

A Supreme Court that Respects Precedent, Impact of Law on People's Lives: Honoring Justice Stevens' Legacy

The Supreme Court makes decisions that have a major impact on the daily lives of women and their families. The Court's decisions define the scope of women's rights to privacy, to equal protection of the laws, and to freedom from discrimination in the workplace and in school, as well as Congress' ability to enact health, safety, and economic and social welfare legislation. Beginning in 2006, during the first full term after Chief Justice Roberts and Justice Alito were confirmed, by narrow margins, the Court has repeatedly handed down decisions that reverse decades of precedent, interpret laws in ways that disadvantage the very people they were intended to protect, and threaten individual rights – including in critical cases involving women's legal rights. There is great concern that even more of the legal protections upon which women have relied for many years are in jeopardy.

It is at this critical juncture that Justice John Paul Stevens, after serving on the Court for nearly 35 years, announced his impending retirement. Justice Stevens was a ringing voice for equal justice on the Court. He was a force on behalf of people throughout this country when the government sought to intrude into their most personal and private decisions, when conservative majorities abandoned longstanding precedents, or when those majorities ignored the real-world context or impact of their decisions – including when he dissented from the Court's recent ruling in *Citizens United v. FEC*,¹ in which the majority overturned thirty years of precedent to remove limits on corporate spending in elections. Described below are three other such cases involving legal issues particularly important to women.

***Gonzales v. Carhart* (2007).** The Supreme Court has repeatedly recognized that the Constitution protects women from government intrusion into their most personal and private decisions, including whether to obtain an abortion. Yet, in *Gonzales v. Carhart* (2007), the Supreme Court in a 5-4 opinion put in jeopardy this fundamental freedom that women have relied upon for over three decades.² In *Gonzales*, Chief Justice Roberts and Justice Alito joined three other Justices in a majority opinion that refused to reaffirm *Roe v. Wade*, leaving open the possibility of overruling it at a later date.³

- The conservative majority in *Gonzales* overturned longstanding precedent on women's health. This case represents the first time the Court approved a government restriction on a woman's access to abortion without an exception to protect the woman's health. In doing so, the majority in *Gonzales* overturned 30 years of constitutional law protecting women's health and undermined a core principle of *Roe v. Wade*.
- The majority in *Gonzales* bent over backwards to allow the government to intrude into the most personal of decisions. The majority in *Gonzales* allowed politicians to criminalize a medically-approved abortion procedure because five Justices determined

¹ 558 U.S. ____ (2010).

² 550 U.S. 124 (2007).

³ *Id.* at 186 (Ginsburg, J., dissenting).

that it was necessary to protect women from the “harmful” consequences of their own decisions. Justice Ginsburg recognized in her dissent, joined by Justice Stevens, that this reasoning “reflects ancient notions about women’s place in the family and under the Constitution—ideas that have long since been discredited.”⁴

- The majority in *Gonzales* ignored the harm that their decision would have on real women. In addition, the majority’s opinion in *Gonzales* ignored significant record evidence demonstrating the devastating effect that upholding a federal ban on a medically-approved abortion procedure without a health exception would have on real women. Substantial record evidence in the cases showed that the banned procedure is medically necessary for some women, including women who face serious health issues such as placenta previa, placenta accreta, liver disease, sepsis, heart problems, and cancer of the placenta. The procedure is also often safest for women with fetuses that have grave health conditions. In upholding the ban, the Court left women facing serious problem pregnancies with a less-safe option.

Ledbetter v. Goodyear Tire & Rubber Co. (2007). More than four decades after Congress outlawed wage discrimination based on sex, women continue to be paid, on average, only 77 cents for every dollar paid to men. This persistent wage gap can be addressed only if women are armed with the tools necessary to challenge sex discrimination against them. One egregious example of why these protections are necessary is the story of Lilly Ledbetter, one of the few women supervisors in a Goodyear tire plant, who did not know until close to her retirement that she had been paid less than her male co-workers for close to 20 years. But in a 5-4 vote, the Supreme Court’s 2007 decision in her case, *Ledbetter v. Goodyear Tire & Rubber Co.*,⁵ actually took tools to fight this kind of injustice away from employees like Lilly Ledbetter. As Justice Ginsburg stated in her stinging dissent, which was joined by Justice Stevens, this decision made it virtually impossible for women and others subjected to pay discrimination to protect their rights. (The Court’s decision was overturned by Congress, with the passage of the Lilly Ledbetter Fair Pay Act in January 2009).

- The conservative majority in *Ledbetter* up-ended longstanding precedent. Under Title VII, an employee has 180 days after a discriminatory act, such as a firing or demotion, to file a discrimination claim. Before the *Ledbetter* decision, both the EEOC and nine of the ten courts of appeals to consider the issue applied a longstanding rule under which each new paycheck was treated as a separate discriminatory act that started a new 180-day clock. But in *Ledbetter*, the Supreme Court reversed this accepted practice and held instead that all charges of pay discrimination must be filed within 180 days of the employer’s original discriminatory decision -- leaving victims of pay discrimination with no recourse against pay discrimination they don’t immediately recognize and challenge.
- The majority in *Ledbetter* ignored Congress’ intent to protect workers. Contrary to Title VII’s intent to encourage voluntary compliance by employers, the *Ledbetter* decision creates incentives for employers to conceal their discriminatory conduct until 180 days have passed. As Justice Ginsburg noted in her dissent, after that time the

⁴ *Id.* at 18 (Ginsburg, J., dissenting) (citations omitted).

⁵ 550 U.S. 618 (2007).

Ledbetter rule renders employers' discriminatory pay decisions "grandfathered, a *fait accompli* beyond the province of Title VII ever to repair."⁶

- The majority in *Ledbetter* disregarded the realities of the workplace. Barring individuals from challenging ongoing pay disparities unfairly ignores the ways in which pay discrimination is manifested in the workplace, as well as its impact over time. Pay information is often confidential; in fact, many employers explicitly forbid their employees from discussing their wages. Moreover, unlike other discriminatory decisions (such as denial of a promotion), pay discrimination is not an adverse action that is immediately apparent to the employee. In addition, while employees may be reluctant to challenge wage disparities that are small at the outset, the disparities can expand exponentially over the course of an employee's career, as raises and pension contributions are calculated as a percentage of prior pay; *Ledbetter* nevertheless imposed a "now or never" rule for challenging any initial small disparities.

***Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1* (2007).** In 2003, the Court upheld the affirmative action program of the University of Michigan Law School by a 5-4 vote, with Justice O'Connor casting the deciding vote and writing the majority opinion.⁷ After Justice O'Connor was replaced by Justice Alito, the Court in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007),⁸ considered whether school districts may adopt voluntary integration plans. The Court agreed to review the case, even though there was no disagreement among the lower courts and although it had declined to review a similar case before Justice O'Connor retired. Although the Court reaffirmed that diversity in education is a constitutionally compelling state interest, a plurality of the Court struck down the voluntary integration plan at issue. Justice Stevens wrote a scathing dissent, which stated in part: "The Court has changed significantly since . . . 1968. It was then more faithful to *Brown* [*v. Bd. of Education*] and more respectful of our precedent than it is today. It is my firm conviction that no Member of the Court that I joined in 1975 would have agreed with today's decision."⁹

Each Supreme Court nomination matters to women. Each Justice on the Supreme Court will have a profound, and lasting, impact on the day-to-day lives of the women of this nation and their families. It is essential that the individual nominated to Justice Stevens' seat honor his legacy in order to prevent longstanding legal protections from being further eroded, if not eliminated.

⁶ *Id.* at 644 (Ginsburg, J., dissenting).

⁷ *Grutter v. Bollinger*, 539 U.S. 306 (2003).

⁸ 551 U.S. 701 (2007).

⁹ *Id.* at 803 (Stevens, J., dissenting).