

# 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.

In *June Medical Services v. Gee* (2019), the Supreme Court granted an emergency request brought by reproductive rights advocates to temporarily block a law that would have closed many of Louisiana's last three clinics that offer abortion care. The law is blocked from going into effect while litigation proceeds.

Additionally, in *West Alabama Women's Center v. Miller* (2018), the Eleventh Circuit struck down a state law that in effect prohibited all abortions performed after 15 weeks in the state. As the ACLU noted, "every court that has considered the constitutionality of such a ban has blocked it, including courts in Texas, Arkansas, Kansas, and Oklahoma."

## 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 teams.

*President Trump's nominees to the federal bench threaten women's rights to reproductive care 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.*

## VIOLENCE AGAINST WOMEN AND SEXUAL ASSAULT

**Brett Kavanaugh** (Supreme Court) faced credible allegations of sexual assault made by Dr. Blasey Ford and other women during his SCOTUS confirmation hearing.

**Neomi Rao** (D.C. Circuit) wrote a number of articles where she warned of “hysteria over date rape.” She argued that “a good way to avoid a potential date rape is to stay reasonably sober” and that “if she drinks to the point where she can no longer choose, well, getting to that point was part of her choice.” The Office of Information and Regulatory Affairs, under Rao’s leadership, signed off on efforts to roll back protections for survivors of sexual assault on college campuses. Rao also criticized the Violence Against Women Act (VAWA).

**Kenneth Lee** (nominated to Ninth Circuit) wrote a number of articles that demonstrated hostility toward women’s rights and equality. He inappropriately criticized the experiences of harassment survivors, espoused harmful stereotypes of sexual violence, and showed skepticism regarding the reported prevalence of rape on college campuses.

**Ryan Bounds** (nominated to Ninth Circuit) wrote an article arguing that schools should impose a higher standard of proof for sexual assault claims, in contrast to the requirements for claims of other serious, nonsexual campus misconduct.

**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.

## 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, limited the amount of compensation that a survivor of workplace sexual harassment and assault can collect from their 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), as a trial judge, had 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.

**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.

**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

**Brett Kavanaugh** (Supreme Court) while on the D.C. Circuit, dissented in a case involving a young immigrant woman in government custody, Jane Doe. In *Garza v. Hargan*, 874 F.3d 735 (2017), Kavanaugh supported denying Jane’s access to abortion care even after she successfully followed and completed all of the burdensome requirements mandated by Texas to have the procedure.

**Eric Murphy** (Sixth Circuit) argued in support of an Arizona law that prohibited certain abortions pre-viability. Murphy also defended a law targeting Planned Parenthood that would have cut off critical women’s health funds.

**Wendy Vitter** (nominated to Eastern District of Louisiana) urged supporters to distribute materials that claimed abortion services are a cause of breast cancer and that birth control pills “kill” and make a woman more likely to be the victim of violent assault and murder. Vitter also lauded how Texas has “led the nation in some very pro-life, restrictive laws,” and how anti-choice activists “are making great strides in making it very difficult to get abortion.”

**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) 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 Kacsmarky** (Northern District of Texas).