

SAVE THE DATE

for the upcoming Center for Reproductive Rights symposium,

EQUALITY AND REPRODUCTIVE RIGHTS

Friday March 3-Saturday March 4, 2006

Columbia Law School

**Co-sponsored by Social Justice Initiatives at Columbia Law School*

Participants will include Professors Jack Balkin (Yale), Pamela Bridgewater (WCL), Rebecca Cook (Toronto), David Cruz (USC), Michelle Fine (CUNY Hunter), Sylvia Law (NYU), Gillian Metzger (Columbia), Eileen McDonagh (NEU), Nina Pillard (Georgetown), Dorothy Roberts (Chicago), Reva Siegel (Yale), and other distinguished scholars.

Topics to be explored at the symposium include:

Equality vs. Liberty? Constitutional Bases for Reproductive Rights

Adolescent Sexualities and Reproductive Freedoms

Choice and Consent in Equal Protection Law

International Protection of Reproductive Rights

Slavery and Contemporary Reproductive Justice

Repronormativity, Same-Sex Marriage and Reproductive Equality

Reproductive Choice in Social Context: Work and Family

* We are working on arranging for CLE credit for the symposium. Details to follow.

Hope to see you there!

**CENTER
FOR
REPRODUCTIVE
RIGHTS**

EP Symposium Overview

Academics have long argued that reproductive rights, including abortion, would be more firmly protected under the theory that discrimination against abortion is sex discrimination and therefore violates the equal protection clause. (*Roe* is based on the due process guarantee of autonomy and privacy.) Some theorists argue that the sex discrimination argument is more intellectually sound and more firmly rooted in the Constitution than the right to privacy. Others simply point out that if restrictions on abortion were considered sex discrimination, a higher constitutional standard of review would apply than currently applies under the due process guarantees of liberty and privacy. (Discrimination against sex is evaluated under the quite stringent “intermediate scrutiny” standard, while most abortion restrictions are currently evaluated under the highly porous “undue burden” standard.)

In assessing the potential of equal protection doctrine to safeguard reproductive rights, the Center, and other legal groups working on reproductive rights issues, face two immediate challenges. In 1974 in *Geduldig v. Aiello*, the Supreme Court ruled that discrimination based on pregnancy is not sex discrimination. The Court reasoned that women as a class are not being discriminated against because not all women become pregnant. Under the Court’s reasoning, discrimination based on abortion is not sex discrimination. Compounding *Geduldig* is the dearth of recent academic legal scholarship on equal protection doctrine as it relates to reproductive rights, scholarship that often serves as the incubator for the new legal theories and arguments that move constitutional law forward.

In 2005, the Center completed extensive legal research to identify factual scenarios that would either inform viable legal challenges seeking to overturn *Geduldig* or establish viable legal claims that would withstand review in light of *Geduldig*. Given the results of our research—we did not identify a scenario—and especially in light of the current and future composition of the Supreme Court, our work during the grant period will focus on two interrelated initiatives to advance academic legal discourse around equal protection doctrine.

Legal Academic Symposium: “Equality and Reproductive Rights.” The Center will host a symposium on March 3-4, 2006 at Columbia Law School, convening leading reproductive rights and constitutional law scholars and academics to explore the potential role of equal protection in safeguarding women’s reproductive rights. The symposium will include the following four panels:

- 1) “Equality v. Liberty? Constitutional Bases for Reproductive Rights”
- 2) “Sexuality and Reproductive Equality”
- 3) “Abortion and Equality: Emerging Issues”
- 4) “Reproductive Rights and Women’s Equality: The Social Context”

Law professors and other academics who have agreed to participate in the symposium, either by writing and presenting an article or by moderating a panel, are listed below:

- Jack Balkin (Yale University Law School)
- Rebecca Cook (University of Toronto Law School)
- David Cruz (University of Southern California Law School)
- Joanne Erdman (University of Toronto Law School)
- Michelle Fine (City University of New York, Graduate Center)
- David Gans (New York University Law School)
- Dawn Johnsen (Indiana University Law School)
- Sylvia Law (New York University Law School)

- Sara McClelland (City University of New York, Hunter College)
- Eileen McDonagh (Northeastern University, Political Science)
- Alice Miller (J.D., Columbia Mailman School of Public Health)
- Gillian Metzger (Columbia University Law School)
- Nina Pillard (Georgetown University Law Center)
- Dorothy Roberts (Northwestern University School of Law)
- Reva Siegel (Yale University Law School)