"The Need to Assure Adequate Remedies for Workers Subjected to Intentional Violations Civil Rights Laws"

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I appreciate the opportunity to come before you today to discuss the need to examine the problems created for victims of intentional employment discrimination following the Supreme Court's decision this Term in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*[1] My testimony will focus on two important issues arising from *Ledbetter*: the need to restore protection for victims of pay discrimination by correcting the Court's specific ruling with respect to the statute of limitations under Title VII and the pressing need to provide adequate remedies to all victims of intentional discrimination by lifting the caps on compensatory and punitive damages currently imposed by Title VII. Because the statute of limitations issue has received the most attention to date, the bulk of my testimony will pertain the issue of caps on damages.

The *Ledbetter* case dramatically illustrates the need for each of these two reforms. As the record of her litigation reveals, Lilly Ledbetter suffered from a form of entrenched pay discrimination on the basis of sex, characteristic of a male-dominated workplace where she worked as the only woman area manager for a major corporation. Over the course of her 19-year employment at Goodyear, Ledbetter's salary fell 15 to 40 percent below the salaries of her male counterparts, despite the fact that she performed substantially the same job as the men. Ledbetter

[1]Slip Opinion, No. 05-1074 (May 29, 2007).

was successful at trial: the jury determined that Goodyear had intentionally discriminated against her on the basis of sex and awarded her backpay, compensatory and punitive damages for a total amount of $3,843,041.93. However, largely because of the statutorily-imposed cap on compensatory and punitive damages under Title VII,[2] the trial judge was compelled to cut the jury's verdict to $360,000.00, a sum considerably below that which the court itself determined that a reasonable jury would find sufficient to punish and deter Goodyear from discriminating in the future.[3] At the Supreme Court, Ledbetter's recovery was taken away completely when the 5-4 majority ruled that her claim was untimely and barred by the statute of limitations.

1. The Ledbetter Rule on the Statute of Limitations is Unfair to Victims of Pay Discrimination and Creates Perverse Incentives for Employer Behavior

The *Ledbetter* decision rejected the longstanding "pay-check accrual rule" that had permitted victims of pay discrimination to bring claims under Title VII if they received a paycheck tainted by illegal discrimination within the statute of limitations period. The Court's ruling now requires that a worker challenge an employer's initial *decision* to discriminate in pay within Title VII's short limitations period (typically within 180 days, or 300 days in states with fair employment agencies), or lose forever the right to challenge ongoing discrimination traceable to that earlier decision. The rule has created a nearly insuperable obstacle for victims of pay discrimination, as highlighted by Justice Ginsburg's detailed dissent inviting Congress to

[2] *See* 42 U.S.C. § 1981a(b) (3) (2006).

[3] Ledbetter v. Goodyear Tire and Rubber Co., No. 99-C-3137-E (N.D. Ala. Sept. 24, 2003).

correct the Court's "parsimonious" reading of Title VII.[4]

Simply put, under the *Ledbetter* ruling, victims of pay discrimination are likely to be left without a remedy under Title VII because of the realities of how pay discrimination typically occurs and is uncovered in today's workplace. The *Lebetter* rule is untenable because it requires employees to challenge a discriminatory pay decision at a time when they are unlikely to have the kind of information necessary to raise a suspicion that their pay is discriminatory, for the simple reason that employers rarely disclose company-wide salary information and the fact that powerful workplace norms often discourage employees from comparing their pay to others in the workplace.[5] The strict limitations of *Ledbetter* are especially harsh on new hires who are often in no position to realize that their starting salaries are inequitable and are likely to perceive that they have been a victim of discrimination only years later when the disparity in pay has greatly magnified and compounded.[6]

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[4] *See* Slip Opinion at 19 (Ginsburg, J., dissenting) ("Once again, the ball is in Congress' court. As in 1991, the Legislature may act to correct this Court's parsimonious reading of Title VII.").

[5] *See* Leonard Bierman & Rafael Gely, *Love, Sex and Politics?" Sure. Salary? No Way: Workplace Social Normand and the Law*, 25 Brekeley F. Emp. & Labor L. 167, 168, 171 (2004) (noting that one-third of the U.S. private sector employer have policies prohibiting employees from discussing salaries and that many more communicate informally an expectation of confidentiality with respect to employee salaries.)

[6] *See* Deborah L. Brake, *Retaliation*, 90 Minn. L. Rev. 18, 28-37 (2005) (discussing social

The *Ledbetter* decision puts discrimination victims in a Catch-22 position. Under the Court's ruling, employees are faced with a dilemma: to preserve their right to contest pay discrimination, *Ledbetter* requires them to complain at the very first hint of discrimination, but, under prevailing Title VII law, employees have no protection against employer retaliation if it is later determined that their internal complaint of discrimination was "unreasonable."[7] Because few employees will be willing to risk retaliation by complaining to their employers "too soon,"[8] the *Ledbetter* rule will likely operate as a practical bar to examination of the kind of entrenched pay disparities that have produced the persistent gap in pay between men and women in the American workforce

If left uncorrected, the Court's ruling is *Ledbetter* will also create perverse incentives for

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science research documenting a "minimization bias" in which targets of discrimination resist perceiving and acknowledging it as such, even when they experience behavior that objectively qualifies as discrimination); Joanna L. Grossman, *The Culture of Compliance: The Final Triumph of Form Over Substance in Sexual Harassment Law,* 26 Harv. Women's L.J. 3, 25-26 (2003); Brenda Major & Cheryl R. Kaiser, *Perceiving and Claiming Discrimination,* in THE HANDBOOK OF RESEARCH ON EMPLOYMENT DISCRIMINATION: RIGHTS AND REALITIES 279, 295-296 (discussing the importance of social support as a factor influencing the decision to report discrimination).

[7] *See* Clark County School District v. Breeden, 532 U.S. 268, 271 (2001).

[8] For a sampling and critique of some of the lower court rulings applying the retaliation standard, see Brake, *Retaliation, supra* note 6, at 82-102.

employer behavior: it will reward those employers who have not internally taken steps to eliminate sex bias in pay by allowing them to pocket the gains derived from illegal – but undetected – discrimination. Because *Ledbetter* now provides employers with immunity from lawsuits challenging pay discrimination that is not immediately discovered and made the subject of a lawsuit, the ruling discourages, rather than encourages, employers to reassess their own pay scales and correct salary inequities. In this respect, the *Ledbetter* rule actually works against the parmount goal of curbing Title VII lawsuits through the prevention of discrimination and the private resolution of employee complaints internally.

Finally, the Court's harsh reading of the statute of limitations in *Ledbetter* was entirely unnecessary to protect employers from disproportionate liability for claims of backpay. Because an explicit provision of Title VII already limits backpay awards to a maximum of two years from the date the charge was filed,[9] there is built-in protection against an undue burden being imposed on employers. The net effect of *Ledbetter* is thus to deny plaintiffs with meritorious claims of pay discrimination from pursuing their claims under Title VII, leaving a wide gap in the protection against salary discrimination, not only for women, but particularly for victims of race and other forms of discrimination who have no right to sue under the Equal Pay Act. [10]

2. Title VII's Combined Cap on Compensatory and Punitive Damages is Arbitrary and Harms Victims of the Most Severe and Egregious Forms of Discrimination

[9] *See* 42 U.S.C.§2000e-5(g) (2006).

[10] *See* Slip Opinion at 17 (Ginsburg, J. dissenting).

Even before Lilly Ledbetter's jury award was taken away completely by the ruling of the Supreme Court, it was reduced substantially by the trial court, in order to comply with the cap on damages currently imposed under Title VII. Since damages were first introduced by the 1991 Civil Rights Act, the amount of compensatory and punitive damages has been keyed to the size of the employer. For large employers such as Goodyear who employ more than 500 employees,[11] the statute sets a cap on the combined amount of compensatory and punitive damages at $300,000. The cap for smaller employers is even lower, set at $50,000 for employers with 15-100 employees, $100,000 for employers with 101-200 employees, $200,000 for employers between 200-500 employees.[12] The caps cover a wide range of compensatory damages for injuries suffered by victims of employment discrimination, including not only mental anguish and emotional pain, loss of enjoyment of life and other non-pecuniary losses, but also future pecuniary losses.[13] Notably, the Title VII cap is a combined cap on both compensatory and punitive damages, in contrast, for example, to many state law caps on tort malpractice awards, which often target punitive damages only.[14] Under the current statutory

[11] Goodyear's website indicates that it employs more than 75,000 associates. http://www.goodyear.com/careers.

[12] 42 U.S.C. § 1981a(b)(3) (2006).

[13] 42 U.S.C. § 1981a (b) (3)(2006).

[14] *See* Catherine Sharkey, *Unintended Consequences of Medical Malpractice Damages Caps*, 80 N.Y.U. L. Rev.391, 496 (2005).

scheme, there is no provision that adjusts the caps to take into account cost-of-living increases or inflation, and judges have no discretion to waive the caps in individual cases to respond to especially serious injuries or egregious violations of Title VII.

In addition to damage caps, both the statute and the case law governing the award of damages under Title VII impose significant restrictions on recovery. Most importantly, the explicit language of Title VII allows the award of compensatory and punitive damages only if the plaintiff proves *intentional* discrimination.[15] Thus, damages are not recoverable in cases of disparate impact involving unintentional discrimination.[16] The statute also contains express limitations on the recovery of punitive damages: in addition to proving intentional discrimination, to be eligible for punitive damages, plaintiffs must prove that the employer acted with "malice or with reckless indifference to the federally protected rights of an aggrieved individual."[17] After passage of the 1991 Act, the Supreme Court further tightened the requirements for eligibility for punitive damages in *Kolstad v. American Dental Ass'n.*,[18] ruling that employers can escape liability for punitive damages if they have made "good faith efforts to

[15] 42 U.S.C. § 1981a (a) (1) (2006).

[16] Employers who violate the ADA also escape damages in reasonable accommodation cases where they can prove they have made good faith efforts to accommodate the disabled individual, even if the accommodation is determined not to satisfy the ADA. 42 U.S.C. § 1981a(a)(3) (2006).

[17] *See* 42 U.S.C.§1981a (b)(1) (2006).

[18] Kolstad v. American Dental Ass'n, 527 U.S. 526 (1999).

enforce an antidiscrimination policy,"[19] despite any malicious or reckless behavior on the part of its managerial employees.

As they currently stand, the caps interfere with the two primary purposes which inform Title VII: to prevent and deter discrimination and to "make victims whole" for injuries suffered on account of employment discrimination.[20] Because of their very nature, caps on damages do not serve to screen out meritless claims or to streamline litigation. Instead, they have the greatest impact in two types of cases: (1) cases in which plaintiffs are able to prove that they have suffered severe injuries and thus deserve a large award for compensatory damages and (2) cases involving egregious behavior on the part of an employer warranting a punitive damage award sizeable enough to deter such an employer from discriminating in a like manner in the future.

Two recent disability discrimination cases illustrate the inequity of imposing caps on compensatory damages in cases in which plaintiffs prove that they have suffered severe emotional distress and other personal injuries as a result of the defendant's discriminatory behavior. In one case,[21] Ulysses Hudson, a former employee of the Department of Homeland Security was awarded $1.5 million in compensatory damages after proving that he was hurt, both financially and emotionally, from retaliatory and discriminatory behavior on the part of his supervisor, which included stalking, harassment and threats to plaintiff's property. Due to the severity of his harm, Hudson was unable to return to work, ultimately was forced to file for

[19] Kolstad, 527 U.S. at 546.

[20] Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975).

[21] Hudson v. Chertoff, 473 F.Supp. 2d 1286 (S.D. Fla. 2007).

Chapter 13 bankruptcy, and proved through medical testimony that he suffered post-traumatic stress disorder, anxiety, and depression because of the defendant's treatment of him. Nevertheless, the trial court was compelled by the Title VII caps to reduce his compensatory damages to $300,000, representing only 20% of his damages as assessed by the jury. In another disability case,[22] an employee of a state prison who had been illegally refused accommodation for his severe asthma had his compensatory damages reduced from $420,300 to $300,000, despite proof of serious harm, including mental suffering over a period of two years, economic hardship, termination, and actual physical injury.

There is no justification for denying the most seriously injured plaintiffs their right to be "made whole." Particularly in civil rights cases involving intentionally discriminatory behavior, federal law should guarantee that it is employers, not victims, who should pay for the proven costs of discrimination, as determined by the facts of the particular case. The current Title VII scheme that sets an artificial limit on compensatory damages based on the size of the employer denies employees their right to individualized justice and may unfairly force victims to forego medical treatment or other services needed to repair the damage caused by a violation of their civil rights.

3. The Title VII Caps on Damages Undermine the Deterrent Effect of Federal Civil Rights Law

[22] Muller v. Costello, 997 F.Supp. 299 (N.D.N.Y. 1998). *See also* Peyton v. DiMario, 287 F.3d 1121 (D.C. Cir. 2002) (compensatory damages reduced from $482,000 to $300,000 in sexual harassment suit); Velez v. Roche, 355 F. Supp.2d 1022 (N.D. Cal. 2004) (compensatory damage award of $505,623 reduced to $300,000 in sexual harassment suit).

When Congress authorized the imposition of punitive damages in the 1991 Civil Rights Act, it reinforced its longstanding commitment to enforce Title VII law in a manner designed to prevent future discrimination. Since the 1970s, the Supreme Court has described the primary objective of Title VII as "prophlylactic" in nature, creating incentives for employers "to self-examine and self-evaluate their employment practices" in order to eliminate discriminatory practices before they cause any additional harm.[23] By permitting plaintiffs to sue for punitive damages, Congress recognized that punitive damages are tailor-made to punish and deter and thus can be an important means to assure that violators do not simply write off the amount they pay to discrimination victims as an acceptable cost of doing business. By providing that punitive damages would be available only in a small subset of intentional discrimination cases in which plaintiffs also prove "malice or reckless indifference to federal rights," Congress carefully balanced the deterrent effect of punitive damages against the interest of employers in being free from disproportionate punishment.

Unfortunately, the caps on damages – particularly in cases involving large employers – work against these objectives. In many cases of egregious discrimination by employers, the caps reduce damage awards so substantially that they effectively destroy any meaningful deterrence. As one trial court recently stated, an employer must "feel the pinch" of punitive damages if they are to accomplish the objective of simultaneously punishing reprehensible conduct and

[23] Albemarle Paper Co. v. Moody, 422 U.S. at 418.

restraining employers from violating the law once again.[24]

The devastating effect of the caps can best be seen in Patrick Brady's recent case against Wal-Mart Stores. Brady suffered from cerebral palsy, a serious disability that affected his physical mobility, vision, balance, as well as his ability to read and to drive. He proved to a jury that Wal-Mart intentionally discriminated against him in numerous ways, including transferring him from the pharmacy to collecting shopping carts in the store's parking lot, asking prohibited questions in the application process before making a conditional offer of employment, and failing to meet its obligation to offer him a reasonable accommodation. The evidence in the case showed that Wal-Mart had continued to ask Brady the same type of prohibited questions it had previously agreed to abandon when it had entered into a consent decree in an earlier case and that Wal-Mart employees were ignorant of the anti-discrimination policies that Wal-Mart had previously agreed to disseminate. The magistrate judge concluded from the testimony that the company had "wilfully failed to provide [its employees] with sufficient training to abide by the anti-discrimination law."

The jury awarded Brady $5 million in punitive damages, which the trial judge reluctantly reduced to $300,000 to stay within the statutorily-imposed caps of the ADA which incorporates the Title VII limitations on damages.[25] In the court's words, slashing the award in the case "respect[ed] the law, but it d[id] not achieve a just result."[26] The court expressed concern that for

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[24] Brady v. Wal-Mart Stores, Inc., 2005 WL 1521407 (E.D.N.Y. 2005).

[25] *See* 42 U.S.C.§1981a (a)(2) (2006). The plaintiff in Brady was able to recover her compensatory damages under New York state law which does not cap such awards.

[26] Brady, 2005 WL 1521407 *4.

"corporate behemoths such as Wal-Mart," such a small punitive damages award would have virtually no deterrent value, given that Wal-Mart's total net sales for 2004 were $256 billion and it took only 37 seconds to achieve sales equal to the $300,000 it was required to pay to Mr. Brady. The court lamented the fact that "there is no meaningful sense in which such an award can be considered punishment" and expressed the view that it was unlikely that "the award in this case can suffice to restrain Wal-Mart from inflicting similar abuses on those who may be doomed to follow in Brady's footsteps."[27]

Other courts have noticed that the Title VII caps undermine the deterrent effect of the law. In the *Ledbetter* case itself, the trial judge took care to point out that although an award of $500,000 in punitive damages represented a "sufficient amount to punish and deter Goodyear,"[28] he was required to lower the punitive damages portion of the award by more than $200,000 under that amount in order to stay within the statutory limit. Additionally, a district court in Kansas remarked that a jury award of $1 million in punitive damages was reasonable, given the compelling evidence of sexual harassment offered by the plaintiff in that case.[29] The plaintiff, Sharon Deters, established that she was subjected to a sexually hostile work environment by her manager who persistently ignored her complaints of harassment by male employees. Rather than

[27] Brady, 2005 WL 1521407 *5.

[28] Ledbetter v. Goodyear Tire and Rubber Co.., No. 99-C-3137-E (N.D. Ala. Sept. 24, 2003).

[29] Deters v. Equifax Credit Information Services, Inc., 981 F.Supp. 1381, 1388 (D. Kan. 1997).

punishing the harassers, the manager responded by reminding plaintiff that her harassers were "revenue producers" and that she was not a revenue producer and explaining to her that "being called a fucking cunt" was just part of the "roughness" of the job. The court noted that, in its view, the jury acted "with calculation and reason" in awarding Deters $1 million in punitive damages and recognized that such a verdict was needed "to sting the defendant"– a multi-billion dollar company – and "deter it from allowing sexual harassment in the future."[30] Nonetheless, the court was required to reduce the award to $300,000, after applying the statutory cap.

It should be noted that because the Title VII cap is a combined cap on compensatory and punitive damages, it is particularly harsh. In one egregious case of religious discrimination, for example, the plaintiff Albert Johnson proved that his supervisor subjected him to a hostile environment.[31] In part because the supervisor was annoyed that Johnson had asked for Sundays off, he called Johnson "a religious freak" and told him that "he was tired of his religious bullshit."[32] The supervisor and co-workers also repeatedly made fun of Johnson's religious beliefs, in lewd and highly offensive language. The jury awarded Johnson $400,000 in compensatory damages and $750,000 in punitive damages. The total award was reduced to the statutory cap of $300,000. In reviewing the case, the appellate court noted that because the jury's $400,000 award for compensatory damages was higher than the cap, the result was the same as if no punitive damages had been awarded.[33]

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[30] Deters, 981 F.Supp. at 1388.

[31] Johnson v. Spencer Press of Maine, Inc., 364 F.3d 368 (1st Cir. 2004).

[32] 364 F.3d at 374.

[33] 364 F.3d at 377-78.

These cases indicate that the current low caps on compensatory and punitive damages, especially the limitation of $300,000 for large employers, significantly weaken the ability of civil rights law to influence the conduct of employers and allow employers easily to "budget" in advance for any future damage awards by prevailing plaintiffs, without changing their illegal behavior. The illogic of the current scheme is that it serves as a deterrent only for those less profitable businesses who cannot afford to pay even low punitive damages judgments, while having no measurable effect on the conduct of the largest and most profitable employers found guilty of intentional and egregious discrimination.

4. The Title VII Caps Create an Unfair Distinction between Victims of Sex, Disability and Religious Discrimination as Compared to Employees Discriminated Against on the Basis on Race or National Origin

An additional inequity produced by the Title VII caps is that they place victims of discrimination based on sex, disability or religious discrimination at the disadvantage in comparison to employees who suffer racial or national origin discrimination. The anomaly arises because employees who charge racial or national origin discrimination in employment may assert claims under 42 U.S.C. §1981. Section 1981 is the Reconstruction-era civil rights statute which bars racial and ethic discrimination in the making of contracts (including employment contracts), but does not reach other forms of discrimination. Significantly, there are no caps on either compensatory or punitive damage awards under §1981. This means that plaintiffs who can

categorize their claims as either racial or ethic discrimination stand to be fully compensated, while others claimants are subject to significant reductions of their awards under the Title VII caps.

The anomalous scheme works a particular hardship on women of color who suffer racialized forms of sexual harassment or discrimination, but are unable to classify their discrimination as "race" discrimination for purposes of suing under Section 1981. The recent case of *Jones v. Rent-A-Center*,[34] is a good example. In that case, the plaintiff was an African American woman who was subjected to a series of sexually demeaning comments and touchings, including numerous incidents in which her store manager deliberately bumped into and grabbed her buttocks and insulted her by making offensive comments, such as "once you go black, you'll never go back" and "the blacker the berry, the sweeter the juice."[35] Because the case was tried as a sexual harassment case under Title VII – and treated exclusively as a case of sex, rather than race, discrimination – compensatory and punitive damages were subject to the Title VII caps. This categorization resulted in a significantly lower award than plaintiff might have received had she been able to sue under Section 1981: notably, the jury awarded plaintiff $1.2 million in punitive damages and $10,000 compensatory damages, which were reduced to $300,000, pursuant to the Title VII caps.

This double standard in damages does not reflect a considered Congressional judgment that somehow sex, disability or religious discrimination is of a lesser order than either racial or

[34] Jones v. Rent-A-Center, 240 F. Supp.2d 1167 (D. Kan. 2002).

[35] 240 F. Supp. 2d at 1171-72.

national origin discrimination. Instead, it is simply a product of historical accident, created by the distinct development of the two separate statutes. Most importantly, the current discrepancy in protection for victims of intentional discrimination cannot be justified by any principle of fairness or justice. It stands to reason that equal rights warrant equal remedies and that federal civil rights law should be reformed to provide uniform and adequate remedies for all victims of intentional discrimination.

5. The Title VII Caps are Unnecessary to Prevent Disproportionate Liability

In closing, it is important to emphasize that eliminating the Title VII caps on compensatory and punitive damages will not open the floodgates to unlimited liability. Presently, there are several checks against disproportionate liability, as provided by Title VII, traditional limits on damage awards imposed by courts, as well as due process limits under the U.S. Constitution. Under Title VII's two-tiered scheme, damages are reserved for cases of intentional discrimination and cannot be awarded in a case of unintentional discrimination in which an employer uses a policy that has a disparate impact on a protected group. Nor are damages available in disability cases alleging a failure to provide a reasonable accommodation when the employer acts in good faith. [36] This insures that "innocent" employers who have not deliberately violated civil rights law are protected against large damage awards and required only to afford plaintiffs equitable relief. Most importantly, since the Supreme Court's 1999 ruling in *Kolstad,* plaintiffs are eligible to recover to punitive damages only in the small subset of cases in which they prove that the employer acted with malice or reckless indifference to federally protected

[36] *See* 42 U.S.C. § 1981a(a)(3) (2006).

rights and the evidence shows that the employer did not make "good faith efforts" to enforce the company's anti-discrimination policy.These strict limits on the eligibility of damage awards assure that only the worst offenders pay damages under Title VII and demonstrates that Title VII's enforcement scheme is markedly different from common law tort remedies which typically allow for recovery of compensatory and punitive damages in negligence and strict liability cases.

Beyond these restrictions, there is ample evidence that Title VII courts are not reluctant to employ other measures to guard against excessive awards, sometimes even in cases in which the awards are well within the Title VII caps. Not infrequently, courts require plaintiffs to agree to a remittitur of compensatory and punitive damages in lieu of a new trial[37] and courts have conscientiously compared the award made by the jury to awards in comparable cases.[38] These traditional procedural checks serve to control the amounts awarded for damages, while allowing courts to exercise their discretion in individual cases, thus preserving the plaintiff's right to individualized justice and assuring that the defendant is not required to pay a judgment out of proportion to its culpability.

The final check on excessiveness of awards derives from the Supreme Court's recent cases dealing with due process limitations on punitive damages. Since the Court's landmark 1996 decision in *BMW of Northern America, Inc. v. Gore*,[39] the Court has devised guideposts for the courts to follow in reviewing large damage awards, several of which track the protections already afforded by Title VII itself. Thus, the constitution requires courts to consider the

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[37] *See e.g.*, Hines v. Grand Casino of La., 358 F.Supp.2d 533 (W.D. La. 2005).

[38] *See e.g.* Velez v. Roche, 355 F. Supp.2d 1022, 1040-41 (N.D.Cal.2004).

[39] 517 U.S. 559 (1996).

reprehensibility of the defendant's conduct, whether the defendant showed "indifference to or reckless disregard" for the health or safety of others, and whether the defendant engaged in tortious conduct while knowing or suspecting that its conduct was unlawful.[40] Outside the civil rights context, the Court has also advised courts to consider the ratio between the compensatory and punitive damages award.[41] While these constitutional checks are principally used to curb state tort awards, they serve as additional constraints on excessive jury awards and protection for defendants in civil cases generally.

The legal landscape has changed considerably since Congress first adopted the damage caps in the 1991. The Supreme Court cases interpreting Title VII, as well as the due process precedents, now provide adequate protection against the misuse of punitive damages. These checks are superior to the Title VII caps because they evenhandedly apply to all cases and attempt to balance the interests of both parties to the lawsuit. The Title VII cap on damages is a blunt instrument that does not serve the interest in justice. Lifting the caps would allow discrimination victims who have suffered the most to receive fair and adequate awards and would hold the worst offenders of civil rights laws fully accountable.

[40] 517 U.S. at 576-77.

[41] *See* State Farm Mut. Automobile Ins. Co. v. Campbell, 538 U.S. 408, 425 (2003).