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Justice Samuel Alito: Reserved with a Respect for History

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Biography

Justice Samuel Alito, Jr. was born in Trenton, New Jersey on April 1, 1950 to Italian immigrant parents, Samuel Sr. and Rose.¹ His parents were both teachers by profession. His father attended law school later in life and became the executive director of New Jersey's bill-drafting Office of Legislative Services.² He attended Steinert High School, a public school in Hamilton Township where he was active in more than 10 clubs, including the debate team, band, track, and the honor society. He was President of the Student Council and graduated as the class Valedictorian.³

Justice Alito went on to attend Princeton University. The backdrop of the Vietnam War influenced much of his time at Princeton. After being assigned a low draft number, he signed up for Princeton's ROTC program so he would be officer if ever placed on active duty.⁴ The ROTC program was supposed to be a two-year training, but was cut to just one before being shut down entirely on campus; thereafter, he attended drills and classes off-campus.⁵ While at Princeton, he led a student conference on the "Boundaries of Privacy in American Society", advocating broad application of the Bill of Rights and opposing domestic spying. It supported placing limits on the gathering of domestic intelligence, decriminalizing sodomy, and ending employment discrimination against homosexuals.⁶ During his senior year, he studied abroad in Italy where he wrote his senior thesis on the Italian legal system. In 1972, Justice Alito graduated from the

¹ Matthew Walther, *Sam Alito: A Civil Man* (2014), available at <http://spectator.org/articles/58731/sam-alito-civil-man>

² Allegra Hartley, *10 Things You Didn't Know About Samuel Alito* (2007), available at <http://www.usnews.com/news/national/articles/2007/10/01/10-things-you-didnt-know-about-samuel-alito>

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *The Justices of the United States Supreme Court* (2014), available at <http://supremecourtreview.com/default/justice/index/id/44>

Woodrow Wilson School of Public and International Affairs. In the Princeton yearbook he notes his intention to someday “warm a seat on the Supreme Court”.⁷

After graduating Princeton, Alito was commissioned as a Second Lieutenant in the US Army Signal Corps and assigned to the United States Army Reserve.⁸ He then attended Yale Law School, where he served as the editor of the Yale Law Journal.⁹ He earned his degree in 1975, just one year after Justice Thomas.¹⁰ After graduation, he served on active duty for three months (September to December) and inactive duty until 1980, when he was honorably discharged with the rank of captain.

Alito then began his career, where he would serve 29 years as a public servant. From 1976-1977, he was the law clerk for Leonard I. Garth of the U.S. Court of Appeals for the Third Circuit with chambers in Newark.¹¹ Although he interviewed for a clerkship with Supreme Court Justice White, he was not hired. Following his clerkship, Alito became Assistant U.S. Attorney, District of New Jersey, where he prosecuted many drug trafficking and organized crime cases until 1981.¹² From 1981-1985, he was Assistant to the Solicitor General Rex Lee, U.S. Department of Justice; during this time, he was able to argue twelve cases before the Supreme Court.¹³ He continued his career as Deputy Assistant Attorney General, U.S. Department of Justice for the next two years. In this position, he provided constitutional advice for the Reagan administration as aide to Attorney General Ed Meese.¹⁴ In 1987, President Reagan named Alito as U.S. Attorney,

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Hartley, *supra* note 2.

¹¹ *The Justices of the United States Supreme Court*, *supra* note 6.

¹² *Id.*

¹³ *Id.*

¹⁴ *Biographies of Current Justices of the Supreme Court*, available at <http://www.supremecourt.gov/about/biographies.aspx>.

District of New Jersey. “He was a vigorous and effective prosecutor of organized crime in part because of his belief that perpetrators of organized crime gave Italian-Americans a negative image.”¹⁵ This led to his appointment to the U.S. Court of Appeals for the Third Circuit in 1990 by George H.W. Bush. The Senate unanimously approved him on a voice vote. As a judge on the Third Circuit, he had his chambers in Newark, New Jersey. At this time, more liberal judges dominated the Third Circuit and Alito often found himself in the minority.¹⁶

Justice Alito was an adjunct professor at Seton Hall Law, teaching Constitutional Law and an original course on Terrorism and Civil Liberties while serving on the Third Circuit.¹⁷ He was awarded the St. Thomas Moore Medal in 1995 for his outstanding contributions to the field of law. Additionally, he delivered the commencement address at Seton Hall Law's ceremony in 2007 and received an honorary law degree from the law school.

While serving on the Third Circuit, Alito's opinions were notable for their “intellectual rigor and, while they did not articulate any sweeping views, they were strongly conservative in spirit.”¹⁸ He decided more than 1500 cases during his term. Alito acquired the nickname "Strip-Search Sammy" by critics of his dissenting opinion in *Doe v. Groody* (2004) because he maintained that police officers did not violate any constitutional rights when they strip-searched a mother and her 10-year-old daughter.¹⁹ Among his most controversial opinion while serving on the Appeals Court was his sole

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *The Justices of the United States Supreme Court*, *supra* note 6.

¹⁸ John Fox, *Biographies of the Robes* (2007), available at http://www.pbs.org/wnet/supremecourt/future/robes_alito.html

¹⁹ Hartley, *supra* note 2.

dissent in *Planned Parenthood v. Casey* (1991), in which he supported the Pennsylvania law requiring women to consult their husbands before having abortions. In his dissent, he reasoned that married women constituted a minority of those seeking abortions and that those who failed to inform their husbands was an even smaller minority and that, therefore, the requirement to inform husbands could not be said to be an "undue burden" on the abortion right. Notably, the Supreme Court upheld the lower court decision (6-3) with O'Connor co-writing the majority opinion with Kennedy and Souter. The Court invalidated the provision requiring notice to husbands, however, Chief Justice Rehnquist, in his dissent adopted Alito's reasoning and quoted from Alito's dissent.²⁰

Another notable opinion from his time on the Third Circuit was Alito's majority in *ACLU v. Schundler* (1999), finding that a Christmas display on city property did not violate separation of church and state doctrines because it included a large plastic Santa Claus as well as a Menorah and a banner hailing diversity.²¹

In October 2005, President George W. Bush nominated Alito as an Associate Justice of the Supreme Court to fill the seat Sandra Day O'Connor vacated with her retirement.²² This was only four days after Harriet Mier's withdrawal. The confirmation hearings were held from January 9-13, 2006 after a failed filibuster attempt by Senator John Kerry on January 3. On January 24, his nomination was voted out of the Senate Judiciary Committee on a 10-8 party line vote and debate on the nomination began in the full Senate the following day.²³ He was confirmed on a 58-42 Senate vote, notably, with

²⁰ *The Justices of the United States Supreme Court*, *supra* note 6.

²¹ *Notable Rulings from Alito* (2005), available at <http://www.npr.org/templates/story/story.php?storyId=4982737>.

²² Fox, *supra* note 18.

²³ *The Justices of the United States Supreme Court*, *supra* note 6.

four Democratic senators voting for confirmation and one Republican and an Independent voting against.²⁴ This confirmation vote was the second lowest on the current court, surpassed only by that of Justice Thomas (being 52–48). Alito was sworn in January 31, 2006 as 110th U.S. Justice. He was the second conservative Bush nominee to be confirmed the Supreme Court.

After joining the Court mid-term, Alito did not participate in the decisions of the early cases, as he had not heard the arguments. Most of these decisions were released without his participation as an 8-member Court with only 3 of these cases being re-argued to break a tie. He delivered his first opinion for the Court, which was unanimous, in *Holmes v. South Carolina*, 547 U.S. 319 (2006), a case about criminal defendants' right to present evidence of a third party committing the crime.²⁵ He wrote three other majority opinions in his first term including a 5-4 pro-business decision limiting employment claims for sex discrimination, a 5-4 decision against environmentalists²⁶, and a plurality opinion joined by Justice Kennedy and Chief Justice Roberts upholding faith-based programs.²⁷

Supporters noted Alito as having an "extraordinary breadth of experience"²⁸ and having all the "qualities of a judge (temperament, impartiality, integrity, dedication) and substantial federal service in the executive and judiciary departments alike..."²⁹

²⁴ David Stout, *Alito is Sworn In as Justice After 58-42 Vote to Confirm Him* (2006), available at http://www.nytimes.com/2006/01/31/politics/politicsspecial1/31cnd-alito.html?_r=0.

²⁵ *Samuel Alito* (2014), available at http://www.conservapedia.com/Samuel_Alito.

²⁶ *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644 (2007).

²⁷ *Hein v. Freedom from Religion Found., Inc.*, 127 S. Ct. 2553 (2007). Justices Antonin Scalia and Clarence Thomas concurred with a stronger opinion.

²⁸ George Bush

²⁹ Doug Kmiec, Pepperdine University Law School and former Reagan official

However, many in opposition felt he was “likely to divide America...”³⁰ and that the Supreme Court would “[look] less like America and more like an old boys’ club.”³¹

In reality, Alito “typically takes a more cautious, soft-spoken approach in his decisions.”³² He writes thoughtful and careful opinions and is even-tempered. He is “sensitive to maintaining the delicate balance between the judicial and legislative branches”³³; he believes the role of judge is to strictly interpret the law, not legislate from the bench. Recognizably, he is known for his conservative views, even being nicknamed Scalito, however the two Justices do not always agree on approach or outcome of cases. “Alito has even occasionally taken a public dig at Scalia, suggesting the latter’s adherence to the original text of the Constitution is of little use in resolving some modern disputes.”³⁴ Justice Alito has said that his judicial philosophy is based on what he learned from his immigrant father. His father told him about being discriminated against for his nationality and religion and how he had to build a life on humble means. He draws on his familial history, treating everyone who comes before him in court with equal respect.³⁵

Alito was the author of the two biggest decisions in the 2013-2014 Term, both of which were rendered on the last day of the Term and were conservative opinions.³⁶ “He has emerged as perhaps the most consistent conservative leader on the Court. He has been particularly adept at attracting support for his opinions from Justice Kennedy,

³⁰ Sen. Charles Schumer (D-NY).

³¹ Senate Minority Leader Harry Reid (D-NV)

³² Laurence Tribe, *The Alito Mayor Effect* (2014), available at <http://www.politico.com/magazine/politico50/2014/the-alito-mayor-effect.html#.VH2UoWSwIkg>.

³³ *Id.*

³⁴ Josh Gerstein and David Nather, *Samuel Alito’s Moment* (2014), available at <http://www.politico.com/story/2014/07/samuel-alitos-moment-108470.html>.

³⁵ *The Justices of the United States Supreme Court*, *supra* note 6.

³⁶ *Samuel Alito*, *supra* note 25.

something other conservative Justices have failed to do.”³⁷ Justice Kennedy has joined in Alito in some of his stronger concurrences.³⁸ Justice Alito has shown a willingness to stand up to the other members of the court, being the sole dissent.

The only controversy surrounding the Justice was when he was caught on camera mouthing the words “not true” at the 2010 State of the Union address in response to President Obama’s claims about a Court ruling.³⁹ While some thought this was disrespectful as the Justices are expected to remain impartial and not react to what is said during the State of the Union, others blamed Obama for “calling out the justices to their faces.”⁴⁰

As for his personal life, Alito married Martha-Ann Bomgardner in 1985. She was a former law librarian in U.S. Attorney’s Office.⁴¹ They have two children, Philip (28 years old, University of Virginia ‘08 and Duke University School of Law ‘12) and Laura (26 years old, Georgetown University ‘10) who were raised and schooled in West Caldwell, New Jersey. After his appointment to the Court, the family moved to Alexandria, Virginia, outside Washington, D.C. where they still reside. Alito is known as quiet and gracious, with an ironic sense of humor. He is respected for his integrity even by those who disagree with his views.⁴² He is a huge baseball fan, more specifically, rooting for the Phillies; he coached his son’s little league team and has said he dreamed of becoming baseball commissioner.⁴³ He enjoys his privacy, rarely making public appearances if they can be avoided.

³⁷ *Id.*

³⁸ *DA’s Office for the Third Judicial Dist. v. Osborne and Morse v. Frederick*, 127 S. Ct. 2618 (2007).

³⁹ Gerstein, *supra* note 34.

⁴⁰ *Id.*

⁴¹ Hartley, *supra* note 2.

⁴² Fox, *supra* note 18.

⁴³ Hartley, *supra* note 2.

Jurisprudence

United States v. Stevens (2010, Sole dissent)-First Amendment

Chief Justice Roberts writes for the majority in this 8-1 decision, with Justice Alito as the sole dissenter.⁴⁴ Commercial creation, sale, or possession of depictions of animal cruelty was prohibited under 18 U.S.C.S. § 48. It contained an exemption for depictions with “serious religious, political, scientific, educational, journalistic, historical, or artistic value.” The legislative history of this law focused on “crush videos”, depicting the torture and murder of helpless animals, appealing to those with a specific sexual fetish. Stevens was found in violation of this statute after selling videos of dogfighting, but moved to dismiss the charges on the grounds that the law was facially invalid under the First Amendment. The District Court denied this motion, finding these depictions categorically unprotected by the First Amendment and Stevens was found guilty. After appeal, the Third Circuit determined that § 48 was unconstitutional and vacated the decision.⁴⁵

The Court agrees with the Third Circuit, finding that 18 U.S.C.S. § 48 was overbroad. First, depictions of animal cruelty are not, as a class, categorically unprotected speech, like that of child pornography. The text of the statute does not require that the depicted conduct be cruel, as conveyed by “maimed”, “mutilated”, and “tortured”, but not by “wounded” or “killed”. Roberts writes that “wounded” and “killed” should, “be read according to their ordinary meaning...Nothing about that

⁴⁴ *United States v. Stevens*, 559 U.S. 460 (2010).

⁴⁵ *Id.* at 464-467.

meaning requires cruelty.”⁴⁶ The majority finds the statutory requirement for the depicted conduct to be illegal improperly extended to areas like animal protection laws, which were unrelated to cruelty. Moreover, depictions of lawful conduct, like hunting, in one jurisdiction could constitute unlawful depictions in another jurisdiction.⁴⁷

Chief Justice Roberts strongly rejects the idea that the law was constitutional because the exemption clause narrows the statute’s reach. The Government’s assurance to only prosecute the really irredeemable videos involving "extreme acts of animal cruelty" is not enough to find the law constitutional.⁴⁸ "We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly."⁴⁹

Justice Alito dissents, lamenting that a valuable statute was struck down that was primarily aimed at prosecuting the creation of these “crush videos”, not suppressing free speech. He argues the Court should not have reached out and held the statute to be facially invalid, but should have limited their consideration to whether the law was unconstitutional as applied to the defendant in the case.⁵⁰ He believes the question of overbreadth should only be considered as a last resort, not in the present case, but even so, he does not agree with the majority’s conclusion in this consideration.

Alito believes that the Court exaggerated the danger of the law being applied to hunting magazines and videos since hunting was legal in all 50 states and the law was not intended to restrict depictions of hunting.⁵¹ He then turns to the actual intention of this

⁴⁶ *Id.* at 475.

⁴⁷ *Id.* at 475-476.

⁴⁸ *Id.* at 478.

⁴⁹ *Id.* at 480.

⁵⁰ *Id.* at 483.

⁵¹ *Id.* at 488-489.

statute, the prosecution of crush videos. Before, "the underlying conduct depicted in crush videos was nearly impossible to prosecute."⁵² This statute was the only effective way to stop this violent crime and without it, these videos would reappear once again. He analogizes the law to one protecting against depictions of child pornography, "[b]ut while protecting children is unquestionably more important than protecting animals, the Government also has a compelling interest in preventing the torture depicted in crush videos."⁵³

Alito thinks there is a sufficiently important government interest in preventing the torture of animals to not invalidate the statute. He trusts that the government would prosecute responsibly and the Court could read the law narrowly to apply only to those videos showing extreme cruelty, like those "crush" videos. Alito keeps his opinion grounded in law, however empathetic it may seem. He isn't afraid to stand alone in his decision because in his opinion, there lacks any adequate reason to protect dangerous speech with no redeeming social value. He does not believe that this statute, simply making a disgusting criminal act illegal, is a restriction of free speech that should be awarded First Amendment protection.

***Snyder v. Phelps* (2011, Sole dissent)-First Amendment**

Again, as in *Stevens*, Chief Justice Roberts delivers the majority opinion in an 8-1 decision, with Justice Alito as the sole dissenter.⁵⁴ Marine Lance Corporal Matthew Snyder was killed in Iraq in 2006. Phelps, founder of the fundamentalist religious group, Westboro Baptist Church, decided to picket the funeral, knowing that it would generate

⁵² *Id.* at 491.

⁵³ *Id.* at 495-496.

⁵⁴ *Snyder v. Phelps*, 131 S. Ct. 1207 (2011).

media attention. On a close-by sidewalk for 30 minutes before the funeral began, Phelps and other members of the Westboro Baptist Church held up signs with messages like “God Hates the USA/Thank God for 9/11,” “America is Doomed,” “Don't Pray for the USA,” “Thank God for IEDs,” “Thank God for Dead Soldiers,” “Pope in Hell,” “Priests Rape Boys,” “God Hates Fags,” “You're Going to Hell,” and “God Hates You.”⁵⁵ The protest dominated media attention surrounding the funeral. After seeing news coverage of the funeral, Matthew's father, Albert Snyder, sued the Westboro Baptist Church for various torts including intentional infliction of emotional distress (IIED).

A jury found for Snyder, awarding millions of dollars in damages. On appeal, the Westboro Baptist Church argued that the First Amendment protected their actions, and the Fourth Circuit agreed.⁵⁶ The Court agrees with the Fourth Circuit, with the question of liability turning largely on whether the speech is of public or private concern.⁵⁷ Roberts writes, “even if a few of the signs...were viewed as containing messages related to Matthew Snyder or the Snyders specifically...the overall thrust and dominant theme of Westboro's demonstration spoke to broader public issues,”⁵⁸ and was thus entitled to First Amendment protection. The protest taking place on public land and the fact that it did not interrupt the funeral factors into the decision. Roberts notes that despite the fact that the speech was very painful for Snyder, “we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate.”⁵⁹

⁵⁵ *Id.* at 1213.

⁵⁶ *Id.* at 1214.

⁵⁷ *Id.* at 1215.

⁵⁸ *Id.* at 1217.

⁵⁹ *Id.* at 1220.

Justice Alito completely disagrees with the majority here. He begins his dissent stating, “[o]ur profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case.”⁶⁰ Snyder was deprived of the right to bury his son in peace. Alito concedes that the First Amendment affords the Westboro Baptist Church many outlets to voice their opinions, however, it does not give them the right to “intentionally inflict severe emotional injury on private persons at a time of intense emotional sensitivity by launching vicious verbal attacks that make no contribution to public debate.”⁶¹ As such, Alito believes that Snyder should be able to recover under the narrow and hard to satisfy tort of IIED. First Amendment rights do not preclude liability, “[w]hen grave injury is intentionally inflicted by means of an attack like the one at issue here...”⁶²

He explains that the majority’s decision was wrong for three reasons.⁶³ First, and most importantly, the Court characterizes the protest as speaking to public issues, while their attack was specifically aimed at Matthew because he was Catholic and a member of the military. Secondly, the Court’s suggestion that because the attack on Matthew Snyder was not motivated by a private grudge, it is entitled to First Amendment protection is wrong. Phelps’ “publicity-seeking motivation” did not “transform their statements attacking the character of a private figure into statements that made a contribution to debate on matters of public concern.”⁶⁴ Third, the majority’s reliance on the fact that the protest occurred on a public street is not enough to preclude liability.

⁶⁰ *Id.* at 1222.

⁶¹ *Id.*

⁶² *Id.* at 1223.

⁶³ *Id.* at 1226.

⁶⁴ *Id.* at 1227.

Alito reasons that, “funerals are unique events at which special protection against emotional assaults is in order.”⁶⁵ While his opinion is overtly sympathetic to Snyder’s family, he does not lose his basis in the law. Phelps and Westboro Baptist Church partook in outrageous conduct that caused severe injury to Snyder, and thus should be found liable for the intentional infliction of emotional distress. He does not believe that this would infringe on the freedom the First Amendment awards, concluding his opinion stating, “[i]n order to have a society in which public issues can be openly and vigorously debated, it is not necessary to allow the brutalization of innocent victims like petitioner.”⁶⁶

Delving into the modus operandi of Westboro Baptist Church and their exploitation of military funerals for media attention, Alito insists that they will keep using this strategy despite its injury to innocent victims. These protests, which injure innocent victims, are not the kind of political speech Alito believes the First Amendment was created to protect and Alito has no issue with making it known that he does not agree with the rest of the Court in their decision.

***Ricci v. DeStefano* (2009, Concurrence)- Racial Discrimination**

In *Ricci v. DeStefano*, a 5-4 opinion delivered by Justice Kennedy and joined by Justices Roberts, Scalia, Thomas and Alito, Alito writes a notable concurrence.⁶⁷ The issue in this case was the non-use of results of an exam given to firefighters in New Haven, Connecticut to identify those firefighters best qualified for promotion. Virtually no minority candidates were eligible for immediate promotion based on the exam results,

⁶⁵ *Id.*

⁶⁶ *Id.* at 1229.

⁶⁷ *Ricci v. DeStefano*, 557 U.S. 557 (2009).

so the city determined not to certify the results to avoid potential liability for discrimination. Thereafter, seventeen white firefighters and one Hispanic firefighter who passed the exam and were denied the benefits of the result, contended that this was disparate treatment on the basis of their races in violation of Title VII of the Civil Rights Act of 1964. The Court held that without a strong basis in evidence that the examination was deficient, discarding the examination was unnecessary to avoid disparate impact. The Court finds that the City could not meet this strong basis in evidence standard and thus their refusal to certify the exam results was reversed.⁶⁸

Alito's concurrence, joined by Justices Scalia and Thomas, addresses the dissent's claim that the majority provides an incomplete description of the facts, pointing out that the dissent has done the same. He seeks to tell a more complete version of the facts.⁶⁹ Alito focuses on the politics behind the decision to not certify the exam, describing the relationship between the New Haven Mayor, John DeStefano, and a politically powerful pastor, Reverend Boise Kimber. He sympathizes with the firefighters who would have received promotions recounting their stories of personal sacrifice, spending countless hours studying everyday.⁷⁰

Alito's philosophy of equal treatment is seen in this case. The court upholds the fairness and validity of the examinations, finding that IOS, who administered the test did more than its due diligence in their position, and therefore Alito does not believe it is right that the men who studied and succeeded should not reap the benefits. While he is less reserved than he normally is in his opinion, pointedly addressing the dissent, this is

⁶⁸ *Id.* at 561-563.

⁶⁹ *Id.* at 596.

⁷⁰ *Id.* at 607.

only because the City clearly engaged in actions that were unfair. With a father from humble beginnings as an immigrant, it is no shock that unequal treatment to a group of men who worked hard to rise in their rankings, only to be denied that right, would deeply offend Alito.

Ledbetter v. Goodyear Tire (2007, Majority)- Sex Discrimination

Justice Alito writes the majority decision in a controversial 5-4 split, *Ledbetter v. Goodyear Tire and Rubber*.⁷¹ Lilly Ledbetter worked for Goodyear, in their plant, with her pay raises based on performance evaluations. After retirement, she filed suit with the Equal Employment Opportunity Commission claiming sex discrimination under Title VII of the Civil Rights Act of 1964.⁷² Ledbetter alleged that she received poor evaluations from her supervisors because she was a woman, and thus, her pay had not increased as much as it should have, earning significantly less than her male counterparts at retirement.⁷³ A jury found for Ledbetter awarding back pay and damages. On appeal, Goodyear argued that her claim was time barred because she didn't file the EEOC charge within 180 days after the alleged unlawful employment practice, known as a charging period.⁷⁴ She argued that each paycheck she received served as a new, discrete act of discrimination, thus triggering a new charging period. The Court holds that Ledbetter was time barred from bringing her discrimination case because "a new violation does not occur, and a new charging period does not commence, upon the occurrence of subsequent nondiscriminatory acts that entail adverse effects resulting from the past

⁷¹ *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007).

⁷² *Id.* at 622.

⁷³ *Id.*

⁷⁴ *Id.*

discrimination."⁷⁵ As such, the issuance of each new paycheck did not reset the charging period and she should have filed suit within 180 days of each time she was denied a raise.

This decision is one based on statutory interpretation. Alito's decision focuses on the discriminatory intent of Goodyear. This intent is the central element of a Title VII claim, and Goodyear's discriminatory intent fell outside the limitations period.

Ledbetter's claim that each paycheck was an act of discrimination is inconsistent with the statute, because there was no evidence of discriminatory intent with the issuance of each paycheck. "It would shift intent from one act (the act that consummates the discriminatory employment practice) to a later act that was not performed with bias or discriminatory motive. The effect of this shift would be to impose liability in the absence of the requisite intent."⁷⁶ Not being one to legislate from the bench, Justice Alito holds that the 180-day timeline reflected Congress' intent of prompt resolution of such discrimination allegations. The short time limit was enacted to ensure quick resolution of disputes, which can become more difficult to defend against as time passes.⁷⁷ Adopting Ledbetter's argument would even allow "discriminatory pay decision[s] made 20 years ago" to be the subject of Title VII claims.⁷⁸ This would be completely opposite the legislature's prompt resolution goal. Alito finds that "current effects alone cannot breathe life into prior, uncharged discrimination", appropriately applying the 180-day statutory limitation to the act with discriminatory intent, barring Ledbetter's claim.⁷⁹ This decision

⁷⁵ *Id.* at 628.

⁷⁶ *Id.* at 629.

⁷⁷ http://www.oyez.org/cases/2000-2009/2006/2006_05_1074

⁷⁸ *Ledbetter*, 550 U.S. at 639.

⁷⁹ *Id.* at 628.

was criticized as ignoring the realities of the workplace. Further, if one does not realize the discrimination in time to protect rights, they are not awarded their “day in court”.

As such, Congress subsequently changed the law in 2009 when President Obama signed the Lilly Ledbetter Fair Pay Act, amending the law to make clear that the 180-day charging period *is* renewed with each discriminatory paycheck issued.⁸⁰ This change had no effect on the Ledbetter’s case, but would ensure a different outcome for anyone in Ledbetter’s position going forward, relieving the discriminated party from a short statute of limitations time-bar.

***McDonald v. City of Chicago* (2010, Majority)- Gun Rights**

Justice Alito writes for the majority in the 5-4 case, *McDonald v. City of Chicago*, joined by Justices Roberts, Scalia, Kennedy, and Thomas.⁸¹ Otis McDonald, Adam Orlov, Colleen Lawson, and David Lawson were residents of Chicago seeking to keep handguns in their homes for self-defense. They were unable to do so, however, due to Chicago’s very restrictive municipal ordinances; the first did not allow a person to possess any firearm without proper registration, and the second prohibited any registration after a 1982 handgun ban “to protect the residents ‘from the loss of property and injury or death from firearms.’”⁸² Together, these ordinances effectively banned handgun possession by private citizens. Fearing vulnerability to criminals, these Chicago residents challenged the ban and ordinances as a violation of the Second and Fourteenth Amendments. The District Court upheld the ordinances, and the Seventh Circuit

⁸⁰ <http://supremecourtreview.com/default/justice/index/id/44>

⁸¹ *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

⁸² *Id.* at 750.

affirmed.⁸³ The Court overturns these decisions, finding the Second Amendment right to keep and bear arms is fully applicable to the States.⁸⁴

Justice Alito frames the case as an issue of due process incorporation. He begins his decision reviewing various methods, standards, and tests that the Court has used apply the Bill of Rights' protections to the states through incorporation, concluding that the appropriate test for the issue at hand is whether “a particular Bill of Rights guarantee is fundamental to *our* scheme of ordered liberty. . . [and] ‘deeply rooted in the country's history and tradition’.”⁸⁵ He answers this question by pointing to the Court’s decision in *Heller*⁸⁶, pointing out, “[s]elf-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is ‘the central component’ of the Second Amendment right.”⁸⁷

Alito further draws on *Heller*, pointing out this right applies to handguns because they are, “the most preferred firearm in the nation to 'keep' and use for protection of one's home and family” (internal quotation marks omitted).⁸⁸ He delves into the history of the origin of the right to self-defense in English law, the right’s continuity in colonial America, and its persistence through post-Civil War politics and its incorporation into many states’ constitutions.⁸⁹ He concludes that, “[I]t is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty.”⁹⁰

⁸³ *Id.* at 752.

⁸⁴ *Id.* at 749.

⁸⁵ *Id.* at 767.

⁸⁶ *District of Columbia v. Heller*, 554 U.S. 570 (2008).

⁸⁷ *Id.* at 767.

⁸⁸ *Id.*

⁸⁹ *Id.* at 768-777.

⁹⁰ *Id.* at 778.

The decision continues to reject the dissenting arguments that the prevalence of handgun restrictions in numerous other countries proves the right to bear arms is not fundamental, pointing out that several Bill of Rights provisions previously applied to the states have no counterpart in many European countries.⁹¹ Alito also rejects public safety arguments noting that “the right to keep and bear arms is not the only constitutional right that has controversial public safety implications.”⁹²

Again, drawing on *Heller*, Alito reiterates that not *all* laws regulating firearms are invalid, including those longstanding regulatory measures such as, “prohibitions on the possession of firearms by felons and the mentally ill, laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms’.”⁹³

This opinion verifies Alito’s conservative judicial philosophy, viewing the right to bear arms as a guarantee, not to be taken by state’s legislature. His reliance and reference of this right throughout America’s history is a clear indication of his respect for history. Again, this respect is reflected in the beginning of his opinion, as he carefully goes through the Court’s various standards and tests for the issue at hand. He opinion thoughtfully and firmly rejects the dissent’s arguments.

***Gomez-Perez v. Potter* (2008, Majority)- Age Discrimination**

Justice Alito departs from the conservative Justices to write the opinion in *Gomez-Perez v. Potter*, a 6-3 decision, with the dissent composed of Justices Roberts, Scalia, and Thomas.⁹⁴ The issue is based on the Age Discrimination in Employment Act of 1967.

⁹¹ *Id.* at 780-782.

⁹² *Id.* at 783.

⁹³ *Id.* at 786.

⁹⁴ *Gomez-Perez v. Potter*, 553 U.S. 474 (2008).

Myrna Gomez-Perez, a United States Postal Service employee alleged that after filing an administrative age discrimination complaint, she suffered retaliation in the form of groundless complaints against her, false accusations, and reduction of her hours. She filed suit under 29 U.S.C.S. § 633a(a) for retaliation.⁹⁵ The District Court granted summary judgment in favor of the Postmaster General and the Court of Appeals for the First Circuit affirmed, holding that in the federal sector, § 633a(a) provides relief for age discrimination but does not cover retaliation.⁹⁶ The Court reverses, finding retaliation based on the filing of an age discrimination complaint was included within the meaning of the phrase "discrimination based on age" under § 633a(a).

The majority bases their reasoning in two prior decisions dealing with retaliation in other antidiscrimination statutes.⁹⁷ First, in *Sullivan*⁹⁸, the Court held that a retaliation claim could be brought under 42 U.S.C. § 1982, providing "[a]ll citizens . . . shall have the same right . . . as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property."⁹⁹ While the statute doesn't explicitly use the phrase "discrimination based on race", that is its meaning.¹⁰⁰ The second case, *Jackson*¹⁰¹, relying on *Sullivan*, held that Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a), which prohibits "discrimination" "on the basis of sex" in any educational program or activity receiving federal aid, prohibits retaliation against a public school teacher for complaining of sex discrimination in the athletic program.¹⁰²

⁹⁵ *Id.* at 478.

⁹⁶ *Id.* at 479.

⁹⁷ *Id.*

⁹⁸ *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229

⁹⁹ *Gomez-Perez*, 533 U.S. at 479.

¹⁰⁰ *Id.*

¹⁰¹ *Jackson v. Birmingham Bd. of Ed.*, 544 U.S. 167

¹⁰² *Gomez-Perez*, 533 U.S. at 480.

Alito and the majority find that the ADEA language at issue, "discrimination based on age", is not materially different from the language *Jackson* and *Sullivan*. More importantly, "the context in which the statutory language appears is the same in all three cases... remedial provisions aimed at prohibiting discrimination."¹⁰³

The decision then breaks down the errors in the First Circuit's decision, which distinguished the present case from *Jackson*. First, they placed too much reliance "on the fact that the ADEA expressly creates a private right of action whereas Title IX...does not."¹⁰⁴ Next, the Circuit incorrectly reasoned that retaliation claims play a more important role under Title IX than under the ADEA, ignoring the basis for *Jackson*, which relied on an interpretation of the statute's text.¹⁰⁵ Lastly, the attempt to distinguish *Jackson* on the ground that Title IX was adopted in response to *Sullivan*, whereas there is no evidence in the ADEA's legislative history of a similar context here is wrong because, "[w]hat *Jackson* said about the relationship between *Sullivan* and the enactment of Title IX can be said as well about the relationship between *Sullivan* and the enactment of the ADEA's federal-sector provision, 29 U.S.C. § 633a."¹⁰⁶

Further, the Court holds that the presence of a specific provision prohibiting retaliation in the private-sector (§ 623(d)) and the absence of a similar provision in § 633a is insignificant. The two provisions were enacted years apart and the federal-sector provision was not modeled after the private-sector provision, but after Title VII's federal-sector prohibition on discrimination.¹⁰⁷

¹⁰³ *Id.* at 481.

¹⁰⁴ *Id.* at 482.

¹⁰⁵ *Id.* at 484.

¹⁰⁶ *Id.* at 485.

¹⁰⁷ *Id.* at 486-487.

Again, Alito is not shy to “stand alone” in his views, believing that protection against the sort of retaliation seen in this case is necessary. While he does not actually “stand alone”, writing for the majority in this case, he parts from his conservative colleagues, whom he normally sides with. His respect for the decisions in *Jackson* and *Sullivan* plays an important role in his decision. Additionally, his role as interpreter of legislation is overtly present. The fact that Congress did not model the federal-sector provision after the private, specifically listing prohibited conduct, means they intended for broader protection. And, if not, Alito trusts that Congress can make the changes to the legislation to clarify their intentions.

***United States v. Jones* (2012, Concurrence)- Fourth Amendment**

U.S. v. Jones is a 9-0 decision with Scalia writing for the majority and with two separate concurrences by Justice Alito and Justice Sotomayor.¹⁰⁸ Antoine Jones came under suspicion of trafficking narcotics. As a result, a GPS tracking device was installed underneath a vehicle registered to his wife while parked in a public parking lot. Over the next month, the device tracked the vehicle's movements.¹⁰⁹ Jones was charged with drug conspiracy based on the information found while using the GPS and a jury found Jones guilty. The Court of Appeals for the District of Columbia reversed, finding that admission of the evidence obtained by the warrantless use of the GPS device in violation of the Fourth Amendment.¹¹⁰ The Court determines that the Government's installation of the GPS device on defendant's vehicle, and its use of that device to monitor the vehicle's movements, constituted a "search." The Government “physically occupied private

¹⁰⁸ *United States v. Jones*, 132 S. Ct. 945 (2012)

¹⁰⁹ *Id.* at 948.

¹¹⁰ *Id.* at 948-949.

property for the purpose of obtaining information...[and] such a physical intrusion would have been considered a ‘search’ within the meaning of the Fourth Amendment when it was adopted.”¹¹¹

Scalia’s opinion begins by explaining that questions of Fourth Amendment jurisprudence have traditionally been, “tied to common-law trespass,”¹¹² until the emergence *Katz*’s¹¹³ “reasonable expectation of privacy” standard, however that is not applicable here. He cites to reasoning in post-*Katz* cases¹¹⁴ to show that the common-law trespassory test has not been abandoned by the Court, but *Katz* has been added.¹¹⁵ Scalia focuses on the police’s act of attaching the device to the car, which, “encroached on a protected area.”¹¹⁶ In defense to the concurrences’ criticism of such outdated law, he argues that, “[w]hat we apply is an 18-th century guarantee against unreasonable searches, which we believe must provide at a *minimum* the degree of protection it afforded when it was adopted.”¹¹⁷ Scalia does not wish to exclusively use the trespassory test, pointing out that *Katz* would still apply to situations without trespass.¹¹⁸

Alito’s concurrence notes that the holding in this case is “unwise”, “[straining] the language of the Fourth Amendment.”¹¹⁹ He finds it ironic to apply “18th-century tort law” to an issue involving a “21st-century surveillance technique.”¹²⁰ Scalia’s basis for determining a search in terms of trespass law is becoming too attenuated with today’s

¹¹¹ *Id.* at 949.

¹¹² *Id.*

¹¹³ *Katz v. United States*, 389 U.S. 347 (1967).

¹¹⁴ *Alderman v. United States*, 394 U.S. 165 (1969) and *Soldal v. Cook County*, 506 U.S. 56 (1992).

¹¹⁵ *Jones*, 132 S. Ct. at 950-952.

¹¹⁶ *Id.* at 952.

¹¹⁷ *Id.* at 953.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 958.

¹²⁰ *Id.* at 957.

changes in technology. He criticizes Scalia's reasoning, finding a "disharmony with a substantial body of existing case law."¹²¹ There is too much emphasis on the "relatively minor" attachment of the GPS.¹²²

Alito also points out this very narrow holding, with the decision only really specifying that the actions the police took *here* were wrong, make the standards going forward quite unclear.¹²³ Alito believes the *Katz* standard is much better suited in the present case, but notes that this is "not without its own difficulties."¹²⁴ With the dramatic changes in technology, perhaps a new approach to Fourth Amendment issues is required, but this should be carried out through legislation.¹²⁵ Congress' pulse on the public makes them best situated to figure out a solution, and as he firmly disagrees with legislating from the bench, he will apply the pre-existing law until any legislative changes are made.¹²⁶ His respect for the division of the legislative and judicial branches is arguably most apparent in this opinion. He plainly states that the Court is not the venue to solve the privacy-in-light-of-technology puzzle, seeking legislation to figure out where to lay the pieces.

***Riley v. California* (2014, Concurrence)-Search Incident To Arrest**

The issue in *Riley v. California* is whether the search of digital information on a cell phone was a lawful search incident to an arrest.¹²⁷ This case combines two similar fact-patterns in which the contents of both defendants' cell phones are searched after they are arrested, and information found on the cell phones is used to charge them with

¹²¹ *Id.* at 961.

¹²² *Id.*

¹²³ *Id.* at 961-962.

¹²⁴ *Id.* at 962.

¹²⁵ *Id.* at 964.

¹²⁶ *Id.*

¹²⁷ *Riley v. California*, 134 S. Ct. 2473 (2014).

additional offenses.¹²⁸ The Court unanimously holds that without a warrant, police officers could not search the information on cell phones seized from an individual as incident to their arrest.¹²⁹

Warrantless searches are reasonable when conducted incident to a lawful arrest, with limitations. The two exceptions, as established in *Chimel*¹³⁰, are when the search is necessary for police protection and/or the preservation of evidence; these are categorically allowed, as held in *Robinson*¹³¹, to all custodial arrests.¹³² The Court does not find that the data on a cell phone falls into either of the *Chimel* exceptions. While it is acceptable for police officers to examine a phones' physical aspects to ensure that it was not a weapon itself, the data stored on the phones could not be used as a weapon to harm the arresting officers, therefore there is no government interest to allow this.¹³³ Additionally, the potential for destruction of evidence is not prevalent among most people and could be countered by law enforcements' own technologies.¹³⁴

There is a high individual interest in protecting information on a cell phone; the immense storage capacity of today's phones implicate privacy concerns because of the sheer amount of information that can be accessed, dating years back, and even extending beyond the phone itself, to remote servers not in the physical proximity of the arrestee.¹³⁵

As the Court points out, this holding does not make the data on cell phones untouchable

¹²⁸ *Id.* at 2480-2482.

¹²⁹ *Id.* at 2495.

¹³⁰ *Chimel v. California*, 395 U. S. 752 (1969).

¹³¹ *United States v. Robinson*, 414 U. S. 218 (1973).

¹³² *Riley*, 134 S. Ct at 2483-2484.

¹³³ *Id.* at 2485.

¹³⁴ *Id.* at 2486-2487.

¹³⁵ *Id.* at 2488-2491.

by police officers; a warrant can be obtained- and quickly.¹³⁶ Further, there is always the availability of the exigent circumstances exception.¹³⁷

Alito's concurrence expresses his strong pro-law enforcement views. He seeks more opportunity for police to search incident to lawful arrest than just the concerns with protection and preserving evidence, even noting that a well-accepted practice, the seizure of papers, does not squarely fit within this scope.¹³⁸ He finds the *Chimel* reasoning "questionable" and does not want to carry this line of reasoning forward, especially with the ever-present changes with cell phones.¹³⁹ While he agrees with the holding of the Court, he does believe there is a better solution. Again, as he does not believe in legislating from the bench, he asks for legislature to think of this solution.¹⁴⁰ He wants legislatures, as an extension of the public, to choose how to protect their privacy in the future.

***FAA v. Cooper* (2012, Majority)-Privacy**

Justice Alito, joined by the more conservative Justices of the Court, writes the majority opinion in *FAA v. Cooper*, a 5-3 decision (Justice Kagan took no part). The issue in this case is whether a pilot could recover damages for mental and emotional damages when his rights under the Privacy Act were violated.¹⁴¹ A pilot who contracted HIV in 1985 applied for Federal Aviation Administration (FAA) medical certificates in 1994, 1998, 2000, 2002, and 2004 neglecting to disclose his HIV status or medications. He was charged with making false statements to a U.S. Government agency after the

¹³⁶ *Id.* at 2493.

¹³⁷ *Id.* at 2494.

¹³⁸ *Id.* at 2495-2496.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 2497.

¹⁴¹ *FAA v. Cooper*, 132 S. Ct. 1441(2012).

Social Security Administration ("SSA") disclosed his HIV status to the U.S. Department of Transportation ("DOT"). He pled guilty to these charges, sentenced to probation, and fined. The pilot then sued the FAA, the DOT, and the SSA, claiming that the SSA's disclosure of his confidential medical information violated his rights under the Privacy Act, causing him mental and emotional distress. The Northern District Court of California dismissed the action, while the U.S. Court of Appeals for the Ninth Circuit reversed.¹⁴²

Justice Alito, writing for the Court holds that the pilot is not allowed to recover damages for mental and emotional distress because Congress limits the type of money damages that could be recovered to "actual damages" which does not encompass non-pecuniary damages, such as those for mental and emotional distress being asked for here. As such, it will not waive the Government's sovereign immunity from liability for such harm. The Court finds that the ambiguity as to the meaning of "actual damages" must be construed in favor of the government to include only pecuniary damages.¹⁴³

The ruling turned on the meaning of the ambiguous term "actual damages" which because it has a, "chameleon-like quality, we cannot rely on any all-purpose definition but must consider the particular context in which the term appears."¹⁴⁴ The Court acknowledges that "actual damages" has been used in other statutes to include both pecuniary and non-pecuniary damages.¹⁴⁵ The Court draws a parallel to the common law actions of libel *per quod* and slander, which allow "general damages" only if "special

¹⁴² *Id.* at 1446-1447.

¹⁴³ *Id.* at 1448.

¹⁴⁴ *Id.* at 1450.

¹⁴⁵ *Id.* at 1453.

damages”, which are limited to pecuniary loss, are proven.¹⁴⁶ Alito writes that it is reasonable to infer that when Congress removed the term "general damages" from the Privacy Act, it meant to foreclose recovery for non-pecuniary harm.¹⁴⁷ Lastly, the Court casts aside Cooper’s argument that limiting recovery to economic loss would frustrate the remedial purpose of the Privacy Act, holding that this effect has no bearing on Congress’ intent to limit liability to pecuniary harm.¹⁴⁸

Despite Alito’s concerns for personal privacy, he is conservative in his views, especially those concerning the government. He respects Congress’ intent in their lawmaking and does not believe the Court’s purpose is anything more than to strictly interpret. Accordingly, the interpretation of the statutory text in this context, leads to the majority’s holding here.

The dissent, composed of Justices Sotomayor, Ginsburg and Breyer, argues that the Court, in limiting "actual damages" to pecuniary loss have "cripple[d] the Act's core purpose of redressing and deterring violations of privacy interests."¹⁴⁹ Because the primary, and sometimes only, “damages” sustained as a result of an invasion of privacy are emotional or mental distress.

***Florida v. Jardines* (2013, Dissent)-Fourth Amendment**

In *Florida v. Jardines*, a 5-4 decision, Alito writes the dissent joined by Chief Justice Roberts, Justice Kennedy, and Justice Breyer. Notably, Justice Scalia wrote for the majority. The issue is whether the use of a drug-sniffing dog in the constitutionally

¹⁴⁶ *Id.* at 1451.

¹⁴⁷ *Id.* at 1454.

¹⁴⁸ *Id.* at 1455.

¹⁴⁹ *Id.* at 1456.

protected curtilage violates the Fourth Amendment.¹⁵⁰ After the Miami-Dade Police Department received an unverified tip that marijuana was being grown in respondent's home, they sent a surveillance team to the house. After noticing no activity, the detectives used a trained drug-sniffing dog to investigate the property surrounding the home. When the dog approached the front porch, he alerted a positive signal for narcotics, which led to the officers obtaining a search warrant for the home. After execution of said warrant, police found marijuana plants and charged Jardines with trafficking in cannabis.¹⁵¹ At trial, Jardines argued the use of the dog was an unreasonable search and got the evidence suppressed. The Appeals Court reversed, while the Florida Supreme Court approved the suppression of evidence because the use of the drug-sniffing dog constituted a search based on no probable cause.¹⁵²

The majority opined that this issue is straightforward based on the plain reading of the Amendment, even with *Katz* reasoning added to the baseline. The police gathered information “in an area belonging to Jardines and immediately surrounding his house — its curtilage”¹⁵³, which enjoyed protection as part of the home itself. The home and its curtilage are at the core of the Amendment, enjoying the most protection, with the front porch being a classic example of the protected area. Further, this information was gathered by physical intrusion and occupation of the area “to engage in conduct not explicitly or implicitly permitted by the homeowner.”¹⁵⁴ While an officer is not expected to shield his eyes and, even more, is welcome to approach a home and knock without a

¹⁵⁰ *Florida v. Jardines*, 133 S. Ct. 1409 (2013).

¹⁵¹ *Id.* at 1413.

¹⁵² *Id.*

¹⁵³ *Id.* at 1414.

¹⁵⁴ *Id.*

warrant, because any visitor may, the majority found it very different to use a trained police dog to explore the protected area in hopes of discovering evidence. Unlike the implied invitation with a knocker, there is no customary invitation in using a police dog and thus the officers' information from this intrusion on Jardines' property was enough to establish that a search occurred.

Alito finds this opinion to be based on "a putative rule of trespass law...nowhere to be found in the annals of Anglo-American jurisprudence."¹⁵⁵ The fact that the presence of the dog during an otherwise lawful visit constitutes trespass is unsupported by any case law. While the majority concludes that the conduct was a search because the officer exceeded the boundaries of the license to approach the house, the dissent finds that "the Court's interpretation of the scope of that license is unfounded."¹⁵⁶ The implied license is extended to welcome and unwelcome visitors alike, with the inquiry not being one of subjective intent. The spatial and temporal limits of this license were clearly abided by here, with the officers sticking to the path during normal visiting hours for a short amount of time. Moreover, the implied license of an officer to approach the door, even with the objective intent to obtain evidence, known as a "knock and talk", is acceptable. Alito asserts that, "The Court offers no meaningful way of distinguishing the 'objective purpose' of a 'knock and talk' from the 'objective purpose' of Detective Bartelt's conduct here."¹⁵⁷

Further, this finding of a "search" fails under *Katz*; there is no reasonable expectation of privacy in odors emanating from home. It would be unrealistic to draw a

¹⁵⁵ *Id.* at 1420.

¹⁵⁶ *Id.* at 1421.

¹⁵⁷ *Id.* at 1424.

line between odors that can be smelled by people and those detectible by dogs.

Additionally, the use of drug-sniffing dogs are not “new technology”, such as those in *Kyllo* that the court should be especially concerned with permitting.

Again, Alito’s pro-law enforcement views are especially consistent with this dissent. He does not see the reasoning of invalidating legitimate methods of obtaining evidence with such fine-drawn differences, especially without a firm root in any case or common law. This opinion sheds light on one of the major fields of difference between Alito and Scalia, with Alito criticizing Scalia’s outdated application of trespass law.

Conclusion

Justice Samuel Alito’s judicial philosophy shines through with each decision he writes. He has a strong respect for the division of the judicial and legislative branches, strictly interpreting the law, not rewriting it. Further, he firmly grounds his decisions in the law. Growing up with an immigrant father, who suffered discrimination and worked hard to build their life, he has a high standard of fairness and treats those who come before him in court equally and with respect. Although he has garnered the nickname “Scalito”, he has proven to be much more than the second coming of Antonin Scalia, looking for modern solutions to modern issues. Alito has a strong voice, sometimes parting from what is “expected” from him. Supporters and adversaries alike esteem his reserved demeanor and strong sense of integrity.