There He Goes Again
Justice Antonin Scalia has a knack for drawing unflattering light to himself and the Supreme Court. Recall, for example, when he refused to recuse himself from a case involving the energy task force run by Dick Cheney, his friend and duck-hunting companion, when Mr. Cheney was vice president.

Justice Scalia is now getting attention for his outlandish view, expressed in an interview in the magazine California Lawyer, that the promise of equal protection in the Constitution’s 14th Amendment does not extend to protecting women against sex discrimination. Legislatures may outlaw sex discrimination, Justice Scalia suggested, but if they decided to enact laws sanctioning such unfair treatment, it would not be unconstitutional.

This is not the first time Justice Scalia has espoused this notion, and it generally tracks his jurisprudence in the area. Still, for a sitting member of the nation’s highest court to be pressing such an antiquated view of women’s rights is jarring, to say the least.

No less dismaying is his notion that women, gays and other emerging minorities should be left at the mercy of the prevailing political majority when it comes to ensuring fair treatment. It is an “originalist” approach wholly antithetical to the framers’ understanding that vital questions of people’s rights should not be left solely to the political process. It also disrespects the wording of the Equal Protection Clause, which is intentionally broad, and its purpose of ensuring a fairer society.

Fortunately, Justice Scalia’s views on women are not the law of the land.

In a slew of rulings since 1971, often with conservative justices in the majority, the Supreme Court has consistently rejected Justice Scalia’s constricted view of what the Constitution requires. It would be nice if he underscored that fact the next time he spoke out on the subject.