



**National
Urban League**

To Be Equal #32

August 7, 2013

Supreme Court Weakens Worker Rights

Marc Morial
President and CEO
National Urban League

"The Court's disregard for the realities of the workplace means that many victims of workplace harassment will have no effective remedy." Ruth Bader Ginsburg, Associate Justice, United States Supreme Court

While the headlines have been dominated by the much-anticipated recent Supreme Court rulings on the Voting Rights Act, affirmative action and marriage equality, the Court also issued two lesser-covered rulings that are an affront to workers' rights and their ability to seek justice if they face discrimination on the job. As with the ruling on Section Four of the Voting Rights Act, these two decisions strip away critical protections granted under Title VII of the Civil Rights Act and continue to overturn decades of anti-discrimination protections.

It should be noted that like the disappointing Voting Rights Act ruling, the Title VII decisions resulted from a 5-4 ideological split, with liberal Justices Ginsburg, Breyer, Sotomayor and Kagan standing strong for worker rights, while the more conservative Justices Alito, Scalia, Thomas, Kennedy and Chief Justice Roberts voted to put the interests of powerful corporations above the rights of workers. When coupled with the Court's evisceration of the Voting Rights Act, these decisions reflect an alarming dismantling of decades of civil rights progress that can only be reversed by a shift in the balance of the Court or principled, but difficult, interventions by Congress.

The decisions in both *Vance v. Ball State University* and *University of Texas Southwestern Medical Center v. Nassar* harshly narrow the interpretation of Title VII of the Civil Rights Act of 1964, prohibiting employment discrimination based on race, color, religion, sex and national origin. In the *Vance* case, the Court has made it harder for workers to bring a lawsuit for workplace discrimination when a superior creates a hostile working environment.

Writing for the majority, Justice Samuel Alito declared that an employer is only responsible for the discriminatory conduct of an employee who meets a new and more restrictive definition of a "supervisor." The Court narrowed the long-standing Equal Opportunity Employment Commission (EEOC) definition of a supervisor so that it might now exclude the person who sets

32TBE 8/7/13 • 120 Wall Street • New York, NY 10005 • (212) 558-5300 • WWW.NUL.ORG



your schedule and directs your workflow and apply only to someone with the power to hire, fire, promote or demote.

Prior to this decision, employers have historically been diligent about monitoring issues of discrimination because of the threat of liability. The Supreme Court has now given employers an effective “out” by removing that liability.

In the Univ. of Texas Southwestern Medical Center case, the Court has made it more difficult for workers to prove retaliation as the reason for their dismissal. A key provision in Title VII prevents an employer from punishing or dismissing an employee for making “a charge, testifying, assisting or participating in any manner in an investigation, proceeding, or hearing” regarding discrimination. The Supreme Court ruling now requires employees to show that retaliation was not just a “motivating factor,” but the sole reason for their dismissal -- meaning an employer could escape liability by claiming other reasons for firing or demoting a whistleblower.

Justice Ginsburg, who six years ago successfully challenged Congress to correct the Court's dismissal of a Title VII lawsuit by passing the Lily Ledbetter Fair Pay Act, said, “The ball again lies in Congress's court to correct this court's wayward interpretation of Title VII.”

We urge the Congress to again answer the call.

###