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Let Down in *AT&T Corp. v. Hulteen*: Supreme Court Issues Decision

"The (respondents) in this action will receive, for the rest of their lives, lower pension benefits than colleagues who worked for AT&T no longer than they did."

– Justice Ruth Bader Ginsburg

The lone voice of a female justice on the Supreme Court addresses the consequences potentially facing 12.6 million employed women aged 55 and over who took pregnancy leave prior to the 1978 passage of the Pregnancy Discrimination Act (PDA), assuming they are eligible to seek retirement benefits from the same employer who denied them credit for their pre-PDA leaves as did ERA's clients, the *Hulteen* plaintiffs and the class they sought to represent.

In a disappointing 7-2 decision issued on May 18, 2009 and written by retiring Justice David Souter, the U.S. Supreme Court reversed the Ninth Circuit's decision in *Hulteen v. AT&T*. The Court sided with the telecommunications giant finding that the pre-1978 pension plan which failed to credit women for pregnancy leave was legal at the time the employees took pregnancy leave and that AT&T does not have to increase these employees' retirement benefits because the pre-1978 plan was part of a valid seniority system.

"[I]t shall not be an unlawful employment practice for an employer to apply different standards of compensation . . . pursuant to a bona fide seniority . . . system . . . provided that such differences are not the result of an intention to discriminate because of . . . sex."

With co-counsel, ERA filed *Hulteen v. AT&T* in 2001. In 2007, the Ninth Circuit Court of Appeals ruled in favor of the plaintiffs supporting their claim that AT&T's policy for calculating the pension and retirement benefits discriminated against women based on their sex and thereby violated Title VII.

It did not go unnoticed by women's rights advocates and the media that the dissent was written by the sole female justice on the Court. Two weeks earlier, in a rare *interview* ([LINK to intv](#)) with the Supreme Court reporter for USA Today, Justice Ginsburg described her experience of the oral arguments in *Hulteen* as "Ledbetter repeated".

While we hope a woman will be appointed to the nation's highest Court, and are delighted with President Obama's recent nomination of Sonya Sotomayor for the Supreme Court, the discrimination faced by all women needs to be addressed immediately.

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