

Women's History

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September 2005

The Supremes

The U.S. Constitution and composition of the Supreme Court was defined by the six men who convened in Philadelphia in 1787. Their Constitution is a living document, interpreted by judges in our courts, often with decisions that traverse. In the 1930s, Chief Justice Hughes stated: "We are under a Constitution but the Constitution is what the Judges say it is." The Supreme Court is the highest court from which there is no appeal. Its decisions are the law of the land. Higher court judges can overrule lower court judges. And lower court judges have a greater propensity to be women.

In 1981 Sandra Day O'Connor became the first woman appointed to the Supreme Court by the first man, of the 42 men to date, who have appointed 106 men and two women Supremes. After 192 years of law making-and-breaking decisions, O'Connor was the first woman, afforded the opportunity by the first man, to speak from the highest court of the land on decisions that legally bind both men and women.

O'Connor evaluated each case on a case-by-case merit basis. Rather than being strictly liberal or conservative, she was both and neither, often the swing vote. When the Supreme Court heard oral arguments about a widow denied use of her property, most of the justices focused on legal precedents. Justice O'Connor said, "Why not give this poor, elderly woman the right to go to court?" In a student-on-student case of a fifth grade girl sexually harassed by a boy, O'Connor rejected the argument that this decision would teach "little Johnny" the wrong lesson about federalism. Instead, she argued, it would ensure that "little Mary may attend class."

Ruth Bader Ginsburg's most famous case to date, may be the 1991 decision to allow women to attend the all male Virginia Military Institute. Ginsburg, reformulated the question before the court, not whether a female can be admitted to the all-male VMI, but whether the government can constitutionally deny admittance to a qualified applicant because of gender. Her philosophy of equal treatment for men and women who do not conform to society's gender-based stereotypes, allows for men to assume traditional female roles, i.e., her victory in the case of a young widower whose wife had died in childbirth and, because of his gender, was ineligible to receive SS benefits enabling him to work part-time and stay home to care for his baby.

Roe v. Wade was affirmed in 1973, by an all-male, liberal Supreme Court. In the 1992 challenge to Roe, it was O'Connor's swing vote which upheld it. In 1993, it was Ginsburg who openly criticized the Court's opinion, stating that had the Supreme Court struck down Roe, the process of legislative liberalization might have continued gradually throughout the states, without the political divisions engendered by Roe. Ginsburg

dissented with the ruling which halted the 2000 presidential ballot counting in Florida, O'Connor voted with the majority.

Appointing a woman to replace O'Connor, may or may not ensure Roe. But if a man is appointed and confirmed to fill this woman's place, the opportunities to speak on law-of-the-land decisions which legally befall both men and women, will be spoken by eight men and one woman Supremes.