AAUW Supreme Court Wrap Up Regarding Issues Important to AAUW Members

In July, Mollie Lam, AAUW's Legal Advocacy Fund Senior Manager held a telephone conference discussion about the Supreme Court's recent decisions regarding women's rights (Hobby Lobby, etc.) Mollie works with the plaintiffs and advocates AAUW supports through LAF's case support program, and she works with AAUW branches across the country on LAF programming. I encourage all of you to listen to a recording of that call by clicking http://www.aauw.org/event/2014/07/scotus-wrap-up-call/. If the link doesn't work, go to http://www.aauw.org and type Supreme Court wrap up call in the search box.

Because these cases are so significant to the legal protections of women, I am including some of the CA AAUW Online Branch Program's questions and answers. Per Mollie, "This was a big year for Supreme Court decisions, and unfortunately this year's rulings were disappointing. That makes it all the more important for AAUW members to be informed about the Court's opinions and the issues at play."

What were the three or four most important cases in the court this year from AAUW's standpoint and why?

Burwell v. Hobby Lobby and Conestoga Wood v. Burwell: On June 30, in a disappointing 5-4 decision, the Supreme Court sided with two for-profit companies that had challenged the Affordable Care Act's contraceptive coverage requirement. These businesses, which included Hobby Lobby, a national arts-and-crafts chain, claimed that providing employee insurance plans that cover certain forms of contraception to which Hobby Lobby's owners have religious objections violates their religious freedoms. The Court agreed, holding that at least some corporations cannot be required to provide contraceptive coverage when the corporation's owners state religious objections. Continuing AAUW's long-standing support for access to contraception and reproductive healthcare, AAUW signed several amicus briefs in different circuits, arguing that for-profit business owners should not be exempt from providing healthcare coverage to their female employees.

McCullen v. Coakley: anti-choice activists challenged a Massachusetts law that prohibits anyone not having business at a reproductive health care facility from entering or remaining on a public way or sidewalk within thirty-five feet of an entrance, exit, or driveway of the care facility. The Massachusetts law was designed to protect patients from harassment and intimidation at the hands of protesters, who can be very aggressive in getting their message across and who sometimes block clinic entrances. The Court ruled unanimously that the Massachusetts law was unconstitutional on the grounds that it impermissibly restricted the protesters' free speech rights. AAUW signed on to an amicus brief urging the Court to uphold the law.

Schuette v. Coalition to Defend Affirmative Action: About a decade ago, the Supreme Court ruled that a race-conscious affirmative action admissions program used by the University of Michigan's law school was constitutional. Following that ruling, anti-affirmative action groups worked to pass Proposal 2, a Michigan state ballot initiative. That initiative passed and created Section 26 of the Michigan Constitution, barring considerations of race in university admissions. Affirmative action advocates filed suit,

arguing that Proposal 2 violated the Fourteenth Amendment of the Constitution because it prevented affirmative action advocates from lobbying universities to use race-consciousness in admissions but allowed all other advocacy groups—such as those that might want to lobby a university to consider a student's alumni connections, athletic ability, or any other factor—to push for consideration. AAUW supports affirmative action programs to increase equity and diversity in education and signed on to an amicus brief urging the Court to declare the amendment unconstitutional. The Court held that the Proposal 2 was constitutionally permissible, meaning the Michigan ban will stand. However, it's important to remember that the Schuette ruling does not affect the status of any affirmative action plans now in place across the country; the opinion does not in any way upset the standing law that some affirmative action plans are constitutional.

How does AAUW decide whether to participate in amicus briefs?
We rely on AAUW's member-voted public policies platforms. Based on the issues members identify as priorities and the platforms that members back, we sign on to amicus briefs that match our priorities and help advance our platforms. Amicus briefs are an important avenue for advancing.

What's to be done about the decisions that don't go the way we would like?
Responding to Supreme Court rulings can be difficult. First, we don't always know right away what practical effects the rulings will have. For instance, we don't know yet how lower courts will interrupt the Hobby Lobby ruling. Will they read Hobby Lobby as a narrower decision that only affects the rights of closely-held corporations, or will they take Hobby Lobby as guidance on the rights of non-profit organizations and publicly-traded corporations as well? It takes time for us to understand what the fallout will be. But there are some concrete steps we can take. We can push for a legislative response. In the case of Hobby Lobby, there is already a bill in Congress (nicknamed the Not My Bosses' Business Act) that would overrule the Hobby Lobby decision and ensure that the contraceptive care requirement applied to for-profit business. It's incredibly important to tell our representatives in Washington to support bills that protect and promote gender equity.
And we can vote. When it comes to the Supreme Court, voting is the most powerful tool we have. The President nominates federal judges, and the Senate confirms (or fails to confirm) them. It's crucial to consider what kind of judicial nominees a political candidate would support as you decide who to vote for this coming November.

How did the women on the court vote in these cases?
Interestingly, McCullen, the buffer zone case, was a unanimous decision. Many commentators were surprised that the justices who are generally strong proponents of reproductive rights and anti-harassment laws voted to strike down Massachusetts' buffer zone law, especially because several of those justices (including Justice Ginsburg) had voted in 2000 to uphold a Colorado buffer zone law. I tend to think that those justices simply felt that the Massachusetts buffer zone—which required protesters to be at least 35 feet away from the entrance or exit of a clinic—was simply too big. The Colorado buffer zone that the Court upheld in the 2000 case was significantly smaller.

The Hobby Lobby decision was 5-4, with the three women justices and Justice Kennedy dissenting. In an interview following the decision, Justice Ginsburg opined that some of her male colleagues have a "blind spot" when it comes to women's issues.
Finally, Schuette was actually a 6-2 decision—Justice Kagan did not participate in the Schuette case because she had been involved in the case in her earlier role as Solicitor General. Justices Sotomayor and Ginsburg dissented together.