

*Fighting for Equality:
LGBTQIA+ & the Courts*

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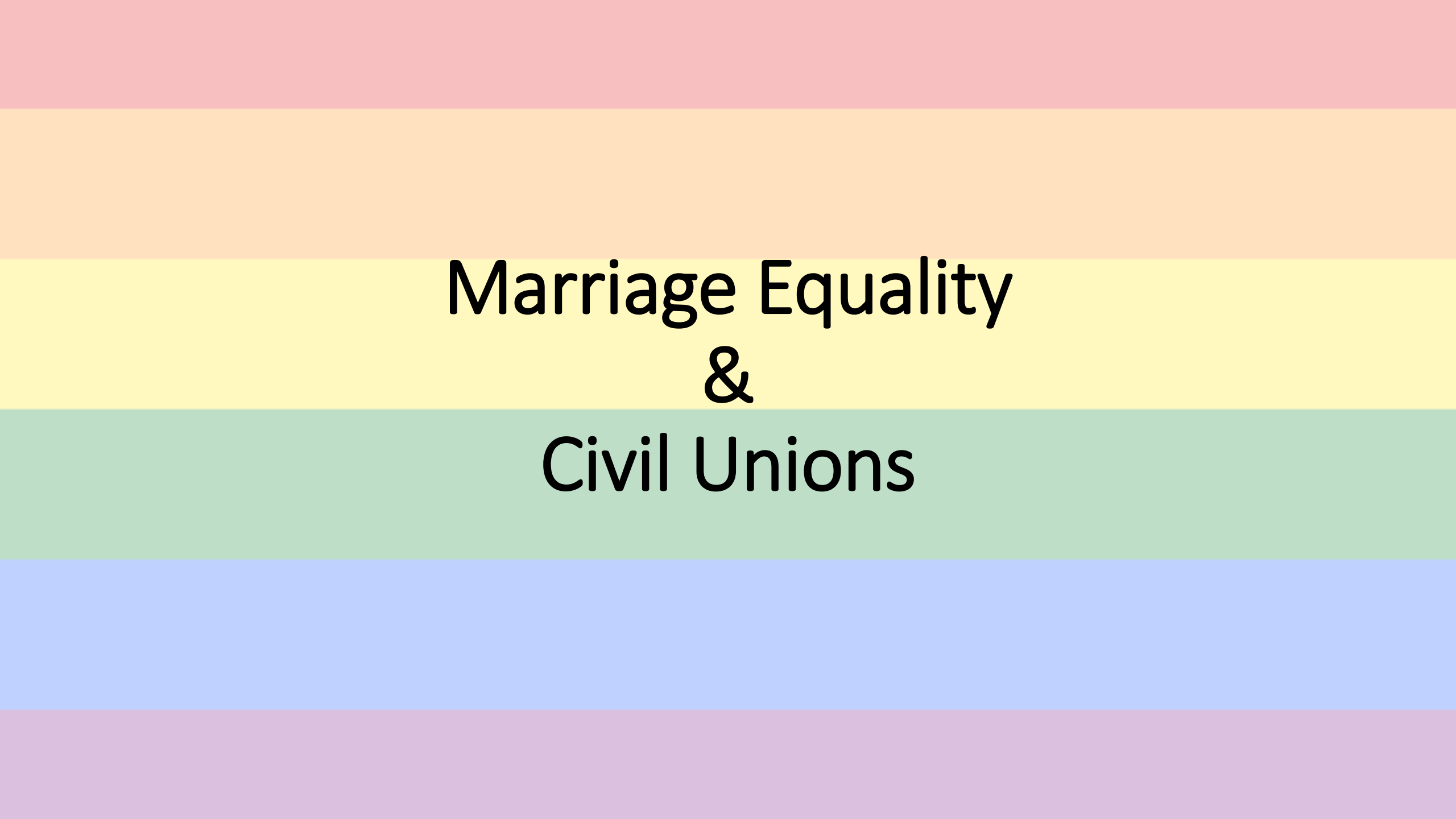
A Little Background

- The LGBTQIA+ Community has, before Stonewall and in the more than half a century since, turned to the courts to gain protections against discrimination and mistreatment under the law and to strike down laws that have targeted – both in word and application – members of this community.
- There have been major victories for the LGBTQIA+ Community at the federal level; namely, with the Supreme Court of the United States (SCOTUS).
 - However, those wins have been accompanied by their fair share of setbacks.
- In this mini lecture on the LGBTQIA+ Community and the Courts, we will look at both the setbacks and the victories.

Gay Magazine/Obscenity

One, Inc. v. Olesen (1958)

- The 9th Circuit Court of Appeals ruled that the Magazine, *One*, which appealed to a homosexual audience was “obscene” and, therefore, did not qualify for constitutional protection under the 1st Amendment.
- The SCOTUS, in a ONE-SENTENCE opinion, struck down the 9th Circuit’s ruling, and declared that *One* qualified for protection under the 1st Amendment.



Marriage Equality
&
Civil Unions

Baker v. Nelson (1972)

- Jack Baker and Michael McConnell (pictured right) applied for a marriage license in Minnesota and were denied by the County Clerk, Gerald Nelson, citing a Minnesota state law that defined marriage as being between “persons of opposite sex.”
- Baker & McConnell sued at the state level and ultimately appealed to the SCOTUS, hoping the Court would strike down the law as being in direct violation of the 14th Amendment’s Equal Protection Clause.
- The SCOTUS chose to not hear oral arguments claiming the issue didn’t raise, “a substantial federal question.”



Jones v. Hallahan (1973) – KY Court of Appeals and

Singer v. Hara (1974) – WA Court of Appeals

- Marjorie Jones, and her fiancée, Tracy Knight, applied for a marriage license in the state of Kentucky and were denied.
- When they sued, the Kentucky Court of Appeals denied their appeal, declaring that “what they propose is not marriage.”
- The following year, John Singer, and his fiancé, Paul Barwick, sued the State of Washington when they were denied a marriage license.
- In their suit, they cited the newly passed Equal Rights Amendment as a reason to compel the state to allow members of the same sex to marry.
- The Washington Court of Appeals denied the request and cited *Jones* as their legal rationale.

Baker v. State (1999) – VT Supreme Court

- This case is the consolidation of 3 lower court cases in which all three plaintiffs had been denied marriage licenses.
- The Vermont Supreme Court had to decide whether or not the same benefits and protections that follow marriage for heterosexual couples extends to homosexual couples under the Vermont State constitution.
- The Court ruled that, yes, in fact, those rights are privy to all persons regardless of sexual orientation.
- The Court left it up to the state legislature to decide how to remedy the constitutional imbalance.
- This resulted in the creation of “Civil Unions” for same-sex couples.

Goodridge v. Dept. of Health (2003) – MA Supreme Court

- Seven same-sex couples sued Massachusetts for the right to marry, and the state's high court ruled in their favor in a November 2003 decision.
- Although there were attempts to amend the state's constitution before the ruling went into effect
 - Those efforts failed
- The first same-sex couples legally married in the United States on **May 17, 2004.**

In re Marriage Cases (2008) – CA Supreme Court & *Hollingsworth v. Perry* (2013)

- On May 15, 2008, the California Supreme Court struck down a state statute (Prop. 22, passed in 1996) and ruled that the portions of the state marriage statutes disallowing same-sex marriages violated the California Constitution.
- However, the window for legal marriages was brief — as voters later that year approved Prop. 8, which amended the state's Constitution to bar same-sex couples from marrying.
 - Thus nullifying the CA Supreme Court's ruling.
- Prop. 8 was later struck down by the 9th Circuit Court of Appeals (in *El Segundo, CA*) & the SCOTUS upheld the 9th Circuit's decision in 2013.

United States v. Windsor (2013)

- Edith Windsor is the widow and sole executor of the estate of her late spouse, Thea Clara Spyer, who died in 2009. The two were married in Toronto, Canada, in 2007, and their marriage was recognized by New York state law.
- Thea Spyer left her estate to her spouse, and because their marriage was not recognized by federal law (due to the Defense of Marriage Act), the federal government imposed **\$363,000** in taxes. Had their marriage been recognized, the estate would have qualified for a marital exemption, and no taxes would have been imposed.
- The SCOTUS struck down the Defense of Marriage Act (DOMA) of 1996 claiming that DOMA denies same-sex couples the rights that come from federal recognition of marriage, which are available to other couples with legal marriages under state law. The Court held that the purpose and effect of DOMA is to impose a "disadvantage, a separate status, and so a stigma" on same-sex couples in violation of the Fifth Amendment's guarantee of equal protection.



Obergefell v. Hodges (2015)

- Shortly after the Windsor decision, Jim Obergefell and John Arthur married in Maryland.
- Arthur was receiving hospice care, having received a diagnosis of A.L.S., or Lou Gehrig's disease, two years earlier.
- The couple sued to ensure their marriage would be recognized in their home state of Ohio.
- After Mr. Arthur died, the case continued all the way to the Supreme Court — a fight that ultimately resulted in all marriage bans nationwide being struck down on **June 26, 2015**.

Obergefell v. Hodges (2015) – Continued

- The Court held that the Due Process Clause of the Fourteenth Amendment guarantees the right to marry as one of the **fundamental liberties** it protects, and that analysis applies to same-sex couples in the same manner as it does to opposite-sex couples.
- Judicial precedent has held that the right to marry is a fundamental liberty because
 - it is inherent to the concept of individual autonomy,
 - it protects the most intimate association between two people,
 - it safeguards children and families by according legal recognition to building a home and raising children; and,
 - it has historically been recognized as the keystone of social order.
- Because there are no differences between a same-sex union and an opposite-sex union with respect to these principles, the exclusion of same-sex couples from the right to marry violates the Due Process Clause of the Fourteenth Amendment.
- The Equal Protection Clause of the Fourteenth Amendment also guarantees the right of same-sex couples to marry as **the denial of that right would deny same-sex couples equal protection under the law**.

The Boy Scouts of America

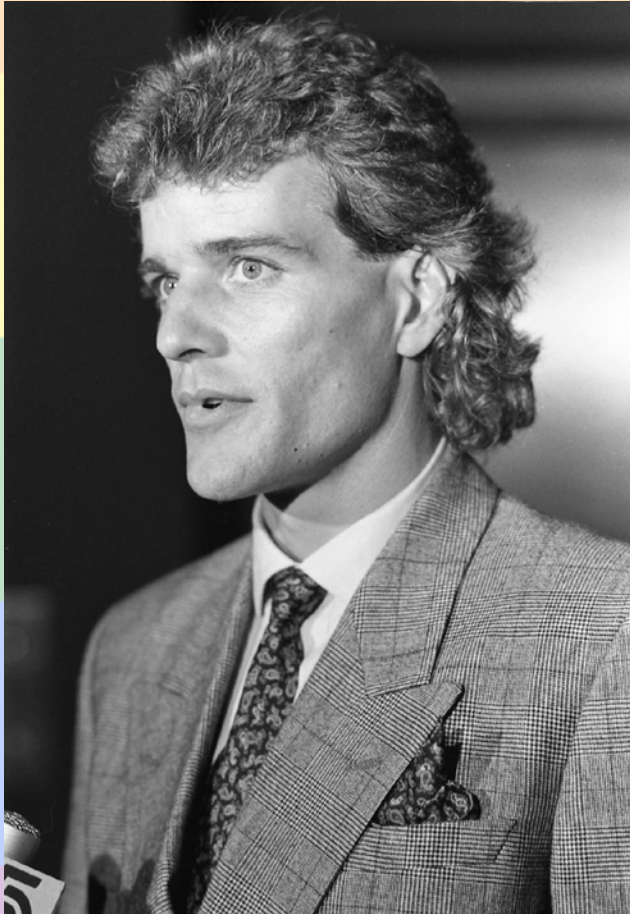
Boy Scouts of America v. Dale (2000)

- Jim Dale (pictured right), was an Assistant Scout Master for his Boy Scout Troop in New Jersey.
- He was expelled from the BSA in 1990 when his sexual orientation, gay, was discovered.
- The New Jersey Supreme Court struck down the ban as unconstitutional and discriminatory.
- The SCOTUS ultimately reversed the NJ Court's ruling, claiming that applying New Jersey's public accommodations law to require the Boy Scouts to admit Dale violates the Boy Scouts' First Amendment right of expressive association." In effect, the ruling gives the Boy Scouts of America a constitutional right to bar homosexuals from serving as troop leaders.



Sexual Behavior

Bowers v. Hardwick (1986)



- Sodomy Case
- Michael Hardwick (pictured left) was arrested for violating the Georgia Anti-Sodomy Law by having sexual intercourse with another man.
- This case was brought forth as the AIDS crisis hit and anti-gay hysteria took over public depictions of gay men's lives.
- The SCOTUS upheld the Georgia law criminalizing sodomy, claiming the US Constitution does not confer fundamental rights upon homosexuals to engage in consensual sodomy.

Lawrence v. Texas (2003)



- Another Sodomy Case
- John Lawrence & Tyron Garner were convicted of “deviant sexual intercourse” in violation of the Texas Homosexual Conduct Law
 - “Two persons of the same sex cannot engage in certain intimate sexual behavior”
- The SCOTUS ended anti-sodomy laws nationwide, reversing the 1986 ruling in a decision by Justice Kennedy that declared, “Bowers was not correct when it was decided, and it is not correct today.”

School Safety

Nabozny v. Podlesny (1996) – US 7th Circuit Court of Appeals



- Jamie Nabozny (pictured left) faced years of abuse and harassment in Wisconsin schools because he was gay.
- After suing, a federal appeals court held that discrimination based on sexual orientation could violate the 14th Amendment's equal protection clause.
- Moreover, the court held that public schools and their officials could be held liable for failing to protect homosexual students from antigay harassment and harm.

The background of the image is a horizontal rainbow gradient, consisting of six distinct color bands: light red at the top, followed by light orange, light yellow, light green, light blue, and light purple at the bottom.

**Anti-Gay
&
Anti-Bisexual
Discrimination**

Romer v. Evans (1996)

- Colorado passed an amendment to the state constitution that prohibited cities and counties from passing anti-discrimination laws that sought to protect members of the LGBTQIA+ community – namely gay and bisexual individuals.
- The SCOTUS struck the amendment down as “unprecedented” in the way that it eliminated a whole group of people’s “right to seek specific protection from the law.”

NOTE: This is the first of many cases for which former Justice Anthony Kennedy authored the opinion advancing the rights of the LGBTQIA+ Community.



Transgender Rights

Brandon v. Richardson County (1997) – NE Supreme Court

- Anti-Transgender Violence Case
- The police in Nebraska failed to protect Brandon Teena, a transgender man, when he agreed to be a witness in the case against his rapists — leading to his murder.
- His family sued, and courts ultimately allowed a lawsuit against the police for their “atrocious” conduct.

(Brandon’s mother, JoAnn, is pictured right)



Doe v. Trump (2019)



- Transgender Military Service Ban
- After Pres. Trump posted a decision on Twitter to ban transgender people from serving in the military and later issued an attempt to do so, courts across the country found the move likely to be unconstitutional and ordered that it not be allowed to go into effect.
- After the initial wave of rulings against the Trump administration, the Pentagon revised and narrowed the ban slightly.
- A federal appeals court in Washington sided with the administration on that revised version.
- The SCOTUS let the ban go into effect.

Workplace Discrimination

Transgender Workplace Protections

Glenn v. Brumby (2011)

US 11th Circuit Court of Appeals

- Vandy Beth Glenn was fired from her job with the Georgia General Assembly after she told her employer that she was transgender and would be transitioning.
- The US 11th Cir. Court of Appeals ruled that her firing was unconstitutional sex discrimination.


Macy v. Holder (2012)

Equal Employment Opportunity Commission

- The commission ruled in Mia Macy's complaint that anti-transgender discrimination is a type of sex discrimination and therefore illegal under Title VII of the Civil Rights Act of 1964
- This decision set a standard for the agency across the country and in other litigation.

Pending Title VII Cases before the SCOTUS (2020)

- The SCOTUS is currently considering whether discrimination on the basis of sexual orientation and gender identity are types of sex discrimination made illegal under Title VII of the Civil Rights Act of 1964.
 - The Court heard oral arguments earlier this term and is set to issue its decisions by the last Friday in June 2020 – when the 2019-2020 term ends.
- ***Bostock v. Clayton County, Georgia (2020) & Altitude Express v. Zarda (2020)***
 - In the Bostock case out of Georgia and the Zarda case out of New York, the question to be resolved by the justices is whether discrimination based on sexual orientation violates the ban on sex discrimination found in Title VII.
- ***R.G. & G.R. Harris Funeral Homes v. Equal Employment Opportunity Commission (2020)***
 - In the funeral home case, the commission sued — under the principle established in *Mia Macy's* case — because a transgender employee faced discrimination. The funeral home is asking the Supreme Court to rule that the commission is wrong that discrimination based on gender identity violates the ban on sex discrimination found in Title VII.



Be You.

Be Proud.

Sources of Information

- Cornell Law – www.law.cornell.edu
- LexisNexis – www.lexisnexis.com
- Los Angeles Times – www.latimes.com
- New York Times – www.nytimes.com
- Oyez – www.oyez.com
- SCOTUS Blog – www.scotusblog.com
- Supreme Court of the United States – www.supremecourt.gov