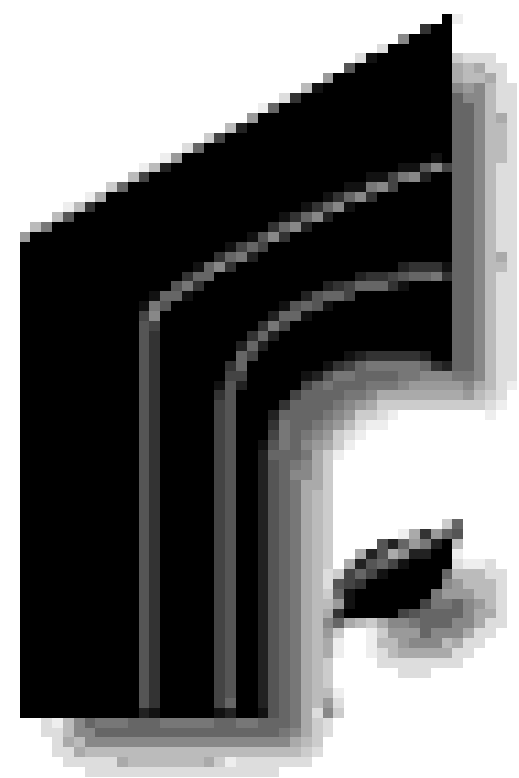


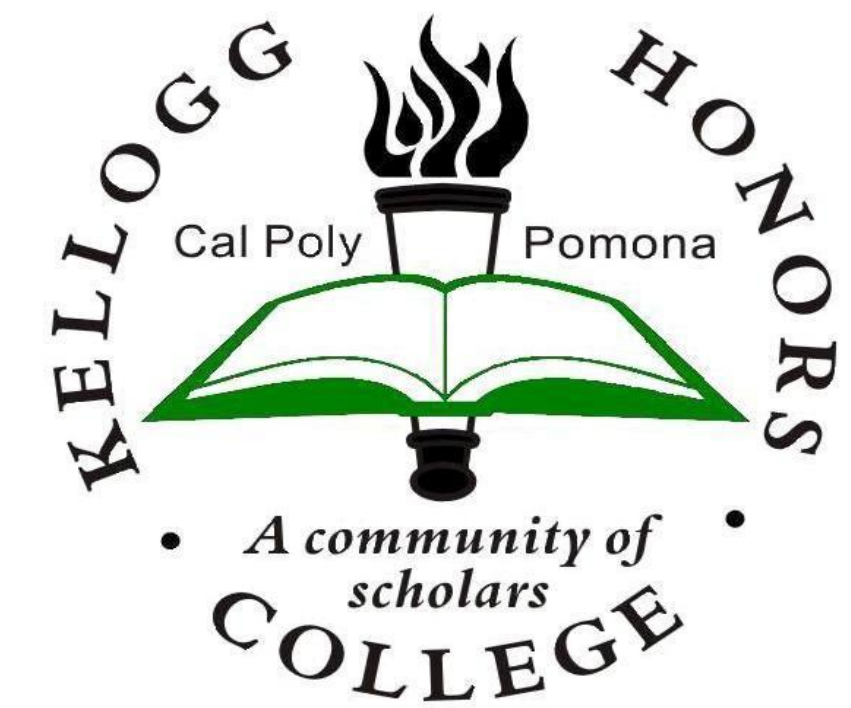
Gender Bias and the Supreme Court of the United States



Mariah Lindsay, Political Science

Mentor: Dr. Mario Guerrero

Kellogg Honors College Capstone Project



Are Supreme Court decisions affected by gender bias?

The under-representation of women on the Supreme Court leads to a bias in rulings made by the Court regarding women's issues.

Question and Argument

- The first woman to join the Supreme Court was in 1981 and only 3 other women have joined since.
- Women have only been on the Court for the last 33 years.
- Four out of a total 112 Supreme Court Justices have been women.
- Although there are women sitting on the Court, they are still underrepresented.
- The introduction of women provides the opportunity to uncover bias on the Court through the opinions written by female justices.
- I think women will bring a different perspective to the Court regarding women's issues that male justices cannot provide.

Literature Review

- Women can better understand the experiences and concerns of women in regards to gender equality.
 - Hernandez (2011) finds that the perspectives and experiences of justices matter in case law decisions.
 - Women judges, regardless of their ideology, are more likely than men to be the strongest supporters of women's rights claims regarding sex discrimination cases (Palmer, 2001). Peresie (2005) finds a similar occurrence in sexual harassment cases.
- The literature on this subject overwhelmingly finds that women make a difference in cases involving women's issues and that men lack perspective when it comes to women's issues.

Methodology

- Five Supreme Court Cases regarding women's issues; using different periods of the Supreme Court, defining those periods based on the number of women sitting on the Court during each period.
- I used Michele Swers definition of women's interests to pick the cases Michele Swers (2002) definition of women's interests, "issues that are particularly salient to women."
- Social Security Benefits, Abortion, Sexual Harassment, Pay Equity, Contraception

Results

Califano v. Westcott (1979)

- All male court deals with a provision in the Social Security Act that provides benefits to dependent children when the father becomes unemployed.
- This directly leaves out mothers who are primary wage earners For the most part, this all male court did not deny the existence of gender discrimination in this provision.
- There was no obvious gender bias within the case.
- This is not in line with my argument but I believe be explained based on the fact that this case is more straight forward than the others. The language of the section is obviously discriminatory to women and therefore the discrimination was harder to deny. The case also dealt with dependent children in need of the benefits, possibly swaying the decision.

Bray v. Alexandria Women's Health Clinic (1993)

- Addition of Justice Sandra Day O'Connor
- This case looks into a section of the Civil Rights Act of 1871, and whether it provides protection from people purposefully blocking access to abortion clinics.
- The majority opinion, written by Justice Scalia, argued that this is not a gender issue but an abortion issue and therefore cannot be found to be discriminatory to women.
- Justice O'Connor wrote a dissenting opinion in which she argued that abortion is an activity "unique to the class of women" and that the actions of the petitioners were discriminatory because the way they went about expressing their opinion was unlawful. Justice O'Connor asserts that it was "undeniably petitioners' purpose to target a protected class, on account of their class characteristics, and to prevent them from the equal enjoyment of these personal and property rights under law."
- I would argue that the Court's failure to recognize the gender discrimination in this case reveals a gender bias in the majority opinion.

Burlington Industries, Inc. v. Ellerth (1998)

- Justice Ruth Bader Ginsburg joins Justice O'Connor.
- This case deals with sexual harassment in the workplace under Title VII of the Civil Rights Act of 1964 and "whether...an employee who refuses the unwelcome and threatening sexual advances of a supervisor, yet suffers no adverse, tangible job consequences, can recover against the employer."
- Justice Ginsburg and O'Connor joined the majority opinion written by Justice Kennedy which helped to reveal biases in the dissenting opinion written by Justice Thomas.
- One example being Justice Thomas' argument that liability cannot be found in this case because, "no sexually harassed employee can reasonably believe that a harassing supervisor is conducting the official business of the company or acting on its behalf." The majority opinion directly opposes this, arguing that sexual harassment can be used to serve an employer. Explaining that sexual harassment can be used to discourage women from seeking advancement.
- To argue that harassment can never be conducted for the benefit of the employer is misleading and harmful to women. Statements like Justice Thomas' perpetuate gender bias and gender discrimination by denying their existence.



Results Continued

Ledbetter v. Goodyear Tire and Rubber Company (2007)

- Justice Ruth Bader Ginsburg is the only female on the Court.
- This case involves pay equity under Title VII of the Civil Rights Act of 1964.
- Lilly Ledbetter filed a claim against Goodyear on the basis sex discrimination in the form of pay discrimination.
- The majority opinion denies Ledbetter's claim due to a time bar limiting the filing period for a pay discrimination claim. They argue that, "Ledbetter should have filed a...charge within 180 days after the discriminatory pay decision was made." And that after this time has passed, the discriminatory behavior is treated as lawful and "merely an unfortunate event in history which has no present legal consequences."
- Justice Alito fails to acknowledge the discriminatory aspects of the pay structure in Ledbetter's case arguing that Goodyear's pay system is "facially nondiscriminatory and neutrally applied." While the system set up by Goodyear may appear to be neutral, it is being applied in a discriminatory fashion. The way it was applied to Ledbetter, being the only female in her position, lead to a stark difference in her pay versus the lowest paid male in the same position.
- Justice Ginsburg wrote a dissent in this case arguing that pay disparities are often different from other discrimination because they develop over time. Justice Ginsburg points out the flawed reasoning in the majority opinion and how it unfairly limits gender discrimination claims involving pay discrimination. Her dissent highlights much of the gender bias prevalent in the majority opinion through their unwillingness to acknowledge the discrimination present in Ledbetter's case and their unnecessary narrowing of a statute intended to protect against discrimination in these cases.

Burwell v. Hobby Lobby Stores (2014)

- Justice Sonia Sotomayor and Justice Elena Kagan join Justice Ginsburg.
- This case involves the coverage of contraception for female employees under health insurance provided by a company whose religious values are against the use of contraception.
- The majority opinion argues in favor of Hobby Lobby, asserting that under the Religious Freedom Restoration Act of 1993, the government cannot impose a substantial burden on religious exercise without a compelling government interest that is served in the least restrictive of means.
- The dissenting opinion, written by Justice Ruth Bader Ginsburg, argues that the majority opinion has an impact on people who do not share the beliefs of the owners of the corporation. The dissent sees the majority opinion as allowing the owners of a corporation to inflict their religious beliefs on their unwilling employees. In doing so, the Court allows the corporation to limit the rights of their female employees by refusing to offer health insurance coverage of contraception that is mandated by law.
- The Court fails to recognize the discrimination apparent in the decision to deny women health coverage, to which they are entitled by law, because of the beliefs of their employers. I would argue that this also points to gender bias on the Court.



Conclusion

- With more time, I would have liked to analyze more cases regarding women's issues to better identify and understand the role gender bias plays in Supreme Court decisions.
- Supreme Court decisions regarding women's issues are affected by gender bias.
- In every case I analyzed, women, regardless of ideology, voted in favor of the women's issue and in writing their own opinions in these cases were able to identify bias in the opposing opinions.
- This is important because the introduction of women on the Court has served to reveal gender bias in decisions.
- Female justices therefore serve an important role on the Court by highlighting bias where it exists and hopefully working to reverse its prevalence.
- This is critical to understanding the role of justices and the need for diversity on the Court. Life experiences and opinions will bias the rulings made and therefore a variety of viewpoints can help to counteract this.