

IF YOU CARE ABOUT WOMEN'S RIGHTS, YOU CARE ABOUT OUR FEDERAL COURTS

Every year, federal courts decide cases that impact critical rights and freedoms for women and girls across America. Federal judges issue rulings that ensure women's access to reproductive healthcare, equal rights in education and the workplace, and protection against sexual assault and violence. Judges play a critical role in interpreting how statutes and constitutional protections affect hundreds of millions of people in our country: girls, women, their children and families, the communities they live and work in, and the opportunities of future generations.

THE FOUNDATION: EQUAL RIGHTS FOR WOMEN

In *Reed v. Reed* (1971), the Supreme Court – for the first time – found that a law that discriminated against women was unconstitutional under the Fourteenth Amendment's Equal Protection Clause. Relying on a brief authored by then-director of the ACLU's Women's Rights Project, Ruth Bader Ginsburg, the Court struck down a state statute that specified that "males must be preferred to females" when appointing an estate administrator.

In *Taylor v. Louisiana* (1975), the Supreme Court invalidated a law that excluded women from the local jury pool unless they had expressly volunteered to serve.

WOMEN'S HEALTH

In *Griswold v. Connecticut* (1965), the Supreme Court held a state law banning the use of contraceptives was unconstitutional. However, in *Burwell v. Hobby Lobby* (2014), the Court ruled that certain corporations may claim religious grounds to deny contraceptive coverage as part of employer-sponsored health insurance plans.

In *Roe v. Wade* (1973), the Supreme Court recognized a constitutional right to have an abortion, which was reaffirmed in *Planned Parenthood v. Casey* (1996). Recently, in *Whole Woman's Health v. Hellerstedt* (2016), the Supreme Court held as unconstitutional Texas abortion restrictions that placed an undue burden on women exercising this right.

WOMEN IN THE WORKPLACE

In *Phillips v. Martin Marietta* (1971), the Supreme Court held that an employer who refused to hire women with young children, while hiring men with young children, violated the law.

In *Meritor Savings Bank, FSB v. Vinson* (1986), the Supreme Court held that workplace sexual harassment that creates a hostile environment is a form of sex discrimination.

In *Price Waterhouse v. Hopkins* (1989), the Supreme Court held that sex stereotyping – like discriminating against women for not appearing feminine enough – can be a form of sex discrimination under the law.

In *Young v. United Parcel Service* (2015), the Supreme Court held that the Pregnancy Discrimination Act requires employers to provide pregnant employees with the same on-the-job accommodations they provide to other similarly situated employees who are not pregnant.

WOMEN'S EDUCATION

In *United States v. Virginia* (1996), the Supreme Court held that the all-male admissions policy of the Virginia Military Institute (VMI) violated women's constitutional equal protection rights.

In 1996, federal judges held that Brown University discriminated against female athletes under Title IX when it pulled university funding from several women's sports teams.

BAD FOR WOMEN

President Trump's nominees to the federal bench threaten women's rights to reproductive choice and to equal opportunities in education and in the workplace. They would make it harder for women to fight harassment, discrimination, domestic violence and sexual assault. Low-income women, women of color and LGBTQ women would face particular hardships.

WORKPLACE DISCRIMINATION AND HARASSMENT

At least two Trump judicial nominees, **Don Willett** (Fifth Circuit) and **Michael Brennan** (Seventh Circuit), have expressed doubt that the "glass ceiling" exists for women workers.

Don Willett (Fifth Circuit), while on the Texas Supreme Court, chose to limit the amount of compensation that a victim of workplace sexual harassment and assault can collect from her employer.

Thomas Farr (Eastern District of North Carolina) supported a North Carolina bill that prevented women who were discriminated against, or who were victims of workplace sexual harassment, from filing a lawsuit in state court, calling it a "better policy for the state."

Kurt Engelhardt (Fifth Circuit) has a troubling record with regard to sexual harassment claims, often going out of his way to rule that allegations do not rise to the level of objectively hostile conduct and to keep cases from even being heard by a jury.

EQUAL OPPORTUNITY IN EDUCATION

Damien Schiff (Court of Federal Claims) sued to prevent Title IX from being applied to high school students. If he had been successful, millions of girls across the country would have had far fewer educational opportunities. His lawsuit was dismissed.

Kevin Newsom (Eleventh Circuit) argued that a high school girls' basketball coach, who was fired for complaining that the school treated the girls' team worse than the boys' team, could not bring a lawsuit for retaliation under Title IX. The Supreme Court disagreed and ruled in favor of the basketball coach.

John Bush (Sixth Circuit) opposed women's admission into the Virginia Military Academy (VMI). He wrote that the military-style education of VMI "does not appear to be compatible with the somewhat different developmental needs of most young women." The Supreme Court disagreed.

REPRODUCTIVE RIGHTS

Kyle Duncan (Fifth Circuit) represented Hobby Lobby in its efforts to avoid providing contraceptive coverage to over 13,000 employees as required by the Affordable Care Act.

John Bush (Sixth Circuit) likened abortion to slavery: "[t]he two greatest tragedies in our country—slavery and abortion—relied on similar reasoning and activist justices at the U.S. Supreme Court, first in the Dred Scott decision, and later in Roe."

L. Steven Grasz (Eighth Circuit) As Chief Deputy Attorney General of Nebraska, defended laws banning abortion procedures as well as laws prohibiting the use of public funds for state grants to organizations providing abortion-related services. His office fought the federal mandate requiring public financing for abortions for low-income victims of rape and incest.

Mark Norris (Western District of Tennessee) co-sponsored a resolution in Tennessee that would ban abortion even if necessary to protect the mother's life or in cases of rape or incest.

Stephen Schwartz (Court of Federal Claims) filed a brief in *Hobby Lobby* opposing the contraceptive mandate, which was also strongly opposed by **Matthew Kacsmayk** (Northern District of Texas).

VIOLENCE AND SEXUAL ASSAULT

David Stras (Eighth Circuit) dissented from a Minnesota Supreme Court decision that made it easier to hold rapists accountable.

Michael Brennan (Seventh Circuit) applauded the Supreme Court's decision in *United States v. Morrison*, which struck down key parts of the Violence Against Women Act.