

## HOW FIVE JUSTICES HAVE IMPACTED THE LIVES OF COUNTLESS HARDWORKING AMERICANS

*In recent years, Americans have seen firsthand how a narrow, conservative majority of the U.S. Supreme Court has issued ruling after ruling favoring large corporations over the interests of hard working Americans.*

### Rejecting Equal Pay For Equal Work: *Ledbetter v. Goodyear Tire & Rubber Co.*

**BACKGROUND:** More than 40 years ago, Congress acted to protect women and others against discrimination in the workplace. It is a continuing struggle to ensure that all Americans – women and men – receive equal pay for equal work. In *Ledbetter vs. Goodyear Tire*, just five Justices decided to give immunity to employers who covertly discriminate against their workers.

**OUTCOME:** Justice Ginsburg rightly concluded in her dissent that, “Once again, the ball is in Congress’ court. As in 1991, the Legislature may act to correct this Court’s parsimonious reading of Title VII.” The Bush administration and Senate Republicans rejected congressional efforts to enact the Lilly Ledbetter Fair Pay Act in the wake of the *Ledbetter* decision. Congress and the Obama administration finally enacted a law in January 2009 to ensure equal pay for equal work, and to strike down the immunity those five Justices gave to employers who covertly discriminate against their workers.

### Uttering The Age Discrimination In Employment Act: *Gross v. FBL Financial Services, Inc.*

**BACKGROUND:** In *Gross v. FBL Financial Services, Inc.*, just five Supreme Court Justices decided to override statutory protections to make it more difficult to prove age discrimination in the workplace. Those five Justices adopted a standard that the Supreme Court itself had rejected in a prior case, and that Congress had rejected when enacting the Civil Rights Act of 1991. It is the very definition of judicial activism when a court imposes a rule of decision rejected by its own precedent and rejected by Congress.

**OUTCOME:** Congress is trying to right this wrong, and in October 2009, the Protecting Older Workers Against Discrimination Act was introduced to reverse the *Gross* decision and restore the law to what it was for decades before five Justices on the Supreme Court rewrote the rule. The legislation will make clear that when a victim shows that discrimination was a “motivating factor” behind a decision, the burden is properly only on the employer to show that it complied with the law.

### Shielding Corporations From Paying Damages: *Exxon Shipping Co. v. Baker*

**BACKGROUND:** Just five Justices ruled in 2008 to reduce the punitive damages awarded by a jury to victims of the Exxon Valdez oil spill, giving Exxon a \$2 billion windfall. At question in the case was the permissible ratio of punitive damages to actual damages under maritime law. The Supreme Court’s opinion placed a limit on punitive damages that must be paid by corporations, effectively creating a new protection for corporations that simply did not exist. If Congress had wanted to cap punitive damages for disasters which impact thousands of Americans who depend on natural resources for their livelihood, it could have. Congress did not.

**OUTCOME:** On May 11, Senators Sheldon Whitehouse, Patrick Leahy and Robert Menendez introduced legislation to overturn the Court’s opinion in *Exxon Shipping Co. v. Baker*. The legislation, the Big Oil Polluters Pay Act, would allow judges and juries to assess punitive damages based on all the facts of a case, without regard to the amount of other damages owed.

## Siding With Wall Street Over Main Street: *Citizens United v. Federal Election Commission*

**BACKGROUND:** In January, five Justices in *Citizens United v. Federal Election Commission* gave another victory to Wall Street at the expense of Main Street America. Without any basis in the plain text or history of the Constitution, five Justices overturned precedent to grant corporations the same power as any individual citizen to influence elections. For those five Justices to reach their broad ruling, they overturned precedent, as well as statute.

**OUTCOME:** Legislation is moving through Congress to overturn the Court's decision in *Citizens United*. The Democracy Is Strengthened by Casting Light On Spending in Elections (DISCLOSE) Act, will help curtail corporate influence in elections by strengthening campaign finance laws to ensure that individual Americans – not corporate entities and other organizations – are still the primary players in the country's elections.

## Narrow, 5-4 Decisions Have Become A Hallmark Of The Roberts Court

Narrow, 5-4 decisions by a conservative majority have become a hallmark of the Roberts' Court. These decisions have often been overreaching in scope, and have repeatedly ignored congressional intent. In *Rent-A-Center v. Jackson*, a 5-4 majority of the Court upheld the power of arbitration agreements to remove even threshold questions of validity from review by a court. In *Stoneridge v. Scientific-Atlanta, Inc.*, the Supreme Court held that pension funds and other investors in companies ruined by fraudulent managers cannot recoup the money they lost from those who knowingly facilitated the fraud, **leaving Americans with nowhere to go for redress**. In *Ashcroft v. Iqbal*, **the Court abandoned precedent** and created what Justice Souter believed was a new rule that was "unfair" to plaintiffs because it denied them a "fair chance to be heard" in court. And, alarmingly, in a 5-4 decision in the recent case challenging the constitutionality of Section 5 of the Voting Rights Act, **the Court disregarded the extensive record compiled by Congress** regarding the continuing need for a reauthorized Section 5.