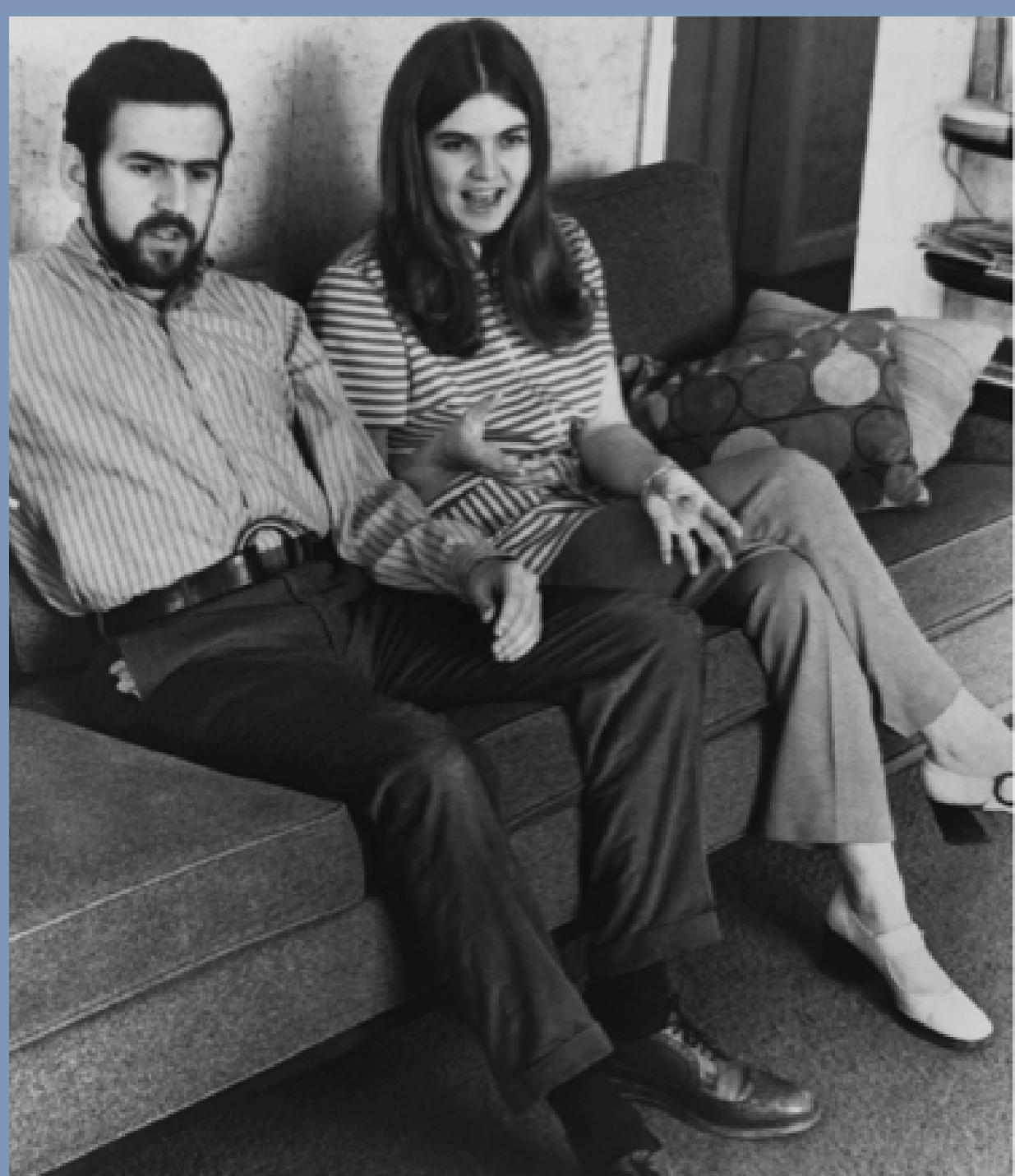


# Frontiero v. Richardson (1973)



## THE SUPREME COURT CASE

After a majority of the judges on the three-judge panel decided that the law allowing different standards for male and female military spousal dependency was constitutional, Sharron and Joseph Frontiero appealed their case to the Supreme Court of the United States. On October 10, 1972, the Court noted probable jurisdiction because the case was decided by a three-judge panel and challenged the constitutionality of a federal law.

The Supreme Court heard oral argument on January 17, 1973. Of the 30 minutes of appellant argument time, Attorney Joe Levin used 20 minutes and provided Professor Ruth Bader Ginsburg, representing the ACLU, 10 minutes. Samuel Huntington, Assistant to the Solicitor General Robert H. Bork, had 30 minutes to argue on behalf of the appellee, Secretary of Defense Elliot Richardson.

During the proceedings, the Supreme Court contemplated whether or not the law allowing different processes for male and female service members to receive dependent benefits violated the Fifth Amendment's Due Process Clause. Ultimately, in an 8-1 decision, the Court ruled that the federal law was unconstitutional as it discriminated on the basis of sex. Justice William H. Rehnquist dissented, agreeing with the lower court's decision to uphold the constitutionality of the law.

## KEY ARGUMENTS

### Appellant: Frontiero and Amicus

#### Represented by Attorney Joe Levin

Argued sexual two types of discrimination:

- Procedural:** The process for female officers to receive dependent benefits is different than the process for male officers.
- Substantive:** The spouses of military servicemen automatically receive benefits they may not need, while the spouses of military servicewomen do not receive benefits, though they may need them.

In rebuttal to the government's argument, Levin contended that administrative convenience is not a valid justification—the Supreme Court previously rejected discrimination based on efficiency in cases such as *Shapiro v. Thompson* and *Reed v. Reed*. Furthermore, the small percentage of women affected will not substantially increase their administrative burden. Lastly, the government must demonstrate a legitimate interest in the discrimination using an intermediate standard of review, not a rational basis.

#### Amicus Curiae—Represented by Attorney & Professor Ruth Bader Ginsburg

The amicus curiae, which means “friend of the court”, argued that the standard of review should be strict scrutiny and that sex should be considered a “suspect class.” Even though women were the majority of the population in 1973, they were significantly underrepresented, and because of these systemic societal structures, sex based discrimination should be scrutinized.

### Appellee: Richardson

#### Represented by Attorney Samuel Huntington

- Argued that the rational basis is appropriate for reviewing this case, since sex has not previously been a reason to apply strict scrutiny. To use strict scrutiny would invalidate all previous cases involving sex-based discrimination.
- Most married women in the Air Force are married to other servicemen and therefore receive no additional housing allowance. Of the 25% of female officers who are married, only 4% of that group have civilian spouses, meaning a very minimal group is even affected.
- It would be a significant administrative burden for the Armed Forces if they had to examine 1.5 million proof-of-dependency forms that every military man would have to submit.

## IMPACT

### 1. Precedent

- Frontiero v. Richardson (1973) was the first gender discrimination case under federal law brought to the Supreme Court. It helped shape how similar cases would be decided in the future.

### 2. Intermediate Scrutiny

- During oral argument, Joseph Levin introduced a new idea called **intermediate scrutiny**. This level of analysis changed how the courts examine discrimination and helps them decide if discriminatory laws are constitutional.

### 3. Military Benefits

- Before the Frontiero case, women had to work harder than men to get military benefits for their spouses. After the case, the unfair rule was removed. Today, if a married servicewoman applies for spousal benefits, she qualifies, just like a married serviceman.

## TYPES OF SCRUTINY

### Rational Basis    Intermediate Scrutiny    Strict Scrutiny

- Used when the legal interest isn't a fundamental right
- Most often upheld as long as the government has a rational reason for its objective
- More often than not, rational basis favors the government's side in court cases
- It is the default that is applied when there is no other means of classification

- For sex-based classifications
- A new type of scrutiny, argued by Joseph J. Levin
- Laws should have a clear purpose and align with government goals.
- In 1996, the law was changed to say that when the government does something based on sex, they have to provide a strong reason.

- Highest degree of examination
- Used when “suspect classes” such as race, religion, natural origin, etc., are involved
- The government must prove that this is the least restrictive means of achieving their objective.
- Extremely difficult for the government to meet the standard and justify the reasoning for its objective.

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