

# **The Structure of Equality**

**To understand the status of women's equality in the United States, we must first know the history of federal legislation and Supreme Court cases and how they affect women and other minority communities.**

**This section details the expansion of women's legal and constitutional rights in the United States and highlights areas in which more work needs to be done. More specifically, this section includes information on the following:**

- **14th, 19th, and 26th Amendments**
- **The Equal Rights Amendment**
- **The Civil Rights Act of 1964**
  - **Marriage Rights**
  - **Privacy Rights**
- **South African Constitutional Model**



# Equal Protection Under the Law: The 14th Amendment to the Constitution

*Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

*Ratified July 9, 1968*

The Fourteenth Amendment was ratified in response to the treatment of newly freed slaves in Southern states after the Civil War. It has since evolved as the constitutional basis of many of the legal decisions eradicating discrimination based on race and gender.

Section 1 of the Fourteenth Amendment defines citizenship as any person born or naturalized in the United States; forbids the states from denying any citizen the privileges and immunities of citizenship without due process of law; and most importantly, requires that all citizens be given equal protection under the law.

It took many years for the Fourteenth Amendment to be expanded to its current interpretation. When Virginia Minor (*Minor v. Happersett*, 1874) petitioned the courts on the basis that women should be afforded the right to vote as one of the privileges and immunities of citizenship, the Court denied her claim. During WWII, however, the Court began to interpret the amendment more broadly. The Court heard a case involving sentencing for chicken thieves, in which a law allowed chicken thieves to be punished by sterilization, while white collar crimes such as embezzling were punished much less severely. The Court argued that “this gross disparity in penalties based on social class...violated the entire premise of equal protection...any law which impinged on fundamental rights in a way to violate the Equal Protection Clause should be given strict judicial scrutiny by the courts” (U.S. Department of State).

In 1954, the Court delivered one of its most important rulings in American history, *Brown v. Board of Education*. The *Brown* decision, by ruling that separate educational facilities for whites and blacks were unconstitutional, asserted that full citizenship requires equal protection of the laws, and that racial segregation—in schools and elsewhere in the public sphere—is a violation of the Equal Protection Clause.

However, the Equal Protection Clause does not mandate that all laws treat everyone exactly the same. Instead, legal doctrine has evolved to require that laws treat “similarly situated persons similarly” (Freeman 476). The Supreme Court has developed three levels of analysis for use when examining laws that treat one class of people differently than another class:

**Strict judicial scrutiny:** the government must show that the challenged classification serves a compelling state interest and that the classification is necessary to serve that interest;

**Intermediate scrutiny:** the government must show that the challenged classification serves an important state interest and that the classification is at least substantially related to serving that interest;

**Rational basis scrutiny:** the government need only show that the challenged classification is rationally related to serving a legitimate state interest.

Classifications based on race, national origin, alienage, and religion are subject to strict scrutiny, as are those concerning certain fundamental rights, namely the right to vote, access to the courts, and issues concerning marriage and family. Classifications based on gender are subject to intermediate scrutiny. Should the Equal Rights Amendment become part of the Constitution, gender would become a suspect class subject to strict scrutiny, which would make it much more difficult for discriminatory laws to stand up in court.

The Fourteenth Amendment also played an integral role in the majority's opinion in *Roe v. Wade*, the 1973 decision legalizing abortion. Eight years earlier, the Court ruled in *Griswold v. Connecticut* (1965) that an implicit fundamental right to marital privacy exists "between the lines" of the 1st, 3rd, 4th, 5th, and 9th Amendments. In *Eisenstadt v. Baird* (1972), the Court asserted that this right to privacy inhered in the individual rather than the marital unit. In *Roe*, the Court ruled that the right to privacy includes abortion. Because it is therefore considered a fundamental right, a state must demonstrate a compelling interest in having any laws that regulate abortion that takes place during the first two trimesters of pregnancy.

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Sources:

Freeman, Jo. "From Protection to Equal Opportunity: The Revolution in Women's Legal Status." In *Women, Politics and Change* ed. by Louise Tilly and Patricia Gurin, New York: Russell Sage, 1990, pp. 457-481.

United States Department of State. "Rights of the People: Equal Protection of the Law." <http://usinfo.state.gov/products/pubs/rightsof/equal.htm>

See also "Constitutional Law and Abortion," <http://members.aol.com/abtrbng/conlaw.htm>



# Winning the Right to Vote: The 19<sup>th</sup> Amendment to the Constitution

*Section 1: The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.*

*Section 2: Congress shall have power to enforce this article by appropriate legislation.*

*Ratified August 18, 1920*

The emergence of the women's suffrage movement can be traced to the Seneca Falls women's rights convention in 1848. In the resulting Declaration of Sentiments, listed first among the grievances committed against women by men was the denial of the "inalienable right to the elective franchise." Furthermore, the Declaration called the struggle to win the vote "the duty of the women of this country."

Suffragists took their demands before Congress, fighting successfully to keep the words "male citizens" out of the 14<sup>th</sup> Amendment, which guarantees equal protection to all citizens of the United States. The National Women's Suffrage Association, headed by Susan B. Anthony and Elizabeth Cady Stanton, refused to support passage of the 15<sup>th</sup> Amendment, which expanded the right to vote to African American men, because it did not apply to women. The more moderate American Women's Suffrage Association, headed by Lucy Stone, Henry Blackwell, and Julia Ward Howe, continued to work in support of the 15<sup>th</sup> Amendment, which was ratified in 1870.

In 1872, Susan B. Anthony was arrested and brought to trial in Rochester, New York for attempting to vote in the presidential election. At the same time, Sojourner Truth appeared at a polling booth in Grand Rapids, Michigan demanding a ballot; she was turned away. Suffragists faced further setbacks when the Supreme Court ruled unanimously in *Minor v. Happersett* (1875) that neither the 14<sup>th</sup> Amendment's privileges and immunities clause nor its equal protection clause gave women the right to vote.

Having lost the battle for an amendment guaranteeing universal suffrage, in 1878 women's suffrage activists proposed a constitutional amendment that would prohibit states from denying someone the right to vote based on the person's sex. It would be 41 years before Congress passed the Amendment with the necessary 2/3 vote, sending it to the states for ratification. In the meantime, suffragists pursued a state by state strategy, lobbying for referendums. By 1918, they had achieved victories in fifteen states.

When the constitutional amendment passed both houses of Congress in 1919, ratification proceeded quickly. Tennessee became the 36<sup>th</sup> state to ratify the 19<sup>th</sup> Amendment after it passed the state legislature by one vote.

Today, increasing voter participation among young women has the power to transform politics because women vote differently than men. The gender gap is the measurable difference in male and female voting and opinions. The gender gap has determined the outcome of elections, making the difference in 8 of the U.S. Senate elections in 2000.



# Expanding the Franchise: The 26<sup>th</sup> Amendment to the Constitution

*Section 1: The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or by any state on account of age.*

*Section 2: The Congress shall have power to enforce this article by appropriate legislation.*

*Ratified July 1, 1971*

Congressman Jennings Randolph (D-WV) first introduced legislation to amend the Constitution to lower the voting age from 21 to 18 in 1942. It gained substantial support after the Korean War, when President Eisenhower endorsed extending the franchise to those “old enough to fight and die for the United States.”

Young people, especially those on college campuses, became increasingly involved in politics in the turbulent 1960s. Civil rights organizations such as the Student Non-Violent Coordinating Committee (SNCC) worked to end segregation and organize voter registration drives in the Deep South. Students for a Democratic Society emerged as the leading leftist, anti-war organization, and the group's founders articulated a commitment to a political concept of participatory democracy. As the student anti-war movement escalated, protests were held on college campuses around the country, including Kent State, where National Guardsmen infamously killed four students on May 4, 1970. The protesters pressured older generations of Americans to recognize that if young people were required to make sacrifices in wartime, they should also have a say in electing those with the authority to take the country into war.

In 1970, Congress passed legislation to lower the voting age to 18. However, because the Constitution gives states the authority to administer the franchise, the Supreme Court ruled in *Oregon v. Mitchell* that the legislation applied to federal elections but not those on the state and local level. To avoid the confusion that would have resulted from having to separate federal and state ballots in the 1972 election, Congress quickly passed Randolph's resolution to send an amendment to the states for ratification. The required number of states ratified the amendment in 100 days.

Since the 1972 election, however, voter turnout among 18-24 year olds has steadily decreased, with the exception of the 1992 presidential elections. Reasons for low voter turnout among this age group range from a lack of education about the process of voting (i.e. how to register, where to go to cast a vote, and how to register as a student in another state or how to request an absentee ballot) to a distrust of government or the feeling that one vote cannot make a difference. Just as the anti-war, civil rights, and feminist movements of the 1960s prodded young people to recognize the government's impact on their lives, however, young people today have a multitude of interests at stake that depend on who holds elective office. These include healthcare, the rising costs of higher education, the strength of the economy, and access to reproductive healthcare, to name a few. An incredible effort by nonprofit and citizen organizations to register and turnout the youth vote successfully reversed the trend toward lower voter turnout in 2004. According to the Center for Information and Research on Civic Learning and Engagement (CIRCLE), nearly five million more young adults voted in 2004 than had done so in 2000, or 42.3% of eligible voters. Perhaps even more importantly, millions of young Americans became involved in political organizing for the first time.



# Unfinished Business: The Equal Rights Amendment

*Section 1. Equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex.*

*Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.*

*Section 3. This amendment shall take effect two years after the date of ratification.*

## The History of the ERA

Alice Paul, head of the National Women's Party and leader of the recently successful women's suffrage campaign, first called for an Equal Rights Amendment to be added to the Constitution in 1923. Her original text read as follows: "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction." The Amendment attracted opposition from labor rights activists who felt that it would undermine protective workplace legislation. In 1943, the resolution was reworded to what it is today. Although both major parties supported the ERA in their platforms in the early 1940s, Congress did not pass the resolution and send it to the states for ratification until 1972. Thirty-eight states were required to ratify the amendment within seven years.

Women's rights organizations around the country, led by the National Organization for Women and ERAmerica, began mobilizing to put pressure on state legislatures to ratify the ERA. In the first year, twenty-two states ratified the amendment, but as opposition groups such as Phyllis Schlafly's Stop ERA Campaign got underway and the religious right solidified their stronghold on the Republican Party, the momentum slowed considerably. Three states shy of the required thirty-eight, NOW pressured Congress to extend the deadline and organized the largest feminist march to that point in support of the extension. In October 1978 their efforts paid off when Congress set a new deadline of June 30, 1982. Pro-ERA groups increased the pressure with tactics including countdown rallies, lobbying, petitioning, and even hunger strikes and White House picketing. Still, they were not able to get the last three states before the 1982 deadline.

The ERA has been reintroduced into Congress every session since it failed to be ratified. It must pass both houses of Congress by a two-thirds majority before it can be sent to the states, starting the ratification process again. Some ERA supporters suggest an alternative "three state strategy." Some legal analysts have concluded that because the deadline was not in the original text of the amendment but rather in the proposing clause, Congress has the power to recognize as valid the 35 states that ratified the ERA before 1982. This would mean that only three more states would need to ratify the amendment for it to become a part of the Constitution today.

***"We shall not be safe until the principle of equal rights is written into the framework of our government."***

**Alice Paul, author of the original Equal Rights Amendment**

## Why We Still Need an ERA

Despite the enormous strides made by the women's movement, legal sex discrimination still persists in the United States. For example, despite laws preventing sex discrimination in employment, including Title VII and the Pregnancy Discrimination Act, women on maternity leave are not necessarily guaranteed job protection (NOW). Under current laws, the employer is only found guilty of discrimination if it is clear that the discrimination was intentional. There are also many areas of inequality that have yet to be addressed by federal legislation, including pay equity for comparable worth, pervasive discrimination against gays and lesbians, and unequal access to reproductive rights, especially for poor and young women.

Ratification of the Equal Rights Amendment would elevate sex to a suspect class under the Equal Protection Clause of the Fourteenth Amendment, equivalent to race (see "Equal Protection under the Law"). In practice, this would require that any legislation that treated males and females differently be submitted to strict judicial scrutiny, meaning that the state must prove that the discrimination serves a compelling state interest and that the law is necessary to serve that interest.

The stark reality is that all of the gains of the past forty years are precarious without the firm constitutional foundation the ERA would provide. A single vote in Congress could overturn any of the feminist movement's hard-won legislative victories. Just recently, efforts have been made to weaken Title IX, which outlaws discrimination in education. A "strict constructionist" judicial interpretation of the Constitution would eradicate the protection afforded women through current interpretations of the Equal Protection Clause of the Fourteenth Amendment. Indeed, without an Equal Rights Amendment, the Constitution, strictly interpreted, would guarantee only that men and women are equal in regards to access to the vote.

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### Sources:

"Issues: Constitutional Equality," National Organization for Women.  
<http://www.now.org/issues/constitution/index.html>.

### Additional Resources:

The Alice Paul Institute: <http://www.equalrightsamendment.org>,  
The ERA Campaign Network: <http://eracampaignweb.kis-hosting.com/index.php>



# Civil Rights Act of 1964

*It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin...*

Title VII of the Civil Rights Act

## Brief Timeline-Preceding the Civil Rights Act of 1964

**1776** The Declaration of Independence is signed and includes the text that all men are created equal. However 'men' included white, property owning men. Slavery continues in the new country while revolts are held.

**1789** The US Constitution is adopted, citing slaves as three/fifths of a person for representative purposes.

As immigrants begin to enter the country, overt discrimination against women, African Americans, and Native Americans spreads to include each newcomer.

**1848** The First Women's Rights Convention convenes in Seneca Falls, NY to demand women's suffrage.

**1861** The tension among the union continues to grow until South Carolina secedes and eleven states follow suit. Later that year the Civil War begins.

**1865** In the same year the Civil War ends, Lincoln is assassinated, the Thirteenth Amendment is added to the Constitution abolishing slavery and the Ku Klux Klan forms in TN.

**1868** In the text of the Fourteenth Amendment, African Americans are now considered full citizens, entitled to full protection by law. African American men are granted the right to vote two years later with the passage of the 15th Amendment.

Women are still not guaranteed the right to vote by the U.S. Constitution, but states are beginning to add the right to vote into their own state constitutions.

**1875** The first Civil Rights Act passes, but is struck down by the Supreme Court a few years later, with the premise that the constitution can only protect individuals from discrimination by the government. Although laws pertaining to the rights of African Americans had been passed, very little had been done about the enforcement of those laws.

In the early part of the 20<sup>th</sup> century, Congress selectively passes several acts granting citizenship to Puerto Ricans and Native Americans while denying the same right to Japanese and Chinese immigrants. Events in the 1950s such as the infamous Brown v. Board ruling helped fuel the civil rights movement.

## The Civil Rights Act of 1964

Just as the summer was heating up with general dissatisfaction by activists up against conservatives who opposed the implementation of social equality and the intermingling of races, the Civil Rights Act was passed. The Civil Rights Act was signed into law on July 2, 1964 by President Lyndon Johnson. Johnson, Kennedy's successor, had pledged to continue the 'ideas and ideals' of equality the late president had started. This particular summer was punctuated by a calculated Freedom Summer campaign by the Student Non-Violent Coordinating Committee (SNCC) in which they coordinated white student activists from prestigious northern universities to the south to register African American voters. The signed bill, backed by the 14<sup>th</sup> and 15<sup>th</sup> Amendments, outlawed racial discrimination in public places and employment opportunities. Title VII of the Civil Rights Act specifically attacks discrimination in the workplace. In the original document, sex discrimination was not included. Congress members proposed the new wording in hope that the bill would not pass if it was extended to protect women's rights as well. The Civil Rights Act of 1964 is considered the most important civil rights legislation in the nation's history.

## Since 1964

**1966** The National Organization for Women (N.O.W.) is founded, pledging to work for equality for both sexes.

Throughout the 1960s various student organizations form, demanding to be heard and be an influential part of the political process.

**1968** Martin Luther King is murdered.

**1979** A group of people come together to demand recognition for the Lesbian and Gay community by successfully implementing a Gay and Lesbian Civil Rights March on Washington.

Throughout the 70s and into the 80s, numerous cases are brought forth and are backed by the Civil Rights Act of 1964.

**1991** As a way to strengthen the act passed in 1964, the Civil Rights Act of 1991 is passed.

## The Benefits of the Civil Rights Act of 1964

Summary of the provisions set forth by the Civil Rights Act of 1964 are as follows:

- Prohibits discrimination in voter registration, such as having a literacy test or a fee
- Forbids discrimination in public places such as restaurants, hotels, etc.
- Permits the federal government to enforce the desegregation of public facilities and schools
- Grants federal financial aid to be withdrawn or withheld from educational institutions and programs that practice racial discrimination
- Prohibits private employers from using discriminating practices in the hiring and firing of any person based on race, color, sex, religion, or nationality



# Right to Marriage

**As Americans, we have seen changes** within the institution of civil marriage. Many of us have seen these changes in our lifetimes. The status of women within marriage has changed and continues to evolve to reflect the equality of spouses. The status of ending a marriage has changed with the Supreme Court's recognition that states have to honor each other's divorces. But eligibility to marry, particularly based on race, present the most recent and vivid example of change within marriage.

At one point, 40 states in this country forbade the marriage of a white person to a person of color. In other words, people could not marry a person of the "wrong" race. Marriages between whites and persons of color were decried as "immoral" and "unnatural". Overwhelming numbers of Americans agreed. A Virginia Judge upheld that State's ban on interracial marriages saying, in a language with the same rhetorical tone as used against gay people today:

"Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And for the interference with his arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix."

Despite the public opposition to interracial marriage, in 1948, the California Supreme Court led the way in challenging racial discrimination in marriage and became the first state high court to declare unconstitutional a ban on interracial marriage. *Perez v. Lippold*, 32 Cal.2d 711 (1948). The Court pointed out that races don't marry each other, people do. Restricting who can marry whom based on that characteristic alone was therefore race discrimination. The court decision was controversial, courageous and correct: at that time, 38 states still forbade interracial marriage, and 6 did so by state constitutional provision.

## ***Loving v. Virginia***

In the middle of the night, in 1958, in the bedroom of their Virginia home, newlyweds Richard and Mildred Loving, a European-American man and an African-American woman, awakened to blinding flashlights and police. The couple was arrested. The charge: violating the ban on marriage for interracial couples. Although it was just a generation ago, that kind of law existed in Virginia and in many states.

Facing a felony conviction and the possibility of up to five years in prison, the Lovings originally pled guilty. They received a one-year jail sentence -- suspended on the condition that they leave the state and not return together for 25 years. The Lovings appealed their case and, nearly a decade after their arrest, the United States Supreme Court held that "racial hygiene" laws that existed in Virginia and 15 other states unconstitutionally sought to interfere with a person's right to marry the partner of her or his choice.

Pre-Loving, states defended laws against interracial marriage as vital to protect "the natural order of things." Virginia's anti-miscegenation law read: "All marriages between a white person and a colored person shall be absolutely void without any decree of divorce or other legal process."

In 1967, the United States Supreme Court struck down the remaining interracial marriage laws across the country and declared that the "freedom to marry" belongs to all Americans. *Loving v. Virginia*, 388 U.S. 1, 12 (1967). The Court described marriage as one of our "vital personal rights" which is "essential to the orderly pursuit of happiness by a free people".

### ***Zablocki v. Redhail***

In 1978, the United States Supreme Court declared marriage to be "of fundamental importance to all individuals". The court described marriage as "one of the 'basic civil rights of man'" and "the most important relation in life." The court also noted that "the right to marry is part of the fundamental 'right to privacy'" in the U.S. Constitution.

### ***Baker v. Nelson***

Considered by some to be "the first" same-sex marriage case. In 1971 a gay male couple argued that the absence of sex-specific language in the Minnesota statute was evidence of the legislature's intent to authorize same-sex marriages. The couple also claimed that prohibiting them from marrying was a denial of their due process and equal protection rights under the Constitution. The court simply stated "we do not find support for [these arguments] in any decision of the United States Supreme Court."

### ***Turner v. Safley***

Over time, restrictions on marriage have become more and more suspect. In 1987, the last time the United States Supreme Court considered the claim of a group of Americans about restriction on their right to marry, the Court articulated four attributes of marriage common to this group and all other Americans. These attributes are:

1. expression of emotional support and public commitment;
2. spiritual significance, and for some the exercise of a religious faith;
3. the expectation that for most, the marriage will be consummated; and
4. the receipt of tangible benefits, including government benefits and property rights.

### ***Marriage Equality***

Looking at these attributes of marriage, the Court decided that these Americans - incarcerated prisoners - shared with other Americans the freedom to marry. Because prisoners, too, can enter into a marriage with these characteristics, the Court invalidated Missouri's' virtually complete ban on marriages of prison inmates. *Turner v. Safley*, 482 U.S. 78, 94 (1987).

The analogies are clear. Restricting who can marry whom based on their sex and sexual orientation is also discrimination. Creating a civil institution which is available to all committed adults -- even if they are incarcerated prisoners -- is essential for the happiness of everyone, including same-sex couples. Perhaps that is why civil rights leaders like Coretta Scott King and now-United States Representative John Lewis of Georgia have endorsed the right to civil marriage for same-sex couples.

*This and additional information is available from the Marriage Equality California (MECA).  
[Http://www.marriageequalityca.org](http://www.marriageequalityca.org)*



# Right to Privacy

The Equal Protection Clause of the 14<sup>th</sup> Amendment in the U.S. Constitution forbids states from denying any person equal protection. In other words, the laws of a state must treat an individual the in the same manner as others in similar conditions and circumstances.

In the same fashion, the right to privacy has evolved to protect the freedom of individuals to choose whether or not to perform certain acts or subject themselves to certain experiences. The Supreme Court handles privacy issues on a case by case basis since society and personal values are always changing. Therefore the boundaries of the right of privacy are impossible to maintain because there is always a change going on in society.

The right to privacy and equal protection play interesting roles in American law and society. Privacy is not explicitly protected by the Constitution, but is important to most Americans. Privacy rights guarantee an individual's right to be left alone without unnecessary interruption by government, media, or other institutions or individuals. The Supreme Court confirmed their belief in the right to privacy, but the extent of the right, and its place in constitutional law, remains debated.

The following court cases, integral to feminist ideology and practice, were decided because of America's continued appreciation of the right of to privacy.

## **GRISWOLD v. CONNECTICUT** **Decided June 7, 1965**

The Griswold v. Connecticut case allowed women in the U.S to receive contraceptive services. More importantly, it identified a constitutional right of privacy that no state could violate. In this way Griswold family planning opponents could not legally impose restrictions on access to services in the future, and it laid the ground work for establishing the right to safe and legal abortion.

However, the clinic closed November 10, 1961 because Griswold and Buxton were arrested for violating a state law that made it illegal to use devices or materials to prevent conception.

They were found guilty as charged and appealed to both the Appellate Division of the Circuit Court and the Connecticut Supreme Court. The Connecticut Supreme Court concluded that the conviction of Griswold and Buxton was not an invasion of constitutional rights.

Griswold and Buxton then took their case to the United States Supreme Court where a ruling decided that a married couple has a right to privacy that cannot be infringed upon by a state law. Therefore the ruling made it legal for married couples to use contraceptives under the guise of 'marital privacy'.

Justice William O. Douglas wrote the majority opinion on the ruling, "We deal with a right of privacy older than the Bill of Rights - older than our political parties, older than our school system. Marriage is a coming together, for better or for worse, hopefully enduring and intimate to the degree of being sacred."

Therefore Connecticut was constitutionally banned from interfering with a married couple's decision about childbearing.

### **Take Action!**

**Keep Roe v. Wade legal! Stay updated on Supreme Court judicial nominees. Know what laws your state is passing to take away privacy rights for women and LGBT individuals. Be active and call your representatives at both the local and national levels.**

**For more information**  
**<http://www.feminist.org/courts/>**

***Roe V. Wade***  
**Decided January 22, 1973**

On January 22<sup>nd</sup>, 1973, the U.S. Supreme Court decided that a woman's right to an abortion fell within the right to privacy protected by the Fourteenth Amendment. The decision, stemming from the *Roe v Wade* court case, gave women the right to an abortion during the entirety of the pregnancy and defined different levels of state interest for regulating abortion in the second and third trimesters. As a result, the laws of 46 states were affected by the Court's ruling.

Jane Roe was unmarried and pregnant; she wanted to terminate her pregnancy by having an abortion "performed by a competent, licensed physician, under safe, clinical conditions". However, she was unable to get a "legal" abortion in Texas because her life did not appear to be threatened by her pregnancy. Also, she could not afford to travel to another jurisdiction to have a legal abortion under safe conditions. Roe claimed that the Texas statutes were vague and they took away her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.

***Lawrence and Garner v. State of Texas***  
**Decided June 26, 2003**

Sodomy laws were enacted to criminalize oral and anal sex by consenting gay couples, and in some states heterosexual couples. Nevertheless it was used almost exclusively to justify discrimination against lesbians and gay men. The decision of *Lawrence & Garner v. State of Texas* made sodomy laws illegal in the 13 states that still criminalized the act. This case was also a step towards gays and lesbians receiving equal rights in all of the 50 states.

Two gay men, John G. Lawrence and Tyron Garner, argued that the state of Texas deprived them of privacy rights and equal protection under the law when they were arrested in 1998 for having sex in a Houston home. A neighbor reported a "weapons disturbance" at the home of John Lawrence, and when police arrived they only found two men having sex. Lawrence and Garner were held overnight in jail and later fined \$200 each for violating the state's Homosexual Conduct Law.

The U.S Supreme Court Justices ruled 6-3 that the law banning same-sex sodomy was unconstitutional. Five justices declared that the law violated the defendants' fundamental right to privacy, and another justice ruled that the law violates equal protection rights by discriminating between homosexuals and heterosexuals. Three justices opposed the overturning of the law.

**The Future**

The court cases mentioned above were all based on privacy rights. In the upcoming years, Bush could appoint two new Supreme Court Justices, both of which could vote against *Roe v. Wade* and other important civil and human rights cases. We live in a time where action is necessary; our voices need to be heard because our future is in jeopardy. *Roe v. Wade* was not decided because the judges thought women should have the choice to decide what happens to their bodies and lives. The case was decided because the judges believe women, like men, have the right to privacy.

*The Republic of South Africa held its first democratic general election on April 26-29, 1994. Nineteen political parties participated in the election and 22 million voted. The drafting of the Constitution involved many South Africans in the largest public participation program ever carried out in the country. After almost two years of intensive consultations, political parties represented in the elected Constitutional Assembly negotiated the content, integrating ideas from ordinary citizens, civil society, and political parties inside and outside the Constitutional Assembly. Fortunately, the care taken to include all the voices of the New South Africa produced a document that specifically assured the rights of women. The Constitution was signed into law in December of 1996.*

## **The Constitution includes non-sexism in its founding provisions:**

### **Republic of South Africa**

1. The Republic of South Africa is one, sovereign, democratic state founded on the following values:
  - a. Human dignity, the achievement of equality and the advancement of human rights and freedoms.
  - b. Non-racialism and non-sexism.
  - c. Supremacy of the constitution and the rule of law.
  - d. Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

**Further, the South African Constitution's Bill of Rights' Section 9, "Equality" adopts the progressive stance that the state will not discriminate against people on the basis of gender, sex, pregnancy, marital status, sexual orientation, and other grounds.**

### **Equality**

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
  - (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
  - (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
  - (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
  - (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.