In *Sex and the City*, HBO's acclaimed television show about the intimate, erotic, and neurotic pursuits of four single women in New York City, Carrie Bradshaw and her friends are either having sex or talking about sex. While single women have been having sex on television for a long time, what distinguishes Carrie and company is the extent to which their sexualities are a crucial part of their belonging to imagined communities of New York City. Carrie makes a living as a journalist who writes about sex. Samantha, a highly successful public relations agent, is unapologetically sexual in all aspects of her life—refusing the distinction between public and private. Miranda negotiates the tensions of the demands of an asexual profession—she is a lawyer—and her more intimate pursuits. Charlotte is the traditionalist, the one that speaks about sex in hushed tones. Episode after episode explores once forbidden topics, from the etiquette of oral sex and public sex to older women—younger men intergenerational relationships and lesbianism, while Carrie reflects upon the deep inner truths of human intimacy for her column. The intimate public sphere explored in *Sex and the City* is part of the broader transformations of sexual citizenship, a process of becoming, which transgresses the borders of old and domesticates the citizens of new. These women are strong and independent and unapologetically sexual. But they are also responsible market citizens, impeccably attired, with aspirations of relational and domestic happiness. They are part of the new sexual citizenry—a citizenry that, although highly sexualized, can be relied upon to self-discipline.

Consider the infamous vibrator episode: in the first season of *Sex and the City*, Miranda introduces Charlotte to a vibrator—a candy-colored one known as the rabbit. Despite her initial shock and profound reserve, Charlotte warms up to her vibrator—so much so that Carrie and Samantha have to stage an intervention, as

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3. Ibid.
4. Ibid.
5. Ibid.
Charlotte is repeatedly cancelling her social engagements to stay home with her new friend. The day after the show aired, sex shops across North America reportedly sold out of the model. What Manolo Blahniks were to shoes, the rabbit now was to vibrators, with the show once again epitomizing the new sexual citizenship as a merging of sex and shopping. This was neither the first nor the last depiction of vibrators on the series – Miranda is seen to have one in her bedside table, and Samantha spends an unsuccessful day at home with several vibrators in an attempt to get her orgasm back. But it did represent a new high water mark, as vibrators came out of the closet and into the public sphere.

The show was not simply an affirmation of women’s right to unmitigated sexual pleasure. The episode set up a problem that needed to be managed: Charlotte was not self-disciplining in her sexuality. She was bordering on sexual excess. She was withdrawing from her community, real (her friends) and imagined (the world of possibilities of New York City). Indeed, her withdrawal was threatening her idealized sexual world to be because she was failing to fully participate in the dating world that would/could/should produce a future husband. And so her friends did what friends are supposed to do: they intervened and helped reestablish the requisite sexual self-discipline. Charlotte’s sexual freedom was a terrain that needed to be managed; she needed to be redirected to make the right choices. Sex was still an important part of that choice, but it had to be appropriately directed.

The vibrator episode encapsulates many of the transformations in the terms of contemporary sexual citizenship, wherein a new degree of sexual freedom is accompanied by a set of codes designed to discipline it. Single women may be entitled to their sexual pleasures, but they must self-govern appropriately. It is a vision of sexual citizenship, however, that stands in stark contrast to a vision that continues to the legal regulation of vibrators in particular, and sexual privacy more generally. In this vision, vibrators continue to cast a shadow of indecency over women’s sexuality, and at least some legislatures assisted by at least some courts are more than prepared to step up to do the disciplining. The vibrator cases are an intriguing example of a legal vision of sexual citizenship that appears increasingly out of sync with a cultural vision, producing tensions within the terms of contemporary belonging.

Sexual Citizenship

Citizenship has always been sexed. The terms of belonging have always incorporated norms of appropriate sexual practices. From the practices of the ancient Greeks, to the proliferation of public discourses of sex from the seventeenth century forward, to

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Sexual Citizens: Freedom, Vibrators, and Belonging

the articulation of the American nation, sex has long been implicated in citizenship. Membership in the public sphere, whether envisioned as rights, political participation, or broader practices of belonging, have been conditional upon a set of sexual norms and practices circumscribed within the private sphere. In the modern context, this belonging has presupposed a highly privatized, familialized, and heterosexual sexuality. Some subjects were explicitly excluded. Much of the sexual citizenship literature has focused on the exclusion of gay men and lesbians: citizenship, as social membership in a nation-state, as a set of rights and responsibilities associated with that membership, and as a set of practices defining membership in the community, has long been associated with heterosexuality. The sexual citizen was a heterosexual citizen. From the criminalization of gay sexuality through sodomy laws, to the legal condonation of discrimination, lesbians and gay men have been denied citizenship.

But the terms of sexual belonging change over time. A second theme within sexual citizenship is that within the last few decades, the once private sphere of intimate life has transformed into more expressly public and political concerns. Scholars, such as Jeffrey Weeks and Anthony Giddens, have argued that a new primacy has been given to sexual subjectivity, related to the democratization of relationships, the production of new subjectivities, and the proliferation of new stories of the self, sexuality, and gender. One-time sexual outlaws – from sexually single women, to gay men and lesbians, to porn stars – have demanded inclusion and begun to revise and expand the meaning of citizenship by claiming their rights and/or their political participation. In so doing, they have contributed to the politicization of the once private sphere, claiming that issues once relegated to this sphere are themselves the proper subject of political contestation. While discourses about sex have long been part of the public sphere, there is a way in which citizenship in our current era appears to be increasingly sexed up. More and more sexual practices have become visible within the public sphere. From representations of sexuality in popular culture – film, television, advertising, music videos – to the increasingly public performances of sex acts once deemed aberrant, such as S and M sex, swinger sex, and commercial sex, sexual discourses saturate the public sphere, as the subject of political contestation and cultural representation.

Sexual citizenship, then, is not just about challenging the heterosexuality of conventional belonging. It is about interrogating the sexual norms and practices that
condition and constitute belonging more generally. My work on sexual citizenship traces the contours of the current modality of sexual citizenship. Who is the good sexual citizen, and why? What are the borders of citizenship? What practices are constituted as legitimate, and what practices are marked as deviant or unbecoming? I am interested in the ways in which sex – as sexual practices, sexual norms, and sexual representations – is implicated in the terms of our belonging. What kind of sexual norms, practices, and representations affirm our belonging, and what kind of belonging to these norms, practices, and representations is affirmed? How does crossing the border from outlaw to citizen, and how does the process of becoming a citizen, reconstitute the subject in the discourses of belonging? Conversely, how do certain sexual practices, norms, and representations operate to produce other citizens as unbecoming, or outlaws?

I use the concept of sexual citizenship to explore these questions and capture the extent to which sexual practices are a central dimension of contemporary belonging. In contemporary citizenship, sexual discourses have saturated the public sphere in more explicit but also circumscribed ways. This sexing of the public sphere and of the terms of belonging has been accompanied by other changes. There is the emergence of neoliberal citizenship, with its emphasis on individual self-reliance. Unlike the model of social citizenship of an earlier Keynesian era, government responsibility for even the most basic welfare of its citizens has receded as individuals are called upon to take responsibility for themselves and their families. Individual risk management and marketized self-reliance are now the hallmarks of the good citizen. Second is an increasing self-disciplining or self-governing of citizenship. Relying on Foucault's later work on governmentality, scholars like Nicholas Rose and Alan Hunt have explored the ways in which the good citizen has become the self-disciplining citizen. Individuals are called upon to govern themselves: “individuals are incited to live as if making a project of themselves.” Through sustained and intense self-scrutiny, individual citizens are called upon to take responsibility for their lives. Citizenship becomes a practice a “self inspection and self regulation through choice,” and a practice of “responsibilization,” of becoming a responsible risk manager for one’s self and one’s family. As neoliberal citizenship has become more about self-governance, this responsibilitized citizenship includes an explicitly sexual dimension; individuals are called upon to make the right choices about sex, managing sexual risks through self-discipline.

17 Rose, Inventing Our Selves.
freedom has become a terrain to be managed. Belonging is not achieved at the expense of freedom per se, but rather, in and through its proper exercise. Sexual citizenship is produced and realized by managing the multitudinous possibilities and making the right sexual choices.

My work on sexual citizenship explores multiple ways in which citizenship is being 'sexed,' privatized, and self-disciplined. From the regulation of consensual sex in obscenity and indecency laws, to the promotion of sex in marriage in welfare law, to the legal contestations over same-sex marriage, sexual norms, practices, and representations are deeply implicated in contemporary debates over good and bad citizenship. In each of these areas, individuals are being called upon to manage their sexual choices, to make sure that given the range of options that are available to them, they make the best – which often means privatized, familialized, and self-disciplined – choice available to them. In the sections that follow, I explore the legal and cultural regulation of sexual citizenship by focusing on the vibrating citizens of _Sex and the City_ and their real-life compatriots in the vibrator cases, that is, the constitutional challenges to antivibrator state legislation.

**Vibrating Citizens**

Some may rightly object to the idea of Carrie and her gang as representative of the terms of contemporary belonging, rooted as they are in the imaginaries of New York the fabulous, with its glamorous parties, clubs, gallery openings, and fashion shows. Yet their sexual lives and their endless discussions thereof seemed to have a resonance well beyond the imagined metropolis. The rabbit, after all, did not just sell out in New York: it sold out across America. The women of _Sex and the City_ captured a kind of sexual zeitgeist, in which women were entitled to sexual pleasure, even in the absence of a male partner. It was a zeitgeist with uptake well beyond the confines of upper-middle-class northeastern urbanites, as evidenced in the increasingly popularity and profitability of the sex toy market directed at women.

Saucy Lady is a small, Alabama-based company that conducts in-house Tupperware-style parties for women at which sex toys are sold. Owner B. J. Bailey has been organizing these parties since 1993. Vibrators, dildos, lingerie, massage oils, lubricants, anal beads, and instruction manuals are amongst the products displayed and sold at these parties. Like larger-scale direct-selling organizations specializing in sex products, such as Passion Parties, Saucy Lady brings sex toys to women through local distributors – or party planners – who host house parties. The idea behind the parties is to take these sex products to the women who may otherwise be too timid to go to the sex products. These direct-selling organizations demystify and normalize them for use by otherwise proper, housewifely citizens. Passion Parties, described in a _New York Times_ magazine article as “one of the country's tamest, most
pro-family peddlers of sexual paraphernalia,” does good business in the southern Bible Belt: in 2003, Mississippi, Arkansas, and Tennessee ranked third, fourth, and ninth, respectively, in sales.20

And Passion Parties is big business. In 2003, it sold $20 million of goods, and projected sales for 2004 were $35 million. Sales grew at a rate of 50 percent annually between 2001 and 2004.21 Nor is Passion Parties alone: its major competitors, Slumber Parties and Pure Romance, each have more than 3,000 consultants across the United States. The economic success of these sex toy parties has been incorporated into the marketing of the parties. For example, Passion Parties promotes becoming a Passion Parties associate as an avenue for women’s financial independence and economic empowerment. The sex toy Tupperware parties are partially framed and legitimated within the discourse of market citizenship. The distributors – the party planners – are good citizens by virtue of the norms of market self-reliance. The consumers are similarly being constituted as good citizens by virtue of the norms of market consumption. As Martha McCaughey and Christine French have argued, the consumption of sex toys – like the consumption of a range of novel lifestyle goods – becomes part of the project of self-actualization.22 Self-help, sexual enhancement, and market consumption are integrated into a new synthetic citizen.

But, just like in the Sex and the City episode, these sex toy parties are not a simple affirmation of an unmitigated right to sexual pleasure; rather, these parties are highly disciplined affairs. The parties are private affairs – they are conducted in one of the women’s homes, and the invitations are by word of mouth. Men are excluded because a male presence would contaminate the pristine female domesticity. There is an implicit code of conduct at these parties: women can talk about sex, they can laugh and let their hair down, but, as the promotional materials provide, “if you did come tonight looking for any vulgarity or pornography, you’re going to be very disappointed.” McCaughey and French, in their participant-observation research on women’s sex toy parties, similarly observed that despite the sexual explicitness of these parties, the “atmosphere attempts to retain some sense of refinement by avoiding putatively dirty words for body parties... Saleswomen use nice-nellyisms such as ‘button’ for clitoris, ‘lily’ for vulva and/or vagina and ‘unit’ for penis.”23

The containment of the erotic content of these parties is also accomplished by particular forms of exclusion. For example, Merl Storr, who has studied the Ann Summers Tupperware-style sex parties in the United Kingdom, has argued that the parties are a form of female homosociality – a performance of a certain kind of femininity that allows women to belong and to exclude those who do not fit in.24

23 Ibid., at 81.
While the parties are all women, the tension between homosociality and lesbianism is carefully policed: lesbians are not generally welcomed within this heterosexual enclave, and although there may be a range of games and banter in which the women may even “flirt” with other women, the male gaze, the woman as sex object for her man, is ever present. Storr suggests that the range of products on sale – sex toys, the massage oils, the sex guides, the lingerie – all invoke the male gaze, even in its absence. McCaughey and French have similarly observed the extent to which women’s sex toy parties assume the heterosexuality of participants. For example, while a broad range of dildos and vibrators are displayed, many parties do not mention or sell strap-on vibrating dildos. As McCaughey and French observe, “it’s as though the companies and/or their dealers presume all women have male partners – and male partners who do not want to be penetrated – or as though keeping the ‘clean’ image of sex toys involves pretending women use them only with men or when alone.” Any threat to heteronormativity is managed by the exclusion of the lesbian and, just as important, the lesbian gaze.

The parties and their emphasis on women’s sexual pleasure are also often contained with the discourses of romance and self-help. Passion Parties long used the tag line “Where every day is Valentine’s Day” and has a flagship product line called “Romanta Therapy.” These products are expressly marketed as relationship enhancing. Indeed, the products are often described by the distributors as relationship saving. Joanne Webb, a Passion Parties representative charged under the Texas obscenity statute, described her work as helping to keep couples together: “I thought... if I could educate women on how to get the most out of their sensuality, how to give the most in their relationship through their sensuality, maybe, just maybe some of these divorce rates would go down.” Kim Airs, who runs two retail sex toy stores specifically directed to women, similarly says, “I cannot tell you how many times I hear, ‘This saved my marriage, this has saved my relationship.’” The distributors see themselves not only as saleswomen, but as sex educators and therapists, helping women to help themselves toward more fulfilling sexual relationships.

These sex parties are part of an increasing emphasis on self-help and self-actualization, wherein women are taking responsibility for their own sexual pleasure. But they are also about women taking greater responsibility for their marriages and their marital sex life. It is the project of sexual responsibilization, in which individuals are being called upon to make their lives a project, and to take

25 Ibid.
26 McCaughey and French, “Women’s Sex Toy Parties,” at 90.
27 Ibid.
28 Ibid.
31 Alexander, “Sex Toys and Porn.”
32 McCaughey and French, “Women’s Sex Toy Parties.”
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responsibility for this project, a project that includes taking responsibility for one's intimate, romantic, and sexual life. It is part of the “Dr. Philification” of intimacy, in which individuals must work hard on their relationships. In his New York Times best-selling book, Relationship Rescue, as well as on his popular afternoon television talk shows and Web site, Dr. Phil calls on his readers to “Put Your Relationship on Project Status”:

To rescue your relationship, you have to put it on Project Status. This means that you must consciously decide to actively, purposefully work on improving your situation each and every day. It's not that you just “want to” or “intend to” work on it. You need to do it, every single day. Discipline yourself to do the work.

Sex has a particularly important role to play in this work because it is said to be an essential part of emotional intimacy and hence of a healthy relationship. So the advice continues:

Put your sex life on project status. Make a conscious decision to recommit to each other and move sex higher on the priority list. Physical intimacy in a relationship deserves a lot of attention. You can start by making small changes. Put your kids to bed earlier, don’t fall asleep on the couch and go to bed at the same time as your partner.

While Dr. Phil directs his message to women and men alike, Passion Parties and the sex toy home distribution industry takes this message specifically to women, to help them take responsibility for their sex lives.

The sex toy network is part of a much broader trend, in which sexual citizens are being called upon to make their sex lives a project – to take responsibility for their sex lives as part of a broader project of taking responsibility for their marriages. As some of the distributors suggest, women are being taught to make sex a priority, to make their sex lives a project, and in so doing, to save their relationships. The sex toy parties can then be framed within a discourse of the self-disciplining of sexual citizenship. Rather than challenging the heteronormativity of sexual citizenship, women are assuming a central role in the project of intimate self-governance, with a view to sustaining the marital relationship. It is admittedly a modality of citizenship with a new emphasis on women's sexual pleasure, one that disrupts the foreclosure on women's sexual agency. It makes women's sexual pleasure speakable, but not entirely for its own hedonistic sake; rather, this pleasure is contained with the marital, the heterosexual, the domestic, where it is put to work to produce a better relationship.

33 Rose, Inventing Our Selves.
34 Ibid.
The Vibrator Cases

Not everyone is on board this new vibrating nation. Several states continue to have statutes criminalizing the sale of sexual devices, including Alabama, Georgia, Mississippi, Texas, and Virginia, which have been held to be constitutional. Similar statutes in other states have been struck down as unconstitutional.

Alabama v. the Vibrator

In 1998, Alabama passed the Anti-Obscenity Enforcement Act, prohibiting the sale of “any devise designed or marketed as useful primarily for the stimulation of human genital organs for anything of pecuniary value.” Shortly after the law went into effect, several women launched a constitutional challenge. B. J. Bailey, the owner of Saucy Lady (a small, Alabama-based company that conducts in-house sex toy parties) and Sherry Williams, a co-owner of Pleasures, an upscale sex boutique in Alabama, supported by the American Civil Liberties Union (ACLU), brought the challenge, arguing that the law violated the constitutional right to privacy and personal autonomy under the Fourteenth Amendment. So began a protracted legal battle, bouncing back and forth between the trial court and the Court of Appeals for the Eleventh Circuit.

Round 1

The District Court for the Northern District of Alabama held that there was no recognized fundamental right to use sex toys. However, reviewing the statute under the rational basis review, the court concluded that the statute lacked any rational basis. In the court’s opinion, none of the three legitimate state interests – (1) banning public displays of obscene material, (2) banning commerce of “sexual stimulation and auto-eroticism for its own sake, unrelated to marriage, procreation or familial relations,” and (3) banning commerce of obscene material – was rationally connected to the legislation. The court ordered the attorney general of Alabama not to enforce the law.

The state appealed. The Court of Appeals for the Eleventh Circuit reversed the district court’s conclusion. It agreed that the appropriate standard for review was rational basis. However, it disagreed with the district court on the application of that standard to the vibrator law. In its view, the promotion and preservation of public morality was a rational basis for the legislation. However, the Eleventh

38 Ibid.
39 Ibid.
40 Ibid.
41 Williams v. Pryor, 240 F. 3d 944 (11th Cir. 2001).
42 Ibid.
43 Ibid.
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Circuit remanded the case to the district court for further consideration of the as-applied fundamental rights challenge. More specifically, it directed the district court to further consider the application of the statute to the “user” plaintiffs and “whether our nation has a deeply rooted history of state interference, or state non-interference, in the private sexual activity of married or unmarried persons” and whether “contemporary practice bolsters or undermines any such history.”

Round 2

The district court once again struck down the statute, holding that it burdened a constitutionally protected right to use sexual devices within private, adult relationships. The court reviewed the history of sexual privacy in the United States, from the seventeenth century to the present, and the withdrawal of state regulation throughout the twentieth century. According to the court, this trend toward legislative and social liberalization supports the finding of a fundamental right to sexual privacy, and this right was broad enough to encompass the right to use the sexual devices in question. This right was, in turn, burdened by the prohibitions on the sexual devices.

The state of Alabama argued that it had a compelling state interest for this burden: specifically, to protect children from obscenity, to prevent assault on the sensibilities of the unwilling adult, to suppress the proliferation of adult-only stores, and more generally, the belief that “the commerce of sexual stimulation and auto-eroticism, for its own sake, unrelated to marriage, procreation or familial relationships is an evil, an obscenity . . . detrimental to the health and morality of the state.” The court held that even though the state possesses a compelling state interest in protecting children and in regulating obscenity, the statute was not sufficiently narrowly tailored to meet these interests. For example, the fact that the statute could apply to the Tupperware-style parties organized in private homes advertised solely by word of mouth meant that the statute was not narrowly tailored to prevent public exposure to children and unwilling adults. Nor was the statute sufficiently narrowly tailored to meet the objective of preventing “the commerce of sexual stimulation . . . unrelated to marriage, procreation or familial relations.”

According to the court, the law “in fact, has the effect of accomplishing the reverse for the user plaintiffs. Each of the user plaintiffs has stated that use of sexual devices during marital and dating relationships has enabled them to, among other things, improve the quality of their marital communications, better their sexual relationships, encourage intimacy in their marital relationships, eradicate

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44 Ibid.
47 Ibid.
48 Ibid., at 1301 (citing “Brief for the Attorney General for the State of Alabama”).
49 Ibid., at 1257.
50 Ibid., at 1301.
fears of infidelity between spouses, and to combat embarrassing or painful medical conditions."\textsuperscript{51} The court continued,

"a great many" of vendor plaintiff B.J. Bailey's customers have "reported to Ms. Bailey that the products they purchased helped them to become orgasmic and greatly improved their marital and sexual relations." ... The parties further have stipulated to the opinions of two experts in the study of human sexuality that "sexual aids help in the revitalization of potentially failing marital relations," and that the use of sexual devices is recommended in "therapy for couples who are having sexual problems in their marriage." ... Also compelling is the fact that the State of Alabama's own University Health System Internet site advocates applying a "powerful vibrator on the glands of the penis" to enable men who have suffered spinal cord injuries to ejaculate, for the specific purpose of "impregnat[ing] their wives and hav[ing] normal, healthy children."\textsuperscript{52}

The district court concluded that the ban on the sexual devices was unconstitutional and enjoined the enforcement of the law.\textsuperscript{53} Again, the state of Alabama appealed, and again, the Eleventh Circuit overturned the district court.\textsuperscript{54} The court held that there was no fundamental, substantive due process right of consenting adults to engage in private, intimate sexual conduct, as would trigger a strict scrutiny review of any infringement of that right. In the court's view, \textit{Lawrence v. Texas}\textsuperscript{55} simply did not establish a right to sexual privacy: "to do so would be to impose a fundamental-rights interpretation on a decision that rested on rational-basis grounds, that never engaged in \textit{Glucksberg} analysis, and that never invoked strict scrutiny. Moreover, it would be answering questions that the \textit{Lawrence} court appears to have left for another day."\textsuperscript{56} Nor, the court held, should any new fundamental right be recognized.\textsuperscript{57}

In searching for, and ultimately finding, this right to sexual privacy, the district court did little to define its scope and bounds. As formulated by the district court, the right potentially encompasses a great universe of sexual activities, including many that historically have been, and continue to be, prohibited. At oral arguments, the ACLU contended that "no responsible counsel" would challenge prohibitions such as those against pederasty and adult incest under a "right to sexual privacy" theory. However, mere faith in the responsibility of the bar scarcely provides a legally cognizable, or constitutionally significant, limiting principle in applying the right in future cases.\textsuperscript{58}
The Eleventh Circuit observed that the only limitation provided by the district court was that the right would only apply to consenting adults.\(^\text{59}\) However, this "consenting adult formula" was not an appropriate constitutional standard: "if we were to accept the invitation to recognize a right to sexual intimacy, this right would theoretically encompass such activities as prostitution, obscenity, and adult incest – even if we were to limit the right to consenting adults."\(^\text{60}\) This passage was followed by a quotation from the Supreme Court's ruling in *Paris Adult Theatre I*:

> the state statute books are replete with constitutionally unchallenged laws against prostitution, suicide, voluntary self-mutilation, brutalizing 'bare fist' prize fights, and duels, although these crimes may only directly involve 'consenting adults.'\(^\text{61}\)

The court concluded its discussion of the first part of the *Washington v. Glucksberg*\(^\text{62}\) test by framing the alleged right as the right to use sexual devices and then turned to a consideration of the second part of the *Glucksberg* test, namely, whether the right can be said to be deeply rooted in the nation's history or implicit in the concept of liberty.\(^\text{63}\) In rejecting this right, the court criticized the district court for focusing on the history of sex in American culture, rather than on sexual devices; for overemphasizing the importance of contemporary practices; and for equating non-intervention in the access to sexual devices with historical protection. The majority referred several times to, and disagreed with, the district court's discovery of a constitutional "right to use sexual devices like . . . vibrators, dildos, anal beads, and artificial vaginas."\(^\text{64}\)

It similarly rejects the district court's discussion of the "contemporary trend of legislative and societal liberalization of attitudes toward consensual, adult sexual activity"\(^\text{65}\) and the "specter of twentieth century sexual liberalism"\(^\text{66}\) on the basis that this contemporary practice is simply not relevant for the *Glucksberg* analysis. Indeed, in the majority's view, this focus on contemporary practice "ultimately proves too much. The fact that there is an emerging consensus scarcely provides justification for the courts, who often serve as an antimajoritarian seawall, to be swept up with the tide of popular culture."\(^\text{67}\) Popular culture – rather than influencing or shaping legal tradition – is held out as the very thing that law must resist.

The Eleventh Circuit concluded that the district court had erred in finding a constitutionally protected right to use sexual devices and remanded the case to the district court, including a consideration of whether, post-*Lawrence*, the previous holding that there was a rational basis for the ban was still good law. The plaintiffs sought a rehearing of the case en banc from the Eleventh Circuit, but their request

\(^{59}\) Ibid.

\(^{60}\) Ibid., at 1240.

\(^{61}\) Ibid., at 1243.

\(^{62}\) Ibid. (citing *Paris Adult Theatre I v. Slaton*, 413 U.S. 49 [1973]).


\(^{64}\) *Williams v. Pryor*, 378 F. 3d 1232.

\(^{65}\) Ibid.

\(^{66}\) Ibid., at 1243.

\(^{67}\) Ibid., at 1244.
was denied.\footnote{Williams v. Attorney General of Ala., 122 F. Appx. 988 (2004).} Their application for certiorari to the U.S. Supreme Court was also denied.\footnote{Williams v. King, 543 U.S. 1152 (2005).}

**Round 3**

On second remand, the district court held that that the previous holding that there was a rational basis for the ban of sexual devices was still good law in the aftermath of *Lawrence*.\footnote{Williams v. King, 420 F. Supp. 2d 1224 (2006).} In the court’s view, the ban on sexual devices was distinguishable from *Lawrence* because it neither targeted a minority nor was exclusively about criminalizing “private” and “consensual” activities (“There is nothing ‘private’ or ‘consensual’ about the advertising and sale of a dildo”).\footnote{Ibid.} Therefore the ban on sexual devices did not fit the *Lawrence* mould of a case in which public morality is not a legitimate state purpose. The law was therefore constitutional, and the plaintiffs’ motion was dismissed.\footnote{Williams v. King, 478 F.3d 1316 (2007).}

The case was, for a third time, appealed to the Eleventh Circuit, which affirmed the district court’s finding that public morality was a legitimate state purpose and that the state had a rational basis for the ban on sexual devices.\footnote{Williams v. Morgan, 2007 WL 1433336 (Oct. 1, 2007).} A petition for a writ of certiorari to the U.S. Supreme Court was again denied.\footnote{Williams v. King, 2007 WL 433336 (Oct. 1, 2007).}

In the aftermath of the Supreme Court’s refusal to hear the appeal, Sherri Williams expressed both her disappointment and resolve in opposing the law: “my motto has been they are going to have to pry this vibrator from my cold, dead hand. I refuse to give up.”\footnote{Ibid.} She has vowed to continue her challenge by bringing a First Amendment challenge to the law.\footnote{“It’s Official,” Lagniappe, Oct. 23, 2007, available at http://www.lagniappemobile.com/ (accessed Oct. 20, 2008).} In an interview with local news media, Williams stated, “What I do is very pro-marriage and pro-relationship. It’s also pro-women and empowering for women.”\footnote{Ibid.} According to the report, she plans to continue selling lingerie, lotions, and risqué adult party favors for bachelorette parties. But for other items (presumably, sex toys), she will now require her customers to sign a release stating that what they are buying is for medical or educational purposes.\footnote{Ibid.}

The reaction of the Alabama Attorney General’s Office to the Supreme Court’s refusal to hear the appeal was to immediately notify county district attorneys responsible for enforcement.\footnote{“Court Leaves Alabama Sex Toy Law Intact,” ABC News, Oct. 1, 2007, available at http://abcnews.go.com/ (accessed April 16, 2009).} However, Madison County district attorney Tim Morgan said that he did not plan to mount a campaign against sex toy retailers, but would
consider cases brought forward by police. "It's a pretty low priority," said Morgan. "We've got plenty of work to do. We don't need to be going out drumming up business... We've got real crimes." 80

The absence of any intention to go after sex toys was reflected in Morgan's earlier comments, noting that the law was not originally directed at sex toys. According to Morgan, Senator Tom Butler, who sponsored the bill, never set out to ban the sale of sex toys. "Sex toys were not even the focus of the bill," said Tim Morgan, the district attorney in Madison County, who helped Butler compile the information for the 1998 antiobscenity law; rather, Butler had been attempting to ban nude dancing. Several statutes had been tried, but club owners found ways to avoid them. The 1998 obscenity law was designed to close the loopholes. "That's where it started," confirmed Senator Butler in a local newspaper. According to Morgan, the 1998 Anti-Obscenity Enforcement Act was successful in that sense, completely ending nude dancing in Alabama. Morgan stated that the ban on sex toys was the result of a law modeled on the laws of surrounding states. Morgan confirmed that, saying, "Neither Tom Butler nor myself or anybody drafted the bill." 83 He said that his staff copied similar laws from surrounding states and that information went directly to the Legislative Reference Service in Montgomery, which then drafted what would become the final bill. 84

So nine years of litigation went on, with no intention of going after sex toys. A more rational universe might have seen the Alabama legislature amend its statute to clarify that it did not intend to ban the sale of sex toys, but simply nude dancing. However, once the challenge had been brought, the point seemed to become that that state should have the right to ban sex toys, regardless of whether it actually wants to ban them or intended to ban them. The Williams challenge to the obscenity law became a test case not so much over the legitimacy of sex toys in Alabama, as over the existence of a right to sexual privacy and whether, in a post-Lawrence world, a state could still legislate on the basis of public morality. For the state of Alabama, the ability to legislate on the basis of public morality would be pivotal in upholding other provisions that were far more important, like the very target of the 1998 obscenity law: nude dancing. And the recognition of a right to sexual privacy might compromise the state's future ability to legislate in relation sexual morality. The case was arguably propelled by a kind of slippery-slope, floodgates anxiety: if we can not ban sex toys, then we won't be able to ban other things sexual, like prostitution, obscenity, or adult incest (or nude dancing, the actual object of the law). 85

81 Ibid.
83 Ibid.
84 Ibid.
Sex and the City Cases: Striking Down Antivibrator Laws

The Williams rulings can be contrasted with constitutional challenges in other states that have successfully struck down similar antivibrator laws. In People v. Seven Thirty-Five East Colfax, the Colorado Supreme Court held that the provisions of an obscenity statute prohibiting the sale of sexual devices violated the right to privacy.85 The court stated that “the statutory scheme, in its present form, impermissibly burdens the right of privacy of those seeking to make legitimate medical or therapeutic use of such devices.” The court noted that the Food and Drug Administration had issued regulations on the therapeutic use of vibrators in the treatment of sexual dysfunction, suggesting that there is a legitimate use, and concluded that the provisions that prohibited their legitimate use were unconstitutional.

In State v. Hughes, the manager of an adult bookstore who was arrested for selling two obscene devices (including a vibrator kit with a dildo attachment) brought a constitutional challenge to the Kansas obscenity law that prohibited the dissemination of the devices.86 The trial court held that the statute violated the right to privacy because it infringed on the right to perform or receive recognized, legitimate medical treatment. The trial court had heard the evidence of a certified psychologist and sex therapist, who testified as to the therapeutic uses of vibrators. The court was concerned that the statute was overbroad because it would subject licensed physicians, psychologists, and sex therapists to criminal sanctions.87 The Kansas Supreme Court upheld the trial court ruling:

> When a state chooses to regulate matters involving sensitive rights of its citizens, it is obligated to do so in a manner that bears a real and substantial relationship to the objective sought and is narrowly drawn to express only those objectives. We hold the dissemination and promotion of such devices for purposes of medical and psychological therapy to be a constitutionally protected activity.88

In striking down the provisions, the court emphasized that the legislature had made no provision for this legitimate use of sexual devices.89 The seeds of subsequent defeat were thereby included within the victory: in the aftermath of the decision, the Kansas legislature amended the statute to prohibit the sale of “a dildo or artificial

85 People v. Seven Thirty-Five E. Colfax, 697 P. 2d 348 (Colo. 1985).
86 State v. Hughes, 792 P.2d 1023 (Kan. 1990). The Kansas obscenity statute included a provision prohibiting obscene devices, which were defined as “a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.” Ibid., at 1027. The second device for which Hughes was charged was an inflatable doll with an artificial vagina. However, in the reported case, there is very little discussion of the doll. The reported case simply states that “Dr. Mould [the expert who testified at the trial] testified that he knew of no therapeutic purposes for an inflatable doll and believed such a device to be ‘more a novelty than any serious sex tool.’ The inflatable doll was not the basis of the trial court’s determination of the issues of this case, and we will not discuss it further in this opinion.” Ibid., at 1025–26.
87 Ibid., at 1030.
88 Ibid., at 1032.
89 Ibid., at 1031–32.
vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy.”

Finally, a Louisiana obscenity statute prohibiting the sale of sexual devices was struck down in *State v. Brenan*. Christine Brenan, owner of a dance wear boutique, was arrested on three occasions for selling “obscene devices.” Rejecting the State’s appeal, the Supreme Court of Louisiana echoed the previous decisions in emphasizing the potential therapeutic use of vibrators:

The State’s unqualified ban on sexual devices ignores the fact that, in some cases, the use of vibrators is therapeutically appropriate. The Food and Drug Administration has promulgated regulations concerning “powered vaginal muscle stimulators” and “genital vibrators” for the treatment of sexual dysfunction or as an adjunct to Kegel’s exercise (tightening of the muscles of the pelvic floor to increase muscle tone). Such regulations indicate that the federal government recognizes a legitimate need for the availability of such devices.

The court further noted, “Notwithstanding their reputation as a naughty novelty item, vibrators remain an important tool in the treatment of anorgasmic women who may be particularly susceptible to pelvic inflammatory diseases, psychological problems, and difficulty in marital relationships.” The court concluded that given these therapeutic uses of vibrators, the legislation banning all such devices “without any review of their prurience or medical use” is not “rationally related to the ‘war on obscenity.’”

**Oscillating Citizenships**

In none of the cases in which the ban on vibrators was struck down did the idea of women’s sexual pleasure or sexual freedom come into play; rather, the legitimating focus was, in each case, on the therapeutic use of vibrators in treating sexual dysfunction. In this regard, the courts also tend to note that experts — doctors, psychologists, and sex therapists — risk being captured by the law simply by virtue of performing their therapeutic role. Not unlike the discourse of those who sell sex toys, there is also an emphasis on marriage and, more specifically, on the ability of vibrators to address sexual problems within marriage. In this line of cases, vibrators then are legitimated but contained within a set of privatized discourses: the “psy” professions and their expertise over the therapeutic use of vibrators and sexual relationships within marriage. This privatization of the legitimate terms for the circulation of sex toy use can be contrasted to the unacceptable privatization emphasized by the appellate court in *Williams*, in which the commercialization of vibrators and other sex toys is framed

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92 *State v. Brenan*, 772 So. 2d 64, 75 (La. 2000).
93 Ibid.
94 Ibid., at 76.
Sexual Citizens: Freedom, Vibrators, and Belonging

as illegitimate and immoral. Shopping for sex toys is not, in this view, at all akin to shopping for shoes; rather, the very marketization of these products produces them as “public” – as public goods in public view – and pruriently so, marking them as even more abject.

But what, one might well ask, does all of this fuss over vibrators, the right to privacy, and public morality have to do with citizenship? These obscenity cases are an example of the contemporary contestations over the appropriate modalities of the governance of intimacy and sexuality. The two lines of cases represent two very different modalities of governance and circulation of power. In the *Sex and the City* approach, sexuality becomes more of a terrain of self-governance. In these cases, the use of vibrators is circumscribed within the more privatized realm of the therapeutic, legitimized by marriage and medicine. In contrast, in the *Williams* approach, sexuality remains an appropriate terrain of state regulation. In this approach, the state has a continued and legitimate role in regulating sexuality, with an emphasis on the publicity of the issue (e.g., “there is nothing private . . . about the advertising or sale of a dildo”).

Moreover, the appellate court’s reasoning in *Williams* shows an almost obsessive concern with maintaining the state’s power to legislate in the sexual arena. Over and again, the Eleventh Circuit expresses a slippery-slope anxiety: there will be nowhere to draw the line between legitimate and illegitimate sexual practices. The courts are engaged in a kind of border patrol, ensuring sharp boundaries between legitimate and illegitimate sexual practices. The courts in the *Sex and the City* cases are no less concerned with sexual borders. However, they seem to have more confidence in a new border to do the work of distinguishing between legitimate and illegitimate sexuality. Good sexuality is private and consensual, therapeutic, and marital. Bad sexuality, one can imply, is on the other side of the binary: public or coercive, nontherapeutic, and nonmarital. The use of vibrators can be incorporated into good and legitimate sexual practices, by virtue of a range of privatizing and self-disciplining discourses, including their integration into the self-governing discourses of marriage.

Some may still find the connection between the governance of sexual practices and the discourses of citizenship to be a stretch. It requires that we move beyond the idea of a proper object to citizenship studies, such as the political relationship between citizen and state, to a broader exploration of the modalities of contemporary governance and belonging. From this perspective, the idea of citizenship involves more than the civil or political rights and obligations of individuals. It involves the ways in which individuals are constituted as good citizens and the multiple practices implicated in this process. Sex and sexuality are amongst these practices. Sexual practices have become a significant terrain on which the terms of contemporary belonging are contested and constituted. Certain kinds of sexual practices, which might have once excluded the subject from belonging – like the use of sex toys – are being publicly and politically contested by subjects who seek to shift to the line

between legitimate and illegitimate sex. When it is successful (and as the Williams
case demonstrates, it is not always), these sexual practices are recoded in terms of
belonging, terms that ensure their appropriate containment. Just like in Sex and the City,
the use of sex toys might be okay, but only if it is appropriately contained
within the privacy of the home and appropriately self-disciplined. Belonging can
incorporate more sexualization, but only, it seems, if it is simultaneously privatized
and self-disciplined.

Yet these discourses remain deeply contested. In the legal sphere, the more
conservative movement to hold the line on sexual morality continues to exercise
some, though certainly not unanimous, sway. At the same time, the Williams vibrator
cases have been subject to pervasive critique, and even ridicule, in the blogosphere.
The idea of criminalizing vibrators does not appear to be a popular one. Even
Christian sex-advice web sites counsel married couples that using vibrators is not
a violation of scripture. Indeed, the burgeoning Christian sex-advice industry is
itself a fascinating example of a highly disciplined and privatized sexual citizenship.
These web sites and self-help manuals advocate sexual pleasure, but exclusively
within a marital relationship. Indeed, there are even Christian sex toy distributors
that claim to sell their products only to married couples.

As these Christian web sites themselves reveal, it is important not to underplay the
extent to which the sexual citizen is being reconstituted on the terrain of the sexual.
Notwithstanding the domestication of sex toy party participants, this performance
pushes at the edges of the previously respectable and desexualized citizen. This is a
sexual citizenship that is explicitly sexual; it is a desiring, pulsating, pleasure-driven,
orgasmic body. This is a new modality of sexual citizenship. It is also an explicitly
gendered sexual citizenship. Williams and the broader Passion Parties phenomenon
are all about women—otherwise respectable, often married women who are buying
and selling sex toys. There is no escaping the sexual desire and sexual pleasure of
women—married or otherwise. Orgasmic women are part of the new sexual citizen,
just as long as they have their orgasm in the right place, at the right time, and with
the right person.

(stating, “We see no scriptural prohibition on toys, nor any way in which toys violate any scriptural
guidelines”). For a discussion of the Christian sex-advice industry, see Mark Oppenheimer, “In the
97 See, e.g., two best-selling Christian sex-advice manuals: Tim LaHaye and Beverley LaHaye, The
Act of Marriage (Grand Rapids, MI: Zondervan, , 1998), and Tim Gardner, Sacred Sex: A Spiritual
and mission: “The twenty second book of the bible is Song of Solomon. We believe that God intended
that such love, as spoken of in Song of Solomon, be a beautiful and normal part of marital life.
Unfortunately this gift from God has been grossly distorted and abused by both ancient and modern
people. Book22 is offering quality products to enhance the intimate life of God’s children. Our hope
is that our products will serve as intimacy enhancers for your marriage.” Ibid. Amongst the many sex
toy items that they sell are two versions of the rabbit: the jelly rabbit and the removable rabbit. Ibid.
Gender Equality

DIMENSIONS OF WOMEN’S EQUAL CITIZENSHIP

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