



Actions Speak Louder Than Words: Roberts & Alito, Then & Now

At the confirmation hearings of Chief Justice Roberts and Justice Alito, members of the Senate Judiciary Committee had a chance to ask tough questions and delve into the nominees' records. What they got in response was mainly vague answers and avoidance despite the fact that both nominees had taken positions on many key issues in the past. And, as justices on the Court, their rulings are consistent with their records. Both John Roberts and Samuel Alito continued on the path they were on as political appointees in Republican administrations and put their personal politics ahead of following the law.

Two cases not included in the film:

Gonzales v. Carhart

In this case the Court upheld the Partial Birth Abortion Ban Act which makes no exception to preserve the health of the woman. Chief Justice Roberts and Justice Alito joined the 5-4 majority.

	CHIEF JUSTICE ROBERTS	JUSTICE ALITO
WHAT THEY SAID AT THEIR CONFIRMATION HEARINGS	<i>"Roe v. Wade is the settled law of the land. There's nothing in my personal views that would prevent me from fully and faithfully applying that precedent, as well as Casey."</i>	<i>"I think that the case law is very clear that protecting the life and the health of a mother is a compelling interest throughout pregnancy. I think that's very clear in the case law."</i>
WHAT THEIR RECORDS SHOWED	As a political appointee in the Reagan and Bush administrations, Roberts denounced the right of privacy. He co-authored a brief stating that "Roe was wrongly decided and should now be overruled."	As a lawyer in the Reagan administration, Alito expressed his personal belief that the Constitution doesn't protect the right to abortion and he advocated a strategy of eventually overturning Roe while "in the mean time mitigating its effects." As an appeals court judge, he would have upheld a spousal consent law that was ultimately struck down by the Supreme Court.



Massachusetts v. EPA

In this case the Court required the EPA to regulate global warming-inducing greenhouse gases. Chief Justice Roberts and Justice Alito dissented in the 5-4 decision saying that none of the parties bringing the case had “standing,” or the right to sue in court.

	CHIEF JUSTICE ROBERTS	JUSTICE ALITO
WHAT THEY SAID AT THEIR CONFIRMATION HEARINGS	<i>“Environmental interests...are all protected under the law [and] standing can encompass, certainly, environmental harms.”</i>	<i>Justice Alito, asked his opinion of Friends of the Earth v. Laidlaw in which the Supreme Court ruled that plaintiffs did not need to prove an actual harm to residents: “Laidlaw is a precedent on the Supreme Court. And my answer to the question there is the same: It is entitled to the respect of stare decisis.”</i>
WHAT THEIR RECORDS SHOWED	As a lawyer in the Reagan Administration, Roberts argued that the Justice Department was “not raising standing challenges in the most vigorous fashion,” and that “[t]his was particularly true in the environmental area.” As a lawyer in the Bush administration, Roberts pursued a policy of seeking the dismissal of cases – particularly environmental cases – on standing grounds. In a 1993 law review article, Roberts defended the Bush administration’s restrictive view of environmental standing.	As an appeals court judge, Alito joined one of the harshest environmental standing decisions ever written, requiring individuals to show harm to the environment before being permitted to file suit.

Two cases from the film:

Ledbetter v. Goodyear Tire

The Court set a 180 day filing deadline for employees to sue their employers for discrimination in pay, even if the discrimination was not immediately apparent to the worker and even if the effects (lower pay) continue to the present day. Justice Alito authored the opinion and Chief Justice Roberts joined the 5-4 majority.

	CHIEF JUSTICE ROBERTS	JUSTICE ALITO
WHAT THEY SAID AT THEIR CONFIRMATION HEARINGS	<i>“Of course gender discrimination is a serious problem. It’s a particular concern of mine and always has been. I grew up with three sisters, all of whom work outside the home. I married a lawyer who works outside the home. I have a young daughter who I hope will have all of the opportunities available to her without regard to any gender discrimination.”</i>	
WHAT THEIR RECORDS SHOWED	As a lawyer in the Reagan White House, Roberts disparaged what he called “the purported gender gap.” In internal memos, Roberts urged President Reagan to refrain from embracing any form of the proposed Equal Rights Amendment (ERA) pending in Congress [and] he concluded that some state initiatives to curb workplace discrimination against women relied on legal tools that were “highly objectionable.” In a 1983 memo, Roberts criticized a California proposal to require women to be paid the same as men for state jobs considered of comparable worth.	As an appeals court judge, Alito, in five split decisions involving a claim of sex discrimination, sided with the defendant every time.



Parents Involved in Community Schools v. Seattle School District #11
Meredith v. Jefferson County Board of Education

Chief Justice Roberts authored an opinion on these cases stating that race cannot be used as a factor in assigning children to particular public schools. Justice Alito joined the 5-4 majority.

	CHIEF JUSTICE ROBERTS	JUSTICE ALITO
WHAT THEY SAID AT THEIR CONFIRMATION HEARINGS	<i>Brown v. Board of Education</i> “changed the course of American history” and put the Supreme Court “in the role of vindicating the vision of justice that the framers enacted in the Constitution.”	<i>Brown</i> was “one of the greatest, if not the single greatest thing, that the Supreme Court of the United States has ever done.”
WHAT THEIR RECORDS SHOWED	As a lawyer in the Reagan administration, Roberts defended the administration’s anti-desegregation policy, writing, “Experience has demonstrated that [forced racial] busing does not promote desegregation but actually increases racial imbalance by causing many parents who can afford to do so to take their children out of the public schools,” and “busing promotes segregation rather than remedying it, by precipitating white flight...it is within Congress’ authority to determine that busing is counterproductive and to prohibit federal courts from ordering it.”	As a lawyer in the Reagan administration, Alito opposed race-conscious policies saying he was “particularly proud” of his efforts to squelch affirmative action policies.