SUPREME COURT OF THE UNITED STATES

No. 92–1239

J. E. B., PETITIONER *v.* ALABAMA EX REL. T. B.

ON WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS OF ALABAMA

[April 19, 1994]

JUSTICE BLACKMUN delivered the opinion of the Court.

In *Batson* v. *Kentucky*, 476 U. S. 79 (1986), this Court held that the Equal Protection Clause of the Fourteenth Amendment governs the exercise of peremptory challenges by a prosecutor in a criminal trial. The Court explained that although a defendant has "no right to a `petit jury composed in whole or in part of persons of his own race,'" *id*., at 85, quoting *Strauder* v. *West Virginia*, 100 U. S. 303, 305 (1880), the "defendant does have the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria." *Id*., at 85–86. Since *Batson*, we have reaffirmed repeatedly our commitment to jury selection procedures that are fair and nondiscriminatory. We have recognized that whether the trial is criminal or civil, potential jurors, as well as litigants, have an equal protection right to jury selection procedures that are free from state-sponsored group stereotypes rooted in, and reflective of, historical prejudice. See *Powers* v. *Ohio*, 499 U. S. 400 (1991); *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. 614 (1991); *Georgia* v. *McCollum*, 505 U. S. __ (1992).

Although premised on equal protection principles that apply equally to gender discrimination, all our recent cases defining the scope of *Batson* involved alleged racial discrimination in the exercise of

peremptory challenges. Today we are faced with the question whether the Equal Protection Clause forbids intentional discrimination on the basis of gender, just as it prohibits discrimination on the basis of race. We hold that gender, like race, is an unconstitutional proxy for juror competence and impartiality.

On behalf of relator T.B., the mother of a minor child, respondent State of Alabama filed a complaint for paternity and child support against petitioner J.E.B. in the District Court of Jackson County, Alabama. On October 21, 1991, the matter was called for trial and jury selection began. The trial court assembled a panel of 36 potential jurors, 12 males and 24 females. After the court excused three jurors for cause, only 10 of the remaining 33 jurors were male. The State then used 9 of its 10 peremptory strikes to remove male jurors; petitioner used all but one of his strikes to remove female jurors. As a result, all the selected jurors were female.

Before the jury was empaneled, petitioner objected to the State's peremptory challenges on the ground that they were exercised against male jurors solely on the basis of gender, in violation of the Equal Protection Clause of the Fourteenth Amendment. App. 22. Petitioner argued that the logic and reasoning of *Batson* v. *Kentucky*, which prohibits peremptory strikes solely on the basis of race, similarly forbids intentional discrimination on the basis of gender. The court rejected petitioner's claim and empaneled the all-female jury. App. 23. The jury found petitioner to be the father of the child and the court entered an order directing him to pay child support. On post-judgment motion, the court reaffirmed its ruling that *Batson* does not extend to gender-based peremptory challenges. App. 33. The Alabama Court of Civil Appeals affirmed, 606 So. 2d 156 (1992), relying on Alabama precedent, see, *e.g.*, *Murphy* v. *State*, 596 So. 2d 42 (Ala. Crim. App. 1991), cert. denied, __ U. S. __ (1992), and *Ex parte Murphy*, 596 So. 2d 45 (Ala. 1992). The Supreme Court of Alabama denied certiorari, No. 1911717 (Ala. Oct. 23, 1992).

We granted certiorari, __ U. S. __ (1993), to resolve

a question that has created a conflict of authority—whether the Equal Protection Clause forbids peremptory challenges on the basis of gender as well as on the basis of race.[1] Today we reaffirm what, by now, should be axiomatic: Intentional discrimination on the basis of gender by state actors violates the Equal Protection Clause, particularly where, as here, the discrimination serves to ratify and perpetuate

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[1]The Federal Courts of Appeals have divided on the issue. See *United States* v. *DeGross*, 913 F. 2d 1417 (CA9 1990), and 960 F. 2d 1433, 1437–1443 (1992) (en banc) (extending *Batson* to prohibit gender-based peremptory challenges in both criminal and civil trials); cf. *United States* v. *Nichols*, 937 F. 2d 1257, 1262–1264 (CA7 1991) (declining to extend *Batson* to gender), cert. denied, __ U. S. __ (1992); *United States* v. *Hamilton*, 850 F. 2d 1038, 1042–1043 (CA4 1988) (same), cert. dism'd, 489 U. S. 1094 (1989), and cert. denied, 493 U. S. 1069 (1990); *United States* v. *Broussard*, 987 F. 2d 215, 218–220 (CA5 1993) (same).

State courts also have considered the constitutionality of gender-based peremptory challenges. See *Laidler* v. *State*, __ So. 2d __ (Fla. App. 1993) (extending *Batson* to gender); *State* v. *Burch*, 830 P. 2d 357 (Wash. App. 1992) (same, relying on State and Federal Constitutions); *Di Donato* v. *Santini*, 283 Cal. Rptr. 751 (Cal. App. 1991), review denied (Cal. Oct. 2, 1991); *Tyler* v. *State*, __ Md. __, 623 A. 2d 648 (1993) (relying on State Constitution); *People* v. *Mitchell*, __ Ill. App. __, 593 N.E. 2d 882 (1992) (same), aff'd in part and vacated in relevant part, No. 73812 (Ill. May 20, 1993); *State* v. *Gonzales*, 111 N.M. 590, 808 P. 2d 40 (App.) (same), cert. denied, __ N.M. __, 806 P. 2d 65 (1991); *State* v. *Levinson*, __ Haw. __, 795 P. 2d 845, 849 (1990) (same); *People* v. *Irizarry*, 165 App. Div. 2d 715, 560 N.Y.S. 2d 279 (1990) (same); *Commonwealth* v. *Hutchinson*, 395 Mass. 568, 481 N.E. 2d 188, 190 (1985) (same); cf. *State* v. *Culver*, 293 Neb. 228, 444 N.W. 2d 662 (1989) (refusing to extend *Batson* to gender);

invidious, archaic, and overbroad stereotypes about the relative abilities of men and women.

Discrimination on the basis of gender in the exercise of peremptory challenges is a relatively recent phenomenon. Gender-based peremptory strikes were hardly practicable for most of our country's existence, since, until the 19th century, women were completely excluded from jury service.[2] So well-entrenched was this exclusion of women that in 1880 this Court, while finding that the exclusion of African-American men from juries violated the Fourteenth Amendment, expressed no doubt that a State "may confine the selection [of jurors] to males." *Strauder* v. *West Virginia*, 100 U. S. 303, 310; see also *Fay* v. *New York*, 332 U. S. 261, 289–290 (1947).

Many States continued to exclude women from jury service well into the present century, despite the fact that women attained suffrage upon ratification of the Nineteenth Amendment in 1920.[3] States that did

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State v. *Clay*, 779 S.W. 2d 673, 676 (Mo. App. 1989) (same); *State* v. *Adams*, 533 So. 2d 1060, 1063 (La. App. 1988) (same), cert. denied, 540 So. 2d 338 (La. 1989); *State* v. *Oliviera*, 534 A. 2d 867, 870 (R.I. 1987) (same); *Murphy* v. *State*, 596 So. 2d 42 (Ala. Crim. App. 1991) (same), writ denied, 596 So. 2d 45 (Ala.), cert. denied, __ U. S. __ (1992).

[2]There was one brief exception. Between 1870 and 1871, women were permitted to serve on juries in Wyoming Territory. They were no longer allowed on juries after a new chief justice who disfavored the practice was appointed in 1871. See Abrahamson, Justice and Juror, 20 Ga. L. Rev. 257, 263–264 (1986).

[3]In 1947, women still had not been granted the right to serve on juries in 16 States. See Rudolph, Women on the Jury—Voluntary or Compulsory?, 44 J. Am. Jud. Soc. 206 (1961). As late as 1961, three States, Alabama,

permit women to serve on juries often erected other barriers, such as registration requirements and automatic exemptions, designed to deter women from exercising their right to jury service. See, *e.g.*, *Fay* v. *New York*, 332 U. S., at 289 ("[I]n 15 of the 28 states which permitted women to serve [on juries in 1942], they might claim exemption because of their sex"); *Hoyt* v. *Florida*, 368 U. S. 57 (1961) (upholding affirmative registration statute that exempted women from mandatory jury service).

The prohibition of women on juries was derived from the English common law which, according to Blackstone, rightfully excluded women from juries under "the doctrine of *propter defectum sexus*, literally, the `defect of sex.'" *United States* v. *DeGross*, 960 F. 2d 1433, 1438 (CA9 1992) (en banc), quoting 2 W. Blackstone, Commentaries *362.[4] In this country, supporters of the exclusion of women from

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Mississippi, and South Carolina, continued to exclude women from jury service. See *Hoyt* v. *Florida*, 368 U. S. 57, 62 (1961). Indeed, Alabama did not recognize women as a "cognizable group" for jury-service purposes until after the 1966 decision in *White* v. *Crook*, 251 F. Supp. 401 (MD Ala.) (three-judge court).

[4]In England there was at least one deviation from the general rule that only males could serve as jurors. If a woman was subject to capital punishment, or if a widow sought postponement of the disposition of her husband's estate until birth of a child, a *writ de ventre inspiciendo* permitted the use of a jury of matrons to examine the woman to determine whether she was pregnant. But even when a jury of matrons was used, the examination took place in the presence of 12 men, who also composed part of the jury in such cases. The jury of matrons was used in the United States during the Colonial period, but apparently fell into disuse when the medical profession began to perform that function. See Note, Jury Service for Women, 12 U. Fla. L. Rev. 224–225 (1959).

juries tended to couch their objections in terms of the ostensible need to protect women from the ugliness and depravity of trials. Women were thought to be too fragile and virginal to withstand the polluted courtroom atmosphere. See *Bailey* v. *State*, 215 Ark. 53, 61, 219 S.W. 2d 424, 428 (1949) ("Criminal court trials often involve testimony of the foulest kind, and they sometimes require consideration of indecent conduct, the use of filthy and loathsome words, references to intimate sex relationships, and other elements that would prove humiliating, embarrassing and degrading to a lady"); *In re Goodell*, 39 Wis. 232, 245–246 (1875) (endorsing statutory ineligibility of women for admission to the bar because "[r]everence for all womanhood would suffer in the public spectacle of women . . . so engaged"). *Bradwell* v. *State*, 16 Wall. 130, 141 (1872) (concurring opinion) ("[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . . The paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator"). Cf. *Frontiero* v. *Richardson*, 411 U. S. 677, 684 (1973) (plurality opinion) (This "attitude of `romantic paternalism' . . . put women, not on a pedestal, but in a cage").

This Court in *Ballard* v. *United States*, 329 U. S. 187 (1946), first questioned the fundamental fairness of denying women the right to serve on juries. Relying on its supervisory powers over the federal courts, it held that women may not be excluded from the venire in federal trials in States where women were eligible for jury service under local law. In response to the argument that women have no superior or unique perspective, such that defendants are denied

a fair trial by virtue of their exclusion from jury panels, the Court explained:

> "It is said . . . that an all male panel drawn from the various groups within a community will be as truly representative as if women were included. The thought is that the factors which tend to influence the action of women are the same as those which influence the action of men—personality, background, economic status—and not sex. Yet it is not enough to say that women when sitting as jurors neither act nor tend to act as a class. Men likewise do not act like a class. . . . The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle interplay of influence one on the other is among the imponderables. To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded." *Id*., at 193–194 (footnotes omitted).

Fifteen years later, however, the Court still was unwilling to translate its appreciation for the value of women's contribution to civic life into an enforceable right to equal treatment under state laws governing jury service. In *Hoyt* v. *Florida*, 368 U. S., at 61, the Court found it reasonable, "despite the enlightened emancipation of women," to exempt women from mandatory jury service by statute, allowing women to serve on juries only if they volunteered to serve. The Court justified the differential exemption policy on the ground that women, unlike men, occupied a unique position "as the center of home and family life." *Id*., at 62.

In 1975, the Court finally repudiated the reasoning of *Hoyt* and struck down, under the Sixth Amendment, an affirmative registration statute nearly identical to the one at issue in *Hoyt*. See *Taylor* v.

Louisiana, 419 U. S. 522 (1975).[5] We explained: "Restricting jury service to only special groups or excluding identifiable segments playing major roles in the community cannot be squared with the constitutional concept of jury trial." *Id*., at 530. The diverse and representative character of the jury must be maintained "partly as assurance of a diffused impartiality and partly because sharing in the administration of justice is a phase of civic responsibility.'" *Id*., at 530–531, quoting *Thiel* v. *Southern Pacific Co.*, 328 U. S. 217, 227 (1946) (Frankfurter, J., dissenting). See also *Duren* v. *Missouri*, 439 U.S. 357 (1979).

Taylor relied on Sixth Amendment principles, but the opinion's approach is consistent with the heightened equal protection scrutiny afforded gender-based classifications. Since *Reed* v. *Reed*, 404 U. S. 71 (1971), this Court consistently has subjected gender-based classifications to heightened scrutiny in recognition of the real danger that government policies that professedly are based on reasonable considerations in fact may be reflective of "archaic and overbroad" generalizations about gender, see *Schlesinger* v. *Ballard*, 419 U. S. 498, 506–507 (1975), or based on "outdated misconceptions concerning the role of females in the home rather than in the `marketplace and world of ideas.'" *Craig* v. *Boren*, 429 U. S. 190, 198–199 (1976). See also *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U. S. 432, 441 (1985) (differential treatment of the sexes "very likely

[5]*Taylor* distinguished *Hoyt* by explaining that that case "did not involve a defendant's Sixth Amendment right to a jury drawn from a fair cross section of the community," 419 U. S., at 534. The Court now, however, has stated that *Taylor* "in effect" overruled *Hoyt*. See *Payne* v. *Tennessee*, 501 U. S. __, __, n. 1 (1991).

reflect[s] outmoded notions of the relative capabilities of men and women").

Despite the heightened scrutiny afforded distinctions based on gender, respondent argues that gender discrimination in the selection of the petit jury should be permitted, though discrimination on the basis of race is not. Respondent suggests that "gender discrimination in this country . . . has never reached the level of discrimination" against African-Americans, and therefore gender discrimination, unlike racial discrimination, is tolerable in the courtroom. Brief for Respondent 9.

While the prejudicial attitudes toward women in this country have not been identical to those held toward racial minorities, the similarities between the experiences of racial minorities and women, in some contexts, "overpower those differences." Note, Beyond *Batson*: Eliminating Gender-Based Peremptory Challenges, 105 Harv. L. Rev. 1920, 1921 (1992). As a plurality of this Court observed in *Frontiero* v. *Richardson*, 411 U. S. 677, 685 (1973):

> "[T]hroughout much of the 19th century the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes. Neither slaves nor women could hold office, serve on juries, or bring suit in their own names, and married women traditionally were denied the legal capacity to hold or convey property or to serve as legal guardians of their own children. . . . And although blacks were guaranteed the right to vote in 1870, women were denied even that right—which is itself `preservative of other basic civil and political rights'—until adoption of the Nineteenth Amendment half a century later." (Footnotes omitted.)

Certainly, with respect to jury service, African-Americans and women share a history of total exclusion, a history which came to an end for women

many years after the embarrassing chapter in our history came to an end for African-Americans.

We need not determine, however, whether women or racial minorities have suffered more at the hands of discriminatory state actors during the decades of our Nation's history. It is necessary only to acknowledge that "our Nation has had a long and unfortunate history of sex discrimination," *id.*, at 684, a history which warrants the heightened scrutiny we afford all gender-based classifications today. Under our equal protection jurisprudence, gender-based classifications require "an exceedingly persuasive justification" in order to survive constitutional scrutiny. See *Personnel Administrator of Mass.* v. *Feeney*, 442 U. S. 256, 273 (1979). See also *Mississippi University for Women* v. *Hogan*, 458 U. S. 718, 724 (1982); *Kirchberg* v. *Feenstra*, 450 U. S. 455, 461 (1981). Thus, the only question is whether discrimination on the basis of gender in jury selection substantially furthers the State's legitimate interest in achieving a fair and impartial trial.[6] In making this assessment, we do not weigh the value of peremptory challenges as an institution against our asserted commitment to eradicate invidious discrimination from the courtroom.[7] Instead, we

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[6]Because we conclude that gender-based peremptory challenges are not substantially related to an important government objective, we once again need not decide whether classifications based on gender are inherently suspect. See *Mississippi University for Women*, 458 U. S., at 724, n. 9; *Stanton* v. *Stanton*, 421 U. S. 7, 13 (1975); *Harris* v. *Forklift Systems*, 510 U. S. __, __ (1993) (GINSBURG, J., concurring) ("[I]t remains an open question whether `classifications based on gender are inherently suspect'") (citations omitted).

[7]Although peremptory challenges are valuable tools in jury trials, they "are not constitutionally protected fundamental rights; rather they are but one state-created

consider whether peremptory challenges based on gender stereotypes provide substantial aid to a litigant's effort to secure a fair and impartial jury.[8]

Far from proffering an exceptionally persuasive justification for its gender-based peremptory challenges, respondent maintains that its decision to strike virtually all the males from the jury in this case "may reasonably have been based upon the perception, supported by history, that men otherwise totally qualified to serve upon a jury might be more sympathetic and receptive to the arguments of a man alleged in a paternity action to be the father of an out-of-wedlock child, while women equally qualified to serve upon a jury might be more sympathetic and receptive to the arguments of the complaining

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means to the constitutional end of an impartial jury and a fair trial." *Georgia* v. *McCollum*, 505 U. S. __, __ (1992) (slip op. 14).

[8]Respondent argues that we should recognize a special state interest in this case: the State's interest in establishing the paternity of a child born out of wedlock. Respondent contends that this interest justifies the use of gender-based peremptory challenges, since illegitimate children are themselves victims of historical discrimination and entitled to heightened scrutiny under the Equal Protection Clause.

What respondent fails to recognize is that the only legitimate interest it could possibly have in the exercise of its peremptory challenges is securing a fair and impartial jury. See *Edmonson* v. *Leesville Concrete Co.*, 500 U. S. 614, __ (1991) (slip op. 5) ("[T]he sole purpose [of the peremptory challenge] is to permit litigants to assist the government in the selection of an impartial trier of fact"). This interest does not change with the parties or the causes. The State's interest in *every* trial is to see that the proceedings are carried out in a fair, impartial, and nondiscriminatory manner.

witness who bore the child." Brief for Respondent 10.[9]

We shall not accept as a defense to gender-based peremptory challenges "the very stereotype the law condemns." *Powers* v. *Ohio*, 499 U. S. 400, 410 (1991). Respondent's rationale, not unlike those regularly expressed for gender-based strikes, is reminiscent of the arguments advanced to justify the total exclusion of women from juries.[10] Respondent

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[9]Respondent cites one study in support of its quasi-empirical claim that women and men may have different attitudes about certain issues justifying the use of gender as a proxy for bias. See R. Hastie, S. Penrod & N. Pennington, Inside the Jury 140 (1983). The authors conclude: "Neither student nor citizen judgments for typical criminal case material have revealed differences between male and female verdict preferences. * * * The picture differs [only] for rape cases, where female jurors appear to be somewhat more conviction-prone than male jurors". The majority of studies suggest that gender plays no identifiable role in jurors' attitudes. See, *e.g.*, V. Hans & N. Vidmar, Judging the Jury 76 (1986) ("[I]n the majority of studies there are no significant differences in the way men and women perceive and react to trials; yet a few studies find women more defense-oriented, while still others show women more favorable to the prosecutor"). Even in 1956, before women had a constitutional right to serve on juries, some commentators warned against using gender as a proxy for bias. See 1 F. Busch, Law and Tactics in Jury Trials §143, p. 207 (1949) ("In this age of general and specialized education, availed of generally by both men and women, it would appear unsound to base a peremptory challenge in any case upon the sole ground of sex . . . .").

[10]A manual formerly used to instruct prosecutors in Dallas, Texas, provided the following advice: "I don't like women jurors because I can't trust them. They do, however, make the best jurors in cases involving crimes against

offers virtually no support for the conclusion that gender alone is an accurate predictor of juror's attitudes; yet it urges this Court to condone the same stereotypes that justified the wholesale exclusion of women from juries and the ballot box.[11] Respondent seems to assume that gross generalizations that would be deemed impermissible if made on the basis of race are somehow permissible when made on the

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children. It is possible that their `women's intuition' can help you if you can't win your case with the facts." Alschuler, The Supreme Court and the Jury: Voir Dire, Peremptory Challenges, and the Review of Jury Verdicts, 56 U. Chi. L. Rev. 153, 210 (1989). Another widely circulated trial manual speculated:

"If counsel is depending upon a clearly applicable rule of law and if he wants to avoid a verdict of `intuition' or `sympathy,' if his verdict in amount is to be proved by clearly demonstrated blackboard figures for example, generally he would want a male juror. . . .

"[But women] are desired jurors when the plaintiff is a man. A woman juror may see a man impeached from the beginning of the case to the end, but there is at least the chance with the woman juror (particularly if the man happens to be handsome or appealing) [that] the plaintiff's derelictions in and out of court will be overlooked. A woman is inclined to forgive sin in the opposite sex; but definitely not her own. . . ." 3 M. Belli, Modern Trials §§ 51.67 and 51.68, pp. 446–447 (2d ed. 1982).

[11]Even if a measure of truth can be found in some of the gender stereotypes used to justify gender-based peremptory challenges, that fact alone cannot support discrimination on the basis of gender in jury selection. We have made abundantly clear in past cases that gender classifications that rest on impermissible stereotypes violate the Equal Protection Clause, even when some statistical support can be conjured up for the generalization. See, *e.g.*, *Weinberger* v. *Wiesenfeld*, 420 U. S. 636, 645 (1975) (holding unconstitutional a Social

basis of gender.

Discrimination in jury selection, whether based on race or on gender, causes harm to the litigants, the community, and the individual jurors who are wrongfully excluded from participation in the judicial process. The litigants are harmed by the risk that the prejudice which motivated the discriminatory selection of the jury will infect the entire proceedings. See *Edmonson*, 500 U. S., at __ (slip op. 13) (discrimination in the courtroom "raises serious questions as to the fairness of the proceedings conducted there"). The community is harmed by the State's participation in the perpetuation of invidious group stereotypes and the inevitable loss of confidence in our judicial system that state-

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Security Act classification authorizing benefits to widows but not to widowers despite the fact that the justification for the differential treatment was "not entirely without empirical support"); *Craig* v. *Boren*, 429 U. S. 190, 201 (1976) (invalidating an Oklahoma law that established different drinking ages for men and women, although the evidence supporting the age differential was "not trivial in a statistical sense"). The generalization advanced by Alabama in support of its asserted right to discriminate on the basis of gender is, at the least, overbroad, and serves only to perpetuate the same "outmoded notions of the relative capabilities of men and women," *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U. S. 432, 441 (1985), that we have invalidated in other contexts. See *Frontiero* v. *Richardson*, 411 U. S. 677 (1973); *Stanton* v. *Stanton*, 421 U. S. 7 (1975); *Craig* v. *Boren*, 429 U. S. 190 (1976); *Mississippi University for Women* v. *Hogan*, 458 U. S. 718 (1982). The Equal Protection Clause, as interpreted by decisions of this Court, acknowledges that a shred of truth may be contained in some stereotypes, but requires that state actors look beyond the surface before making judgments about people that are likely to stigmatize as well as to perpetuate historical patterns of discrimination.

sanctioned discrimination in the courtroom engenders.

When state actors exercise peremptory challenges in reliance on gender stereotypes, they ratify and reinforce prejudicial views of the relative abilities of men and women. Because these stereotypes have wreaked injustice in so many other spheres of our country's public life, active discrimination by litigants on the basis of gender during jury selection "invites cynicism respecting the jury's neutrality and its obligation to adhere to the law." *Powers* v. *Ohio*, 499 U. S., at 412. The potential for cynicism is particularly acute in cases where gender-related issues are prominent, such as cases involving rape, sexual harassment, or paternity. Discriminatory use of peremptory challenges may create the impression that the judicial system has acquiesced in suppressing full participation by one gender or that the "deck has been stacked" in favor of one side. See *id.*, at 413 ("The verdict will not be accepted or understood [as fair] if the jury is chosen by unlawful means at the outset").

In recent cases we have emphasized that individual jurors themselves have a right to nondiscriminatory jury selection procedures.[12] See *Powers*, *Edmonson*,

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[12]Given our recent precedent, the doctrinal basis for JUSTICE SCALIA's dissenting opinion is a mystery. JUSTICE SCALIA points out that the discrimination at issue in this case was directed at men, rather than women, but then acknowledges that the Equal Protection Clause protects both men and women from intentional discrimination on the basis of gender. See *post*, at 2, citing *Mississippi University for Women* v. *Hogan*, 458 U. S., at 723–724. He also appears cognizant of the fact that classifications based on gender must be more than merely rational, see *post*, at 5–6; they must be supported by an "exceedingly persuasive justification." *Hogan*, 458 U. S., at 724. JUSTICE SCALIA further admits that the Equal Protection

and *McCollum*, all *supra*. Contrary to respondent's suggestion, this right extends to both men and women. See *Mississippi University for Women* v. *Hogan*, 458 U. S, at 723 (that a state practice "discriminates against males rather than against females does not exempt it from scrutiny or reduce the standard of review"); cf. Brief for Respondent 9 (arguing that men deserve no protection from gender discrimination in jury selection because they are not victims of historical discrimination). All persons, when granted the opportunity to serve on a jury, have the right not to be excluded summarily because of discriminatory and stereotypical presumptions that reflect and reinforce patterns of historical discrimination.[13] Striking individual jurors on the assumption

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Clause, as interpreted by decisions of this Court, governs the exercise of peremptory challenges in every trial, and that potential jurors, as well as litigants, have an equal protection right to nondiscriminatory jury selection procedures. See *post*, at 3–5, citing *Batson*, *Powers*, *Edmonson*, and *McCollum*. JUSTICE SCALIA does not suggest that we overrule these cases, nor does he attempt to distinguish them. He intimates that discrimination on the basis of gender in jury selection may be rational, see *post*, at 2, but offers no "exceedingly persuasive justification" for it. Indeed, JUSTICE SCALIA fails to advance *any* justification for his apparent belief that the Equal Protection Clause, while prohibiting discrimination on the basis of race in the exercise of peremptory challenges, allows discrimination on the basis of gender. His dissenting opinion thus serves as a tacit admission that, short of overruling a decade of cases interpreting the Equal Protection Clause, the result we reach today is doctrinally compelled.

[13]It is irrelevant that women, unlike African-Americans, are not a numerical minority and therefore are likely to remain on the jury if each side uses its peremptory challenges in an equally discriminatory fashion. Cf. *United States* v. *Broussard*, 987 F. 2d 215, 220 (CA5 1993)

that they hold particular views simply because of their gender is "practically a brand upon them, affixed by law, an assertion of their inferiority." *Strauder* v. *West Virginia*, 100 U. S. 303, 308 (1880). It denigrates the dignity of the excluded juror, and, for a woman, reinvokes a history of exclusion from political participation.[14] The message it sends to all those in the courtroom, and all those who may later learn of the discriminatory act, is that certain individuals, for no reason other than gender, are presumed unqualified by state actors to decide important questions upon which reasonable persons could disagree.[15]

Our conclusion that litigants may not strike

(declining to extend *Batson* to gender; noting that "[w]omen are not a numerical minority," and therefore are likely to be represented on juries despite the discriminatory use of peremptory challenges). Because the right to nondiscriminatory jury selection procedures belongs to the potential jurors, as well as to the litigants, the possibility that members of both genders will get on the jury despite the intentional discrimination is beside the point. The exclusion of even one juror for impermissible reasons harms that juror and undermines public confidence in the fairness of the system.

[14]The popular refrain is that *all* peremptory challenges are based on stereotypes of some kind, expressing various intuitive and frequently erroneous biases. See *post*, at 6. But where peremptory challenges are made on the basis of group characteristics other than race or gender (like occupation, for example), they do not reinforce the same stereotypes about the group's competence or predispositions that have been used to prevent them from voting, participating on juries, pursuing their chosen professions, or otherwise contributing to civic life. See B. Babcock, A Place in the Palladium, Women's Rights and Jury Service, 61 U. Cinn. L. Rev. 1139, 1173 (1993).

potential jurors solely on the basis of gender does not imply the elimination of all peremptory challenges. Neither does it conflict with a State's legitimate interest in using such challenges in its effort to secure a fair and impartial jury. Parties still may remove jurors whom they feel might be less acceptable than others on the panel; gender simply may not serve as a proxy for bias. Parties may also exercise their peremptory challenges to remove from the venire any group or class of individuals normally subject to "rational basis" review. See *Cleburne* v. *Cleburne Living Center, Inc.*, 473 U. S. 432, 439–442 (1985); *Clark* v. *Jeter*, 486 U. S. 456, 461 (1988). Even strikes based on characteristics that are disproportionately associated with one gender could be appropriate, absent a showing of pretext.[16]

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[15]JUSTICE SCALIA argues that there is no "discrimination and dishonor" in being subject to a race- or gender-based peremptory strike. *Post*, at 5. JUSTICE SCALIA's argument has been rejected many times, see, *e.g.*, *Powers*, 499 U. S., at 410, and we reject it once again. The only support JUSTICE SCALIA offers for his conclusion is the fact that race- and gender-based peremptory challenges have a long history in this country. *Post*, at 4 (discriminatory peremptory challenges "have co-existed with the Equal Protection Clause for 120 years"); *post*, at 5 (there was a "106–year interlude between our holding that exclusion from juries on the basis of race was unconstitutional, [*Strauder*, *supra*], and our holding that peremptory challenges on the basis of race were unconstitutional, [*Batson*, *supra*]"). We do not dispute that this Court long has tolerated the discriminatory use of peremptory challenges, but this is not a reason to continue to do so. Many of "our people's traditions," see *post*, at 8, such as *de jure* segregation and the total exclusion of women from juries, are now unconstitutional even though they once co-existed with the Equal Protection Clause.

[16]For example, challenging all persons who have had

If conducted properly, *voir dire* can inform litigants about potential jurors, making reliance upon stereotypical and pejorative notions about a particular gender or race both unnecessary and unwise. *Voir dire* provides a means of discovering actual or implied bias and a firmer basis upon which the parties may exercise their peremptory challenges intelligently. See, *e.g.*, *Nebraska Press Assn* v. *Stuart*, 427 U. S. 539, 602 (1976) (Brennan, J., concurring in the judgment) (*voir dire* "facilitate[s] intelligent exercise of peremptory challenges and [helps] uncover factors that would dictate disqualification for cause"); *United States* v. *Witt*, 718 F. 2d 1494, 1497 (CA10 1983) ("Without an adequate foundation [laid by *voir dire*], counsel cannot exercise sensitive and intelligent peremptory challenges").

The experience in the many jurisdictions that have barred gender-based challenges belies the claim that litigants and trial courts are incapable of complying with a rule barring strikes based on gender. See n. 1, *supra* (citing state and federal jurisdictions that have extended *Batson* to gender).[17] As with race-based

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military experience would disproportionately affect men at this time, while challenging all persons employed as nurses would disproportionately affect women. Without a showing of pretext, however, these challenges may well not be unconstitutional, since they are not gender- or race-based. See *Hernandez* v. *New York*, 500 U. S. 352 (1991).

[17]Respondent argues that Alabama's method of jury selection would make the extension of *Batson* to gender particularly burdensome. In Alabama, the "struck-jury" system is employed, a system which requires litigants to strike alternately until 12 persons remain, who then constitute the jury. See Ala. Rule Civ. Proc. 47 (1990). Respondent suggests that, in some cases at least, it is necessary under this system to continue striking persons from the venire after the litigants no longer have an

Batson claims, a party alleging gender discrimination must make a prima facie showing of intentional discrimination before the party exercising the challenge is required to explain the basis for the strike. *Batson*, 476 U. S., at 97. When an explanation is required, it need not rise to the level of a "for cause" challenge; rather, it merely must be based on a juror characteristic other than gender, and the proffered explanation may not be pretextual. See *Hernandez* v. *New York*, 500 U. S. 352 (1991).

Failing to provide jurors the same protection against gender discrimination as race discrimination could frustrate the purpose of *Batson* itself. Because gender and race are overlapping categories, gender can be used as a pretext for racial discrimination.[18]

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articulable reason for doing so. As a result, respondent contends, some litigants may be unable to come up with gender-neutral explanations for their strikes.

We find it worthy of note that Alabama has managed to maintain its struck-jury system even after the ruling in *Batson*, despite the fact that there are counties in Alabama that are predominately African-American. In those counties, it presumably would be as difficult to come up with race-neutral explanations for peremptory strikes as it would be to advance gender-neutral explanations. No doubt the *voir dire* process aids litigants in their ability to articulate race-neutral explanations for their peremptory challenges. The same should be true for gender. Regardless, a State's choice of jury-selection methods cannot insulate it from the strictures of the Equal Protection Clause. Alabama is free to adopt whatever jury-selection procedures it chooses so long as they do not violate the Constitution.

[18]The temptation to use gender as a pretext for racial discrimination may explain why the majority of the lower court decisions extending *Batson* to gender involve the use of peremptory challenges to remove minority women. All four of the gender-based peremptory cases to reach

Allowing parties to remove racial minorities from the jury not because of their race, but because of their gender, contravenes well-established equal protection principles and could insulate effectively racial discrimination from judicial scrutiny.

Equal opportunity to participate in the fair administration of justice is fundamental to our democratic system.[19] It not only furthers the goals of the jury system. It reaffirms the promise of equality under the law — that all citizens, regardless of race, ethnicity, or gender, have the chance to take part directly in our democracy. *Powers* v. *Ohio*, 499 U. S., at 407 ("Indeed, with the exception of voting, for most citizens the honor and privilege of jury duty is their most significant opportunity to participate in the democratic process"). When persons are excluded

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the federal courts of appeals and cited in n. 1, *supra*, involved the striking of minority women.

[19]This Court almost a half century ago stated:

"The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. . . . This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury." *Thiel* v. *Southern Pacific Co.*, 328 U. S. 217, 220 (1946).

from participation in our democratic processes solely because of race or gender, this promise of equality dims, and the integrity of our judicial system is jeopardized.

In view of these concerns, the Equal Protection Clause prohibits discrimination in jury selection on the basis of gender, or on the assumption that an individual will be biased in a particular case for no reason other than the fact that the person happens to be a woman or happens to be a man. As with race, the "core guarantee of equal protection, ensuring citizens that their State will not discriminate . . . , would be meaningless were we to approve the exclusion of jurors on the basis of such assumptions, which arise solely from the jurors' [gender]." *Batson*, 476 U. S., at 97–98.

The judgment of the Court of Civil Appeals of Alabama is reversed and the case is remanded to that court for further proceedings not inconsistent with this opinion.

It is so ordered.