of women," Lichtman said.

Ginsburg has been the court's lone female member since Alito replaced Justice [Sandra Day O'Connor](#) in January 2006, and both women have expressed consternation about that in interviews since then.


"The word I would use to describe my position on the bench is 'lonely,' " Ginsburg told [USA Today](#) this year. Asked what difference O'Connor's departure would make, Ginsburg said only: "This term may be very revealing."

Richard Lazarus, co-director of Georgetown University Law Center's Supreme Court Institute, said that reading a dissent from the bench is significant for a justice. "It's a different order of magnitude of dissent," he said.

Lazarus said Ginsburg's dissents "may be signifying an increasing frustration."

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