

# The Women's Rights Project

The American Civil Liberties Union has a long and distinguished history of advancing women's rights. In the more than 80 years since the ACLU was started, women have secured enormous gains in the fight for equality. The Women's Rights Project, founded in 1972 by Ruth Bader Ginsburg, now a Supreme Court Justice, emerged and has remained a leader in the legal battles to ensure women's full equality in American society. Our long struggle to eradicate laws that explicitly treat women differently from men has been largely successful. Federal and state laws have been enacted to ban gender discrimination in employment, education and housing. As a result, women today participate in all realms of society on a more equal basis than ever before.

But, despite these gains, stark inequalities persist in many areas of American life: Women—and in particular women of color—still earn far less than men for the same work and sexual harassment of working women continues to be a major problem. Women who rely on welfare to support their families are forced to endure invasions of their privacy and unfair denials of benefits. Victims of domestic violence are kicked out of public housing because they have been abused. Incarcerated women receive inadequate services and suffer sexual assault by prison guards.

Girls are often denied access to the same educational opportunities as boys.

To address ongoing discrimination, the Women's Rights Project focuses on four core areas: employment, poverty and welfare, violence against women and criminal justice. We also remain involved in the fight to ensure equal educational opportunities for women and girls. And, cutting

across our core priorities, we are working to bring an international human rights framework to our litigation and advocacy efforts.

## Employment

In 2003, Mei Ying Liu and Shu Fan Chen, two immigrant women from China's Fujian Province, sued King Chef Buffet, a Wayne, NJ Chinese food restaurant, for paying the waitresses no wages, discriminating against them and housing them in a substandard apartment.

A federal court judge awarded the women a \$3.5 million default

judgment for unpaid wages and unlawful discrimination. For many low-wage women workers like Liu and Chen, exploitation—long hours for inadequate pay, unsafe working conditions and sexual harassment—is a way of life. This is particularly true for women in service industries that rely on immigrant labor, such as hotels, restaurants, retail stores and garment factories.

Our goal in representing low-wage immigrant women workers is to enforce civil rights for all working women in this country, to achieve economic improvements for immi-

### Timeline of Women's Rights Legislation

#### 1963

Congress passes the Equal Pay Act, the first federal law to prohibit wage discrimination on the basis of sex.

#### 1964

Congress passes Title VII of the Civil Rights Act of 1964, prohibiting employers from making employment decisions on the basis of race, color, religion, sex, or national origin.

#### 1972

Congress approves the Equal Rights Amendment (ERA) to the United States Constitution. President Nixon signs it and sends it to the states for ratification.

#### 1972

Congress passes Title IX of the Educational Amendments Act, prohibiting sex discrimination in schools and educational programs that receive federal funds.



photo by Ted Kirk, courtesy of The Appleseed Foundation.

Andrea Evans and her son, Simeon, plaintiffs in *Mason v. Nebraska* in which the WRP and the Nebraska ACLU participated in persuading the state Supreme Court to rule unanimously that the "child exclusion" law could not be applied to families headed by disabled parents.

## Timeline of Major Supreme Court Decisions on Women's Rights

### **1971 *Reed v. Reed***

Relying on a brief written by Ruth Bader Ginsburg, the ACLU Women's Rights Project's first director, the Supreme Court in a unanimous decision rules for the first time that a law that discriminates against women is unconstitutional under the Fourteenth Amendment.

### **1973 *Frontiero v. Richardson***

In the first case Ginsburg argued before the Supreme Court, the Court strikes down a federal statute that automatically grants male members of the military housing and benefits for their wives, but requires female members to demonstrate the "actual dependency" of their husbands to qualify for the same benefit.

### **1975 *Weinberger v. Weisenfeld***

Ginsburg successfully argues WRP's case that gender-based distinctions in the Social Security Act—providing benefits to care for a child to widows with minor children but not to widowers—is unconstitutional because it discriminates against both working women, whose families receive fewer protections as a result of their social security taxes than do the families of men, and against widowers, who need such benefits to provide for their children.

### **1976 *Craig v. Boren***

The Supreme Court adopts a "heightened scrutiny" standard of review to evaluate legal distinctions on the basis of gender. This means that gender-based legal distinctions must bear a substantial relationship to an important governmental interest.

### **1982 *Mississippi University for Women v. Hogan***

The Court rules it is unconstitutional for a state to provide a nursing school for women only because there is no important governmental interest in perpetuating women's over-representation in nursing.

### **1984 *Roberts v. United States Jaycees***

The Court affirms Minnesota's decision to strike down the Jaycees' policy of excluding women under the state public accommodations law. The Court, rejecting the Jaycee's First Amendment argument, rules that Minnesota has a compelling interest in ending sex discrimination.

photo courtesy of Sandra Lochren



Police Officer Sandra Lochren was forced to take unpaid leave when she was pregnant because the Suffolk County Police Department prohibits pregnant officers from going on light duty.

We also seek to secure women's advancement in traditionally male occupations, such as policing. Police Officer Sandra Lochren was three months pregnant when she asked to go on light duty. The police department had long had a policy of providing light duty to all officers who needed it. But in April 2000, the department changed its policy, allowing only officers injured on the job to go on light duty. Officer Lochren's only options were to use up her accrued paid leave and then take unpaid leave, or continue working full duty without adequate protective gear, including a properly fitting gun belt and bulletproof vest. She took the unpaid leave.

Pregnancy discrimination, as illustrated by Officer Lochren's case, remains a major obstacle for women in the workplace, particularly in those jobs traditionally held by men. The WRP is representing Officer Lochren and five other female officers in the department who are challenging the new policy.

## Poverty and Welfare

Poverty is a persistent cause and effect of women's inequality in our society. Women are poorer than men in the United States, and throughout the world, because they take up the lion's share of unpaid, expensive care-giving work and because gender segregation in the workplace often locks them into low-paid work with few opportunities for advancement. Our work on behalf of poor women and women receiving welfare seeks to advance core ACLU values, such as the rights of privacy, equality and due process of law, in order to advance their full citizenship rights and break the cycle of poverty.

In an attempt to force poor women to have fewer children, many states, as part of "welfare reform," adopted policies that deny cash assistance to children born into a family receiving welfare. Research shows that these provisions, known as child exclusion policies, do nothing to help move women from welfare to work.

An example of the failure of child exclusion policies was the situation Lisa Cannon faced in Nebraska. Cannon has received federal Supplemental Security Income since 1992 because of a permanent disability resulting from undiagnosed scoliosis. To receive SSI, an individual must be unable to work due to a physical or mental impairment that has lasted or is expected to last a year or longer. Cannon's scoliosis prevents her from being able to stand for more than four hours at a time and causes muscle spasms that render her unable to walk for several days.

### **1978**

The Pregnancy Discrimination Act becomes law, making clear that discrimination based on pregnancy is sex dis-

crimination under Title VII. It prohibits employers from discriminating against women based on pregnancy, childbirth or related conditions.

### **1982**

The ERA narrowly fails to gain ratification by the necessary 38 states. However, many states

adopt Equal Rights Amendments to their constitutions.

In 1992, Cannon gave birth to her daughter Marquesha, and began receiving welfare six months later. In 1999, Cannon's daughter Tylesha was born, but because of Nebraska's child exclusion law, she was not included in the family's grant. Cannon's son, Fernandez, was born in 2000 and again, because of the child exclusion, the family's welfare grant was not increased.

The WRP, in cooperation with the Nebraska ACLU, submitted a friend-of-the-court brief in *Mason v. Nebraska*, challenging application of the state's child exclusion law to Cannon and her children, and to other families with disabled parents who are unable to work.

In 2003, the Nebraska Supreme Court unanimously ruled that the child exclusion law could not be applied to families headed by disabled parents. The law was purportedly adopted as a way to move recipients from welfare to work. The court held that the Nebraska Legislature, therefore, could not have intended the law to be applied to families headed by disabled parents who, by definition, are unable to work. Approximately 1,000 more families in Nebraska now receive the welfare benefits necessary to care for their children.

The WRP has fought child exclusion laws in legal challenges in New Jersey and around the country and we continue to seek to overturn such laws legislatively.

## Housing Discrimination Against Victims of Domestic Violence

Tiffanie Alvera's husband assaulted her in their home in Oregon. After the assault, she sought treatment for her injuries and obtained a restraining order to prevent her husband from coming back to the apartment. But when she gave the housing manager a copy of the restraining order, she was served with a 24-hour eviction notice pursuant to the management company's zero-tolerance for violence policy.

Under its zero tolerance policy, all members of a household—victim and perpetrator alike—were evicted if there was any violence in the apartment. Applied in the context of domestic violence, such a policy has a disproportionate impact on

women, who are the primary victims of abuse. Alvera, with the help of the WRP and other civil rights organizations, filed a sex discrimination suit against the management company under the federal Fair Housing Act and the state fair housing law.

We successfully settled the case, and the management company agreed to stop applying its zero tolerance policy to victims of domestic violence in the five states where it owns hundreds of apartments.

Alvera's case was the first to challenge such a policy, but reports indicate that

Associated Press photo



Tiffanie Alvera fought back and won when the management company that ran her apartment building, citing a "zero tolerance for violence" policy, tried to evict her after her husband had attacked her in their home.

### 1991

The Civil Rights Act of 1991 becomes law, effectively overriding several recent Supreme Court

decisions that placed new obstacles in the paths of plaintiffs seeking relief from discrimination under Title VII.

### 1993

The Family and Medical Leave Act becomes law, providing employees with 12 weeks unpaid leave to

### 1986 *Meritor Savings Bank v. Vinson*

The Court holds that sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title VII.

### 1991 *United Auto Workers v. Johnson Controls*

The WRP writes a friend-of-the-court brief that helps persuade the court that Title VII forbids employers from adopting fetal-protection policies preventing fertile women from working in jobs that entail exposure to lead or other toxins that might harm a fetus. The court holds that women must be allowed to make their own decisions about pregnancy and dangerous work.

### 1996 *United States v. Virginia*

Justice Ginsburg delivers the Court's opinion that the all-male Virginia Military Institute's discriminatory admissions policy violates women's equal protection rights. The Court orders VMI to admit women or forfeit its government funding.

### 2000 *United States v. Morrison*

The Court strikes down the civil rights remedy of the Violence Against Women Act, which allowed victims of gender-motivated violence to sue their attackers under federal law.

### 2001 *Ferguson v. City of Charleston*

The Court holds that pregnant women cannot be subjected to mandatory drug tests, the results of which are reported to police, as such tests constitute warrantless, suspicionless searches in violation of the Fourth Amendment.

### 2001 *Nguyen v. INS*

The WRP co-counsels this case in which the court upholds a law that automatically deems out-of-wedlock children born overseas to be United States citizens when their mothers are citizens, but requires affirmative steps acknowledging paternity to establish the child's citizenship if only the father is a citizen.

### 2003 *Nevada Department of Human Resources v. Hibbs*

The Supreme Court upholds the constitutionality of the Family Medical Leave Act (FMLA), which provides 12 weeks unpaid leave to employees to care for a new baby or seriously ill family member. The Court concludes that the FMLA's guarantee of leave to all workers, regardless of their gender, protects against employers' discriminatory stereotypes that care-giving is a woman's responsibility not a man's.

care for a newborn, a newly adopted child, a seriously ill family member or the employee's own serious illness.

housing authorities across the country are evicting victims of domestic violence pursuant to similar policies. The WRP has intervened on behalf of several battered women and successfully stopped numerous threatened evictions.

To ensure other battered women living in public housing are not threatened with eviction in the future, we also persuaded the U.S. Department of Housing and Urban Development to issue guidance to public housing authorities across the country on how to help domestic violence victims obtain and maintain housing.

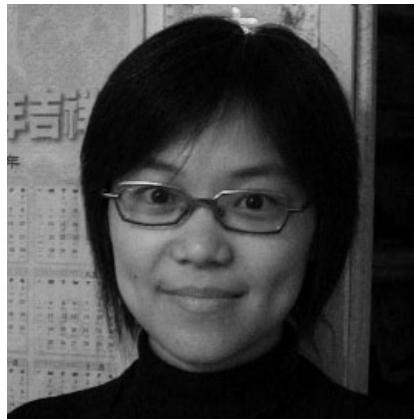
## Criminal Justice

The WRP works to improve the conditions of confinement for women in prison and girls in juvenile detention. We also advocate for alternatives to detention that successfully address the underlying causes of women's and girls' involvement in the criminal justice system and that attempt to end their cycles of incarceration.

Among the issues that we are pursuing are:

- gender disparities in services and treatment provided to male and female prisoners
- sexual assault of women by male corrections officers
- incarcerated women's ability to maintain relationships with their children
- women's greater exposure to conviction for crimes resulting from relationships with men who are the primary or actual offender

Our goal is to identify the unique and unmet needs of women and girls involved in the criminal justice system, particularly women and girls of color, and to seek improvement through advocacy, public education and litigation.



Wei Chen, an organizer with the Chinese Staff and Restaurant Workers Association, assisted the WRP and our clients in *Liu v. King Chef Buffet*.

## Education

The U.S. Department of Education recently proposed new regulations that would have the effect of weakening Title IX civil rights protections—which guarantee equal educational opportunities for women and girls—by loosening restrictions on school districts seeking to operate single-sex classes and schools. This proposal threatens to seriously undermine the protections of Title IX and would violate the Constitution.

Passed in 1972, Title IX has been instrumental for more than 30 years in closing what was a huge gender gap in education in America. In many observable ways, its prohibition on sex discrimination has had results both in schools and beyond. The proposed weakening of that law promises to stymie further progress and indeed to turn back the clock. The WRP submitted comments to the Department of Education in opposition to the proposed regulations and we are waiting to see what action DOE will take.

## Using International Human Rights Standards

The grand aim in the 1970s, Justice Ginsburg has said, was to place women's rights permanently on the human rights agenda. Civil liberties lawyers in the United States have in recent years begun using international human rights laws to undergird lawsuits in the U.S. and in other advocacy efforts.

The WRP has been heavily involved in efforts to draft and enact groundbreaking New York City legislation that would implement the principles of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Elimination of all Forms of Racial Discrimination (CERD). We are also raising international human rights arguments in our advocacy and litigation. Through these efforts we hope to broaden the public understanding of women's human rights.



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### Women's Rights Project

The Women's Rights Project is responsible for implementing ACLU policy in the area of gender discrimination. The WRP is dedicated to the advancement of the rights and interests of women, with a particular emphasis on issues affecting low-income women, women of color and immigrant women. We bring direct litigation, file friend-of-the-court briefs, provide support for

ACLU affiliate litigation, serve as a resource for ACLU legislative work on women's rights and engage in public education. The WRP has actively participated in virtually every major gender discrimination case in the Supreme Court, in congressional and public education efforts to remedy gender discrimination and in other endeavors on behalf of women.

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