

Special “thank you” to Dr. John Maynor for approval of this topic in PS 4930, and for allowing me to exceed the page limit by 11 pages. This paper was written in 2019 and has since been updated with new cases.

Group Rights According to Constitutional Law:

An expansion on “Should There Be Group Rights?

According to the Supreme Court and the United States Constitution,
Yes.”

Miura Rempis, College of Liberal Arts. Scholar’s Week 2021.



ABSTRACT

Group rights have been a controversy for as long as the United States has existed; the Supreme Court of the United States has given, and redacted, opinions regarding the validity of group rights for nearly 200 years in order to both further and restrict the possibility of factions growing too powerful in the eyes of the public and of the government. This research project explores the changing opinion of the Supreme Court on the validity and value of group rights based solely on the outcome of landmark Supreme Court cases in the United States.

(Abstract written 3/1/2021)

CONCLUSION

All of these Supreme Court cases regarding religious rights, rights of representation, rights against discriminatory action, the rights of women, and the rights of the LGBTQ+ community serve as evidence that in the case of the United States, there is a not only a necessity of group rights to exist, but also a constitutional provision that ensures as such: the 14th Amendment to the United States Constitution.

Because America as a nation at its founding chose to exclude demographics from the narrative of the social construct during its creation, it *created the necessity* for the existence of group rights; thus, group rights and America go hand and hand.

Religion as a Group

- Reynolds v. United States, 98 US 145 (1879).
- Engle v. Vitale, 370 US 421 (1962).
- Abington School District v. Schempp, 374 US 203 (1963).
- Lemon v. Kurtzman, 403 US 602 (1971).
- Edwards v. Anguillard, 482 US 578 (1987).
- Cantwell v. Connecticut, 310 US 296 (1940).
- Everson v. Board of Education of the Township Ewing, 330 US 1 (1947).
- Wisconsin v. Yoder, 406 US 205 (1972).
- Zelma v. Simmons-Harris, 536 US 639 (2002).
- Rosenberger v. Rector and Visitors of the University of Virginia, 515 US 819 (1995).

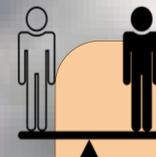
According to the United States Supreme Court, religions and sincerely held beliefs both qualify for group protections as well as lack the correct Constitutional standing to have allocations for group rights; because of the intent to prevent entanglement with the government, religious rights are group rights insofar that the federal government does not have the authority to interfere with them, but also cannot be considered privileges that other groups do not share.



Gender as a Group

- Muller v. Oregon, 208 US 412 (1908).
- Adkins v. Children’s Hospital of DC, 261 US 525 (1923).
- West Coast Hotel Company v. Parrish, 300 US 379 (1937).
- Griswold v. Connecticut, 381 US 479 (1965).
- Reed v. Reed, 404 US 71 (1971).
- Roe v. Wade, 410 US 113 (1973).
- Doe v. Bolton, 410 US 179 (1973).
- Planned Parenthood of Southeastern Pennsylvania v. Case, 505 US 833 (1992).
- Corning Glass Works v. Brennan, 417 US 188 (1974).
- Craig v. Boren, 429 US 190 (1976).
- “Religious Freedom Restoration Act” H.R. 1308, 103rd Congress 91993-1994.
- Burwell v. Hobby Lobby Stores, 573 US ____ (2014).
- Employment Division, Department of Human Resources of Oregon v. Smith, 494 US 872 (1990).
- Franklin v. Gwinnett County Public Schools, 503 UA 60 (1992).
- Harris v. Forklift Systems, 510 US 17 (1993).

According to the United States Supreme Court, gender is extended group rights because it forms a marginalized group that requires its own allocation of privileges via Constitutional Amendment and cannot be separated without discrimination; gender as a construct can change, but in the eyes of history, gender is considered concrete. The change to the definition of gender is discussed later under “Sexuality as a Group” for the inclusion of gender expression under the LGBTQ+ community.



Race as a Group

- Plessy v. Ferguson, 163 US 537 (1896).
- Regents of the University of California v. Bakke, 438 US 265 (1978).
- Gutter v. Bollinger, 539 US 306 (2003).
- Gratz v. Bollinger, 539 US 244 (2003).
- Smith v. Allwright, 321 US 649 (1944).
- Brown v. Board of Education of Topeika, Kansas, 347 US 483 (1954).
- Loving v. Virginia, 388 US 1 (1967).
- Jones v. Alfred H. Mayer Company, 392 US 409 (1968).
- Batson v. Kentucky, 476 US 79 (1986).
- Swain v. Alabama, 380 US 202 (1965).
- Trump v. Hawaii No. 117-965, 585 US ____ (2018)***
- Comcast v. National Association of African-American-Owned Media, 589 U.S. ____ (2020)***

According to the United States Supreme Court, race is extended group rights because race is a marginalized group that requires its own allocation of privileges via Constitutional Amendment and cannot be separated without discrimination; similar to the reasoning for “Gender as a Group”, race is considered concrete, and therefore cannot be changed. Over time, the *reception* of race has changed, hence the differing opinions of the Supreme Court in regards to racial equity and equality.

Sexuality as a Group

- Bowers v. Hardwick, 478 US 186 (1986).
- Romer v. Evans, 517 US 620 (1996).
- Lawrence v. Texas, 539 US 558 (2003).
- Obergefell v. Hodges, 576 US ____ (2015).
- Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)***
- Altitude Express, Inc. v. Zarda, 590 U.S. ____ (2020)***
- Bostock v. Clayton County, 590 U.S. ____ (2020)***
- R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission, 590 U.S. ____ (2020)***

According to the United States Supreme Court, sexuality and gender expression qualify for group rights, however historically have not been extended group rights until after confirmation at the Supreme Court level. Sexuality and gender expression are not *new* concepts or rights to fight for, but have recently been more popular in media and in the eyes of the public following the social changes associated with the LGBTQ+ community and the reception thereof.



*** signifies an added Supreme Court case that has been included following the conclusion of my initial research period.

Please contact me at mpr2z@mtmail.mtsu.edu for a full copy of this research project. Thank you for your interest.