



Women Employed

## **The Nomination of Judge Samuel Alito to the U.S. Supreme Court Threatens Hard-Won Employment Rights**

For three decades, Women Employed has championed public policies that ensure core legal rights for women and minorities in the workplace. America's judiciary plays a vital role in protecting these rights. The judicial record of U.S. Supreme Court nominee Samuel Alito suggests that his confirmation could threaten or reverse the employment advances made by women and minorities over the last thirty years. Therefore, Women Employed opposes the nomination of Judge Samuel Alito.

From his government service in the Reagan Administration to fifteen years on the Third Circuit Court of Appeals, Alito's record reveals an opposition to the enforcement of anti-discrimination statutes and a reading of the law that restricts employee rights.

### *Family and Medical Leave*

The Family and Medical Leave Act guarantees employees up to twelve weeks of unpaid leave for family or health reasons. The Act has been fundamental in protecting women from dismissal during maternity leave. In 2000, Alito wrote a decision claiming the federal government could not apply the law to state employees because it represented "an unconstitutional abrogation of states' rights" (*Chittister v. Department of Community and Economic Development*). Three years later, the Supreme Court took the opposite view in *Nevada Department of Human Resources v. Hibbs*. The 6-3 decision, with Chief Justice William Rehnquist and Justice Sandra Day O'Connor in the majority, found that the goal of remedying gender discrimination in the workplace was sufficient justification for setting aside states' immunity. Alito's over-ruled decision could have affected the legal protections of five million state employees.

*It's up to us.*

## *Employment Discrimination*

Alito has written numerous minority opinions to limit the enforcement of anti-discrimination laws. He has argued for an extremely high bar of evidence in employment discrimination cases that limits corporate liability and the recourse of individuals through the judicial process. His justification for this position is that it is wrong to allow “disgruntled employees to impose the costs of trial on employers who, although they have not acted with the intent to discriminate, may have treated their employees unfairly” (*Sheridan v. E.I. DuPont de Nemours and Co.*). Alito’s fellow judges have countered that protections under employment law would be “eviscerated” if courts followed Alito’s logic (*Bray v. Marriott Hotels*).

## *Affirmative Action*

Alito’s writings and decisions suggest opposition to rules that provide opportunities for under-represented women and minorities. As Assistant Solicitor General under President Reagan, Alito co-authored numerous briefs restricting affirmative action, taking extreme views that were later rejected by the Supreme Court. In his 1985 application for a Justice Department promotion, he described his pride in his contributions to the government’s attacks on affirmative action. As a judge on the Third Circuit, Alito voted to strike down a school district’s affirmative action plan to provide equal employment opportunity to employees (*Taxman v. Board of Education of the Township of Piscataway*).

Judge Samuel Alito’s rulings on the Family and Medical Leave Act, employment discrimination, and affirmative action reveal a troubling view of the government’s obligation to protect individual civil rights. Alito’s record suggests that if he is confirmed, he is likely to oppose many of the protections that Americans, especially women and minorities, now regard as essential to fairness and equality.



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Women Employed is a non-profit organization whose mission is to improve the economic status of women and remove barriers to economic equity. Women Employed promotes fair employment practices, helps increase access to training and education, and provides women with information and tools to plan their careers.