

Gender, Economic Inequality, and the Supreme Court

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This paper addresses how the Supreme Court's recent gender-based decisions are contributing to economic inequality. Currently, the top 1% of households earns one-fifth of the nation's income, while owning over one-third of the nation's wealth. Meanwhile, incomes for the other 99% are at their lowest point since 1997, amidst decreasing social mobility, greater job insecurity, and deepening poverty. Economic inequality results not only from market forces such as globalization and technological change, but also from governmental policies that shape the market. The judiciary is part of this narrative, albeit often overlooked. As I argued in *A Court for the One Percent: How the Supreme Court Contributes to Economic Inequality*, 2014 Utah L. Rev. 389 (2014), the Court endorses a class-blind view of the law that wrongly presumes that the market generates outcomes that are natural, inevitable, and beneficial. The result is further entrenchment of economic inequality.

These wealth and income disparities are magnified through the prisms of race and gender, the latter of which is this paper's focus. Feminist economists have explained how the rise of economic inequality is linked to the stalled progression of gender equity. Here too, the Supreme Court plays a pivotal role. The Court's gender-based decisions have limited the economic advancement of women, which in turn, deepens the economic divide for all Americans. In recent years, the Court has issued decisions that allow for-profit employers to pay and promote women less than men (*Wal-Mart v. Dukes*); deny contraception coverage to employees (*Burwell v. Hobby Lobby*); and limit the ability of unions to organize homecare workers, who are overwhelmingly female and low paid (*Harris v. Quinn*). These decisions have concrete, serious economic consequences that fall most harshly on working class and low-income families. For all these reasons, the time is right to explore the Court's role at the intersection of class and gender and to develop strategies that will advance economic justice for all. This paper examines how the Court's decisions in the areas of workplace law and reproductive justice reflect the Court's benign and deferential view of the market and thereby reinforce the widening gap between the haves and have-nots in America.