

## Justice Souter's Important Role in Protecting Women's Legal Rights

In almost twenty years on the Supreme Court, Justice David Souter has played a crucial role in many cases involving women's legal rights. Without his vote, many rights women rely on would have been taken away.

Here is a sampling of areas and cases in which Justice Souter cast a positive vote to protect women's rights.

### Upholding *Roe v. Wade*

- Justice Souter was a co-author of the decisive three-vote "joint opinion" in *Casey v. Planned Parenthood* (1992), in which the Court reaffirmed the essential holding of *Roe v. Wade* protecting a woman's right to choose.
- Justice Souter was in the 5-4 majority in a 2000 ruling striking down a law that made some abortions illegal without ensuring that women's health would be protected, in *Stenberg v. Carhart* (2000). When the Court struck down an almost identical statute seven years later, after the retirement of Justice O'Connor and the confirmation of Chief Justice Roberts and Justice Alito, in *Gonzales v. Carhart* (2007), Justice Souter joined Justice Ginsburg's stinging dissent.

### The Constitutional Guarantee Against Sex Discrimination

- Justice Souter joined the 6-3 majority that struck down the exclusion of all women from juries through peremptory challenges under the Equal Protection Clause in *J.E.B. v. Alabama* (1994).
- Justice Souter joined the majority of the Court in striking down the exclusion of all women from the state-run Virginia Military Institute on the ground that women were not tough enough to succeed in *United States v. Virginia (VMI)* (1996). In *VMI*, Justice Souter's vote supported imposing a requirement of a "skeptical scrutiny" in reviewing sex discrimination.
- Justice Souter joined the dissenters in *Nguyen v. INS*, 533 U.S. 53 (2001), the most recent constitutional equal protection case involving sex discrimination. The 5-4 majority decision upheld immigration laws that make it more difficult for male citizens than female citizens to confer citizenship on their non-marital children, using a weakened version of the heightened scrutiny standard that applies to such discriminatory laws, and relying on gender stereotypes of different parenting roles for men and women to uphold the discrimination.

### Title IX's Prohibition on Sex Discrimination in School

- In *Davis v. Monroe County Board of Education* (1999), Justice Souter joined the majority opinion in a 5-4 ruling holding that a claim may be brought under Title IX to challenge the sexual harassment by one student of another where the school authorities have failed to adequately protect the students.

- In 1998, Justice Souter joined the dissenters in *Gebser v. Lago Vista Independent School District*, a 5-4 decision in which the Supreme Court severely limited the protections available under Title IX to students who have been sexually harassed by their teachers or other school employees. The four dissenting Justices pointed out the unfairness of the result reached by the majority.
- Justice Souter joined the majority in *Jackson v. Birmingham Board of Education* (2005), in which the Court ruled 5-4 that a claim may be brought under Title IX to challenge a school's retaliation against an individual who complains of sex discrimination in violation of Title IX – in that case, the coach of a girls' high school basketball team who was stripped of his coaching position when he complained about unequal treatment for the female athletes.
- Justice Souter joined the Court's unanimous decision this Term in *Fitzgerald v. Barnstable School Committee*. With this decision, the Court safeguarded women's and girls' rights by allowing them to pursue remedies for gender discrimination in schools under both Title IX and the Constitution.

#### Sex Discrimination in the Workplace

- Justice Souter joined the Court's majority in several major cases enabling women to challenge sexual harassment in the workplace. For example, in 1998, he joined the majority decisions in *Burlington Industries v. Ellerth*, which allows employers to be held liable if they are negligent or otherwise at fault when a supervisor sexually harasses an employee. In 1993, he joined the Court's unanimous decision concluding that "Title VII [the federal law prohibiting sex discrimination on the job] comes into play before the harassing conduct leads to a nervous breakdown" in *Harris v. Forklift Sys.*, (1993).
- In 1998, Justice Souter wrote the majority decision in *Faragher v. City of Boca Raton*, which held that employers could be held liable for sexual harassment by a supervisor.
- Justice Souter joined the dissent in *Ledbetter v. Goodyear Tire & Rubber Co.*, a 5-4 decision written by Justice Alito in which the Court severely cut back on the availability of relief under Title VII for employees who have been subject to pay discrimination. The dissent noted that the decision ignored the realities of the workplace. (This decision was recently overturned by Congress, with the passage of the Lilly Ledbetter Fair Pay Act).
- Justice Souter joined the Court's unanimous decision this Term in *Crawford v. Metro*, which ruled that employees are protected from being retaliated against for cooperating with an employer's internal investigation of discrimination.
- Justice Souter also joined the Court's 2008 decisions in *CBOCS v. Humphries* and *Gomez-Perez v. Potter*, where the Court held that two civil rights laws protect those who face retaliation for complaining about employment discrimination.

#### Affirmative Action

- Justice Souter joined the Court’s opinion in *Grutter v. Bollinger* (2003), the landmark 5-4 ruling upholding the right of public universities to use affirmative action in their admissions policies to promote diversity, allowing affirmative action on the basis of sex as well as race, which is especially important in areas in which women remain dramatically under-represented, such as science, engineering and technology. Justices Scalia, Thomas, Rehnquist and Kennedy dissented.
- Justice Souter joined the dissenters in *Parents Involved in Community Schools v. Seattle Sch. Dist. No. 1* (2007), when the majority struck down, 5-4, efforts by two school districts to maintain racial integration in their schools.

#### Congress’s Power to Protect the Public

- Justice Souter was in the 5-4 majority in *Nevada v. Hibbs* in 2003, in which the Court ruled that Congress was within its authority in allowing damage suits against the states under the Family and Medical Leave Act for violations of the Act’s provision guaranteeing workers leave to take care of family members.
- Justice Souter joined the Court’s majority in *Tennessee v. Lane* in 2004, in which the Court ruled that Congress had the power to allow suits for damages against states under the Americans With Disabilities Act when a disabled person was denied physical access to a courthouse.
- Justice Souter often dissented from Supreme Court rulings in the late 1990s holding that Congress lacked the power to act in important areas. For example, when the Court struck down a key provision of the Violence Against Women Act in *United States v. Morrison* in 2000, he joined a scathing dissent that criticized the majority for disregarding a “mountain” of legislative history, state studies documenting gender bias in the state court systems, and the fact that the states themselves had had urged Congress to enact this federal remedy.

#### **Justice Souter’s Legacy for Women**

These, and other key cases demonstrate how closely divided major decisions can be, and the key role that Justice Souter has played in the protection of the most central legal rights for women. Because of Justice Souter, women have more protections against sexual harassment in school and in the workplace, against retaliation when trying to protect their rights, against unequal pay, against government-sanctioned discrimination in virtually every walk of life, and against government intrusion into their most personal decisions.