

A HISTORY OF SUPREME COURT CIVIL RIGHTS DECISIONS IN 1000 WORDS

With the Supreme Court hearing arguments on the constitutionality of California's proposition 8 and the Federal Defense of Marriage Act this week, I thought I'd take a stab at giving a (extremely) brief summary of the Supreme Court's involvement with crafting civil rights in this country. Legal scholars will surely scoff at my generalities, but this is meant to be a summary for the masses not some sort of scholarly article. So, without further introduction, here's my attempt at summarizing civil rights jurisprudence in 1000 words:

1896: *Plessy v. Ferguson*

The Court establishes the “*separate but equal*” doctrine by upholding a Louisiana law requiring public places to serve African Americans in separate, but ostensibly equal, accommodations. In its decision, the Court said that segregation is "universally recognized as within the competency of states in the exercise of their police powers."

1938: *Missouri ex el Gaines v. Canada*

The Court determines that Lionel Gaines must be admitted to the all-white University of Missouri School of Law. The case marked the beginning of the end for “*separate but equal*”

1950: *Sweatt v. Painter* and *McLaurin v. Oklahoma State Regents*

The Court extends the Gaines ruling to all law and graduate schools.

1954/ 1955: *Brown v. Board of Education & Brown v. Board II*

As the Court said,

"We conclude, unanimously, that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." Gone are the days of “*separate but equal*” **58 years after it was invented by the Court.**

1956: The Supreme Court, without comment, affirmed a lower court ruling declaring segregation of the Montgomery bus system illegal, giving a major victory to Rosa Parks, Martin Luther King, Jr., and the thousands of anonymous African Americans who had sustained the bus boycott in the face of violence and intimidation.

1965 *Griswold v. Connecticut*

The Court, in striking down a law barring the use of contraceptives by married couples, for the first, time recognized a constitutional right to privacy. It noted that the right is inherent in the due process clause of the Fourteenth Amendment.

1968: *Jones v. Alfred H. Mayer Co.*

The Court holds that the Civil Rights Act of 1866 bans racial discrimination in housing.

1971: *Griggs v. Duke Power Co.*

The Court holds that Title VII of the 1964 Civil Rights Act prohibits employer practices that have a discriminatory effect on minorities and women.

1972. *Eisenstadt v. Baird*

The Court expands the sexual privacy right of the due process clause of the Fourteenth Amendment recognized in *Griswold* to unmarried persons.

1973 *Roe v. Wade*

In this pivotal case, the Court determined that the constitutional right to privacy extended to a woman's decision to have an abortion. However, it noted that the interest in privacy must be balanced against the state's two legitimate interests in regulating abortions: protecting prenatal life and protecting women's health. Applying the test, the Court determined that the state had a legitimate interest in banning abortions during the third trimester of pregnancy. This test would be slightly modified fifteen years later in the *Casey* case.

1978: *Regents of the University of California v. Bakke*

The Supreme Court rules that race could lawfully be considered as one of several factors in making admissions decisions to medical school. This case is seen as the beginning of jurisprudence on affirmative action, though President Kennedy and Johnson had been involved with executive side policies prior to the decision in *Bakke*.

1986: *Wygant v. Jackson Board of Education*

The Court holds that a public employer may not lay off more senior white workers to protect the jobs of less senior black workers.

1986: *Bowers v. Hardwick*

Sexual orientation begins to enter the fray. The Court in *Bowers* upheld a Georgia state law that criminalized sodomy. The Court stated that the constitutional right to privacy did not encompass "homosexual sodomy". The right to privacy would become an incredibly important concept in later cases on sexual orientation

1987: *Johnson v. Transportation Agency, Santa Clara County*

The Court upheld an employer's affirmative action plan that allowed gender to be considered as a positive factor when choosing among qualified candidates for jobs in which women were severely underrepresented.

1989: *City of Richmond v. Croson*

The Court adopted the legal standard of review of “strict scrutiny” for any state affirmative action program to be deemed constitutional. In order for the program to be valid it needs to be supported by a compelling government interest and narrowly tailored to fit that interest.

1992. *Planned Parenthood of Southeastern Pennsylvania v. Casey*

The Court reaffirmed *Roe* and upheld most of the Pennsylvania law, which put extensive restrictions on abortion at issue. Imposing a new standard to determine the validity of laws restricting abortions, the Court states that the test is whether a state abortion regulation has the purpose or effect of imposing an "undue burden," which is defined as a "substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." Under this standard, the only provision to fail the undue-burden test was a provision requiring notification of the husband if a woman was seeking an abortion.

1995: *Adarand Constructors v. Peña*

The Supreme Court extended *Croson* to hold that strict scrutiny also applies to federal affirmative action programs.

1996: *Romer v. Evans*

The Court struck down a Colorado referendum that would have overturned local laws prohibiting discrimination based on sexual orientation by declaring that the referendum served no legitimate government interest and violated basic guarantee of equal protection.

1998: *Bragdon v. Abbott*

The court ruled that HIV-positive individuals are covered by the Americans with Disabilities Act.

1999: *Olmstead v. L.C*

In another significant victory for disability rights advocates, the Court held that the Americans with Disabilities Act bars the unnecessary segregation of people with disabilities in state institutions.

2000: *Boy Scouts of America v. Dale*

The Court sided with the Boy Scouts and ruled that the First Amendment rights of free expression and association trumped a New Jersey anti-discrimination law that would have prohibited the group from dismissing a gay scoutmaster.

2003: *Lawrence v. Texas*

The Court overruled the decision *Bowers* and held that the state lacked a legitimate interest in regulating the private conduct of consenting adults. At issue was a Texas state law that criminalized homosexual sodomy but not heterosexual sodomy. The Court relied upon the *Griswold* and *Eisenstadt* line of right to privacy cases.

2013 *US v. Windsor and Hollingsworth v. Perry*

The Court is currently hearing oral arguments on the constitutionality of California's proposition 8, which bans same-sex marriage and the federal Defense of Marriage Act. It remains to be seen how the Court will side, but it is certain that many of these listed cases will provide a framework for their decision. Regardless of the decisions of the Court in *Windsor* and *Hollingsworth* one thing is for sure. The Supreme Court is going to make a seminal ruling that will dictate the future of the gay rights movement in the US for years to come.

OK, I went 1090 words, but close enough. So, there you have it- the Supreme Court's history of civil rights cases condensed into a single blog post. What do you think?

Michael F. Brennan runs a virtual law office helping clients in Illinois, Wisconsin, and Minnesota. He is by no means a con law scholar, but has a passion for equality and its evolution. He can be reached at michael.brennan@mfblegal.com with questions or comments, or check out his website at www.thevirtualattorney.com.

By Michael Brennan

Image courtesy of FreeDigitalPhotos.net