

Lactating Legally

The Fourteenth Amendment protects a woman's right to breastfeed in public whenever and wherever she pleases. Despite the forty-nine states that legally protect breastfeeding in public, the act still remains a controversial issue in today's society. Through the law, nursing in public is protected under the Fourteenth Amendment's Due Process and Equal Protection Clause, but in society, some see breastfeeding in public as indecent and taboo.

The Due Process Clause is the foundation of America's liberty, including those who wish to breastfeed in public. In *Dike v. School Board*, a breastfeeding teacher was told to stop breastfeeding her infant during her lunch break after three consecutive months of doing so. The school's policy prohibited teachers to bring their children to work; Dike obliged until her child developed an allergy to the milk-based formula. The school board continued to reject Dike's request to nurse her child in the school parking lot during her lunch break, compelling her to take an unpaid leave. After the school's failure to comply with federal laws allowing mothers to pump or breastfeed during the first year of a child's life, the "frivolous" case proved to be more than a school policy issue--it became a breastfeeding matter. The Due Process Clause gave Dike the right to argue against the school board and cite similar cases regarding women's rights and her right to breastfeed as needed. Dike used the argument "that the right to breastfeed is entitled to constitutional protection as part of a larger right to parent" (Shelton). Although she lost her original case, it was reversed upon appeal to the Fifth Circuit Court. Breastfeeding was deemed "the most elemental form of parental care." Dike's case was ruled as a "protected liberty interests" and therefore given the right to breastfeed through the fundamental rights of the

Fourteenth Amendment. Equal protection abides by the state's breastfeeding laws, disputing policies such as the school board's policy used against Dike.

The Equal Protection Clause states "No state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws;" this clause gives women equal protection to breastfeeding in public as otherwise, it would be denying personal and equal rights. Equal Protection was also cited in other women's right cases such as *Roe v. Wade* and *Griswold v. Connecticut*.

Although breastfeeding in public is protected by the law, it continues to be a contentious topic. It is not a morality issue like abortion or contraception, but a taboo issue - similar to how women's suffrage and equal rights were seen in the past. Some view nursing in public as indecent, though it is legal to breastfeed publicly in forty-nine states. Not many are aware of state laws that protect women breastfeeding; some still feel the need to embarrass and shame breastfeeding mothers. This ultimately prevents these women equal protection despite the Fourteenth Amendment favoring them.

The media has preconditioned society to view breasts as sexual glands rather than natural, milk-producing glands for nurturing babies. There is nothing sexual or indecent about a woman nursing her child because it is a fundamental practice. Women's breasts were made "solely for the purpose of feeding infants" (Helppie-Schmieder). In an incident regarding a United Airlines passenger and flight attendant, according to this article, the mother was discreetly nursing her child as an attendant rudely asked her husband to "help her out" and tossed a blanket towards the couple. The mother, now embarrassed and stunned, proceeded to feed her child as others defended her (Hetter). In other public facilities such as a Target in Connecticut, a woman was

verbally attacked for breastfeeding in the café; the man demanding a refund for witnessing such a “disgusting” act (Schoenfeld). This shows that some do not view breastfeeding as a natural, beautiful moment between mother and baby, but rather, an indecent, somewhat sexual act that causes discomfort.

State laws relating to breastfeeding vary from penalizing the persecutor to plainly “protecting” the mother's. There are few penalizing states, one of them being New York, that allow women to sue their discriminators. In contrast, there are many “protected” states, such as North Carolina, who merely just protect the women; these states do not penalize those who discriminate mothers nursing in public (Shelton). These “protected” states are the cause of the continuation of discriminative and shaming action towards mothers breastfeeding in public--despite the fact that public breastfeeding is “protected” under the Equal Protection Clause. In order for breastfeeding women to be “entitled to life, liberty, and the pursuit of happiness,” the laws have to create a “legal recourse against those who discriminate against them” (Shelton). There should also be promotion for awareness of these laws to prevent further discrimination against public breastfeeding.

Breastfeeding mothers are legally protected by the Fourteenth Amendment in forty-nine states. Due Process allows for women to fight for their rights through a fair trial and Equal Protection permits equal rights for the act of breastfeeding. Despite these favoring laws, breastfeeding in public will continue to be seen as socially unacceptable and uncomfortable to many, therefore preventing women, specifically mothers, to be “entitled to life, liberty, and the pursuit of happiness.” Until further laws are passed with the intent to advocate for and bring

awareness to the naturality of breastfeeding, breastfeeding in public will remain an ignorant and controversial issue.

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