



NO SURPRISES: ALITO'S RECORD PREDICTED LEDBETTER

On April 23, the Senate failed to restore crucial civil rights protections eviscerated by the Supreme Court's 5-4 decision in Ledbetter v. Goodyear Tire and Rubber. Justice Alito, the decision's author, had a 15-year judicial record of undercutting legal protections for Americans and limiting access to justice before he was even confirmed to the Supreme Court. While on the Third Circuit Court of Appeals, Justice Alito repeatedly issued rulings that were hostile to women's rights, workers' rights, and civil rights. In fact, in five split decisions involving a claim of sex discrimination, Justice Alito sided with the defendant every time. Here are just a few examples from Justice Alito's stark pre-confirmation record:

- **He Issued Lone Dissents Trying to Make It Harder to Prove Claims of Employment Discrimination.** In *Bray v. Marriott Hotels*, Justice Alito unsuccessfully tried to keep a worker's claim of race discrimination from being heard by the jury. His colleagues in the majority asserted that anti-discrimination statutes "would be eviscerated if our analysis were to halt where [Alito's] dissent suggests." In *Sheridan v. E.I. Dupont de Nemours*, heard by all the judges on his court, he was outvoted 10-1 when he tried to get around precedent to throw out a jury verdict in favor of a worker claiming sex discrimination. Several years later, in *Reeves v. Sanderson Plumbing Products, Inc.*, the Supreme Court, by a 9-0 vote, effectively rejected the restrictive manner in which Justice Alito had tried to apply Congressional anti-discrimination statutes.
- **He Turned a Blind Eye to Victims of Discrimination and Harassment.** In *Pirolli v. World Flavors, Inc.* Kenneth Pirolli, a mentally retarded employee, alleged that he was sexually abused and harassed by his coworkers, including incidents of partially undressed coworkers holding him from behind and turning off the lights, leading Pirolli to fear that he was going to be raped. Another co-worker "attempted to push a broom pole into [Pirolli's] behind as other staff watched, and another had a practice of "rub[bing] his penis against Pirolli's behind when Pirolli bent over." The trial court dismissed the case, finding that the harassment was "macho horseplay and adolescent rough-housing" that did not constitute discrimination. Pirolli appealed, joined by the Equal Employment Opportunity Commission, which filed an *amicus* brief siding with him. The Third Circuit reversed the trial court, but Justice Alito dissented saying, "Pirolli's brief never asserts that his work environment was one that a reasonable, non-retarded person would find hostile or abusive."
- **He Struck Down a Law Protecting State Workers.** In *Chittister v. Department of Community and Economic Development*, Justice Alito held that Congress does not have the authority to give the country's nearly five million state employees an enforceable right to personal unpaid sick under the Family and Medical Leave Act. Facing a similar challenge in *Nevada Dept. of Human Resources v. Hibbs*, the Supreme Court later found that a state employee can enforce his or her rights under the part of the law requiring employers to provide for family leave.
- **He Tried to Raise the Bar for Proving Disability Discrimination.** In *Nathanson v. Medical College of Pennsylvania*, Judge Alito dissented from a ruling finding that a disabled medical student had produced sufficient evidence to take to a jury her claim that she had to drop out because the school failed to provide her a seating arrangement that accommodated her disability. The majority accused Judge Alito of raising the student's burden of proof to the point where "few if any Rehabilitation Act cases could survive" a defendant's motion to have a case dismissed before trial.

The impact of the *Ledbetter* case on the lives of Americans is undeniable. In only ten months, *Ledbetter* has been cited in 233 cases, including by the powerful federal courts of appeals in 12 of 13 circuits. But Justice Alito's deciding vote in the case should come as a surprise to no one—his opinion in the *Ledbetter* case precisely echoed his lengthy pre-confirmation record.