

**CAROLYN  
RAYE  
WHITENER**  
1941-



**REVERSE  
SEX  
DISCRIMINATION**

Equal protection under the law was granted by the Fourteenth Amendment in 1868. For a century after that, women had a hard time convincing courts that they should be treated equally. In 1976, an ACLU lawyer set out to convince the all-male Supreme Court to take sex discrimination seriously with an unconventional case, where men were the victims.

Oklahoma had passed a law in the early 1970s allowing females to buy beer at 18, but males had to be 21. After its passage, 20-year-old Oklahoma State University freshman Mark Walker challenged the beer statute. The key issue? The Fourteenth Amendment's Equal Protection Clause. Because the law-imposed penalties on sellers rather than the buyers, licensed beer vendor Carolyn Whitener was added as a co-plaintiff. Whitener owned the Honk n' Holler convenience store near the Oklahoma State University campus, whose clientele included females who bought beer for their male friends.

Before the case came to trial, Walker turned 21, so 18-year-old Curtis Craig replaced him as a co-plaintiff. In December 1972, the case *Craig v. Boren* (Governor of Oklahoma) was dismissed on the grounds that the state could regulate commerce in liquor. At the District Court hearing, the state relied on statistics showing more males than females 18-21 were arrested for drunk driving or were injured or killed in traffic accidents.

Former Lawton resident and ACLU's Women's Rights Project attorney Ruth Bader Ginsburg was looking for good gender equality cases. She realized this male discrimination case was important because any gender discrimination was unconstitutional. "Delighted to see the Supreme Court is interested in beer drinkers," she wrote to Fred Gilbert, Craig's attorney, after the Court agreed in January 1976 to hear the case.

Because the Supreme Court was composed only of men, Ginsburg knew she had a case that connected to their sex – buying beer was male discrimination they could understand. By October 1976, Curtis Craig had also turned 21. Because Gilbert was not allowed to add another male plaintiff, beer vendor Carolyn Whitener became the only plaintiff in the case.

The question became "Can the 21<sup>st</sup> Amendment's guarantee of state regulation of liquor overrides the 14<sup>th</sup> Amendment's guarantee of equal protection?" Justice William Brennan said, "the 21<sup>st</sup> Amendment was primarily aimed at interstate commerce of alcohol." On closer examination, the state's statistics showed that only 2% of males 18-20 had been arrested for alcohol-related driving offenses. Brennan concluded, "it was unfair to punish the 98% of young men who did not get arrested for the sins of the 2% who did."

In a 7-2 decision, the Court concluded that Oklahoma violated the Fourteenth Amendment's Equal Protection Clause. The Oklahoma law was declared unconstitutional, and the decision established a new standard for review in gender discrimination cases. With it went laws everywhere that discriminated on the basis of gender. The Nineteenth Amendment was reaffirmed: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."