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History of Gender Discrimination and the 14th Amendment

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Recommended Citation
Weiss, Alyson, "History of Gender Discrimination and the 14th Amendment" (2012). *College of Law Library Student-Authored Works.* Paper 102.
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Research Guides

History of Gender Discrimination and the 14th Amendment

Guide Information

Last Updated: Nov 15, 2012
Guide URL: http://libguides.law.gsu.edu/content.php?pid=314837
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Introduction

In this day and age, women do not typically face gender discrimination in their daily lives. That is not to say that gender stereotyping and discrimination do not exist. However, society has come a long way since the enactment of the 14th amendment.

The Fourteenth Amendment to the United States Constitution was enacted in 1868 and states, in relevant part: "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."

This portion of the Fourteenth Amendment is called the "Equal Protection Clause" and from the text of the Amendment you would infer "person" to mean everyone, including women. Unfortunately that was not necessarily the case. While the Amendment was enacted after the Civil War to ensure that all people were treated equally, history tells us this did not happen. Not only were African Americans consistently discriminated against but there were laws in many states that abridged women's constitutional rights. The plight of women to be treated equally played out in the courts. It took several Supreme Court cases striking these statues down as unconstitutional for women to be afforded the same constitutional rights as men.

Scope of this LibGuide

This bibliography will explore the history of gender discrimination after the enactment of the Fourteenth Amendment. The case law regarding this topic is voluminous. This guide will focus primarily on Supreme Court Cases that led to women obtaining many of the rights they enjoy today. These cases are merely a starting off point for several deeper areas to be explored. This guide is to assist attorneys, law students, and lay persons wishing to explore gender discrimination but is in no way cumulative of all the resources or topics in this area. This guide is meant to provide a very basic understanding of the history of gender discrimination after the enactment of the 14th Amendment, and a snapshot of some of the cases that have resolved a few of these issues. This bibliography links to free resources, however, for a more in depth look at this topic, readers may also utilize Westlaw or Westlaw Next and Lexis Nexis or Lexis Advance at cost.

About the Author

Alyson Weiss is a third year law student who is graduating in May 2012 from Georgia State University College of Law. She graduated from the University of Florida in 2008 with a Bachelors of Science in Telecommunications--News Reporting and a minor in Anthropology. Following graduation from the University of Florida Ms. Weiss worked at a real estate law firm as a legal assistant awhile awaiting admissions to law school. After graduation from Georgia State Alyson will be working at a law firm in Atlanta, Georgia practicing Commercial Real Estate. If you have any further questions regarding this author or this bibliography please contact Meg Butler at mbutler@gsu.edu.

Disclaimer

This research guide does not purport to be all-inclusive of the relevant case law on the subject of gender discrimination and the Fourteenth Amendment. Although this area of law is not rapidly changing, it is critical that all cases be checked to ensure they are still good law. Any information provided in this guide is not to be taken as the opinion of the author or Georgia State University College of Law in regards to how to interpret Fourteenth Amendment rights. If you feel your rights have been violated, you should consult with an attorney.

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Primary Sources

United States Constitution

AMENDMENT XIV

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.

SECTION 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

SECTION 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5.

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

Georgia Constitution

Paragraph VII.

Citizens, protection of. All citizens of the United States, resident in this state , are hereby declared citizens of this state ; and it shall be the duty of the General Assembly to enact such laws as will protect them in the full enjoyment of the rights, privileges, and immunities due to such citizenship

United States Code

Education

20 U.S.C. § 1681 "Sex"

This statute essentially provides that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance but there are some exceptions detailed in the statute.

Employment

42 U.S.C. § 2000e-2

This statute essentially provides that no employer shall 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; or to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or

otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Historic Cases Allowing Discrimination

There are several historic cases holding that statutes meant to "protect" women were constitutional when in fact those statutes discriminated against women.

In Muller v. Oregon, 208 U.S. 412 (1908) the Court held Oregon Law that limited women to only working 10 hours a day in laundries was constitutional. This statute made it a misdemeanor for a woman to work more than 10 hours a day in a laundry facility.

In Radice v. New York, 264 U.S. 292 (1924) the Court upheld a New York statute which prohibited women from working in restaurants at night as constitutional.

In Hoyt v. Florida, 368 U.S. 57 (1961) the Court upheld a Florida statute which allowed women to choose whether or not they wanted to participate in jury service, unlike for men where it was mandatory.

In Cronin v. Adams, 192 U.S. 108 (1904) the Court upheld a municipal ordinance which forbid the sale of liquor to women under the theory of protecting their morals.

Supreme Court Cases Holding Discrimination is Unconstitutional

Many Supreme Court cases turned on whether sex stereotypes were being used when the legislature enacted the statute. Even though some women today may wish some of the old statutes were in place (ie women don't have to pay alimony or women could buy certain alcoholic beverages at 18 while men couldn't buy until 21) the cases that struck down these statues also began to strike down gender stereotypes. The Courts began holding that the traditional role of a woman in the home and the man as the provider were no longer in place and therefore equality was pioneered.

Standard of Review

Though not all of the following cases were decided under this standard of review, Craig v. Boren 429 U.S. 190 (1976) set the standard, as applied today, as intermediate scrutiny which required that the gender-based classifications (1) must serve important governmental objectives and (2) must be substantially related to the achievement of those objectives.

In Craig v. Boren the Court struck down a state statute that prohibited the sale of "non-intoxicating" 3.2 beer to males under 21 and to females under 18. The State presented statistics that more males were arrested for drunk driving but the Court found the correlation between males and females arrested for drunk driving was not enough to allow the use of sex discrimination.

Discrimination Cases

In Reed v. Reed 404 U.S. 71 (1971) the Court held that Idaho statute which provided that as between persons equally qualified to administer estates males must be preferred to females, was based solely on a discrimination prohibited by and was a violation of the equal protection clause of the Fourteenth Amendment.

In Stanton v. Stanton 421 U.S. 7 the Court held that the difference in sex between children did not warrant a distinction in the Utah statute under which girls attained majority at 18 but boys did not attain majority until they were 21 years of age, and the statute violated the equal protection clause of the Fourteenth Amendment.

In Orr v. Orr 440 U.S. 268 (1979) the Court invalidated an Alabama law imposing alimony obligations upon males but not upon females.

In Frontiero v. Richardson 411 U.S. 677 the Court held that a Federal statute which said spouses of male members of the uniformed services are dependents for purposes of obtaining increased quarters allowances and medical and dental benefits, but that spouses of female members are not dependents unless the female can prove the spouse is dependent for over one-half of their support was unconstitutional. (5th Amendment Case).

In United States v. Virginia, 518 U.S. 515 (1996) the Court held that an all male military college (VMI) was unconstitutional even though the State argued the academy would need separate housing and facilities for women and even though the State offered to establish a parallel program for women. The Court said the State's arguments were not exceedingly persuasive and the parallel program lacked the same military structure as VMI and was not comparable.

Cases Premised on Righting Past Wrongs

The Supreme Court has allowed some discrimination when the statutory classifications that benefit women and disadvantage men are meant to overcome the effects of past societal discrimination against women. These types of statutes are often called "benign" discrimination and the Court will look (1) to the statute and to its legislative history to ascertain that the scheme does not actually penalize women, (2) that it was actually enacted to compensate for past discrimination, and (3) that it does not reflect merely historic and overbroad generalizations' about women. Where a statute is "deliberately enacted to compensate for particular economic disabilities suffered by women," it serves an important governmental objective and will be sustained if it is substantially related to achievement of that objective. (Califano v. Webster, 430 U.S. 313 (1977)).

In Kahn v. Shevin, 416 U.S. 351 (1974) the Court held that the Florida statute did not violate the equal protection clause and was valid and that a state tax law is not arbitrary although it discriminates in favor of certain class if the discrimination is founded upon a reasonable distinction or difference in state policy not in conflict with the Federal Constitution.

In Schlesinger v. Ballard, 419 U.S. 498 (1975), The Court held that the Federal statutory scheme affording women naval officers a 13-year tenure of commissioned service before mandatory discharge for want of promotion, while requiring the mandatory discharge of male officers who are twice passed over for promotion but who might have less than 13 years of commissioned service (this Plaintiff had 9 years) does not violate the constitution. (5th Amendment Case).

In Mississippi University for Women v. Hogan, 458 U.S. 718 (1982), the Court held that policy of state-supported university, which limited its enrollment to women, of denying otherwise qualified males the right to enroll for credit in its nursing school violated equal protection clause of the Fourteenth Amendment. Though the State argued that the female only school was justified as female affirmative action, the Court rejected this reasoning saying women were never denied training as nurses and in fact dominated the field. (not righting a past wrong).

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Secondary Sources

Law Reviews and Journals

There are hundreds of law review articles relating to the topic of Gender Discrimination and the Fourteenth Amendment. Here are just a few law reviews and journals where you may find articles related to this topic.

Berkley Journal of Gender, Law and Justice

American University Journal of Gender, Social Policy and the Law

Cardozo Journal of Law & Gender

Columbia Journal of Gender & Law

Duke Journal of Gender Law & Policy

Harvard Journal of Law & Gender

Journal of Gender, Race, & Justice

University of Maryland Law Journal of Race, Religion, Gender, & Class

Michigan Journal of Gender & Law

American Law Reports

American Law Reports (ALR) contains encyclopedic essays (annotations) on particular legal topics discussed in key cases. These annotations contain many citations to cases, statutes, and secondary materials.

Hassman, Phillip E., *Construction and application of state equal rights amendments forbidding determination of rights based on sex* (90 A.L.R.3d 158)

This annotation collects and analyzes the cases which have construed or applied those state constitutional equal rights provisions which forbid the determination of rights based on sex. It includes only those state constitutional provisions whose terms clearly, and without qualification, prohibit government from classifying on the basis of sex.

Wooster, Ann K., *Equal Protection and Due Process Clause Challenges Based on Sex Discrimination—Supreme Court Cases* (178 A.L.R. Fed. 25)

This annotation collects and analyzes United States Supreme Court cases that have discussed constitutional challenges based on sex discrimination under the Due Process Clauses and Equal Protection Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

Landis, Debra T., *Application of state law to sex discrimination in employment* (87 A.L.R.3d 93)

This annotation collects and analyzes the cases in which the courts have discussed the application of state law to a claim of sex discrimination in employment.

Blogs

American Association of University Women

Mission statement: AAUW advances equity for women and girls through advocacy, education, philanthropy, and research.

Since 1881 the American Association of University Women has been the nation's leading voice promoting education and equity for women and girls through its research, public policy, legal advocacy, international programs, and fellowships, grants, and awards.

Constitutional Law Prof Blog

This blog is compiled by edited by constitutional law professors. This blog covers a variety of constitutional issues among them gender discrimination and the 14th Amendment.

American Civil Liberties Union Blog

"Because Freedom can't Blog Itself" ACLU Blogs about a range of topics relating to civil liberties and freedoms including gender discrimination and your right to equal protection under the 14th Amendment.

Books

There are hundreds of books covering the topics of Gender Discrimination and the 14th Amendment. Here are just a few you can find at the Georgia State Library. For more books visit the Georgia State University Law Library Page. You can search for "Sex discrimination against women" or "Gender Discrimination" or "14th Amendment." Any of these searches will give you hundreds of book results to sort through.

- Gender, Sex and the Law by Susan Edwards (Editor)
  Call Number: KD4103 .G46 1985
  ISBN: 0709909381
  Publication Date: 1985-03-01
- Race, Gender, and Discrimination at Work by Samuel Cohn
  Call Number: HD6060 .C63 2000
  ISBN: 0813332028
  Publication Date: 1999-12-31
- Gender by Noël Merino
  Call Number: KF4758 .G46 2011
  ISBN: 9780737749489
  Publication Date: 2010-09-10
- A Fearful Freedom by Wendy Kaminer
  Call Number: KF4758 .K35 1990
  ISBN: 0201092344
  Publication Date: 1990-01-01
- Justice and Gender by Deborah L. Rhode
  Call Number: KF4758 .R48 1989
  ISBN: 0674491009
  Publication Date: 1989-11-27
- Law, Gender, and Injustice by Joan Hoff
  Call Number: KF4758 .H64 1991
  ISBN: 0814734677
  Publication Date: 1991-05-01

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Interest Groups and Associations

American Bar Association

Sections

Section of Individual Rights and Responsibilities

Created in 1966, the Section of Individual Rights and Responsibilities provides leadership within the ABA and the legal profession in protecting and advancing human rights, civil liberties, and social justice.

This Section fulfills its role by: (1) Raising and addressing complex and difficult civil rights and civil liberties issues in a changing and diverse society, and (2) Ensuring that protection of individual rights remains a focus of legal and policy decisions.

Commissions

Women in the Profession

The Commission was created in August 1987 to assess the status of women in the legal profession, identify barriers to advancement, and recommend to the ABA actions to address problems identified. Hillary Rodham Clinton, the first chair of the Commission, set the pace for the Commission to change the face of the legal profession by issuing a groundbreaking report in 1988 showing that women lawyers were not advancing at a satisfactory rate. From this report, the Commission found that a variety of discriminatory barriers remained a part of the professional culture, the significant increase in the number of women attorneys would not eliminate these barriers and a thorough reexamination of the attitudes and structures in the legal profession was needed.

Georgia Bar Association

Sections

Individual Rights Law Section

The Individual Rights Law Section serves the Bar through educational activities intended to protect and promote the rights of individuals. In recent years the Section has sponsored continuing legal education seminars on such topics as privacy in the information age, environmental justice, and civil rights litigation. During the legislative session the Section monitors legislation likely to have a significant impact on members. The Section sponsors community service projects, hosts informal gatherings for its members and special guests, such as members of the judiciary and legislature, and publishes a newsletter for its members to keep them informed of current developments affecting individual rights.

Other Associations

American Civil Liberties Union

The ACLU works in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantees everyone in this country. There are many liberties they strive to protect and your right to equal protection under the law and protection against unlawful discrimination is among them.

National Organization of Women

The National Organization for Women (NOW) is the largest organization of feminist activists in the United States. NOW has 500,000 contributing members and 550 chapters in all 50 states and the District of Columbia.

Since its founding in 1966, NOW's goal has been to take action to bring about equality for all women. NOW works to eliminate discrimination and harassment in the workplace, schools, the justice system, and all other sectors of society; secure abortion, birth control and reproductive rights for all women; end all forms of violence against women; eradicate racism, sexism and homophobia; and promote equality and justice in our society.

The Center for Constitutional Rights

The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.

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For a list of other Women's Organizations in many professional fields including accounting, science and engineering, or for a list of Ethnic Women's Organizations visit the United States Department of Interior, Reclamation Civil Rights Division, Women's Organizations.

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