

# JUDGES & THE COURTS

## FACT SHEET

### Supreme Court Review: 2014-2015 Term

July 2015

The 2014-2015 Supreme Court Term included a number of blockbuster cases affecting women's rights, from marriage equality, to health care, to housing discrimination, to pregnancy discrimination and other workplace protections. Several of these cases resulted in historic victories, and others in positive, but more limited, decisions. But even the jubilation produced by the significant victories is tempered by the danger that the Court may restrict other rights important to women next Term.

#### An Historic Victory for Marriage Equality

On the anniversary of the decision in *Lawrence v. Texas*, the 2003 case in which the Court struck down Texas's law criminalizing same-sex intimate activity, and *United States v. Windsor*, the 2013 case in which the Court struck down the federal law defining marriage as between a man and a woman, the Supreme Court handed down a 5-4 decision establishing full marriage equality. In ***Obergefell v. Hodges***, the Court held that the Constitution requires all states to permit and recognize marriages between same-sex couples. In *Obergefell*, the Court considered cases brought in four states—Kentucky, Michigan, Ohio, and Tennessee. Each presented a constitutional challenge brought by same-sex couples who were either denied the right to marry or whose marriages—performed in a state that permitted same-sex couples to marry—were not recognized in their current state of residence. The Court considered two questions: first, whether states that did not themselves permit marriages between same-sex couples were required to recognize marriages performed lawfully in other states; and second, whether all states were required to issue marriage licenses to same-sex couples.

In an historic opinion written by Justice Kennedy, the Court held that the Fourteenth Amendment enshrines a fundamental right to marry that cannot be denied to same-sex couples. As Justice Kennedy wrote, “[The petitioners] ask for equal dignity in the eyes of the law,”

and “[t]he Constitution grants them that right.” The majority opinion focused on the institution of marriage and its indelible place in the very fabric and history of our society, and the unconstitutional inequality that results when this this fundamental liberty is denied to same-sex couples. The majority found that the Fourteenth Amendment requires states both to grant marriage licenses to same-sex couples and to recognize marriages between same-sex couples performed in other states. This decision is of enormous symbolic and practical importance to LGBT individuals across the country, and particularly for women. Female same-sex couples are, on average, more economically vulnerable than male same-sex couples and are also more likely to be raising children. The availability to same-sex couples of the legal benefits and protections that flow from marriage will thus be especially significant for women.

In deciding *Obergefell*, the Supreme Court did not specifically address whether laws or governmental practices that discriminate on the basis of sexual orientation should be presumed to be unconstitutional, as the National Women's Law Center had urged in [its amicus brief](#) to the Court. And more work remains to be done in Congress and state legislatures around the country to ensure that LGBT individuals are protected from discrimination in areas such as employment and housing. Nonetheless, *Obergefell* represents a landmark victory for millions of Americans, affirming their right to dignity, liberty, and equality under the law.

## A Resounding Win for Women’s Health

In *King v. Burwell*, the Court handed down a major victory to the millions of Americans who have purchased health insurance through the federally-facilitated health insurance exchanges, finding that these individuals were eligible for subsidies to help cover the cost of health insurance under the Affordable Care Act (ACA).

At issue in *King* was whether a key provision of the ACA allowed the Internal Revenue Service (IRS) to provide subsidies in the form of tax credits to help individuals and families cover the cost of health insurance when they purchased insurance through the federally-facilitated health insurance exchanges--just as the IRS provides subsidies to those who purchase insurance through state-run exchanges. Residents of Virginia challenged the IRS’s determination that eligible individuals may receive tax credits to subsidize their purchase of health insurance through the federal exchange, arguing that the ACA only made individuals enrolled in marketplaces established by states eligible for such credits. Only 13 states have established their own health insurance exchanges, meaning that nearly seven million women in the remaining 37 states who were receiving these subsidies or eligible to receive them were at risk of losing access to affordable health insurance. The loss of these tax credit subsidies would profoundly harm both individual women depending on them to access health coverage, as well the critical insurance reforms made by the ACA, as the National Women’s Law Center [explained in an amicus brief](#) submitted on behalf of 68 organizations.

In a 6-3 decision authored by Chief Justice Roberts, the Supreme Court ruled that the tax credits are available to individuals in states that have a federally-facilitated exchange. The Court agreed that the text, structure and statutory purpose of the ACA demonstrate that the law was intended to provide tax credits to all eligible individuals, in every state. As the Chief Justice wrote, “Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them.” The Supreme Court’s decision means that millions of women will continue to be able to afford health insurance and gain access to critical care, and that the ACA remains strong.

## A Victory for Peggy Young and Pregnant Workers Nationwide

In a 6-3 ruling authored by Justice Breyer, the Supreme Court in *Young v. UPS* affirmed that employers may not rely on workplace accommodation policies that significantly burden pregnant workers without strong justifications.

The question presented in *Young* was whether UPS violated the Pregnancy Discrimination Act (PDA) when it refused to accommodate UPS driver Peggy Young’s pregnancy-related lifting restriction, even while it regularly accommodated employees with similar limitations arising out of on-the-job injuries or disabilities as defined by the Americans with Disabilities Act, and those who had lost their commercial driver’s licenses. The Supreme Court declined to hold that an employer violated the PDA any time that it refused to provide an accommodation to a pregnant worker that it had previously provided to a non-pregnant worker similar in ability or inability. However, the Court made clear that when an employer accommodates workers similar to pregnant workers in their ability to work, it cannot refuse to accommodate those pregnant workers who need it simply because it “is more expensive or less convenient” to accommodate pregnant women too. The Court also held that an employer that fails to accommodate pregnant workers who need it violates the PDA when its accommodation policies impose a “significant burden” on pregnant workers that outweighs any justification the employer offers for those policies. The Court explained that one way of showing a significant burden is by demonstrating that the employer failed to provide accommodations to a large percentage of pregnant women who needed them while accommodating a large percentage of non-pregnant workers.

The Court’s decision put employers on notice that if they deny accommodations to pregnant workers who have a medical need for them, they may be violating the law. As the National Women’s Law Center [explained in an amicus brief](#) filed on behalf of 123 members of Congress in support of Peggy Young, the PDA was not only intended to break down the barriers to workforce entry faced by pregnant women. It was also enacted to ensure that employers abandoned practices and policies that made it difficult for pregnant women to remain in the labor force. The Court’s decision in *Young* means that more women will not have to choose between the health of their pregnancies and their paychecks.

## Maintaining an Important Vehicle for Combatting Housing Discrimination

In a sweeping victory for equal housing opportunity, the Supreme Court decided in ***Texas Department of Housing and Community Affairs v. The Inclusive Communities Project*** that the Fair Housing Act (FHA) protects against disparate impact discrimination. Disparate impact discrimination occurs when a policy or practice disproportionately harms a protected class and is not motivated by any compelling need, whether or not the policy or practice was intended to harm the protected class. The case arose when the Inclusive Communities Project alleged that the Texas Department of Housing and Community Affairs' practice of disproportionately granting tax credits to developments in minority neighborhoods resulted in a concentration of low-income housing in these neighborhoods. Inclusive Communities claimed that this exacerbated housing segregation in violation of the FHA. [As set out in an amicus brief](#) joined by the National Women's Law Center, disparate impact theory has also been important in challenging housing discrimination against victims of domestic and sexual violence.

In a 5-4 decision authored by Justice Kennedy, the Supreme Court ruled, consistently with the other nine Circuit Courts of Appeal that have considered this question, that the text, legislative history, and purpose of the FHA compel the conclusion that it prohibits disparate impact discrimination. In his opinion, Justice Kennedy focused on the results-oriented language of the FHA, along with the Court's previous conclusions that similar language in Title VII and the Age Discrimination in Employment Act prohibited disparate impact discrimination. Justice Kennedy also pointed to the importance of the FHA's statutory purpose, noting that the Court's decision "acknowledges the FHA's continuing role in moving the nation toward a more integrated society."

The ability to bring disparate impact claims under the FHA is of critical importance. As Justice Kennedy wrote, permitting disparate impact claims under the FHA is critical to "counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment." Protection against disparate impact discrimination allows advocates fighting to ensure fair housing opportunities for people of color and for women to keep an important tool in their legal arsenal.

## Protections for Victims of Employment Discrimination

The Supreme Court handed down two other decisions this Term that have important implications for plaintiffs bringing employment discrimination claims under Title VII of the Civil Rights Act of 1964. Overall, these decisions affirm strong civil rights protections for employees and the authority of the Equal Employment Opportunity Commission (EEOC) to enforce the law. However, the Court left some wiggle room for employers to potentially extend the complaint process, making it more difficult and time consuming for individuals to bring claims.

At issue in ***EEOC v. Abercrombie*** was whether an employer can only be liable for failing to provide a religious accommodation under Title VII when the employer has actual knowledge that a religious accommodation was required, based on direct, explicit notice from the applicant or employee. Title VII's prohibition on religious discrimination requires employers to make reasonable accommodations for religion, such as modifying dress codes, if they can do so without undue hardship. The case arose when Samantha Elauf, a young Muslim woman, was interviewed for a sales position at Abercrombie. After the interview, the assistant manager wanted to hire Elauf, but contacted a district manager to make sure that Elauf's headscarf was acceptable given that the store's policy prohibited employees from wearing "caps." The district manager told her that Elauf could not be hired because of her headscarf—but did not know with certainty at that time that Elauf's headscarf was worn for religious reasons. In an 8-1 decision, the Court ruled that in order to prevail in a religious accommodation claim under Title VII, a claimant need only show that her need for an accommodation was a motivating factor in the employer's decision, and not whether the employee or applicant directly communicated the need for the religious accommodation to the employer. The Court's decision in ***Abercrombie*** protects the religious rights of individuals in the workplace and denies employers a mechanism for avoiding liability for discriminatory hiring practices.

The Court's decision in ***Mach Mining v. EEOC*** represented a more qualified success for civil rights plaintiffs. When the EEOC receives an employment discrimination complaint, it must seek informal

resolution of the complaint before it can file a lawsuit against an employer in federal district court. This process is called “conciliation.” *Mach Mining* is a case in which the EEOC alleged that Mach Mining engaged in systemic hiring discrimination against women. Mach Mining sought to have the case dismissed based on the argument that the EEOC did not attempt to conciliate the discrimination complaint in good faith before filing the lawsuit. The Court was asked to determine whether the EEOC’s process of conciliating a dispute before filing suit against an employer was subject to review by the courts. [As set out in an amicus brief](#) joined by the National Women’s Law Center, the delays in enforcing employment discrimination laws that could result if the conciliation process were subject to broad judicial review would be especially harmful to women in nontraditional fields, like the women who sought mining jobs in this case. Justice Kagan wrote for a unanimous Court that courts may review the EEOC’s conciliatory process, but, importantly, provided that the scope of that review is very narrow. The Court held that courts may determine whether the EEOC informed the employer about the allegations against it, and whether the Commission tried to engage the employer in some form of written or oral discussion to give the employer the opportunity to remedy the alleged discrimination. In all other aspects of the conciliation process, the Court reaffirmed the EEOC’s broad discretion. The unanimous Court therefore preserved much of the deference afforded to the EEOC in resolving civil rights disputes.

## Looking Ahead

While advocates and legal experts analyze the implications of this Term’s decisions, a number of cases raising issues important to women have already been accepted for review next Term.

- Affirmative action is once again back on the table at the Supreme Court. The Court will hear ***Fisher v. University of Texas at Austin***, a follow-up from the Court’s 2013 decision in the same case. The Court’s 2013 decision affirmed that public colleges and universities may consider racial and ethnic diversity as one factor among many in an admission policy, acknowledging the vital role that diversity can play, but sent the University of Texas’s admissions policy back to the lower court to consider whether workable race-neutral alternatives would allow the University to achieve the diversity it sought. The

Fifth Circuit again reviewed, and once again found that the University’s admission plan satisfied the Constitution. Next Term, the Court will review the Fifth Circuit’s analysis. The case will be important in ensuring that pathways to opportunity remain open for women of color.

- The Court will hear ***Tyson Foods v. Bouaphakeo***, which raises the issue of class actions or collective actions may be certified in a wage theft case when the financial awards to individual class members will differ. This case raises the concerning possibility that the Court will further limit the use of class or collective actions, which sometimes provide the only practical means for individual workers to seek redress through litigation--particularly those low-wage workers (among whom women are over-represented) who have monetary claims that while important to the financial security of the worker are small in absolute terms.
- The Court will also hear ***Friedrichs v. California Teachers Association***, which challenges a longstanding ruling permitting public sector unions to require all workers covered by a union contract to pay dues, whether they are members of the union or not, because the union acts in their interest. The case threatens to sharply undermine the ability of public employee unions to advocate for workers. The case is particularly important for women, as union membership boosts wages for all workers, but for women in particular.
- The Court will hear a case that could raise new legal obstacles for individuals who faced intolerable discrimination in the workplace that forced them to quit their jobs. ***Green v. Donahoe*** asks the Court to decide whether, under Title VII, the clock for challenging a constructive discharge begins to run when an employee resigns or at the time of an employer’s last discriminatory act prior to the resignation. The majority of constructive discharge claims are brought in sex discrimination cases, frequently in cases challenging hostile environment sexual harassment, meaning that this case has a particular interest for women workers.

The Supreme Court’s decisions this Term, as in every Term, affect women for generations to come. Advocates will be watching to see how the Court’s decisions in critical cases next Term will shape women’s legal rights in the future.