

Research Article

LAWYERING IN A WORLD OF CONSTANT CHANGE

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Received 12th May 2026; Accepted 13th June 2026; Published online 15th July 2026

ABSTRACT

This article consists of four sections. The first section discusses the challenges to the future of institutional reform. The second section considers whether attorneys should stay the course or change their strategy to safeguard future success. The third section lists several recommended changes in litigation strategy. The final section concludes by observing that to ensure that reforms are long-lasting, attorneys should always fine-tune their strategies to the situation at hand. In this way, their strategy fits the facts of the case, not the other way around.

Keywords: Alternative Legal Theories, Cultural Backlash, Legal Strategy Changes, Shifting Politics.

INTRODUCTION

This article consists of four sections. The first section discusses the challenges to the future of institutional reform. The second section considers whether attorneys should stay the course or change their strategy to safeguard future success. The third section lists several recommended changes in litigation strategy. The final section concludes by observing that to ensure that reforms are long-lasting, attorneys should always fine-tune their strategies to the situation at hand. In this way, their strategy fits the facts of the case, not the other way around.

CHALLENGES TO THE FUTURE OF INSTITUTIONAL REFORM

In my opinion, the greatest challenges to institutional changes are cultural, ethical, moral, and religious backlashes, along with a variety of societal constraints. There are also polarizing opinions among attorneys and the judiciary, with systemic barriers impeding the enforcement of gender-equity litigation.¹ Here are some of the challenges facing institutional reform:

Fierce Cultural Backlash and Constraints

Progressive institutional reforms usually ignite intense cultural, ethical, moral, and religious counter-movements. Why?

- **Individual Pushback:** Many individuals have religious beliefs that act as their moral compass. They have family who tie them to the past and project them into the future. They have property that ensures that they not only survive, but thrive. They have a country that provides for their well-being and demands their loyalty. Some people readily embrace the LGBTQ+ agenda, whereas others reject it because, for them, it violates their fundamental moral and religious values. Although there are many reasons for individual pushback, one is that modern morality is perceived as violating the Laws of God. Rebellion

against being canceled by family and friends is likely another reason.

- **Corporate Pushback:** According to *Dodge v. Ford*, the sole purpose of a corporation is to maximize shareholder value.² However, corporations are likely to embrace the LGBTQ+ or woke agenda provided it does not interfere with their revenue, profits, or has negative legal consequences. For example, on April 1, 2023, Dylan Mulvaney uploaded a Bud Light-sponsored post on Instagram in which she displayed a can of Bud Light with her picture on it. Mulvaney was celebrating her first year as a transgender female. Bud Light sales immediately dropped by 25 percent, and it lost its market-share leadership. Two weeks later, the CEO issued an apology. And on July 26, 2023, Anheuser-Busch, the parent company, decided to lay off 2 percent of its U.S. employees because of weak Bud Light sales.³ This example shows that corporations are not immune to pushing back against the LGBTQ+ agenda.
- **Institutional Pushback:** Local institutions and communities frequently resist the implementation after reform advocates achieve legal victories. For example, in *Grimm v. Gloucester County School Board*, a transgender student won the right to utilize a bathroom that was consistent with their gender identity under Title IX. The case sparked a fierce backlash from people who firmly believed there are only two genders. The litigation was long-drawn-out, and it took years to rewrite local school policy.⁴
- **Economic Constraints:** According to the current progressive cultural narrative, biological women who stay at home to raise a family are unpaid labor.⁵ The assumption is that all labor should

¹Amy Beller, Jennifer Hillman, Gail Mautner, & Nina Stryker, Gender Inequality in the Legal Profession, *The American College of Trust and Estate Counsel* (n.d.), available at <https://www.actec.org/resource-center/video/gender-inequality-in-the-legal-profession/>.

²*Dodge v. Ford Motor Co.*, 204 Mich 459 (1919), available at <https://law.justia.com/cases/michigan/supreme-court/1919/204-mich-459-170-n-w-668-1919.html>.

³Roger Martin, The Strategy Lesson from the Bud Light Fiasco, *Medium* (Aug. 7, 2023), available at <https://rogermartin.medium.com/the-strategy-lesson-from-the-bud-light-fiasco-874ef8db4f49>.

⁴*Grimm v. Gloucester County School Board*, No. 19-1952 (4th Cir. 2020), available at <https://law.justia.com/cases/federal/appellate-courts/ca4/19-1952/19-1952-2020-08-26.html>.

⁵Jeremy Engle, Should Stay-at-Home Parents Be Paid?, *The New York Times* (Oct. 10, 2019), available

be paid in dollars and cents. Also, there is a tenacious gender pay gap, where women remain at a severe financial disadvantage if they attempt to pay for gender-equity litigation.⁶

- **Structural Inertia:** According to the Advancement of the American Legal System (IAALS), it is difficult to achieve fair outcomes for marginalized groups. This is due to the inequalities of who has access to justice via legal representation.⁷

Shifting Politics and Judicial Resistance

When reforming institutions, favorable legal results and interpretations are necessary. There are significant obstacles to change when the country's political climate shifts, or judicial ideologies are thrust to the forefront.⁸ Some of the issues include:

- **Judicial Retrenchment:** In specific circuits and in the Supreme Court, a ferocious cultural pushback exists. The legal landscape is quite unstable for civil rights proponents attempting to implement decisions like *Obergefell v. Hodges*.⁹ In *Obergefell v. Hodges*, the Supreme Court opined that the fundamental right to marry is guaranteed to same-sex couples by the Due Process and Equal Protection Clauses of the Fourteenth Amendment.¹⁰
- **Conflicting Interpretations:** When addressing gender-based claims, courts typically apply varying levels of scrutiny. Some courts minimize evidence of systemic bias, preferring intent-based standards.¹¹

Issues within the Legal Profession

One of the challenges of institutional reform is ensuring that attorneys are well-equipped and prepared to facilitate change. Here are some of the legal professional issues involved.

- **Leadership Disparities:** Even though the majority of law school graduates are women, they hold only a small minority of partner and senior leadership positions in law firms. This limits their ability to achieve high levels of advocacy.¹²
- **Lack of Mentorship:** At many law firms, female attorneys experience low retention rates due to a lack of support, discrimination regarding family obligations, and uneven opportunities for business development.¹⁴

- **Cultural Stereotypes:** Kachhwaha demonstrated that implicit and explicit biases regarding gender affected legal outcomes in family law, civil disputes, and employment claims. Kachhwaha examined how gender bias pervades the various parts of the legal process, often resulting in unequal access to justice.¹⁶
- **Unequal Treatment:** Female attorneys, including women of color, are typically exposed to condescension, courtroom interruptions, and even exclusion from litigation assignments. According to Gordon, Judge Amy J. St. Eve observed a significant gender gap among senior trial attorneys. For attorneys arguing before the Seventh Circuit, the ratio was three men to one woman, and women were interrupted more frequently than men.¹⁷
- **Institutional Backlash:** According to Salerno et al., male attorneys who expressed anger were likely viewed more positively (influential, commanding, and effective) than female attorneys who, when they expressed anger, were likely viewed more negatively (as shrill, overly emotional, and ineffective). This experiment was conducted three times with hundreds of undergraduate participants making the determination.¹⁸

Procedural Hurdles and Retaliation

Often, litigation seeking to change policies encounters procedural barriers that delay on-the-ground reform. Consider the following:

- **Legal Roadblocks:** Immunity defenses, jurisdictional standing, and class action certification are frequently employed by entities to dismiss legitimate discrimination claims before trial.
- **Chilling Effects:** In *A. B. v. Hawaii State Department of Education*, the plaintiffs sued under Title IX because the defendant failed to provide equal treatment, benefits, and opportunities to male and female athletes, and retaliated against female athletes when they raised Title IX compliance issues with high school administrators. This high school administration threatened to cancel all sports programs. This could have prevented future plaintiffs from filing suits. The effect was to stifle reform from within the school district.¹⁹

In the future, institutional reform depends not only on winning court cases but also on steering clear of political and social landmines that can deter, or even prevent, the enforcement of hard-won rights.

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⁶Laura Alicia Aquino Arriaga, *WhoDeserves a Lawyer? The Hidden Gender Bias in the Right to Counsel*, *AJ2Lab* (Sep. 8, 2025), available [athttps://a2jlab.org/who-deserves-a-lawyer-the-hidden-gender-bias-in-the-right-to-counsel/](https://a2jlab.org/who-deserves-a-lawyer-the-hidden-gender-bias-in-the-right-to-counsel/).

⁷PTJ Staff, *IdentifyingBarriers to Equity in the Justice System*, *Paths to Justice Summit Series* (Feb. 22, 2022), available [athttps://iaals.du.edu/sites/default/files/documents/publications/paths_to_justice_barriers_equity_paper.pdf](https://iaals.du.edu/sites/default/files/documents/publications/paths_to_justice_barriers_equity_paper.pdf).

⁸James Patterson, *RemakingPoliticalInstitutions:Climate Change and Beyond* (Cambridge University Press Dec. 31, 2020).

⁹*Obergefell v. Hodges*, 576 U.S. ____ (2015), available [athttps://www.oyez.org/cases/2014/14-556](https://www.oyez.org/cases/2014/14-556).

¹⁰*Id.*

¹¹admin in Uncategorized, *Gender Bias in JudicialSystemsAround the World*, *Gendercide* (Jul. 19, 2025), available [athttps://www.gendercide.org/gender-bias-in-judicial-systems-around-the-world/](https://www.gendercide.org/gender-bias-in-judicial-systems-around-the-world/).

¹²Amy Beller, Jennifer Hillman, Gail Mautner, & Nina Stryker, *supra*, note 1.

¹³Valerie Spengler, *Advancing Women in Law: Progress, Challenges, and Opportunities*, *Practus* (Aug. 5, 2024), available [athttps://practus.com/advancing-women-in-law-progress-challenges-and-opportunities/](https://practus.com/advancing-women-in-law-progress-challenges-and-opportunities/).

¹⁴Laura Alicia Aquino Arriaga, *supra*, note 6.

¹⁵Catherine Chan, *Confronting the Unique Challenges Faced by Women Attorneys*, *Colorado Lawyer* (Dec. 2024), available [athttps://cl.cobar.org/departments/confronting-the-unique-challenges-faced-by-women-attorneys/](https://cl.cobar.org/departments/confronting-the-unique-challenges-faced-by-women-attorneys/).

¹⁶Shubham Kachhwaha, *Navigating Gender Bias in the Legal System: Challenges andSolutions*, 1 *International Journal of Research Publication and Review* 11, 1350-52 (Nov. 2024) available [athttps://ijrpr.com/uploads/V5ISSUE11/IJRPR34782.pdf](https://ijrpr.com/uploads/V5ISSUE11/IJRPR34782.pdf).

¹⁷Erin Gordon, *Study Suggests Persistent Gender Gap—and Solutions for Patching “Leaky Pipeline”*, *American Bar Association* (Apr. 13, 2022), available

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¹⁸Jessica M. Salerno, Hannah J. Phalen, Rosa N. Reyes, & N. J. Schweitzer, *ClosingwithEmotion: The Differential Impact of Male versus Female Attorneys Expressing Anger in Court*, 42 *Law and Human Behavior* 4, 385-401, available at <https://doi.org/10.1037/lhb0000292>.

¹⁹*A. B. v. Hawaii State Dept of Education*, No. 20-15570 (9th Cir. 2022), available [athttps://law.justia.com/cases/federal/appellate-courts/ca9/20-15570/20-15570-2022-04-04.html](https://law.justia.com/cases/federal/appellate-courts/ca9/20-15570/20-15570-2022-04-04.html).

STAY THE COURSE OR CHANGE STRATEGY TO ENSURE FUTURE SUCCESS

Attorneys who take on institutional reform and civil rights cases cannot merely stay the course. There is an intense cultural, ethical, moral, and religious backlash that utilizes federal jurisprudence to undercut judicial victories. Change advocates must adapt their strategies to include community mobilization, local enforcement, and strategic regulations to prevent a hostile precedent with far-reaching implications.

The following are issues that address changes in legal strategy:

- **The Federal Judiciary Is Ever Changing:** In *Obergefell*, the Supreme Court ruled that the fundamental right to marry is guaranteed to same-sex couples by the Due Process and Equal Protection Clauses of the Fourteenth Amendment.²⁰ In *Grimm*, a transgender student won the right to utilize a bathroom that was consistent with their gender identity under Title IX.²¹ Even so, conservative shifts in federal courts, including the Supreme Court, could result in hostile rulings that annihilate progress when taking on a wide-ranging case. It could turn out that a local strategy may be safer than pushing for a premature country-wide confrontation.
- **State-Level Decentralization:** As seen in *A. B. v. Hawaii State Department of Education*, a considerable number of institutional reform cases are being tried in state courts and administrative agencies.²² State constitutions, as well as state civil rights statutes, are increasingly being used as workarounds for federal laws that oppose reforms. When this path is taken, attorneys must plan state-by-state on how to effect change.
- **Implementing Rules versus Changing Laws:** Rights on paper that soon discover an implementation barrier could be construed to be illusory. Attorneys must emphasize long-term enforcement and structural monitoring to ensure that rights become real. Winning an initial declaratory judgment is simply insufficient.

RECOMMENDED CHANGES IN LITIGATION STRATEGY

Changes in litigation strategy are essential in this ever-changing legal environment. Some issues to consider include:

- **Defensive Selection:** Attorneys should be selective about which cases they appeal to a higher court. By choosing to settle lower-court decisions, they may be able to secure regional victories rather than risk a reversal at the appellate or Supreme Court level.
- **Alternative Legal Theories:** Attorneys are employing arguments that go beyond equal protection arguments. By employing specific legal frameworks, such as Title IX regulations or state equal rights amendments, cases can concentrate on statutory compliance rather than engaging in extensive constitutional debates.
- **Community Lawyering:** Litigation should go hand in hand with grassroots organizing. As in *Watson*, attorneys should strive to educate the public and mobilize the local population to create

the political will that is needed to implement hard-won court victories.²³

In some sense, attorneys are institutional troubleshooters. Through focused litigation, they help sustain community enforcement of cases rather than relying on top-down social change from the court system.

CONCLUSION

In conclusion, litigation strategies in equal rights and civil rights cases should be geared to the facts of the case. There is no one-size-fits-all litigation strategy. A strategy that worked in one case may not yield success in another. Times are changing, and the resistance to change is also mounting. Attorneys should consider the environment they find themselves in and then plan accordingly. It is the only way to proceed effectively.

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Donald L. Buresh earned his Ph.D. in engineering and technology management from Northcentral University. His dissertation assessed customer satisfaction for both agile-driven and plan-driven software development projects. Dr. Buresh earned a J.D. from The John Marshall Law School in Chicago, Illinois, with a focus on cyber law and intellectual property. He also earned an LL.M. in intellectual property from the University of Illinois Chicago Law School (formerly, The John Marshall Law School), an LL.M. in cybersecurity and privacy from Albany Law School, graduating summa cum laude, and an LL.M. in financial compliance and risk management from Albany Law School, graduating summa cum laude. Dr. Buresh received an M.P.S. in cybersecurity policy and an M.S. in cybersecurity, with a concentration in cyber intelligence, both from Utica College. He has an M.B.A. from the University of Massachusetts Lowell, focusing on operations management, an M.A. in economics from Boston College, and a B.S. from the University of Illinois-Chicago, with a major in mathematics and philosophy. Dr. Buresh is a member of Delta Mu Delta, Sigma Iota Epsilon, Epsilon Pi Tau, Phi Delta Phi, Phi Alpha Delta, and Phi Theta Kappa. He has over 25 years of paid professional experience in Information Technology and has taught economics, project management, negotiation, business ethics, business law, quality management, and cybersecurity at several universities. Dr. Buresh is an avid Chicago White Sox fan and keeps active by fencing épée, foil, and now sabre at a local fencing club. Dr. Buresh is a member of the Florida Bar.

MISCELLANEOUS CONSIDERATIONS

Author Contributions: The author has read and agreed to the published version of the manuscript.

Funding: This research received no external funding.

Institutional Review Board Statement: Not applicable.

Informed Consent Statement: Not applicable.

Conflicts of Interest: The authors declare no conflict of interest.

Acknowledgments: The author thanks Leizza Buresh for all her efforts in editing this paper. Any remaining issues are mine.

²⁰*Obergefell v. Hodges*, 576 U.S., *supra*, note 9.

²¹*Grimm v. Gloucester County School Board*, No. 19-1952, *supra*, note 4.

²²*A. B. v. Hawaii State Dept of Education*, No. 20-15570, *supra*, note 19.

²³Charles Elsesser, Article: Community Lawyering - The Role of Lawyers in the Social Justice Movement, 14 *Loyola Journal of Public International Law*. 375 (Spring 2013), available at <https://thinkific-import-development.s3.amazonaws.com/312903/ElsesserCOMMUNITYLAWYERINTHEROLEOFLAWYERSINT-200714-085522.pdf>.

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