Statement of the Honorable John Conyers, Jr.
for the Hearing on "Civil Rights Under Fire: Recent Supreme Court Decisions"
Before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties
Thursday, October 8, 2009, at 10:00 a.m.
2141 Rayburn House Office Building

In recent years, I have become deeply concerned about the direction of the Supreme Court, particularly with respect to civil rights laws passed by Congress. Too often, the Court has interpreted civil rights laws much more narrowly than Congress intended. The result has been to harm the people that the laws were intended to protect and require Congress to consider new legislation to try to repair the damage.

Let me give three examples:

First, in *Ledbetter v. Goodyear Tire and Rubber* in 2007, the Court's decision harmed victims of pay discrimination by ruling that a discriminatory salary decision can only be challenged under federal law within 180 days of the initial decision. This is despite the fact that such decisions have continuing effects and are typically not discovered by victims until much later. The dissent rightly criticized the majority for adopting a "cramped interpretation" that was "incompatible with the statute's broad remedial purpose." Congress effectively overruled this ruling in the Lilly Ledbetter Fair Pay Act of 2009.

Second, earlier this year, the Court made it harder for workers to prevail against age discrimination in Gross v. FBL Financial Services. Previously, if an employee could prove that age was a factor in a layoff or demotion, the employer had to show that it had acted for a valid reason to prevail in a discrimination case. As a result of the Gross ruling, however, workers now face the full burden of showing that age was the deciding factor. As the dissenters pointed out, this clearly contradicts Congress' intent. Just yesterday, I joined many of my colleagues in cosponsoring the Protecting Workers Against Discrimination Act to overrule Gross and restore the rights of older workers.

Third, the Court issued a harmful decision in Alexander v. Sandoval in 2001. In that case, the Court ruled that victims of discrimination in federally-funded programs cannot challenge such discrimination unless they can prove intent, despite the fact that federal regulations implementing anti-bias law prohibit actions that also have an unjustified discriminatory effect. This reversed decades of precedent and has already harmed discrimination victims around the country. I have joined many of my colleague in introducing legislation to reverse this decision, most recently in the Civil Rights Act of 2008, although such legislation has not yet passed the Congress.

Unfortunately, there have been many more such decisions in recent years harming civil rights, and I look forward to hearing about them from the experts who will testify before us today.

Under our system of checks and balances, Congress is not defenseless when the Court makes these kinds of decisions. It can correct many Court rulings that harm civil rights, as it has already concerning the Ledbetter case and is seeking to do with respect to the Gross and Sandoval cases. I look forward to hearing our panel's suggestions about what they think we in Congress and the federal government, and the American people, should do about this problem.

As many of you know, I have dedicated my life to the struggle for civil rights and civil liberties, and I am gravely concerned about the implications for future generations if the Supreme Court continues on its present course. If we do not remain vigilant in our role as a watchdog over the Judiciary, and active in protecting against reversals of civil rights precedents and statutes, then we will risk losing rights and freedoms won over the past generations.

This hearing is about recent rulings issued by the Court that interpret congressional statutes so narrowly that it creates barriers to the courts and weakens the voting rights and employment rights of Americans. It is about the Court's willingness to substitute its judgment for that of Congress in statutory interpretation.

There were questions raised by Justice Kennedy at the Northwest Austin Municipal Utility District Number One v. Holder oral argument challenging whether Section 5 was still needed in light of Barack Obama's successful election to the presidency. I would like to hear the views of our witnesses on the relevancy of Section 5 now, in light of President Obama's election.

The Court recently issued a ruling on the application of Title VII to age discrimination in Gross v. FBL Financial Services, Inc. 2009. It's interpretation has made it more difficult for people to bring a successful age discrimination case. I would like to hear from the witnesses about the action Congress should take to address this issue.

In 2003 the Supreme Court upheld the use of affirmative action in higher education. At that time, Justice O'Connor said, "We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today." The 25 year time period was raised again in 2007, by Justice Roberts and Alito in Parents Involved in Community Schools v. Seattle School District. Both Justices expressed skepticism about the continuing need to consider race. I would like to know the views of our witnesses on the continuing need to consider race in education and employment. Of the recent Supreme Court rulings, I would like to know which area of law has been subjected to the most setbacks.

In 1988, the Office of Legal Counsel in the Department of Justice authored an extensive report on potential developments in key areas of constitutional law. The report, "The Constitution in the Year 2000: Choices Ahead in Constitutional Interpretation," advocated strict construction of the constitution and a more limited role for Congress in passing remedial legislation to address discrimination. I would like to hear the views of our witnesses on whether the Court is moving in that direction.