



National Asian Pacific American Women's Forum

NAPAWF

1050 17th Street, N.W., Ste 250
Washington, DC 20036
T (202) 293-2688; F (202) 293-4507
www.napawf.org

The Supreme Court Vacancy: Issues at Stake for APA Women

The Supreme Court is closely divided on major issues of importance to APA women and women of color. Justice O'Connor's replacement will likely influence the direction of the Court on these important questions, particularly those resolved by narrow 5-4 decisions. A new right-wing Justice may threaten the progress made in the areas of civil rights, reproductive freedom, and civil liberties. The following represent some of the issues at stake for APA women.

Reproductive Privacy

The right of privacy protects a woman's access to birth control, abortion, and other reproductive and sexual health services. This right was embodied by *Griswold v. Connecticut* (1965) and later extended in *Roe v. Wade* (1973). The Supreme Court has upheld the right of privacy against numerous attacks, but only by a thin margin. One new anti-choice Justice could threaten the progress made in the area of reproductive rights.

- In its most recent abortion decision, *Stenberg v. Carhart* (2000), the Supreme Court overturned a Nebraska law that banned a procedure known as partial-birth abortion because it lacked any exception to protect a woman's health. Justice O'Connor was the swing vote in this 5-4 decision.
- The Supreme Court will hear *Ayotte v. Planned Parenthood of Northern New England* in its next term, a case that challenges New Hampshire's Parental Notification Act. The Act requires a minor to notify her parents or obtain a court waiver before receiving an abortion. It contains no exception to protect a woman's health. The outcome of *Ayotte* has serious implications for the health of APA women and girls.
- Access to birth control and contraception is critical for APA women. One study found that 2/3 of APA women are sexually active, yet less than 40% regularly use protection against STDs.
- Access to safe abortion services is also a vital issue for APA women. APA women have the second highest utilization rate of abortion services. One study found that abortion rates fell for all racial groups *except* APAs between 1994

and 2000.

- Parental notification laws will have a negative impact on young APA women. Several studies show that many APA teens do not discuss birth control or pregnancy concerns with their families or doctors. Notification laws put APA women and girls at an increased risk for STDs, unplanned pregnancies, and life-threatening pregnancy complications.

Immigrants' Rights

In 2001, two Supreme Court cases made significant advances in the area of immigrants' rights. Both cases were decided by 5-4 votes. Selecting a new Justice who respects the rights of immigrants is crucial to ensuring that all immigrants and other minority groups are treated equally under our laws.

- In a consolidation of *Zadvydas v. Davis* and *Kim Ho Ma v. Ashcroft* (2001), the Court ruled that the U.S. government cannot detain immigrants facing deportation indefinitely (possibly for life), even if they cannot return to their native countries. This decision is particularly important to the Southeast Asian community, as Vietnam and Laos do not permit the return of their citizens who are deported from the U.S. It also protects former long-term legal residents – often refugees – from being detained indefinitely.
- A strict immigration law went into effect in 1997, allowing the government to automatically deport legal immigrants who plead guilty to crimes. Many APA families fell apart when the government retroactively applied this law to legal immigrants who had old criminal convictions. In *INS v. St. Cyr* (2001), the Supreme Court ruled that this law cannot be applied retroactively.

Affirmative Action

The Supreme Court has issued a series of 5-4 decisions protecting affirmative action programs that expand opportunities for women and people of color and bring diversity to American institutions of higher education. The appointment of one conservative Justice may change the Supreme Court's position on

affirmative action.

- *Grutter v. Bollinger* (2003) was the most recent of the 5-4 affirmative action decisions. *Grutter* upheld the right of public colleges and universities to consider race as a factor in their admissions procedures.
- Despite stereotypical assumptions that the APA population is academically successful, studies have found differences in education levels among particular APA subpopulations. For instance, 63.6% of Chinese Americans have had some college, compared to 26% of Laotian Americans and 28% of Cambodian Americans.
- Compared to a national average of 1.4%, 26.2% of Cambodian Americans and 45% of Hmong Americans have no formal education.
- Affirmative action programs will help create opportunities for APAs, especially APA women, employed in higher education. APAs have one of the lowest tenure rates of all racial and ethnic groups, and they represent only 1% of all higher education administrators in the country. As of 1996, the tenure rate of APA women lagged far behind that of APA men.
- All groups, including APAs, reap the benefits of a more diverse learning environment.

Violence Against Women

The Violence Against Women Act (VAWA) provides vital protections to women in the U.S. against domestic violence, sexual assault, dating violence, and stalking. Created in 1994 and reauthorized in 2000, VAWA is again up for reauthorization in 2005. The VAWA 2005 reauthorization is an opportunity to create more culturally appropriate services for APA women and APA immigrant women who are survivors of domestic and sexual violence. So far, VAWA has created additional services for immigrants and communities of color. However, the addition of another conservative Justice could change the protections guaranteed under this legislation.

- In 2000, *United States v. Morrison* challenged the constitutionality of federal remedies provided under VAWA to survivors of gender-based violence. In a 5-4 decision, the Court ruled that these remedies were unconstitutional.
- Domestic violence is just as prevalent in the APA community as it is in mainstream populations. A survey of APA women found that 81.1% of the respondents experienced at least one form of partner violence in the past year. Of the women who did not experience intimate partner violence, more than half (64%) said they knew an APA friend who experienced such violence.

- APA women experience disproportionately high rates of domestic violence-related homicide. 13% of women and children killed in domestic violence-related homicides in Massachusetts in 1991 were APAs, although APAs represent only 2.4% of the state's total population.

RECOMMENDATIONS:

- **Urge your Senators to oppose extremist judicial nominees.** We need federal judges who will *interpret* the law rather than *make* the law. Our Senators must carefully and thoroughly examine each nominee.
- **Ask your Senators to support nominees who respect the constitutional rights of underrepresented groups.** A new Supreme Court Justice must be committed to upholding the social justice gains made by women, immigrants, and people of color. Otherwise, we risk backtracking on the progress made towards APA women's rights.
- **Organize education forums in your chapters and communities to begin a dialogue around the importance of the Supreme Court for APA women.** Invite lawyers, activists, and other advocates to educate members about these issues and how a new Justice could change the direction of the Court.

August 2005

Sources:

Asian/Pacific Islander Domestic Violence Resource Project, *Project AWARE* (2000-2001) available at www.dvrp.org.
Feminist Majority Foundation, *The Supreme Court: What's at Stake for Women?*
Ms. Magazine, *What's at Stake for Us?* (Summer 2005)
National Asian Pacific American Legal Consortium, *FACT SHEET: Affirmative Action and Higher Education* available at www.napalc.org.
National Asian Pacific American Legal Consortium, *The Supreme Court Vacancy: What's at Stake for Asian Pacific Americans?* (July 2005) available at www.napalc.org.
National Task Force to End Sexual and Domestic Violence Against Women, *Overview of VAWA 2005* available at www.vawa2005.org.
People for the American Way, *Protect Immigrants' Rights* available at www.savethecourt.org.

