



Chapman Law Review

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SYMPOSIUM: 1920–2020: THE EFFECTS OF WOMEN’S SUFFRAGE 100 YEARS AFTER RATIFICATION OF THE 19TH AMENDMENT

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Editor's Note

It is my honor to introduce *Chapman Law Review's* second issue of volume twenty-three. This issue consists of submissions for our 2020 symposium: "1920–2020: The Effects of Women's Suffrage 100 Years After Ratification of the 19th Amendment."

This issue opens with the keynote address of Honorable Judge Leslie Abrams Gardner of the U.S. District Court for the Middle District of Georgia. We thank her for taking the time to share her experiences and thoughts with us at Chapman Law School.

Our first article, by Ms. Leigh Creighton Bond and Ms. Monika Taliaferro, introduces us to the rise of the reproductive justice lawyer. They argue that voter suppression issues, and the fight for voting rights, are all linked as reproductive justice issues. Next, Ms. Megan Butcher, Ms. Kristine Coats, Mr. Grant Voss, and Ms. Brandy Worden take a unique approach to analyzing laws that impact women in STEM by contributing original research in the form of personal interviews with noteworthy women leaders in STEM. Their work concludes that, while legislation since the Nineteenth Amendment has advanced the status of women in STEM, more can be done to help increase their representation. Thereafter, Dr. Kishor Dere explores the roles and impacts of three noteworthy women in U.S. politics—Eleanor Roosevelt, Nancy Pelosi, and Ivanka Trump. He discusses how, despite their different positions and time periods, each of these women has broken through barriers and achieved many firsts for women in politics. Next, Ms. Reshma Kamath studies the give-and-take process that is the Women's Movement and the #MeToo Movement. She identifies that women often face additional barriers and hardships in a variety of domains, such as the military and church. Ms. Sherry Leysen conducts extensive analysis on laws by women and laws that affect women. She first looks at laws advanced by women in the California State Assembly and Senate, and then studies how laws in employment, corporate governance, and health have impacted women. Finally, Ms. Brittany Raposa brings us full circle by discussing the impact the Nineteenth Amendment has had on women's rights and access to reproductive healthcare. She highlights the importance of the right to vote in achieving and retaining access to bodily autonomy.

Chapman Law Review is grateful for the continued support of the members of the administration and faculty that made this

symposium and the publication of this issue possible, including: Dean of Chapman University Dale E. Fowler School of Law, Matthew Parlow; our faculty advisor, Professor Celestine Richards McConville; and our faculty advisory committee, Professors Deepa Badrinarayana, Frank Doti, Ernesto Hernandez, and Kenneth Stahl. Special thanks go to Dean Cianciarulo for her guidance in soliciting scholars and speakers and to the Research Librarians of the Hugh & Hazel Darling Law Library for their tireless work for the *Chapman Law Review*. Our Senior Symposium Editor, Bethany Ring, deserves applause for her work and dedication to this incredibly successful symposium. Finally, I would like to express my appreciation to the staff of the 2019–2020 *Chapman Law Review*—without you, this issue would not have been possible. This semester we experienced a unique situation due to the restrictions and effects of COVID-19, but all of Fowler School of Law and the *Chapman Law Review* triumphed during this challenging time. I am honored to have been part of this endeavor. As former Dean Kacer told the Class of 2020 during orientation—it takes a village. Thank you to my village.

Jillian C. Friess
Editor-in-Chief

Keynote Address: The Honorable Leslie Abrams Gardner of the U.S. District Court for the Middle District of Georgia

[Dean Matthew Parlow of the Chapman University Dale E. Fowler School of Law opening remarks]

Good afternoon everyone, thanks for being here. Welcome, my name is Matt Parlow. It's my privilege to serve as the Dean of the Fowler School of Law. This is such a terrific event and it's great to see such a wonderful turnout. The first panel this morning was really terrific, can we give them a round of applause again?

Before I introduce our keynote speaker I wanted to say a few thank-you's and welcome's. I'd like to thank Bethany, Jillian, and all of the *Law Review* editors, as well as Professor Celestine McConville—the Advisor to the *Law Review*—and Associate Dean Marisa Cianciarulo who worked closely with the *Law Review* on putting together this program. Thank you for all of your work on this.

There are several people in the audience I want to recognize. I'd like to recognize Don Rotunda, brother of our departed college Professor Ron Rotunda. It's really meaningful for you to be here with us today, thank you for being here. Would also like to recognize my decanal colleague from the Wilkinson College, Jennifer Keane, as well as the president of our Alumni Association, Shannon Switzer, and alumna, trustee, and member of our board of advisors, Zeinab Dabbah. Thank you for being here with us.

I'd also like to recognize a special individual whose life story should be something that all of us are mindful of in being those who study the law and those who aspire to become lawyers, and that is Jimmy Gardner who is sitting at the head table. Jimmy was leading a very robust and exciting life when he was wrongfully convicted and imprisoned. He spent twenty-six years in jail before being exonerated. He tours the country speaking about his experiences as a motivational speaker; works a lot on innocence project work. Perhaps you'll accept an invitation in the future to come back and maybe talk about your story. But his story should be a guidepost for us in remembering how the justice system is not always perfect, how there are problems with

it on so many different levels, and it's just really great to have you here with us today. Thank you for being here Jimmy.

And now, it is my honor to introduce our keynote speaker, and my good friend, Judge Leslie Abrams Gardner. Judge Gardner went to Brown University where she received a joint bachelor's degree in public policy and African American studies. She received her J.D. from Yale Law School, which is where we overlapped and became good friends. She then clerked for the Honorable Marvin J. Garbis of the United States District Court for the District of Maryland. She practiced law at Skadden Arps in Washington D.C. before becoming an Assistant U.S. Attorney for the Northern District of Georgia.

She then was nominated by President Obama and confirmed by the Senate by 100–0. Now, let's pause for a moment there and marinate on that in our era of, shall we say, strained partisanship. She took the oath of office and in doing so—in taking the bench—became the first female federal judge in the Middle District of Georgia and the first African American woman to become an Article III judge in the State of Georgia.

I commend you to read her bio. It is telling that on her bio in our program, the majority of it is not what I just went over, but actually her commitment to the community and all the work that she does in the community. And as someone who has known and admired Judge Gardner for, I can't believe, twenty years—we started really young, we were like in elementary school when we started law school—it speaks volumes about her character, about her commitment, all the work that she does in the community. We're so fortunate to have her with us here today, please join me in welcoming Judge Gardner as our Keynote.

[Honorable Judge Leslie Abrams Gardner Keynote Address]

Good afternoon. Thank you Matt for the invitation and Marisa for getting me here and putting up with my calls. I also want to congratulate the editors and the members of the *Chapman Law Review* for this wonderful summit. This is not only a great symposium topic, but the focus on voting rights and individual rights is certainly timely. Our nation is struggling to navigate and balance the rights of free speech, technological innovation, and intellectual integrity at this time. Questions of who can vote and how we vote are prime subjects in legislatures and court rooms across the nation. These same questions are central to accessing equal rights in all spheres of American life, including access to justice.

The issue of voting rights has always been in the center and the forefront of my life. I grew up on stories of my parents work

in the Civil Rights Movement. Their marches and the trouble that my dad got in fighting to secure the right to vote in 1960s Mississippi. These stories of my childhood fueled my desire to be a federal judge. Now, as my father would tell it, I decided to become a federal judge when I was in the second grade and I wrote an essay about Thurgood Marshall. I will note that I get younger every time he tells that story. But I do remember learning about Thurgood Marshall and about Constance Baker Motley and the work that they were doing and the fight that they engaged in to ensure equal rights for everyone. And I decided I wanted to be like her. To me, their lives were legacies about fighting for justice and that is the legacy that I want to leave.

Now while I grew up listening to the exploits of my parents and my aunts and uncles, I never really heard much about my grandparents' role in the Civil Rights Movement. Now, my grandparents were the members of the greatest generation and I thought that that was just part of their normal stoicism. But it turned out that, that wasn't really what was going on. Rather, my grandparents were equally committed to voting and securing equal rights for themselves, but their story was a bit more complicated than even my parents. My grandparents were from Mississippi and they grew up when asserting your rights could literally mean death. It could mean you could lose your housing, your job, your livelihood in a moment's notice. And so, for them they had to learn to not talk about it, to be very strategic in their actions in order to take care of their family.

My grandmother, Wilter May Abrams, was born on July 5th, 1927 in Clark County, Mississippi and I fortunately had her in my life for most of my life as she passed away on January 24th of last year at the age of ninety-one. She was a high school graduate and she worked as a caterer in the food services for the University of Southern Mississippi for over fifty years. She was married to my grandfather, who was a veteran of World War II and of the Korean War for sixty-five years. They had six children, five of whom survived. Three of their children went on to get college degrees and graduate degrees and the two others served in the military. Now think about this: these are poor black people from Mississippi, and they were able to put three of their children through college; they went on to get graduate degrees. Of their grandchildren, I think at last count we, because we just found out we had another, I think we were at twenty-seven. The majority of us have graduated from college, gone on to get graduate degrees, or served in the military. My grandmother lived to see one of her granddaughters run for governor of the

State of Georgia and another become a United States District Court judge.

We're talking about promise and progress today and to me, that story, that arc, is exactly what we're talking about. My grandmother went, as you'll hear, from someone who was denied the right to vote several times to seeing her granddaughter sworn in as a judge. My parents and my grandparents instilled in us the belief that education was the key to success and would pry open doors that others sought to shut in our faces. And they also taught us that service to our community was a duty, not a choice. She and my grandfather were adamant about voting and I remember them planning—as we were growing up—planning their work schedules so that they could go to the polls together. They voted in every election: local, state, federal, primary, or general, they were going to be there. And I didn't really understand their fervency until 2016.

And I was living in Albany and I was driving home to Mississippi to see my grandmother and my parents and my dad called when I got into Hattiesburg and said: "Hey, can you stop and grab an absentee ballot for your grandmother?" who was at that time, eighty-nine years old and was housebound. And of course, I did it and I took it to her, and I sat back in the room with her and I gave it to her, and she started to cry. And I couldn't understand why she was crying until she explained to me that the first time she went to vote, she had taken a class at her church so that she could pass the poll test. And there was a group of them and so when they went down after their teachers decided that they were ready, they went down and they sat through the test and by the end of the day, my grandmother and one other person were left. And she had passed the test, the written test, and she was so proud. And so, she walked up to the registrar and she gave them the piece of paper that said she passed the test. And the registrar told her they had one more question she had to answer.

And he asked her: "How many bubbles were in a bar of soap?" And when she couldn't get the "right" answer to that, they told her she could not vote. And as she turned around she said she had felt so proud just two minutes before, and there was this feeling of despair. And the thing she remembers most about that moment, because there were people outside throwing racial slurs at them and jeering at her, but she remembers three young white men, leaning against the wall, laughing at her.

And so, she told me she made sure once she finally got the right to vote that she exercised it on *every* occasion. And there were times where the weather was bad, and she didn't have a car

and she would have to walk to the polling place. There were times when she was working and raising five children, and she was just too tired, and she thought about not going. But she remembered being taunted and she remembered winning the right to vote and she went to the poll every time. So, the fact that this time she had to cast her ballot in writing broke her heart.

Now, when I think about my grandmother and I think about this story I've always thought of it in terms of race. But my grandmother, like all black women, had to navigate through life dealing with both racism and sexism. And as I began to write this presentation the story came to mind, and I realized that the racial intent behind the poll worker and the people taunting my grandmother could very well have been gender based. As you heard this morning, opponents of the women's right to vote argued that women lacked the intelligence to vote in much the same way that they asserted that black people weren't smart enough. Thus, you had the birth of poll tests. And when I read tales of the Women's March of 1913, they were replete with stories of the slurs and the insults that were hurled at the protestors. And I imagine that they were just as vulgar and degrading as the slurs and insults that were thrown at my grandmother that day. Every vote my grandmother cast honored not only those who fought for civil rights but also paid homage to every person who fought to secure the right to vote for women.

I ask myself: Where are we now? Has so called universal suffrage resulted in equal rights? Equal access? Equal justice under the law? To see where we are, however, I think it is important for us to know where we've come from. And to ask ourselves: What does equal justice under law really mean?

The words "equal justice under law" are carved into the façade of the Supreme Court. And, they were, in 1932, Chief Justice Charles Evan Hughes approved that engraving. The inspiration for the engraving came from the Court's opinion in *Caldwell v. Texas*, an 1891 case interpreting the Fourteenth Amendment in which Chief Justice Melville Fuller wrote: "The powers of the states in dealing with crime within their borders are not limited. But no state can deprive particular persons, or classes of persons, of equal and impartial justice under the law."

Now, while the Supreme Court was unanimous in this opinion, this version of American justice was not shared by everyone. In 1935, in fact, at that time the justices and journalists apparently would engage in open debate in the papers, and one particular journalist suggested that the word "equal" should be removed from that engraving. And Justice

Hughes pushed back because he noted that there was a need to place a strong emphasis on impartiality in the justice system.

This idea of equal justice under the law also has its bearings all the way back to the beginning of what we have founded our democracy on. The Athenian leader Pericles stated that “[i]n democracy there exists equal justice to all and alike in their private disputes.” The ideal of equality, however, was often espoused, if not enacted, by our Founding Fathers.

One hundred years ago, this country continued its journey towards a more perfect union by ratifying the Nineteenth Amendment, which granted women the most fundamental right of democracy—that is, the right to vote. But as we all know, that battle was long and hard-fought. There were embers of promise in 1756 when Lydia Chapin Taft of Massachusetts became the first woman to vote in, what would become, the United States. Now, I call this only an ember because she was only allowed to cast a vote for her deceased husband. She couldn’t vote for herself; she could vote for him. Not quite equality, but, ok, we had a start.

Twenty years later, however, the Founding Fathers acted to actively bank that sentiment, and this seems to be despite the not-so-subtle pressure from their wives. In G. J. Barker-Benfield’s *Abigail and John Adams: The Americanization of Sensibility*, there is a letter that she prints from Abigail Adams to her husband in 1776. And Mrs. Adams wrote: “In the new Code of Laws which I suppose it will be necessary for you to make, I desire you would remember the ladies and be more generous and favorable to them than your ancestors. Do not put such unlimited powers into the hands of the husbands.” Future President Adams blithely, but presciently, responded: “As to your extraordinary Code of Laws, I cannot but laugh. Depend upon it, we know better than to repeal our masculine systems.” And that’s exactly what they did.

For more than 100 years, the men who ran this country by and large refused to repeal their masculine systems and enshrined in the very fabric of this nation *inequality* under law. The desire to preserve the masculine systems, and more specifically, the white, male, Protestant, moneyed systems, are the roots of many of the ills and the shame that are in the history of this country. We have only to look at the Three-Fifths Compromise and the Alien and Sedition Acts to see this. Yet despite the systemic and overwhelming obstacles, women in this country have consistently pushed towards that more perfect union of universal suffrage.

In the fight to right the original wrong against women in this country, the Modern National Women's Movement was born, as you've all heard, in 1848 with the Seneca Falls Convention. The Seneca Falls Convention birthed the Declaration of Sentiments airing the grievances and listing the demands that those in attendance thought were long overdue. This document was a living, breathing testament to the movement fighting for social, civil, and religious rights of women. Mirroring the Declaration of Independence, it stated: "We hold these truths to be self-evident, that all men and women are created equal, and that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the pursuit of Happiness."

Following the convention, the demand for the vote became a centerpiece of the Women's Rights Movement. Activists raised public awareness and lobbied governments to grant voting rights to women. But, I want to note that the suffragettes didn't just want the symbolic right to vote. They wanted to harness the power of the electorate to make change. Women of the time saw voting rights as a tool to achieve the many changes that they believed were necessary to have their families and their communities prosper. Whether it was advocating for the abolition of slavery, the temperance laws, or child labor laws, these women knew that they could affect greater change by voting themselves than by working to have some man vote in their favor.

In the 1870s, the fires of equality began to burn brighter as the states shined a great light on the value of federalism and moved women's rights forward, even as the nation stood still. As the Wyoming Territory stood poised to become the forty-fourth state, the issue of women's suffrage was front and center. The territory's constitution was the first to grant women the right to vote, but the U.S. Congress demanded that this right be rescinded before they would admit Wyoming into the Union. Wyoming, however, stood firm, and they said: "We will remain out of the Union 100 years rather than come in without the women." Wyoming prevailed and became the first state to allow women the right to vote. And, on September 6, 1870, Louisa Ann Swain became the first woman to cast a vote in a general election. Wyoming was part of a western wave that by 1915 saw nine states allow women to vote.

Now, as with every major struggle, women of color were in the fight and race was front and center in the Women's Suffrage Movement. Sojourner Truth's "Ain't I a Woman" speech is as enduring as the Declaration of Sentiments. Truth, who had been born into slavery and later freed, was an ardent abolitionist and a womanist. In 1851, at the women's conference of Akron, Ohio,

some male ministers were—as they were want to do at the time—condescending to women about why men were superior and why they should be in charge.¹ And, in response to one gentleman who preached about Eve’s original sin, Truth responded stating: “I can’t read but I can hear. I’ve heard the Bible and I’ve learned that Eve caused man to sin. Well if woman upset the world, do give her a chance to set it upon right again.”

Truth and the other black women seeking equal rights spoke directly to those who were determined to maintain the masculine systems as well as those who strove to maintain the racist systems that underpinned this country. They understood, as Frances Willard did, that in any society where men are not free, black women are less free because we are further enslaved because we are enslaved by our sex. They, along with generations of black women that followed them, would often find themselves pinned between fighting for women’s rights and fighting for the rights of African Americans. As explained by Deborah Gray White, black women not only have to see themselves through the lens of blackness and whiteness, but also through the lens of patriarchy. Whenever they are in black spaces, women have to situate themselves in the context of patriarchy. Whenever they are in fem spaces, they must still situate themselves in the context of their blackness. But despite this oft-exhausting triple consciousness, black women would continue to agitate for all of their rights.

In 1913, Alice Paul and Lucy Burns of the National American Women’s Suffrage Association spearheaded the planning of the Women’s Suffrage March, which fanned the flames for women’s rights again. The purpose of the parade was to march in the spirit of protest against the present political organization of society from which women are excluded. Strategically, they set it on the day before Woodrow Wilson’s inauguration so they would have a good crowd, and thousands of women marched through the streets of Washington D.C. Race, of course, reared its ugly head again and many of the white women who had come for the march refused to march with the black women. The decision was made to segregate the march and require the black women to march behind them. Many black women just moved on to the back, but many of them also refused to do that and marched along with their delegations. One of those women—I saw a picture of her up when I came in—was the famed Ida B. Wells.

¹ Judge Gardner stated the year as 1951. However, after research, it appears the accurate date is 1851.

Black women, Native American women, Latinas, and Asian American women were not deterred by racism for fighting for the right of women to vote. Even in the face of discrimination and knowing that they were not seen as equals, women of color fought along their white sisters seeking the right to vote. In fact, according to researcher Sally Wagner, Lucretia Mott and other leaders of the Seneca Falls Convention gave Native American women, specifically women of the Iroquois Confederacy, credit for inspiring the Declaration of Sentiments.

Wagner writes, “It did not start with white women; that is not the point of entry into women having a political voice. Indigenous women have had a political voice in their nations long before the white settlers arrived.” Despite this, Native American women would not gain the right to vote until 1924 when Native Americans were finally granted citizenship.

Latina author Maria Amparo Ruiz de Burton offered a better critique of American racism while supporting women’s suffrage in her 1872 book *Who Would Have Thought It?*, and Chinese American suffragette Mabel Lee was one of the leaders of the 1912 New York suffrage parade, boldly riding a horse at the front of the processional. Despite their pivotal roles and hard work, due to the fact that Native Americans and Asian Americans had yet to be granted American citizenship, Native American and Asian American women would not be allowed the vote when the Nineteenth Amendment was passed.

Now, despite this convoluted past, the Nineteenth Amendment, which was initially introduced to Congress in 1878, passed in the House of Representatives on May 21st, 1919 and in the Senate on June 4th, 1919. On August 18, 1920, Tennessee became the thirty-sixth state to vote to ratify the Nineteenth Amendment and it was finally adopted on August 26, 1920, enfranchising 26 million Americans just in time for the presidential election. And, on November 2nd of that same year, more than 8 million women across the United States voted for the first time.

But the fight was not over, and women rolled up their sleeves and got to work to achieve the full measure of equality. As Alice Paul said: “It is incredible to me that any woman should consider the fight for full equality won. It has just begun.” And she was right. While August 26th, 1920 was a pivotal day and one which we really should celebrate, it did not usher in equal rights. Nowhere is this more clear than in the legal system, and especially in one of its most fundamental structures: jury service. Many of the women of Alice Paul’s generation believed that the doors to fully participate in society would become open with the passage of

the Nineteenth Amendment. But Paul and others possessed the foresight to know that the battle had just begun. In fact, the battle to sit on juries would go well into the twentieth century.

The right to be judged by a jury of one's peers is fundamental to our understanding of justice. It is also a topic that has always fascinated me. I wrote a paper, my substantial, about it in law school, and specifically about the usurpation of the jury's role under the mandatory sentencing guideline regime. I took classes and tried to divine the mysteries of the jury as a prosecutor. And I work very hard to ensure now that juries in my court are seated and are fair and impartial. I am also probably the only person in this room who crosses her fingers in hopes that she will actually be seated on a jury when called. Alas, I think that door has closed.

Now the basis of my fascination is that the jury system, like our adversarial system, is the best way to achieve equal justice under the law. The jury is proof that diversity has intrinsic value. For, if and when we get it right, twelve people of different backgrounds and beliefs who are forced to talk to each other in order to reach a unanimous decision are far more likely to reach a just decision than one lone judge encumbered by her natural biases or the echo chamber that can result when an homogenous group of jurors are asked to sit in judgement.

Our founders understood the value of the jury system and enshrined the right to trial by jury in the Sixth and Seventh Amendments to the Constitution. Their basic understanding of the value of the jury, coupled with the desire to maintain their masculine systems, however, systematically excluded women from jury service. They and their successors subscribed to the doctrine of *propter defectum sexus*. Yes, you guessed it, the doctrine of defect of sex.

In 1879, the Supreme Court enshrined this foolishness into the Law of the Land. In *Strauder v. West Virginia*, the Court held that states could constitutionally confine the selection of jurors to males. Bowing to the spurious arguments that it was for the women's "own good" that she be barred from the jury, and preaching to women that their duty was to their family and their household as if they were too feeble-minded to do both, they also appealed to the sexist tropes of so-called finer womanhood that espoused that women should be spared the gruesome details of criminal cases and that their natural feminine sympathies would set all the prisoners free. We'd just open up the door and let them out.

Once again, the incubators of the states outpaced the federal government and the Supreme Court in seeing the rightness and

the value of women on the jury. Again, the Wyoming Territory granted women the right to serve on juries in 1870. The Washington Territory followed suit in 1883 and the list of states allowing women to sit on juries grew to twelve by the time the Nineteenth Amendment was adopted. Still, at the start of World War II, twenty-one states still prohibited women from sitting on juries. Congress got the hint in 1957, thirty-seven years after the passage of the Nineteenth Amendment, and declared that women were eligible to sit on federal juries, regardless of state law. Still, it would not be until 1966, when the barrier finally fell in Alabama, that every state had granted to women the right to sit on juries in some form or fashion.

Now, Supreme Court jurisprudence on this matter is complicated and reflects the nation's difficulty with gender equality. In 1946, the Court issued an opinion in *Ballard v. United States*, which held that women could not be systematically excluded from federal jury service. This is a good thing. This decision, however, was based on a defendant's right to a fair trial rather than a woman's right to sit on a jury. The Court wrote: "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. . . . To insulate the courtroom from either may not make an iota of difference. Yet, a flavor, a distinct quality is lost if either sex is excluded. The exclusion of one may indeed make the jury less representative of the community"

But just fifteen years later, in 1961 in *Hoyt v. Florida*, the Court once again relied on sexist tropes when upholding Florida's law, which required women to volunteer for jury service while jury service for men was compulsory. The Court held that it could not say that it's constitutionally impermissible for a state, acting in pursuit of the general welfare, to conclude that a woman should be relieved from the civic duty of jury service unless she herself determines that such service is consistent with her own special responsibilities, whatever those might be.

Fortunately, the Court abandoned this view in 1975 in *Taylor v. Louisiana* when it struck down a Louisiana rule that was similar to the Florida rule. This time the court held that the Sixth Amendment's right to an impartial jury requires that the venire be drawn from a fair cross-section of the community. And the Court, as it sometimes does in its reasoning, didn't quite overturn *Hoyt*, but it danced around it saying, *Hoyt* did not involve a defendant's Sixth Amendment right to a jury drawn from a fair cross-section of the community and the prospect of denying him of that right if women as a class are systemically excluded. Now, I have read both of these opinions numerous

times and I really do not understand the distinction, but, they found one.

In 1994, in *J.E.B. v. Alabama ex rel.*, the Court held that gender based preemptory challenges were unconstitutional because they violated the Equal Protection Clause, stating that “the Equal Protection Clause prohibits discrimination in jury selection on the basis of gender, or 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 man or a woman.” The driving rationale behind this decision was the theory that doing otherwise would perpetuate the discrimination that precluded women from the jury pool for so long. Now, while the outcome was right, the rationale was grounded in a theory of gender-blindness that fails to recognize the intrinsic value of diversity. As Justice Sandra Day O’Connor recognized in her concurrence, the majority opinion failed to acknowledge that, like race, gender matters. After citing empirical studies that demonstrate how gender plays a role in jury service, Justice O’Connor wrote: “One need not be a sexist to share the intuition that in certain cases a person’s gender and resulting life experiences will be relevant to his or her view of the case.”

Now, while I do not agree with Justice O’Connor’s outcome or later statement that criminal defendants should be allowed to use gender-based preemptory challenges because gender-based assumptions about juror attitudes are sometimes accurate, I do agree with her assertion that to say that gender makes no difference as a matter of law is not to say that gender makes no difference as a matter of fact. Rather, I believe that this particular truth is exactly why diversity in juries is essential. People’s varying identities, be they race, sexuality, socioeconomic status, or gender, are intertwined with their life experiences and their resulting world views; that diversity is what formed the backbone of our jury system. Diversity in the jury system is critical to equal justice under law. Not just for criminal defendants and litigants in court, but also for women to achieve the full rights of citizenship. As the Supreme Court explained, community participation in the administration of criminal law is not only consistent with our democratic heritage but is also critical to public confidence in the fairness of the criminal justice system.

And when I read this I couldn’t help but think about my husband. The jury that convicted him was all white. They were managed by a white judge who, while they were apparently deadlocked and were sent back to continue deliberations four times after they could not or would not come to a unanimous decision, they returned a verdict of guilty. A split verdict of

guilty. And I have to wonder, I have to think, that had there been some diversity, had there been some different life experiences, had there not been an echo chamber which was reinforced by the dictates of a judge, what that outcome would have been. Would he have been incarcerated unjustly for twenty-seven years? And as we see with the spate of exonerations from wrongful convictions that have been handed down by all white juries that are flooding the news every day, this is a testament to the importance of diversity in a jury.

There is also research that shows that more diverse jury pools award more balanced judgments in civil cases. But I would say that just as important, if not more important, is the acknowledgment and protection of a woman's right to sit on the jury. That is a fundamental right that has yet to be recognized by the Supreme Court and the failure to do so allows the discrimination that has shaped our history to continue, although in more covert and invidious fashions, into our future.

Each time I preside over a jury voir dire I remind the panel that jury service is a duty and a right. One that people have fought for and died for and one which we as Americans hold dear. A woman's right to sit on a jury cannot continue to be understood only in the context of someone else's rights. As Alice Paul instructed us, women, and those who believe in equality and the promise of this nation, rolled up our sleeves and have been working diligently for the last 100 years to perfect this union. We have knocked down many of the legal hurdles barring us from community participation and we continue to fight the social hurdles that fuel stereotypes regarding the spaces in which women belong and the capacity of our minds to contribute toward building this more perfect union.

In 2016, a woman, for the first time, won the popular vote in a presidential election. The Speaker of the House of Representatives is a woman who managed to capture the job twice. Today, women make up about 33% of state and federal judges in the United States and one-third of the justices who sit on the Supreme Court. In every presidential election since 1980, the proportion of eligible women who voted exceeded the proportion of eligible men who voted. In 2018, record numbers of women ran for Congress and for governorships across this country. A black woman came within 55,000 votes of becoming the Governor of Georgia. More women serve in Congress than ever before and the current democratic primary has seen the largest number of women ever vying for the presidential nomination of a major party. In the last midterms, there were

81.3 million women registered to vote in the United States, making up 53% of the electorate.

So, despite the battles yet to be won, we should be proud of our nation for achieving such monumental milestones in the century since the adoption of the Nineteenth Amendment. But we must not rest on our laurels. We continue to see disparities across the board for women compared to their male counterparts in education, workplace opportunity, pay, healthcare quality, healthcare access, and the criminal justice system. These issues and more make our voices more necessary than ever and our vote is our voice. As we celebrate the progress we've made, we must remain resolute to continue the fight for equal rights and equal justice under the law. As the path to the Nineteenth Amendment shows, the path towards equality and justice is not a straight line. But, as Martin Luther King Jr. said: "The arc of the moral universe is long, but it bends towards justice." If I might be so bold, I would amend that statement to say that "the arc of the moral universe is long, but it bends towards justice *for all*."

Thank you for having me, and Happy Centennial.

The Continued Rise of the Reproductive Justice Lawyer

*Leigh Creighton Bond & Monika Taliaferro**

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I. INTRODUCTION

“No one ever talks about reproductive justice in their political platforms but [Stacey Abrams] did running for governor. It speaks to how we need more, not only women of color in office but, folks from the South who are actually from communities who can speak to these issues.”¹

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¹ Amanda Michelle Gomez, *Stacey Abrams got the country talking about a 6-week abortion ban in Georgia*, THINK PROGRESS (Mar. 29, 2019, 9:15 AM), <http://thinkprogress.org/how-stacey-abrams-got-more-people-to-care-about-a-6-week-abortion-ban-georgia-a2d03bf913c6/> [<http://perma.cc/TC28-8APZ>].

The 2018 Georgia governor's race presents the latest battle cry for the reproductive justice movement to continue the fight against the disenfranchisement of voters. Voter suppression is a reproductive justice issue.

Before the 2018 Election Day, in 2017, Georgia purged over 500,000 voters from rolls under a "use it or lose it law."² And under an exact match system, over 51,000 voters had a pending status and were in jeopardy of not being cleared to vote before Election Day.³ A month before Election Day, the American Civil Liberties Union of Georgia ("ACLU"), as Plaintiffs' counsel, sought a temporary restraining order to "stop an ongoing constitutional train wreck," citing that "over 500 absentee ballots or ballot applications have already been rejected under [Georgia's] signature-matching provisions."⁴ The list goes on and further back: from 2012 to 2016, "Georgia purged 1.4 million people from the voter rolls."⁵ Brian Kemp, the Republican gubernatorial candidate and current governor, was also Secretary of State, and under his watch, Georgia implemented strict voter-identification laws, the closure of polling places, and investigations into voter-registration drives.⁶

Georgia's "constitutional train wreck" may have been inevitable given the dismantling of the Voting Rights Act ("VRA") in 2013,⁷ federal legislation passed in 1965 to require preclearance of election laws in mostly Southern states, and banning racially discriminatory literacy tests as a voter registration requirement.⁸ Yet, alongside Georgia's microcosm of

² Johnny Kauffman, *Georgia Law Allows Tens Of Thousands To Be Wiped From Voter Rolls*, NPR (Oct. 22, 2018, 5:04 AM), <http://www.npr.org/2018/10/22/659416485/georgia-s-use-it-or-lose-it-law-wipes-voters-from-rolls> [<http://perma.cc/BG64-32D3>].

³ Brentin Mock, *How Dismantling the Voting Rights Act Helped Georgia Discriminate Again*, CITYLAB (Oct. 15, 2018), <http://www.citylab.com/equity/2018/10/how-dismantling-voting-rights-act-helped-georgia-discriminate-again/572899/> [<http://perma.cc/N6EQ-3PD8>].

⁴ Memorandum of Law in Support of Plaintiffs' Motion for Temporary Restraining Order at 1–2, *Ga. Muslim Voter Project v. Kemp*, 2018 WL 7822108 (N.D. Ga. Oct. 16, 2018) (No. 1:18cv04789), ECF No. 5.

⁵ Ari Berman, *How Gerrymandering and Voter Suppression Paved the Way for Abortion Bans*, MOTHER JONES (May 17, 2019), <http://www.motherjones.com/politics/2019/05/gerrymandering-voter-suppression-abortion-heartbeat-bills/> [<http://perma.cc/P2X5-MC59>].

⁶ Ronald Brownstein, *The Ghosts of the 1960s Haunt the Georgia Governor's Race*, ATLANTIC (Nov. 5, 2018), <http://www.theatlantic.com/politics/archive/2018/11/stacey-abrams-voting-rights-and-future-georgia/574864/> [<http://perma.cc/QT5J-AVF3>]; P.R. Lockhart, *Georgia, 2018's most prominent voting rights battleground, explained*, VOX, <http://www.vox.com/policy-and-politics/2018/10/26/18024468/georgia-voter-suppression-stacey-abrams-brian-kemp-voting-rights> [<http://perma.cc/3LL4-QXZK>] (last updated Nov. 6, 2018, 8:35 PM).

⁷ Mock, *supra* note 3.

⁸ Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437, *partially invalidated by* *Shelby Cty. v. Holder*, 570 U.S. 529 (2013); Kara Brandeisky et al., *Everything That's Happened Since Supreme Court Ruled on Voting Rights Act*, PROPUBLICA (Nov. 4, 2014, 12:31 PM), <http://www.propublica.org/article/voting-rights-by-state-map> [<http://perma.cc/4X78-MPZ4>].

the national voter suppression crisis, Stacey Abrams' historic gubernatorial candidacy expanded attention to abortion rights and the broader reproductive justice movement. A reproductive justice activist, Monica Simpson, noting the catalyzing effects of Abrams' campaign, said, "We benefited from a very public and powerful governor's race with Stacey Abrams . . ."⁹ Simpson is the executive director of SisterSong, a reproductive justice collective which includes founders of the term and framework, "reproductive justice."¹⁰

Reproductive justice is often referred to as a framework and theory equipping organizers, activists, and advocates with a lens to apply to all injustice. In 1994, Black women coined this term by uniting the terms "reproductive rights, social justice, and human rights."¹¹ Reproductive justice centers on "three interconnected human rights values: the right *not to have children* using safe birth control, abortion, or abstinence; the right *to have children* under the conditions we choose; and the right *to parent the children we have* in safe and healthy environments."¹²

The interconnecting concepts of reproductive justice are indicative of the "intersectionality"¹³ embedded in the reproductive justice movement. Indeed, reproductive justice organizations like SisterSong, Women of Color, and Reproductive Justice Collective collaborate with a number of individuals and organizations to address a myriad of systemic policies and cultural practices that constrict marginalized communities.¹⁴ Marginalized communities include people of color, immigrants, the LGBTQIA+ community, young people, disabled individuals, and low-income individuals. Ultimately, if reproductive justice is achieved for the most marginalized, then all other identities and communities will also have rights.

Despite reproductive justice's intersections with other social justice issues, there is often a trichotomy presented between reproductive health, reproductive rights, and reproductive justice:

⁹ Gomez, *supra* note 1.

¹⁰ *Reproductive Justice*, SISTERSONG, <http://www.sistersong.net/reproductive-justice> [<http://perma.cc/ULA8-9PKZ>] (last visited Jan. 19, 2020).

¹¹ RADICAL REPRODUCTIVE JUSTICE: FOUNDATIONS, THEORY, PRACTICE, CRITIQUE 18 (Loretta J. Ross et al. eds., 2017).

¹² *Id.* at 14.

¹³ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, U. CHI. LEGAL F. 139, 139–68 (1989). Crenshaw, a law professor at Columbia Law School and the UCLA School of Law, first coined the term "intersectionality" in this Article.

¹⁴ Verified Complaint for Declaratory and Injunctive Relief at 6, *SisterSong v. Kemp*, No. 1:19-cv-02973, 2019 WL 4849448 (N.D. Ga. June 28, 2019), ECF No. 1.

1. *Reproductive Health* addresses the delivery of reproductive health services and the expansion and improvement of those services;
2. *Reproductive Rights* is often presented as the legal and advocacy work to protect the rights to access reproductive health care (and related services); and
3. Finally, descriptions of *Reproductive Justice* usually focus on organizing against systemic oppression.¹⁵

Yet, all three approaches—reproductive health, reproductive rights, and reproductive justice—aim to achieve overarching goals for the reproductive justice movement.¹⁶

In the wake of increased voter suppression and renewed legislative and policy attacks on reproductive rights and health care access, reproductive justice became a nationally elevated issue. Certainly, voter suppression is a reproductive justice issue. While reproductive justice centers on the most marginalized, similarly, these communities are also the target of disenfranchisement. Even though the Fifteenth Amendment gave rise to a high Black voter turnout, an increased number of registered Black voters, and numerous Black elected officials during Reconstruction, those civil rights victories were dismantled following the removal of federal troops in 1877.¹⁷ This backlash effect is mirrored in the history of reproductive rights. Three years after *Roe v. Wade* legalized abortion, the Hyde Amendment passed, blocking the use of federally funded Medicaid for abortion care.¹⁸ The abortion restriction specifically targeted low-income communities who relied on federally funded health insurance.

The continued backlash and dismantling of *Roe* “targeted first those women who are the most politically disenfranchised

¹⁵ ASIAN CMTYS. FOR REPRODUCTIVE JUSTICE, *A New Vision for advancing our movement for reproductive health, reproductive rights and reproductive justice*, FORWARD TOGETHER, <http://forwardtogether.org/wp-content/uploads/2017/12/ACRJ-A-New-Vision.pdf> [http://perma.cc/GD7Q-24X6] (last visited Jan. 19, 2020); see also RADICAL REPRODUCTIVE JUSTICE: FOUNDATIONS, THEORY, PRACTICE, CRITIQUE, *supra* note 11, at 11.

¹⁶ ASIAN CMTYS. FOR REPRODUCTIVE JUSTICE, *supra* note 15; RADICAL REPRODUCTIVE JUSTICE: FOUNDATIONS, THEORY, PRACTICE, CRITIQUE, *supra* note 11, at 15.

¹⁷ Val Brown & Anya Malley, *Finding Our Power*, TEACHING TOLERANCE (Spring 2019), <http://www.tolerance.org/magazine/spring-2019/finding-our-power> [http://perma.cc/CT8L-3NC9] (interviewing and featuring Carol Anderson, a professor at Emory University in Atlanta, Georgia and author of the recently published, *One Person, No Vote: How Voter Suppression Is Destroying Our Democracy*).

¹⁸ Ally Boguhn, *Here’s What You Need to Know About the Hyde Amendment and Efforts to End It*, REWIRE NEWS (June 21, 2019, 10:28 AM), <http://rewire.news/article/2019/06/21/heres-what-you-need-to-know-about-the-hyde-amendment-and-efforts-to-end-it/> [http://perma.cc/AA6R-JV59]; see also Hyde Act, Pub. L. No. 94-439, § 209, 90 Stat. 1418, 1434 (1976).

and thus the least [likely] to protect their rights in the lawmaking process.”¹⁹ The dismantling of *Roe* occurs and continues alongside voter disenfranchisement. The Supreme Court decided *Roe* in 1973, and a decade later, women became and remain a majority voting bloc in presidential elections.²⁰ Starting in 1982, around the same time as the women majority voting bloc, and through 2006, the Department of Justice blocked 700 proposed changes to voting laws under the preclearance provision of the VRA.²¹ When the Supreme Court nullified parts of the VRA in *Shelby County v. Holder*,²² states began passing more abortion restrictions.²³ Thus, although we celebrate the 100 year anniversary of the Nineteenth Amendment’s establishment of women’s voting rights, a woman’s right to vote, as well as the reproductive rights of all individuals, are under attack.

This Article is just the beginning of an exploration of voter suppression as a reproductive justice issue. To support the exploration, Part II addresses reproductive justice lawyering and, therefore, provides a brief overview of the reproductive justice movement. Next, Part III continues with an overview of women as voters, the significance of women voters, and how women voters are suppressed. The Article ends with Part IV—which harkens back to Part I and the 2018 Georgia gubernatorial race and Stacey Abrams’ historic campaign—to offer an insightful and positive outlook on reproductive justice lawyering and voter suppression.

II. A BRIEF HISTORY OF REPRODUCTIVE JUSTICE LAWYERING

Is reproductive justice lawyering a practice area or a framework?²⁴ Given the new and evolving nature of the phrase, “reproductive justice,” published scholarship is minimal and certainly not definitive on reproductive justice combined with the

¹⁹ LORETTA J. ROSS, *African American Women and Abortion*, in *ABORTION WARS: A HALF CENTURY OF STRUGGLE, 1950–2000* 98 (Rickie Solinger ed., 1998).

²⁰ Charlene Carruthers, *The Right to Vote Affects the Power to Choose: How Voter Suppression in 2012 Will Erode Reproductive Rights*, *REWIRE NEWS* (July 13, 2012, 8:39 AM), <http://rewire.news/article/2012/07/13/power-to-vote-affects-our-power-to-choose-how-voter-suppression-in-2012-affects-r/> [<http://perma.cc/6DK4-HN9L>].

²¹ Brown & Malley, *supra* note 17.

²² *Shelby Cty. v. Holder*, 570 U.S. 529, 557 (2013).

²³ Julie Zuckerbrod, *Why Voter Suppression Is a Problem for Reproductive Rights and Justice*, *NAT’L WOMEN’S L. CTR.* (Aug. 15, 2019), <http://nwlc.org/blog/why-voter-suppression-is-a-problem-for-reproductive-rights-and-justice/> [<http://perma.cc/4X7W-5VCZ>].

²⁴ *Lawyering for Reproductive Justice: Convening Report*, *IF/WHEN/HOW* (2016), <http://www.ifwhenhow.org/resources/lawyering-for-rj-convening-report/> [<http://perma.cc/GT72-A7FY>]. If/When/How posed this question and facilitated a discussion about it as part of a 2016 convening of thirteen legal professionals to discuss overall what it means to “lawyer for reproductive justice.” *Id.* As a newer organization, If/When/How trains law students and new lawyers for reproductive justice. *Id.*

practice of law.²⁵ Moreover, other pre-existing social justice lawyering and legal scholarship offer definitions and examples that provide insight into whether reproductive justice lawyering is a specialty. For example, during the onset of public interest lawyering, the ACLU, founded in 1920—the same year as the Nineteenth Amendment—was one of the leading organizations providing legal representation for reproductive rights.²⁶ At the time, the ACLU, from the 1920s through the 1960s, litigated and lobbied issues, including maternity leave, equal pay, employment discrimination, and reproductive oppression.²⁷ In 1971, before being appointed to the Supreme Court, Ruth Bader Ginsburg established the ACLU Women’s Rights Project.²⁸ A few years later in 1974, the ACLU established its Reproductive Freedom Project.²⁹ While the ACLU sometimes refers to their past work as “women’s rights” or “reproductive rights,” the discussion later in this Part will illuminate the connections to reproductive justice.³⁰ For another example, some of the tactics and strategies found in movement lawyering—defined as “the mobilization of law through deliberately planned and interconnected advocacy strategies, inside and outside of formal law-making spaces, by lawyers who are accountable to politically marginalized constituencies to build the power of those constituencies . . .”—apply to the past and current work of lawyers in the reproductive justice movement.³¹

Ultimately, to define reproductive justice lawyering is to define the reproductive justice movement.³² Indeed, an integral

²⁵ See, e.g., Gemma Donofrio, *Exploring the Role of Lawyers in Supporting the Reproductive Justice Movement*, 42 N.Y.U. REV. L. & SOC. CHANGE 221, 221 (2018); Sarah London, *Reproductive Justice: Developing a Lawyering Model*, 13 BERKELEY J. AFR.-AM. L. & POL’Y 71, 71 (2011).

²⁶ See Donofrio, *supra* note 25, at 234 (citing Ann Southworth, *Conservative Lawyers and the Contest over the Meaning of “Public Interest Law,”* 52 UCLA L. REV. 1223, 1234–35 (2005)); see also *About the ACLU Reproductive Freedom Project*, ACLU, <http://www.aclu.org/other/about-aclu-reproductive-freedom-project> [<http://perma.cc/W4SD-VR5E>] (last visited Nov. 24, 2019).

²⁷ See *The ACLU and Women’s Rights: Proud History, Continuing Struggle*, ACLU, <http://www.aclu.org/other/aclu-and-womens-rights-proud-history-continuing-struggle> [<http://perma.cc/58UK-9DXD>] (last visited Nov. 25, 2019).

²⁸ *The History of the ACLU Women’s Rights Project*, ACLU, <http://www.aclu.org/other/history-aclu-womens-rights-project> [<http://perma.cc/TS8S-754Z>] (last visited Nov. 27, 2019).

²⁹ See *About the ACLU Reproductive Freedom Project*, *supra* note 26.

³⁰ *Id.*; *The ACLU and Women’s Rights: Proud History, Continuing Struggle*, *supra* note 27.

³¹ Scott L. Cummings, *Movement Lawyering*, 5 U. ILL. L. REV. 1645, 1690 (2017) (emphasis removed).

³² The reproductive rights and reproductive justice movements are global; however, this Article only provides an overview of reproductive justice in the United States. The keyword is “overview.” Consult the cited sources for an expanded introduction to the reproductive justice movement. Additionally, while the term reproductive justice is not entirely synonymous with reproductive rights, because reproductive justice was only

component of movement lawyering places the movement “at the center of the story.”³³ Therefore, this Part primarily focuses on the reproductive justice movement and its resulting and growing framework through a brief and select history. More importantly, this Part’s overview of the reproductive justice movement provides necessary background information to connect the movement, with the help of later parts, to voter suppression and the overarching insight of this Article.

A. Before *Roe*

“*All I ever been is a woman slave which is worst [sic] than a woman and worst [sic] than a slave.*”³⁴

The story of the reproductive justice movement did not begin when twelve Black women coined the term “reproductive justice” in 1994.³⁵ Loretta Ross, one of the twelve women, writes about discovering a long history of Black women engaging in advocacy and activism for reproductive justice.³⁶ The coining of the term essentially captured the past work of Black women and other women of color,³⁷ and sowed the seeds for continuing the work.

During the nineteenth century, women of color endured reproductive oppression, slavery, racial exclusion, and genocide.³⁸ Laws were passed to control female slaves’ bodies and reproduction, including a 1662 law in the Virginia Colony redefining the freedom status of every child based on the father.³⁹ To resist reproductive oppression and slavery, Black women, as

coined in 1994, in some instances the two terms are accurately used interchangeably by individuals and groups whose work explicitly addresses reproductive justice. Lastly, there are multiple variations on the definition of reproductive justice. As aforementioned in the Article’s introduction and later, this Article applies the following definition and values for reproductive justice: the right to have children, the right not to have children, and the right to parent children. Later, this section of the Article provides an overview of how the reproductive justice framework applies access, systemic oppression, and intersecting identities to the three main values of reproductive justice.

³³ Cummings, *supra* note 31, at 1651; *see also* Donofrio, *supra* note 25, at 251.

³⁴ Pamela D. Bridgewater, *Ain’t I A Slave: Slavery, Reproductive Abuse, and Reparations*, 14 *UCLA WOMEN’S L.J.* 89, 90 (2005). Pamela D. Bridgewater Toure, the late author, was a reproductive justice lawyer and scholar. Here, she recreates Sojourner Truth’s voice “for [her] own purposes.” *Id.* at 90 n.2.

³⁵ *See* Loretta J. Ross, *Reproductive Justice as Intersectional Feminist Activism*, 19 *SOULS* 286, 286 (2017).

³⁶ *See* ROSS, *supra* note 19, at 161, 164; *see also* Jael Silliman et al., *UNDIVIDED RIGHTS: WOMEN OF COLOR ORGANIZE FOR REPRODUCTIVE JUSTICE* 7 (Haymarket Books, 2016) (2004).

³⁷ Women of color coined the phrase “women of color” in 1977, which includes women and femmes from the Native American, Black, Asian American, and Latin communities. SILLIMAN, *supra* note 36, at 10; *see also* *Our History*, SISTERSONG, <http://www.sistersong.net/mission> [<http://perma.cc/7K2Q-M6WP>] (last visited Nov. 27, 2019).

³⁸ *See generally* LORETTA J. ROSS & RICKIE SOLINGER, *REPRODUCTIVE JUSTICE: AN INTRODUCTION* 23–27 (2017).

³⁹ *See id.* at 18–19.

female slaves, engaged in fertility activism, including sharing information about herbs and other readily available substances that could induce an abortion or function as a contraceptive and prevent pregnancy.⁴⁰ When the federal government passed the Indian Removal Act of 1830 and gave the U.S. military the power to forcibly remove and march Native Americans, pregnant women and mothers suffered as they crossed U.S. terrain.⁴¹ In fact, “Cherokee women led [a] resistance against [forced] removal.”⁴² For another example, the Immigration Act of 1924 required visas and photographs for all immigrants, which was financially burdensome for Mexicans.⁴³ Additionally, the Immigration Act of 1924 banned Asians and their descendants.⁴⁴

In order to control women, states also criminalized abortion throughout the nineteenth century.⁴⁵ Abortion statutes existed in all states by the end of the nineteenth century.⁴⁶ In general, the abortion statutes criminalized the use of abortifacients or instruments to induce an abortion, “unless necessary to preserve the woman’s life.”⁴⁷

Ultimately, the beginning of the reproductive justice movement’s story is reproductive oppression, racial injustice, and the ways in which Black women and other women of color organized and engaged in activism.⁴⁸ Meanwhile, the mainstream reproductive rights movement began with a focus on the needs and desires of middle and upper-class women, and failed to acknowledge the reproductive oppression of Black women and other women of color.⁴⁹ Instead, at its start, the reproductive rights movement centered access to contraception and abortion.⁵⁰ Therefore, the beginning of the mainstream reproductive rights movement coincides with the beginning of the birth control movement.⁵¹ Referred to (and still to this day, by some) as “the mother of birth control,” Margaret Sanger coined the phrase

⁴⁰ *See id.* at 20.

⁴¹ *See id.* at 21–22.

⁴² *See id.* at 22.

⁴³ *See id.* at 31–32.

⁴⁴ *See id.* at 32.

⁴⁵ *See* Samuel W. Buell, Note, *Criminal Abortion Revisited*, 66 N.Y.U. L. REV. 1774, 1783–84 (1991).

⁴⁶ *See id.* at 1784.

⁴⁷ *Id.*; *see also* Eugene Quay, *Justifiable Abortion—Medical and Legal Foundations*, 49 GEO. L.J. 395, 435 (1961). According to Buell, Quay’s article includes the statutes passed over time in all fifty states. *See* Buell, *supra* note 45, at 1784 n.44.

⁴⁸ *See* DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 3–4 (1997).

⁴⁹ *See id.* at 10; *see also* Bridgewater, *supra* note 34, at 130.

⁵⁰ *See* ROBERTS, *supra* note 48, at 5.

⁵¹ *See id.*

“birth control” in 1914.⁵² The same year, Sanger was arrested for violating the Comstock Law, which classified birth control literature as “obscene” and banned the distribution of any birth control literature.⁵³ Two years later, Sanger opened the first birth control clinic in the U.S. and later founded the American Birth Control League, the latter of which became a part of Planned Parenthood Federation of America, a national reproductive rights organization.⁵⁴

The ACLU represented Sanger in later arrests,⁵⁵ and also represented another birth control proponent, Mary Ware Dennett.⁵⁶ Dennett is the founder of the National Birth Control League and the Voluntary Parenthood League.⁵⁷ By the time the Supreme Court legalized contraception, both Sanger and Dennett had lobbied, been arrested, and spent many years fighting for women to have more reproductive freedom.⁵⁸ Finally, in 1965, the Supreme Court in *Griswold v. Connecticut* ruled that states could not deny married couples contraception, and in 1972, the Supreme Court’s ruling in *Eisenstadt v. Baird* gave access to contraception for unmarried people.⁵⁹

The story often left out of the birth control movement is the eugenics movement in the U.S.—a parallel movement seeking population control, grounded in racist ideology.⁶⁰ Like Sanger and Dennett, eugenicists were proponents of birth control, but eugenicists viewed birth control as a means of preventing the reproduction of those they deemed “genetically inferior,” including immigrants, the descendants of slaves, Native Americans, the poor, and the criminalized.⁶¹ Essentially, eugenicists aimed to control the population of non-whites.

⁵² See *id.* at 57; see also *Margaret Sanger (1879–1966)*, PBS, <http://www.pbs.org/wgbh/americalexperience/features/pill-margaret-sanger-1879-1966/> [<http://perma.cc/UUW3-C6HF>] (last visited Feb. 12, 2020).

⁵³ See ROBERTS, *supra* note 48, at 57.

⁵⁴ See *id.* at 57–58; see also *Our History*, PLANNED PARENTHOOD, <http://www.plannedparenthood.org/about-us/who-we-are/our-history> [<http://perma.cc/LRS2-UFHC>] (last visited Nov. 26, 2019).

⁵⁵ See *About the ACLU Reproductive Freedom Project*, *supra* note 26.

⁵⁶ *ACLU History: Safeguarding Reproductive Freedom*, ACLU, <http://www.aclu.org/aclu-history-safeguarding-reproductive-freedom> [<http://perma.cc/QRT2-FMMC>] (last visited Nov. 24, 2019).

⁵⁷ Marjorie Heins, *A Birth-Control Crusader: “The Sex Side of Life”—Mary Ware Dennett’s Pioneering Battle for Birth Control and Sex Education*, ATLANTIC (Oct. 1996), <http://www.theatlantic.com/magazine/archive/1996/10/a-birth-control-crusader/376695/> [<http://perma.cc/2P6D-JRAC>].

⁵⁸ See *id.*

⁵⁹ *Our History*, *supra* note 54.

⁶⁰ See ROBERTS, *supra* note 48, at 59; see also SILLIMAN ET AL., *supra* note 36, at 59.

⁶¹ ROBERTS, *supra* note 48, at 59; see also SILLIMAN ET AL., *supra* note 36, at 59.

Black women and other women of color's participation in the birth control movement is complex, as they continued to seek fertility control methods, especially as a means out of poverty following slavery.⁶² Further complicating the story of the birth control movement and women of color is the mother of birth control's complicit relationship with the eugenics movement. Legal scholar, Dorothy Roberts, argues that although Sanger may have pushed for birth control as simply reproductive freedom for all women, Sanger's coining and usage of the term "birth control" suggests an intention to align with the language perpetuated by eugenicists.⁶³

The eugenics movement also had its own parallel movement, the sterilization movement. Indeed, the aforementioned Immigration Act of 1924 highlights the crossover of eugenics and sterilization laws.⁶⁴ Prior to the Immigration Act of 1924, a lobbyist for eugenics, Harry Hamilton Laughlin, implemented a survey to prove that immigrants made up a high percentage of the U.S.'s "socially unfit" population.⁶⁵ The eugenics and sterilization movements in 1927 shared a historical moment when the Supreme Court in *Buck v. Bell* upheld Virginia's compulsory sterilization statute.⁶⁶ Supreme Court Justice Oliver Wendell Holmes, perhaps not readily known as a eugenicist, wrote the Court's decision and infamously said, "Three generations of imbeciles are enough."⁶⁷ Following the decision, states passed forced sterilization statutes and approximately 70,000 Americans were sterilized.⁶⁸

The reproductive justice movement's story continues, as women of color organized against forced sterilization. Black women, Latina, and Native American groups recorded and disseminated information about being forcibly and, sometimes unknowingly, sterilized.⁶⁹ A first-of-its-kind civil suit filed by Creek-Shawnee Native American Norma Jean Serena, in 1973,

⁶² See ROBERTS, *supra* note 48, at 15; see also SILLIMAN ET AL., *supra* note 36, at 15.

⁶³ *Intersectionality Matters with Kimberlé Crenshaw: What Slavery Engendered: An Intersectional Look at 1619*, AFR. AM. POL'Y F. (Nov. 14, 2019) (downloaded using iTunes); see also ROBERTS, *supra* note 48, at 76–81 (discussing Sanger's possible political strategy and whether she was a racist).

⁶⁴ See ROBERTS, *supra* note 48, at 68.

⁶⁵ *Id.* at 67–68.

⁶⁶ *Id.* at 69.

⁶⁷ *Id.*; see also *The Supreme Court Ruling That Led To 70,000 Forced Sterilizations*, NPR (Mar. 24, 2017, 3:46 PM), <http://www.npr.org/2017/03/24/521360544/the-supreme-court-ruling-that-led-to-70-000-forced-sterilizations> [<http://perma.cc/BX3K-77NC>].

⁶⁸ See ROBERTS, *supra* note 48, at 69; see also *The Supreme Court Ruling That Led To 70,000 Forced Sterilizations*, *supra* note 67.

⁶⁹ SILLIMAN ET AL., *supra* note 36, at 16.

documented sterilization abuse.⁷⁰ Represented by the Council of Three Rivers American Indian Center, Serena won a partial victory against the Department of Public Welfare.⁷¹ The jury awarded \$17,000 in damages and restored her custody of her two young children.⁷² The jury decided Serena had given consent to be sterilized.⁷³ Despite the incomplete legal victory, the civil suit exemplifies a movement lawyering strategy and result, given that the general public was exposed to the oppressive injustice of forced sterilization, especially affecting women of color.⁷⁴

Continued public exposure to the forced sterilization of women of color ensued the following year in *Relf v. Weinberger*.⁷⁵ The state of Alabama sterilized the Relf sisters, young Black girls, without the knowledge and consent of their parents.⁷⁶ Their story was a part of a class action suit advanced by the Southern Poverty Law Center.⁷⁷ As a result, the federal government passed sterilization guidelines.⁷⁸

There are many more examples of the forced sterilization of women of color that this Article does not cover. Interestingly enough, there are no examples of white middle-class women, as they did not suffer forced sterilization and, even when attempting to engage in voluntary sterilization, doctors hesitated and enacted multiple barriers.⁷⁹ The gap between the sterilization experiences of white middle-class women and women of color exemplifies the mainstream reproductive rights movement's failure to align with the reproductive justice movement. Overall, the mainstream reproductive rights movement did not center the lived stories of reproductive oppression and control women of color continue to face.

Foreshadowing reproductive justice and incorporating the lived stories of women, *Abramowicz v. Lefkowitz* challenged an abortion law in New York.⁸⁰ Lawyers from the Center for Constitutional Rights made up an all-women legal team (unusual

⁷⁰ *Id.* at 17; see also Sally J. Torpy, *Native American Women and Coerced Sterilization: On the Trail of Tears in the 1970s*, 24 AM. INDIAN CULTURE & RES. J. 1, 5 (2000), <http://uclajournals.org/doi/10.17953/aicr.24.2.7646013460646042> [<http://perma.cc/Z9GM-EJVF>].

⁷¹ Torpy, *supra* note 70, at 4.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 4–5.

⁷⁵ 372 F. Supp. 1196 (D.D.C. 1974), *on remand sub nom.*, *Relf v. Matthews*, 403 F. Supp. 1235 (D.D.C. 1975), *vacated sub nom.*, *Relf v. Weinberger*, 565 F.2d 722 (D.C. Cir. 1977).

⁷⁶ ROBERTS, *supra* note 48, at 93.

⁷⁷ *Id.*

⁷⁸ *Id.* at 94; see also 42 C.F.R. §§ 50.201–50.207 (2018).

⁷⁹ See ROBERTS, *supra* note 48, at 95.

⁸⁰ *Hall v. Lefkowitz (Abramowicz v. Lefkowitz)*, 305 F. Supp. 1030 (S.D.N.Y. 1969).

for the time) to bring the suit as a class action.⁸¹ There were 109 women plaintiffs, many of whom were interviewed by the lawyers, Florynce “Flo” Kennedy and Diane Schulder.⁸² About twelve women showed up to testify to their stories contained in the brief about how they were personally oppressed and overall affected by New York’s abortion law.⁸³ They showed up to tell the stories about their abortions. The suit was later rendered moot when the New York law was changed, but *Abramowicz* inspired the current trend of storytelling through testimony and in briefs.⁸⁴ Moreover, the legal strategy of incorporating the diverse lived experiences of women to argue for change foreshadows the coining of reproductive justice and modern reproductive justice lawyering.

B. After *Roe* and the Coining of Reproductive Justice

“*The key words are ‘if she chooses.’*”⁸⁵

Abortion was the primary goal of the mainstream reproductive rights movement; therefore, after the Supreme Court decided a person has a right to choose an abortion in *Roe*, reproductive rights advocates claimed a victory.⁸⁶ Women of color knew better; their lived experiences and the reproductive and racial harm their ancestors suffered taught them better. While abortion rights advocates promoted pro-choice language post *Roe*, women of color focused on the limitations of that “choice.”⁸⁷

The Hyde Amendment is a manifestation of the detrimental and downward spiral nature of a pro-choice framework. As previously mentioned, Congress passed the Hyde Amendment in 1976 at the start of continuous backlash to *Roe*.⁸⁸ Worsening the backlash was the failure of the mainstream reproductive rights movement to galvanize support to fight the Hyde Amendment,

⁸¹ *Abramowicz v. Lefkowitz Historic Case*, CTR. FOR CONST. RTS., <http://ccrjustice.org/home/what-we-do/our-cases/abramowicz-v-lefkowitz> [<http://perma.cc/8JAM-B5JH>] (last visited Nov. 19, 2019); see also Reva B. Siegel, *Roe’s Roots: The Women’s Rights Claims That Engendered Roe*, 90 B.U. L. REV. 1875, 1885 (2010).

⁸² Siegel, *supra* note 81; Dr. Cynthia Greenlee, *How Abortion Storytelling Was Born*, REWIRE NEWS (Jan. 22, 2016, 4:48 PM), <http://rewire.news/article/2016/01/22/abortion-storytelling-born/> [<http://perma.cc/U4YW-FFFU>].

⁸³ Greenlee, *supra* note 82.

⁸⁴ Siegel, *supra* note 81, at 1886.

⁸⁵ SILLIMAN ET AL., *supra* note 36, at 11.

⁸⁶ See *Roe v. Wade*, 410 U.S. 113, 163 (1973).

⁸⁷ Marlene Gerber Fried, *Reproductive Rights Activism in the Post-Roe Era*, 103 AM. J. PUB. HEALTH 10, 11 (2013).

⁸⁸ See Maggie Astor, *What is the Hyde Amendment? A Look at Its Impact as Biden Reverses His Stance*, N.Y. TIMES (June 7, 2019), <http://www.nytimes.com/2019/06/07/us/politics/what-is-the-hyde-amendment.html> [<http://perma.cc/95AV-7W4D>].

which stripped federally funded Medicaid use for abortions.⁸⁹ “However inadvertently, the pro-choice movement had sent a message that the dilemmas of women of color and low-income women were not its priorities,” argues Marlene Gerber Fried, a reproductive rights activist and co-author of *Undivided Rights: Women of Color Organize for Reproductive Justice*.⁹⁰ The lack of intention coupled with grave effects harkens back to Dorothy Roberts’ argument about whether Sanger’s birth control advocacy aligned with eugenicists. Indeed, a pattern of unintended but deleterious and worsening effects continued when pro-choice advocates, including Planned Parenthood, opposed efforts for federal guidelines to stop forced sterilization on the basis of a woman’s individual choice.⁹¹

Despite the failures of the mainstream reproductive rights and pro-choice rhetoric, when Black women in 1994 planted the seeds for the reproductive justice framework, reproductive justice then and now was about more than simply changing or replacing pro-choice and reproductive rights frameworks.⁹² In other words, Black women did not coin reproductive justice because the mainstream reproductive rights movement was wholly inept at addressing the injustices suffered by Black women and women of color. One of the founding mothers of reproductive justice, Toni M. Bond Leonard, states that the initial purpose behind reproductive justice was, and continues to be, the “centering [of] black women . . . moving [their] voices from the margins to the center of the discourse.”⁹³ If Black women as marginalized identities are centered, then regardless of the movement—reproductive rights, pro-choice, women’s rights, etc.—questions about “[i]nstitutional, cultural, language, and educational barriers” will be asked when advocating for tactics and solutions to any injustice to any person.⁹⁴ Furthermore, the reproductive justice framework calls for an intersectional approach to the varying “forms of oppression that threaten . . . bodily integrity and autonomy.”⁹⁵ Unabashedly, like the purposeful retelling behind the previously mentioned words, “*All I ever been is a woman slave which is worst [sic] than a*

⁸⁹ Marlene Gerber Fried, *Reproductive Rights Activism After Roe*, in RADICAL REPRODUCTIVE JUSTICE: FOUNDATIONS, THEORY, PRACTICE, CRITIQUE 143 (Loretta J. Ross et al. eds., 2017).

⁹⁰ *Id.*; see also Marlene Fried, HAMPSHIRE.EDU, <http://www.hampshire.edu/faculty/marlene-fried> [<http://perma.cc/8T4M-4WPL>] (last visited Nov. 29, 2019).

⁹¹ See Fried, *supra* note 90, at 145.

⁹² See Toni M. Bond Leonard, *Laying the Foundations for a Reproductive Justice Movement*, in RADICAL REPRODUCTIVE JUSTICE: FOUNDATIONS, THEORY, PRACTICE, CRITIQUE 45–46 (Loretta J. Ross et al. eds., 2017).

⁹³ *Id.* at 46.

⁹⁴ ROBERTS, *supra* note 48, at 229.

⁹⁵ Leonard, *supra* note 92, at 47.

woman and worst [sic] than a slave,”⁹⁶ at the onset of the reproductive justice framework was an intention to tell and act on complete stories.

Whether a framework or a legal specialty, reproductive justice lawyering necessitates storytelling. Recall as an example, the aforementioned *Abramowicz* case that incorporated women’s abortion stories as testimony. Similarly, lawyers in voting rights cases have incorporated storytelling. Centering the lived experiences of marginalized, minority voters—essentially sharing stories from their everyday lives—proved effective in a Texas case concerning a voter ID law.⁹⁷ The court of appeals praised a Fifth Circuit judge for rendering a decision based on the stories of individual citizens and the barriers they faced.⁹⁸ Thus, while Part III delves further into voting rights and, consequently, into its dark side highlighting voter suppression, storytelling strongly suggests a beacon of hope for lawyers fighting to protect reproductive rights and voting rights.

III. IMPORTANCE OF WOMEN VOTERS AND VOTER SUPPRESSION

A. How Women Voted: The 1920 Presidential Election

The 1920 Presidential Election presented a unique opportunity to see how newly enfranchised women would exercise their newly guaranteed right to vote. While most western states permitted women to vote prior to the Nineteenth Amendment, the Nineteenth Amendment required all states to guarantee the right to all women.⁹⁹ Women were expected to show up in droves at the polls and to support Republican candidates who pushed for women’s right to vote. To the disappointment of many, the opposite happened.

The 1920 Presidential Election endured a sharp drop in overall voter turnout.¹⁰⁰ Some blamed women for the decrease in voter turnout. Researchers estimated that between thirty-four and forty-six percent of eligible female voters voted.¹⁰¹ Women’s

⁹⁶ Bridgewater, *supra* note 34 (emphasis added).

⁹⁷ Pamela S. Karlan, *Undue Burdens and Potential Opportunities in Voting Rights and Abortion Law*, 93 IND. L.J. 139, 155 (2018).

⁹⁸ *Id.* at 153.

⁹⁹ Mona Morgan-Collins, *Votes for and by Women: How did Women Vote After the Nineteenth Amendment?* 10 (London Sch. of Econ. Political Sci. & Political Econ. Research Grp., Working Paper No. 1, 2016), <http://www.lse.ac.uk/government/Assets/Documents/pdf/research-groups/pspe/working-papers/Mona-Morgan-Collins-Votes-For-and-by-Women.pdf> [<http://perma.cc/HRZ2-VYPK>].

¹⁰⁰ See Sara Alpern & Dale Baum, *Female Ballots: The Impact of the Nineteenth Amendment*, 16 J. INTERDISC. HIST. 43, 57 (1985).

¹⁰¹ *Id.* at 45–46.

suffrage was characterized as a “failure,” “tremendous disappointment,” and that “women had promised that their votes would deliver too much.”¹⁰²

Voter turnout was not the only disappointment. Some were disappointed or surprised that a women’s voter bloc never emerged. Women were expected to align with the Republican Party who enfranchised them.¹⁰³ Some politicians even feared the power of a women’s voting bloc and the impact it could have on politics.¹⁰⁴ However, many suffragist leaders openly objected to a women’s voting bloc, instead intentionally choosing to lead and support non-partisan groups like the League of Women Voters led by Carrie Chapman Catt.¹⁰⁵ She argued that women should reject the idea of voting together as a bloc.¹⁰⁶ This idea may have been based on the dangerously false assumption that with suffrage, women achieved equal status with men and did not need a female agenda. Opponents of a women’s voting bloc argued that women should be seen as human beings first rather than women first.¹⁰⁷

Unfortunately, this strategy of avoiding a women’s bloc caused more harm than good. As Sara Alpern and Dale Braum write, “Wanting to be seen as competent human beings inhibited women from running for political office as conscious feminists.”¹⁰⁸ Women assumed that obtaining the right to vote meant men saw them as equals—quite the contrary. Women were voted against for being women, and because a women’s bloc to support women candidates was non-existent, women were not recognized as viable candidates. Women who were against a women’s bloc missed out on the opportunity to push for female equality because they believed they had already obtained it with the right to vote.¹⁰⁹

To further complicate matters, the absence of a women’s voter bloc reinforced stereotypes that women voted like their husbands or fathers, and did not think for themselves.¹¹⁰ Researchers have since found that the opposite was true. Mona Morgan-Collins argues that most women who voted in the 1920 election voted distinctly from men, contributing to the

¹⁰² *Id.* at 47, 56–57.

¹⁰³ See Morgan-Collins, *supra* note 99, at 1.

¹⁰⁴ Alpern & Baum, *supra* note 100, at 43.

¹⁰⁵ *Id.*

¹⁰⁶ See *id.* at 61.

¹⁰⁷ See *id.*

¹⁰⁸ *Id.* at 63.

¹⁰⁹ See *id.*

¹¹⁰ See Morgan-Collins, *supra* note 99, at 1.

Republican landslide in the 1920 election.¹¹¹ Republicans were responsible for passing the Nineteenth Amendment that enfranchised women, so it makes sense that women would lean towards the party that enfranchised them. Women voted for Republican candidates more often than men did in the 1920 election, with the exception of women in the Southern Black Belt.¹¹² Women in the Southern Black Belt voted for Democratic candidates as much as white men did.¹¹³

The Southern Black Belt is identified as the region between Eastern Texas to Virginia and Maryland.¹¹⁴ Voters in the Southern Black Belt tended to side with the Democrats who promoted ideals related to white supremacy.¹¹⁵ While most women in other parts of the nation voted for Republican candidates during the 1920 election, women in the Southern Belt chose the Democratic Party.¹¹⁶ Women in the Southern Black Belt had an interest in promoting white supremacy and voted to protect that interest. This is evidence that women chose the party that best supported their interests.

While voter turnout and the lack of a women's voter bloc were disappointments for feminists, there were some victories that emerged from the 1920 election. As previously stated, Republicans claimed a landslide victory, which was due in part to the support of women. The Sheppard-Towner Maternity and Infancy Act of 1921 was another victory that resulted from women's involvement in the 1920 election.¹¹⁷

The Sheppard-Towner Maternity and Infancy Act of 1921 may have been the first victory for reproductive rights after the passing of the Nineteenth Amendment. The act was sponsored by Jeanette Rankin, the first woman elected to Congress.¹¹⁸ She was elected in 1916, four years before the passing of the Nineteenth Amendment.¹¹⁹ Rankin sponsored the act in 1918, but it was not

¹¹¹ *See id.*

¹¹² *See id.*

¹¹³ *See id.* at 3.

¹¹⁴ *See id.* at 2.

¹¹⁵ *See id.*

¹¹⁶ *See id.*

¹¹⁷ *See* Liette Gidlow, *Beyond 1920: The Legacies of Woman Suffrage*, NAT'L PARK SERV., <http://www.nps.gov/articles/beyond-1920-the-legacies-of-woman-suffrage.htm> [<http://perma.cc/RAR4-ZZVE>] (last visited Mar. 9, 2020).

¹¹⁸ *See The Sheppard-Towner Maternity and Infancy Act*, HIST., ART & ARCHIVES, <http://history.house.gov/Historical-Highlights/1901-1950/The-Sheppard-Towner-Maternity-and-Infancy-Act/> [<http://perma.cc/W2T6-FA3W>] (last visited Mar. 9, 2020).

¹¹⁹ *See RANKIN, Jeannette*, HIST., ART & ARCHIVES, [http://history.house.gov/People/Listing/R/RANKIN,-Jeannette-\(R000055\)/](http://history.house.gov/People/Listing/R/RANKIN,-Jeannette-(R000055)/) [<http://perma.cc/CRX9-RHKF>] (last visited Mar. 9, 2020).

passed until 1921, after women earned the right to vote.¹²⁰ By this time, Rankin was no longer in Congress.¹²¹ The Act was named after the two male senators that reintroduced it in 1920.¹²² The Act provided one million dollars in federal aid per year for five years to states to promote “the welfare and hygiene of maternity and infancy.”¹²³ In order to receive the funds granted by the act, states had to enact legislation and allocate money toward the cause. Congress would then grant the funds in proportion to the amounts that the state spent toward maternal and infancy care, up to a certain amount.¹²⁴ One study found that a state’s participation in the Sheppard-Towner Act correlated with whether the state had recently granted women the right to vote.¹²⁵ States with newly enfranchised women (women who did not receive the right to vote until 1920) accepted a larger share of the money than states where women had the right to vote before 1917.¹²⁶

The Act is credited with creating almost 3,000 child and maternal health care centers and providing education on maternal and infancy issues, which in part led to a decrease in infant mortality.¹²⁷ The passing of this Act was a result of lobbying efforts of women’s organizations and fear that women would retaliate at the polls if congressional members failed to pass the act.¹²⁸

The 1920 presidential election presented both disappointments and victories. Some were disappointed with women voter’s turnout and the fact that a voting bloc never emerged. Despite the disappointing turnout, women are still credited, at least in part, with the Republican landslide that put President Warren G. Harding in office.¹²⁹ Additionally, women were able to lobby and cause enough fear in Congress to push forth the Sheppard-Towner Maternity and Infancy Act to provide

¹²⁰ See *The Sheppard-Towner Maternity and Infancy Act*, *supra* note 118.

¹²¹ See *id.*

¹²² See *id.*

¹²³ Sheppard-Towner Maternity and Infancy Protection Act, 42 U.S.C. §§ 161–175 (1925).

¹²⁴ *Id.*

¹²⁵ See Carolyn M. Moehling & Melissa A. Thomasson, *The Political Economy of Saving Mothers and Babies: The Politics of State Participation in the Sheppard-Towner Program*, 72 J. ECON. HIST. 75, 77 (2012).

¹²⁶ See *id.* at 91.

¹²⁷ See J. Stanley Lemons, *The Sheppard-Towner Act: Progressivism in the 1920s*, 55 J. AM. HIST. 776, 785 (1969).

¹²⁸ Morgan-Collins, *supra* note 99, at 8.

¹²⁹ Greg Bailey, *This Presidential Speech on Race Shocked the Nation . . . in 1921*, NARRATIVELY (Oct. 26, 2016), <http://narratively.com/this-presidential-speech-on-race-shocked-the-nation-in-1921/> [<http://perma.cc/P7TB-BTCF>].

funding for maternal and infancy issues.¹³⁰ As noted below, it would take decades before women's turnout exceeded that of men.

B. The 1992 Presidential Election

The presidential election of 1964 marked the first time that female voters outnumbered male voters.¹³¹ During the 1960s and 1970s, there were several gains in the reproductive rights movement, as noted above in Part II. Married couples gained the right to contraception in 1965;¹³² the *Abramowicz* case, which led to a change in New York's abortion law, was heard in 1969;¹³³ unmarried couples gained the right to contraception in 1972;¹³⁴ and the federal government passed sterilization guidelines in 1978.¹³⁵ Of course, we cannot forget *Roe* which was decided in 1973.¹³⁶ On the surface, there appears to be a positive correlation between women voters outnumbering men in the 1960s and the major advancements in the reproductive rights in the 1970s. Additionally, by 1980, women's voter turnout (the number of eligible voters who actually voted) exceeded that of men.¹³⁷ This surge in women's participation at the polls in the 1960s through the 1980s, along with the advancements made in reproductive rights in the 1970s, were the antecedents leading up to the 1992 presidential election.

The presidential election of 1992 is one of historical importance for women. As a result of the 1992 presidential election, women were nominated and elected to Congress at an unprecedented rate.¹³⁸ It was so monumental for women that it was dubbed by many as the "Year of the Woman."¹³⁹

Before we dive into the women's political surge in the 1992 election, let's take a look at the events in the 1990s leading up to the presidential election of 1992 that may have impacted

¹³⁰ See Susan L. Waysdorf, *Fighting for Their Lives: Women, Poverty, and the Historical Role of United States Law in Shaping Access to Women's Health Care*, 84 KY. L.J. 745, 774 (1996).

¹³¹ See *Gender Differences in Voter Turnout*, CTR. FOR AM. WOMEN & POLITICS (Sept. 16, 2019), <http://www.cawp.rutgers.edu/sites/default/files/resources/genderdiff.pdf> [<http://perma.cc/X4S9-A4A3>].

¹³² *Griswold v. Connecticut*, 281 U.S. 479 (1965).

¹³³ *Hall v. Lefkowitz (Abramowicz v. Lefkowitz)*, 305 F. Supp. 1030 (S.D.N.Y. 1969).

¹³⁴ *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

¹³⁵ See 42 C.F.R. § 441.253 (1978).

¹³⁶ *Roe v. Wade*, 410 U.S. 113 (1973).

¹³⁷ See *Gender Differences in Voter Turnout*, *supra* note 129.

¹³⁸ See *The Year of the Woman, 1992*, HOUSE.GOV, <http://history.house.gov/Exhibitions-and-Publications/WIC/Historical-Essays/Assembling-Amplifying-Ascending/Women-Decade/> [<http://perma.cc/6H2D-B3AE>] (last visited Nov. 28, 2019).

¹³⁹ See *id.*

women's participation in the election. While the 1960s and the 1970s were marked by advancements for women, the 1990s started off on a different note. There were a few major events that may have impacted women's participation in the 1992 election. First, the notorious confirmation hearing of Supreme Court Justice Clarence Thomas.¹⁴⁰ More specifically, the testimony of Anita Hill on October 11, 1991, which captured the attention of women around the country.¹⁴¹ Anita Hill testified before an unsympathetic, all-white, male Senate Judiciary Committee about her allegations that Thomas sexually harassed her while she worked for him at both the Department of Education and the Equal Employment Opportunity Commission.¹⁴²

The juxtaposition of the all-male committee firing hostile questions at Hill about her allegations alienated many women and left them wondering where the women in Congress were. While some may have been alienated, other women were ignited into action.¹⁴³ Seven house democratic women protested the committee's hostile treatment of Hill.¹⁴⁴ We know for sure that it motivated at least one woman to run for Senate.

Senator Patty Murray blatantly stated watching the hearings motivated her to run.¹⁴⁵ She was left wondering who was there to say what she would have wanted to say during the hearings.¹⁴⁶ Though we cannot know for sure, it is likely that the hearing sparked an interest in politics in many other women. What we do know, is that Hill left an impact on women. Her testimony brought not only sexual harassment to the forefront, but the fact that more women were needed in Congress. After her testimony, complaints of sexual harassment increased at the Equal Employment Opportunity Commission,¹⁴⁷ perhaps signifying that women would no longer remain silent.

The second reason for an influx of women in politics could be the debate over abortion. Leading up to the election, abortion was a key topic. It came up at the confirmation hearing of Justice

¹⁴⁰ *See id.*

¹⁴¹ *See id.*

¹⁴² *See id.*

¹⁴³ *See id.*

¹⁴⁴ *See id.*

¹⁴⁵ *No women served on the Senate Judiciary Committee in 1991. The ugly Anita Hill hearings changed that.*, WASH. POST (Sept. 18, 2018, 12:18 PM), <http://www.washingtonpost.com/history/2018/09/18/no-women-served-senate-judiciary-committee-ugly-anita-hill-hearings-changed-that/> [http://perma.cc/M7DC-X2E4].

¹⁴⁶ *See id.*

¹⁴⁷ *See Erin Blakemore, How Anita Hill's Confirmation Hearing Testimony Brought Workplace Sexual Harassment to Light*, HISTORY (Apr. 2, 2019), <http://www.history.com/news/anita-hill-clarence-thomas-sexual-harassment-confirmation-hearings> [http://perma.cc/Y2MK-783N].

Thomas, it was the subject of the women's march of 1992, and the issue of several Supreme Court cases. During Thomas' confirmation hearings in September 1991, he was questioned extensively about his stance on abortion and *Roe*.¹⁴⁸ He was asked so many questions, Senator Hatch commented that one would think abortion was the only topic the Supreme Court addresses.¹⁴⁹ In his opening statement during the hearings, Senator Patrick J. Leahy stated, "[Abortion] is one of the burning social issues of our time. It is the single issue about which this committee and the American people most urgently wish to know the nominees' views."¹⁵⁰ Despite this, Thomas refused to provide a concrete response to his stance on abortion.

Abortion had long been a hot topic, even before the confirmation hearing held in 1991. The *Roe* ruling invalidated state laws that prohibited abortion.¹⁵¹ States that had such laws began to implement new laws that aimed to place barriers on women's rights to abortion. These barriers were a part of the backlash to *Roe* and ranged from requiring spousal consent (or parental consent in the case of minors), twenty-four hour waiting periods before abortions, prohibiting the use of state or federal funds to administer abortions, and requiring abortions to be performed in hospitals, to name a few.¹⁵² Between 1974 and 1992, the Supreme Court ruled on more than twenty cases involving state or federal government actions that impeded the right to abortion, like the ones listed above.

Organizations like the National Organization for Women ("NOW") and Planned Parenthood saw these laws, rules, and regulations that limited a women's right to an abortion as an attack on women and their bodies. Some of them filed claims in courts across the nation. One such case is *Planned Parenthood v. Casey*.¹⁵³ The case revolved around a Pennsylvania law that attempted to regulate or control women's right to abortion.¹⁵⁴ Pennsylvania's law prohibited abortions up until *Roe* held that such laws were

¹⁴⁸ See Neil A. Lewis, *The Thomas Hearings: Thomas Undergoes Tough Questioning on Past Remarks*, N.Y. TIMES (Sept. 12, 1991), <http://www.nytimes.com/1991/09/12/us/the-thomas-hearings-thomas-undergoes-tough-questioning-on-past-remarks.html> [<http://perma.cc/U4VJ-MZT7>].

¹⁴⁹ *Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States, Committee on the Judiciary United States Senate*, 102nd Cong. 297 (1993).

¹⁵⁰ *Id.* at 53.

¹⁵¹ *Roe v. Wade*, 410 U.S. 113, 164 (1973).

¹⁵² See *Overview of Supreme Court Decisions on Abortion and the Right to Privacy*, CTR. FOR REPROD. RTS. (May 7, 2009), <http://www.reproductiverights.org/document/overview-of-supreme-court-decisions-on-abortion-and-the-right-to-privacy> [<http://perma.cc/7D5R-8QGN>].

¹⁵³ 744 F. Supp. 1323 (E.D. Pa. 1990).

¹⁵⁴ *Id.* at 1326.

unconstitutional. Shortly after *Roe*, Pennsylvania, like other states, attempted to implement laws to control, or some would argue restrict, abortion in the 1980s. One such law was the Pennsylvania Abortion Control Act of 1982.¹⁵⁵

The Act required doctors to give specific information to the patient regarding the abortion procedure, implemented a twenty-four hour waiting period after she received the information before she could have the abortion procedure, required parental or judicial consent for minors before they could obtain an abortion, required women to inform their husbands of the procedure except in limited circumstances, and mandated that second trimester abortions be performed in a hospital.¹⁵⁶ The case eventually made its way back to the Supreme Court.

NOW wanted to ensure women's voices were going to be heard. On April 6, 1992, NOW sponsored the March for Women's Lives in support of abortion rights.¹⁵⁷ The march occurred mere weeks before the Supreme Court was scheduled to hear arguments in *Casey*.¹⁵⁸ Depending on who you ask, approximately half a million to 750,000 people attended the march.¹⁵⁹ NOW estimated attendance at approximately 750,000, while the police estimated attendance to be 500,000.¹⁶⁰ *Casey* eventually made its way back to the Supreme Court. The Supreme Court was scheduled to hear arguments on April 22, 1992.¹⁶¹ Either way, the march was one of the most attended marches on Washington at that time, and was attended by celebrities like Jane Fonda and Democratic presidential candidates of the 1992 presidential election like Bill Clinton.¹⁶²

The New York Times quoted the President of NOW, Patricia Ireland, stating, "The reality is that we're tired of begging men in power for our rights. . . . If the courts won't protect them, then Congress has got to enact laws to protect a woman's rights. And if Congress doesn't, then we're going to elect pro-choice women to Congress."¹⁶³ This was arguably a rallying cry for women to

¹⁵⁵ *Id.* at 1327.

¹⁵⁶ *See id.*

¹⁵⁷ *See* Ronald J. Ostrow & Marilyn Yaquinto, *Pro-Choice Rally Draws 500,000*, L.A. TIMES (Apr. 6, 1992, 12:00 AM), <http://www.latimes.com/archives/la-xpm-1992-04-06-mn-422-story.html> [<http://perma.cc/Bj5E-VAHW>].

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Karen de Witt, *Huge Crowd Backs Right to Abortion in Capital March*, N.Y. TIMES (Apr. 6, 1992), http://link.gale.com/apps/doc/A174836830/ITOF?u=dclib_main&sid=ITOF&xid=5b14a443 [<http://perma.cc/X6TD-2L3C>].

¹⁶¹ *See* Ostrow & Yaquinto, *supra* note 157.

¹⁶² Witt, *supra* note 160.

¹⁶³ *Id.*

organize, nominate, and elect women to protect their rights. Women heeded the call.

After the march, the Supreme Court issued their decision in *Casey* in July 1992. The Court reaffirmed *Roe* and prohibited states from placing an “undue burden” on a woman’s right to an abortion.¹⁶⁴ The case was a victory for women, especially supporters of the Women’s March, as it relates to its reaffirming *Roe*—which some feared was in danger of being overruled. An even greater victory was to come—the presidential election of 1992.

The presidential election of 1992 was a victory for women for several reasons. First, women increased their presence in both the House and the Senate of Congress. In 1991, two women held Senate seats: Nancy Kassebaum of Kansas and Barbara Mikulski of Maryland.¹⁶⁵ This changed drastically as a result of the 1992 presidential election. According to the Center for American Women and Politics, thirteen women ran for Senate seats.¹⁶⁶ Prior to that time, the most women candidates for Senate at one time was ten in the 1984 presidential election.¹⁶⁷ Four women were elected to Senate seats, joining the two women incumbents. The Senate went from two women Senators to six women Senators overnight. The Senate was not the only branch of Congress making historical, unprecedented gains.

The House had even more gains for women. One hundred six women ran for House seats in the 1992 presidential election.¹⁶⁸ This marked a historical moment for the House. Up to that point, no more than sixty-nine women had ran at one time, which happened to be in the previous election in 1990.¹⁶⁹ Twenty-four women were elected to serve their first term in the House of Representatives in 1992.¹⁷⁰ That year, Carol Moseley-Braun was the first woman of color ever elected to the Senate.¹⁷¹

Perhaps women were incited by the confirmation hearings, or maybe they were motivated by the rallying of the Women’s March; either way the presidential election of 1992 was a

¹⁶⁴ See *Planned Parenthood v. Casey*, 505 U.S. 833, 876 (1992).

¹⁶⁵ See Wendy Kaminer, *Crashing the Locker Room*, ATLANTIC (July 1992), <http://www.theatlantic.com/magazine/archive/1992/07/crashing-the-locker-room/376351/> [<http://perma.cc/2HCP-YMXZ>].

¹⁶⁶ *Summary of Women Candidates for Selected Offices*, CTR. FOR AM. WOMEN & POLITICS (Nov. 7, 2019), <http://www.cawp.rutgers.edu/sites/default/files/resources/genderdiff.pdf> [<http://perma.cc/BC7M-XRD3>].

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *The Year of the Woman, 1992*, *supra* note 138.

¹⁷¹ *Id.* at n.47.

victorious one for women. The victories did not end at election day. Congress passed key legislation that directly impacted the lives of women, such as: (1) the Family Medical Leave Act, (2) the Violence Against Women's Act, and (3) the Freedom of Access to Clinic Entrances Act, which made it a crime to block entrances of reproductive health clinics or to commit an act of violence against a clinic.

One political party benefited greatly from the Year of the Women: the Democratic Party. According to the Roper Center for Public Opinion Research, forty-five percent of women voters voted for Democrat President Bill Clinton, while thirty-eight percent voted for Republican President George H.W. Bush.¹⁷² This trend of women leaning towards the Democratic Party started in 1992 and continued all the way up to the presidential election of 2016. Between 1992 and 2016, more than fifty percent of women voted for the Democrat presidential candidate.¹⁷³ Men tended to vote for Republican candidates during that time, with the exception of President Barack Obama's presidential election in 2008. Women were finally mobilizing as a bloc voting for the Democratic Party.

C. The 2018 Presidential Election

If 1992 was the Year of the Woman, what shall we call 2018? In 2018, a record-breaking number of women were elected to office throughout the nation. In the Senate, a record-breaking twenty-four women were elected to serve in the 116th Congress.¹⁷⁴ The largest gains for women in Congress were seen in the House of Representatives. In the House of Representatives, thirty-six women were elected to office for the first time, only one of which was Republican.¹⁷⁵ This surpassed the record set in 1992 of twenty-four women. The total number of women in the 116th House was 102, which shattered the record set in 2016 of eighty-five women.¹⁷⁶ The 116th House was comprised of forty-three women of color and a diverse group of first timers, which included the first Native American women

¹⁷² *How Groups Voted in 1992*, ROPER CTR. FOR PUB. OPINION RES., <http://ropercenter.cornell.edu/how-groups-voted-1992> [<http://perma.cc/4ETM-UG5H>] (last visited Nov. 28, 2019).

¹⁷³ See Richa Chaturvedi, *A closer look at the gender gap in presidential voting*, PEW RES. CTR. (July 28, 2016), <http://www.pewresearch.org/fact-tank/2016/07/28/a-closer-look-at-the-gender-gap-in-presidential-voting/> [<http://perma.cc/87VK-N2XU>].

¹⁷⁴ *Press Release: Results: Women Candidates in the 2018 Elections*, CTR. FOR AM. WOMEN & POLITICS (Nov. 29, 2018), http://cawp.rutgers.edu/sites/default/files/resources/results_release_5bletterhead5d_1.pdf [<http://perma.cc/TTF9-KJ65>].

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

elected to Congress, the first Muslim women elected to Congress, the first bisexual woman elected to Congress, and the youngest woman ever elected to Congress.¹⁷⁷

In total, 126 women served in the 116th Congress in 2018.¹⁷⁸ One hundred six of the 126 are Democrats, making the congressional race not just about women, but about Democratic women.¹⁷⁹ The gains went beyond Congress. More women than ever ran for Governor of their state. According to the National Women's Law Center, sixteen women won their primary in the race for Governor.¹⁸⁰ Stacey Abrams, Georgia's Democratic candidate for Governor was the first Black female major-party nominee for Governor.¹⁸¹ She lost her race to the incumbent, Governor Brian Kemp, in a widely publicized race that some argued was plagued with voter suppression tactics.¹⁸² Nine women went on to win their gubernatorial race, three of which became the first female Governor of their state.¹⁸³ Fifty-eight women were elected to executive offices throughout the nation, many of which were the first woman of color to serve in the position for their state.¹⁸⁴ Thousands of women ran for office in their state's legislature, setting a record.¹⁸⁵ Women made huge gains in the political sphere, and more specifically, Democratic women made huge gains.

The number of Democrat women serving in state legislators in 2018 was more than double the number of Republican women in 2017.¹⁸⁶ Both locally and nationally, women made significant gains in the political sphere in 2018.

¹⁷⁷ Li Zhou, *A historic new Congress will be sworn in today*, VOX (Jan. 3, 2019, 11:15 AM), <http://www.vox.com/2018/12/6/18119733/congress-diversity-women-election-good-news> [<http://perma.cc/H4YF-83CT>].

¹⁷⁸ See Bethany Blankley, *A record of 'firsts' among 126 women elected to 116th Congress*, CTR. SQUARE (Dec. 29, 2018), http://www.thecentersquare.com/national/a-record-of-firsts-among-women-elected-to-th-congress/article_f5f3e64c-0796-11e9-acf7-7fe57d73128b.html [<http://perma.cc/D8GS-NP9Q>].

¹⁷⁹ *Press Release: Results: Women Candidates in the 2018 Elections*, *supra* note 174.

¹⁸⁰ Candace Milner, *2018 Was a Historic Year for Women in Politics*, NAT'L WOMEN'S L. CTR. (Nov. 7, 2018), <http://nwlc.org/blog/2018-was-a-historic-year-for-women-in-politics/> [<http://perma.cc/SAT4-C77Q>].

¹⁸¹ See David Marchese, *Why Stacey Abrams is still saying she won.*, N.Y. TIMES (Apr. 28, 2019), <http://www.nytimes.com/interactive/2019/04/28/magazine/stacey-abrams-election-georgia.html?mtrref=www.google.com&gwh=249E833535DA17B030A32F798FEB3A9A&gwt=pay&assetType=REGIWALL> [<http://perma.cc/PH3M-3G5S>].

¹⁸² *See id.*

¹⁸³ *Press Release: Results: Women Candidates in the 2018 Elections*, *supra* note 174.

¹⁸⁴ *Id.*

¹⁸⁵ Milner, *supra* note 180.

¹⁸⁶ *Women Serving in the 50 States 2017*, NCSL (Nov. 7, 2017), <http://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/women-in-state-legislatures-for-2017.aspx> [<http://perma.cc/PPD3-UW9M>].

When thinking about what led to the gains in 2018, we can look back to 1992 and watch history repeat itself. We can compare fears that the Republican presidential candidate would appoint conservative Justices to the Supreme Court to overturn *Roe*, to the fears that President Trump would appoint a conservative Justice to the Supreme Court to fill its vacant seat. We can compare the sexual harassment allegations against Supreme Court Justice Clarence Thomas to presidential candidate Donald Trump's comments about grabbing women by their pussies and the #MeToo Movement.¹⁸⁷ We can compare the 1992 March for Women's Lives to the 2017 March on Washington and around the United States. We can compare the regulations aimed at limiting reproductive freedom leading up to the 1992 election to the regulations limiting reproductive freedom leading up to the 2018 election. According to the Guttmacher Institute, states enacted sixty-three new restrictions on abortion access in the year leading up to that election, the largest number enacted in one year since 2013.¹⁸⁸

The 1992 election and 2018 election demonstrate that when women's rights are attacked or at risk of attack, they rally. And when they rally, they vote and elect. Women have proven to be a strong voting force, not just in 1992 and 2018, but in the elections in between. More specifically, Democratic women have proven to be a strong voting force as they have showed up to the polls consistently, as demonstrated above. Even more specific, Black women were emerging as a strong voting force.

1. Black Women at the Polls

Black women had a late start to the polls, but caught up quickly. Though the Nineteenth Amendment gave women the right to vote in 1920, many Black women were unable to exercise their right to vote until the VRA of 1965.¹⁸⁹ In 1964, fifty-eight percent of Black women cast votes.¹⁹⁰ By 2012, the number of Black women who voted in the election jumped to seventy percent.¹⁹¹ Black women showed up at the polls more than any

¹⁸⁷ *Transcript: Donald Trump's Taped Comments About Women*, N.Y. TIMES (Oct. 8, 2016), <http://www.nytimes.com/2016/10/08/us/donald-trump-tape-transcript.html> [<http://perma.cc/K9MU-v427>].

¹⁸⁸ Elizabeth Nash et al., *Policy Trends in the States, 2017*, GUTTMACHER INST. (Jan. 2, 2018), <http://www.guttmacher.org/article/2018/01/policy-trends-states-2017> [<http://perma.cc/GQC5-RQEP>].

¹⁸⁹ Emily Baxter, Kaitlin Holmes & Rob Griffin, *The Importance of Women of Color Voters: Then and Now*, CTR. FOR AM. PROGRESS (Aug. 26, 2015, 9:05 AM), <http://www.americanprogress.org/issues/women/news/2015/08/26/120074/the-importance-of-women-of-color-voters-then-and-now/> [<http://perma.cc/QK5R-99UP>].

¹⁹⁰ *Id.*

¹⁹¹ *Gender Differences in Voter Turnout*, *supra* note 131.

other group that year. Sixty-five percent of eligible white women voted, sixty-two percent of eligible white men voted, and sixty-one percent of eligible Black men voted.¹⁹²

Black women continued to out-vote men in the 2018 midterm elections. Fifty-five percent of eligible Black women voted¹⁹³ and ninety-two percent of them voted Democratic.¹⁹⁴ In comparison, white women split their votes between Democrats and Republicans.¹⁹⁵ It is clear to see that Black women are a market to be catered towards, especially in the Democratic party. As Aimee Allison, Founder and President of She the People stated, “If you enter into a campaign and you don’t already have established relationships with black women in particular, you are not going to be successful.”¹⁹⁶

Women, especially Black women, have proven to be a strong voting bloc at the polls. History has proven that when women show up at the polls, they vote for Democratic candidates. As mentioned above, women have been out-voting men for decades and Black women have been steadily increasing their presence at the polls at almost every presidential election since the late 1980s.¹⁹⁷ So, what happens when democratic women become a strong voting bloc at the polls? They become targets. Some would say if you cannot beat them, join them by catering to them. Others would say if you cannot beat them, suppress them—more specifically, suppress their vote.

D. Voter Suppression

Voter suppression tactics are not new. After the Fifteenth Amendment gave men of color the right to vote in 1869, several tactics to suppress their votes were employed. Tactics included literacy tests, constitution or citizenship tests, poll taxes, and moral character requirements.¹⁹⁸ Though some whites were impacted by the tactics, these measures were aimed at

¹⁹² *Id.*

¹⁹³ See Jordan Misra, *Voter Turnout Rates Among All Voting Age and Major Racial and Ethnic Groups Were Higher Than in 2014*, CENSUS (Apr. 23, 2019), <http://www.census.gov/library/stories/2019/04/behind-2018-united-states-midterm-election-turnout.html> [<http://perma.cc/RP6C-HCUC>].

¹⁹⁴ Alec Tyson, *The 2018 midterm vote: Divisions by race, gender, education*, PEW RES. CTR. (Nov. 8, 2018), <http://www.pewresearch.org/fact-tank/2018/11/08/the-2018-midterm-vote-divisions-by-race-gender-education/> [<http://perma.cc/2M7L-9RC2>].

¹⁹⁵ See *id.*

¹⁹⁶ Melanie Eversley, *Black Women Voters Will Be Central to the 2020 Presidential Election, Experts Predict*, FORTUNE (June 20, 2019), <http://fortune.com/2019/06/20/black-women-voters-2020-election/> [<http://perma.cc/5YWD-WLB3>].

¹⁹⁷ See *Gender Differences in Voter Turnout*, *supra* note 131.

¹⁹⁸ See H.R. REP. No. 89-439, at 2443, 2451–53 (1965).

disenfranchising the newly enfranchised Black men.¹⁹⁹ When women gained the right to vote in 1920, these tactics were still at play. The only difference was that Black women became targets along with Black men. These voter suppression tactics remained in practice up until 1965 when the VRA prohibited them, with the exception of the poll tax. The poll tax was found to be unconstitutional in 1966 by the U.S. Supreme Court in *Harper v. Virginia Board of Elections*.²⁰⁰

Voter suppression did not end with the passing of the VRA. Although the old tactics of tests and taxes were prohibited, new tactics began to emerge and are in practice today. These new tactics are in the form of voter ID laws, elimination of early voting, misinformation, and intimidation. Voter suppression is a reproductive justice issue. Voting is one of the tools women can use to fight for reproductive justice. When the right to vote is attacked, women are limited in their ability to fight for reproductive justice. In 2019, six states, all with Republican controlled state legislators, put forth “early abortion bans” to restrict abortions that occur between six and eight weeks after the first day of the pregnant woman’s last period.²⁰¹ Those states include Georgia, Kentucky, Louisiana, Mississippi, Missouri, and Ohio.²⁰² Alabama put forth a law that banned abortion at any point unless the mother’s health is at risk.²⁰³ These laws all directly contradict *Roe*, which permits abortions up until viability, when the fetus can live on its own outside of the uterus.²⁰⁴ While these states were busy passing abortion bans, they were also implementing new voting restrictions like those named above. This section addresses how those tactics impact all women and Black women in particular, and how they are utilized in states implementing the strictest abortion bans.

Four of the seven states implementing abortion bans do not allow early voting.²⁰⁵ While the other three states (Georgia, Louisiana, and Ohio) allow early voting, they attempted to limit early voting in 2012 by either reducing the days or hours of early

¹⁹⁹ See *id.* at 2443–44.

²⁰⁰ See *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670 (1966).

²⁰¹ See Mara Gordon & Alyson Hurt, *Early Abortion Bans: Which States Have Passed Them?*, NPR (June 5, 2019, 3:08 PM), <http://www.npr.org/sections/health-shots/2019/06/05/729753903/early-abortion-bans-which-states-have-passed-them> [<http://perma.cc/XCE4-XVQN>].

²⁰² See *id.*

²⁰³ See *id.*

²⁰⁴ See *Roe v. Wade*, 401 U.S. 113, 154 (1973).

²⁰⁵ Missouri, Kentucky, Mississippi, and Alabama do not allow early voting. See Ankita Rao, Erum Salam & Juweek Adolphe, *Which US states make it hardest to vote?*, GUARDIAN, <http://www.theguardian.com/us-news/ng-interactive/2019/nov/07/which-us-states-hardest-vote-suppression-election> [<http://perma.cc/5YC9-3E25>] (last updated Dec. 5, 2019, 12:43 PM).

voting, or eliminating Sunday voting.²⁰⁶ Given that most states permit early voting, those states that do not are in the minority.²⁰⁷

Florida provides anecdotal evidence of what happens when early voting is limited. According to NOW, limits to early voting during the 2012 presidential election caused long lines at the polls with some voters waiting until 2:30 a.m. to cast a vote.²⁰⁸ Early voting is useful for not only eliminating long lines on election day, but also allowing voting when it is convenient. This is helpful for women who are often caretakers for their family. Additionally, it prevents women from missing work, which could result in a loss of pay or unfavorable judgement from co-workers.

E. Voter ID Laws

Voter ID laws are another tactic used to suppress voters. Voter ID laws are fairly new—the first law was passed in 2006.²⁰⁹ Today, eighteen states require photo identification to vote.²¹⁰ Three of the seven states implementing abortion bans in 2019 require a photo identification to vote.²¹¹ Former Attorney General, Eric Holder, summed up the problem with voter ID laws in a speech he made before the NAACP in 2012. Holder stated, “Many of those without IDs would have to travel great distances to get them, and some would struggle to pay for the documents they might need to obtain them. We call those poll taxes.”²¹² Voter ID laws impact women more than men since women often change their name when they marry. NOW estimates that ninety percent of women have a different name on their photo ID than birth certificate due to name changes after marriage.²¹³ In some states, those women would need to take extra steps to verify their identity before they vote. This presents an added and unnecessary barrier to vote.

²⁰⁶ See Emily Stewart, *The battle over early voting, explained*, VOX, <http://www.vox.com/2018/10/29/18018634/early-voting-2018> [<http://perma.cc/8DZK-KWQ2>] (last updated Nov. 4, 2018, 9:07 AM).

²⁰⁷ Thirty-eight states permit early voting, while five states do not, and seven states require an excuse to vote early. See Rao, Salam & Adolphe, *supra* note 205.

²⁰⁸ See *Voter Suppression Targets Women, Youth and Communities of Color (Issue Advisory, Part One)*, NOW (Aug. 2014), <http://now.org/resource/voter-suppression-targets-women-youth-and-communities-of-color-issue-advisory-part-one/> [<http://perma.cc/8DBK-V2GQ>].

²⁰⁹ See *id.*

²¹⁰ See Rao, Salam & Adolphe, *supra* note 205.

²¹¹ Alabama, Georgia, and Mississippi require photo identification to vote. See *id.*

²¹² JOHN H. JORDAN, BLACK AMERICANS 17TH CENTURY TO 21ST CENTURY: BLACK STRUGGLES AND SUCCESSES 544 (2013).

²¹³ See *Voter Suppression Targets Women, Youth and Communities of Color (Issue Advisory, Part One)*, *supra* note 208.

F. Voter Misinformation

Voter misinformation is rampant, not just on election day, but year-round. It is perpetrated by heads of states, including ours, political leaders, network news organizations, and anonymous internet users. President Trump alleged that millions voted illegally and put together a commission to look into voter fraud.²¹⁴ There was no evidence to support the allegation, and the commission was later dissolved.²¹⁵ These claims of voter fraud, which have been repeatedly debunked, lead to these laws which attempt to restrict voting.

Of course, there is also the issue of Russian interference into the election by posting false information on social media sites, aimed at discouraging people of color from voting. Social media has become an increasingly popular tool to spread misinformation on voting, candidates, and the issues on the ballot, especially abortion. Researchers at the University of Wisconsin-Madison reported finding hundreds of Facebook and Twitter posts with inaccurate information regarding where and when to vote.²¹⁶ Additionally, Facebook is known to be plagued with misleading content on controversial topics like abortion.

Misinformation is obviously dangerous when it involves where and when a person should vote. It is also dangerous when the misinformation revolves around political issues like abortion. This danger is amplified when social media is involved. Social media has the ability to reach large amounts of people very quickly. Voters presented with false information are robbed of their ability to make an informed decision at the polls. As social media use grows, advocates will need to do a great deal of work to protect voters from misleading information on social media.

The above tactics are just a few of the voter suppression tools that are used. If one needs additional anecdotal evidence of their use, look no further than the state of Alabama, which is currently attempting to ban all abortions, with the exception of those needed when there is a medical risk.²¹⁷ Alabama has a history of voter suppression. The state has been accused of a host of voter

²¹⁴ See *Disbanded: Trump's "Voter Fraud" Commission*, BRENNAN CTR. (May 11, 2017), <http://www.brennancenter.org/our-work/research-reports/disbanded-trumps-voter-fraud-commission> [<http://perma.cc/H95E-R2SV>].

²¹⁵ See *id.*

²¹⁶ See Young Mie Kim, *Voter Suppression Has Gone Digital*, BRENNAN CTR. (Nov. 20, 2018), <http://www.brennancenter.org/our-work/analysis-opinion/voter-suppression-has-gone-digital> [<http://perma.cc/N762-MY4B>].

²¹⁷ See Erin Durkin, Jessica Glenza & Amanda Holpuch, *Alabama abortion ban: Republican state senate passes most restrictive law in US*, GUARDIAN (May 15, 2019, 2:22 PM), <http://www.theguardian.com/us-news/2019/may/14/abortion-bill-alabama-passes-ban-six-weeks-us-no-exemptions-vote-latest> [<http://perma.cc/LJZ2-WU2B>].

suppression tactics such as purging rolls, closing polls, and gerrymandering.²¹⁸ In fact, under the VRA of 1965, Alabama was one of nine states which required approval or “pre-clearance” from the federal government before it could implement any change to voting procedures.²¹⁹ This changed in 2013 after the Supreme Court invalidated the pre-clearance provision in the case of *Shelby County v. Holder*.²²⁰

In 2014, for the first time, Alabama required a photo ID to vote.²²¹ To further complicate matters, Alabama intended to close more than thirty-one ID-issuing offices.²²² The plan would close ID offices in all six counties where Blacks made up more than seventy percent of the population, but left open forty offices in counties where whites were in the majority.²²³ The plan was cancelled due to backlash.²²⁴

In 2016, Alabama attempted to implement a law requiring proof of citizenship before registering to vote.²²⁵ Furthermore, Alabama does not permit early voting²²⁶ and is also one of eight states where the women’s prison population grew while the men’s prison population declined.²²⁷ While incarcerated voters are eligible to vote if they have not been convicted of a felony involving moral turpitude, the women’s prison population is another indication that women’s liberties are at risk in the state of Alabama.

Alabama’s use of voter ID laws, voter registration laws, and lack of early voting earned it a spot towards the top of the Guardian’s list of the hardest states in which to vote.²²⁸ In fact, five of the seven states that implemented some form of an early abortion ban made the Guardian’s list of the hardest places to vote.²²⁹ Alabama is not alone in its use of voter suppression tactics. Many other states are using these tactics. Women, in

218 See Peter Dunphy, *When It Comes to Voter Suppression, Don't Forget About Alabama*, BRENNAN CTR. (Nov. 5, 2018), <http://www.brennancenter.org/our-work/analysis-opinion/when-it-comes-voter-suppression-dont-forget-about-alabama> [<http://perma.cc/XX8H-S82J>].

219 Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437.

220 *Shelby Cty. v. Holder*, 570 U.S. 529 (2013).

221 See ALA. CODE § 17-9-30 (2019).

222 See Dunphy, *supra* note 218.

223 See *id.*

224 See *id.*

225 See *New Voting Restrictions in America*, BRENNAN CTR. 1, 2 (July 3, 2019), <http://www.brennancenter.org/sites/default/files/legal-work/New%20Voting%20Restrictions.pdf> [<http://perma.cc/WE8G-54VZ>].

226 See Rao, Salam & Adolphe, *supra* note 205.

227 See Wendy Sawyer, *The Gender Divide: Tracking Women's State Prison Growth*, PRISON POL'Y INITIATIVE (Jan. 9, 2018), http://www.prisonpolicy.org/reports/women_overtime.html [<http://perma.cc/SN7N-HFBF>].

228 See Rao, Salam & Adolphe, *supra* note 205.

229 See *id.*

particular, must pay close attention to these tactics and their use in conjunction with restrictions being implemented on reproductive rights.

IV. CONCLUSION: WHAT'S NEXT FOR REPRODUCTIVE JUSTICE AND VOTER SUPPRESSION?

*“America achieves a measure of reproductive justice in Roe v. Wade, but we must never forget, it is immoral to allow politicians to harm women and families to advance a political agenda.”*²³⁰

Voting rights are at the center of the reproductive justice movement, especially due to the ongoing and increased federal and state government attacks on reproductive rights, coupled with voter suppression efforts. Moreover, “[i]t has become clear that the courts won’t protect us anymore. We must protect ourselves and our best weapon is our vote,” writes Barbara Ann Luttrell, vice president of external affairs at Planned Parenthood Southeast.²³¹ Acknowledging continued distrust of courts, modern movement lawyering calls for a variety of strategies outside of traditional litigation and case law.²³²

Stacey Abrams’ gubernatorial campaign is a case study of reproductive justice lawyering outside of traditional case law and litigation. Abrams, a lawyer and former House Minority Leader for the Georgia General Assembly, said her “campaign was a love song to SisterSong”; moreover, she described her campaign as one that “center[ed] communities of color and [spoke] to the marginalized and disadvantaged”—indeed, recognizable language to any reproductive justice advocate.²³³ Thus, although Abrams’ campaign was thwarted—arguably to some and not arguable to others—by voter suppression, it will remain a victorious example of what reproductive justice lawyering could look like. Given the historic nature of Abrams’ campaign, Abrams was in the media

²³⁰ Stacey Abrams, former Georgia gubernatorial candidate, Democratic response to State of the Union (Feb. 5, 2019), in *Dem response to the State of the Union*, POLITICO (Feb. 8, 2019, 9:35 AM), <http://www.politico.com/interactives/2019/stacey-abrams-state-of-the-union-2019-response-fact-check-transcript-2/5/19/> [<http://perma.cc/DV3Q-FTFL>]. Stacey Abrams continued to make history by being the first Black woman to give the Democratic response to President Donald Trump’s second State of the Union address.

²³¹ Barbara Ann Luttrell, *My Body, My Voice: The courts won’t protect us anymore*, CREATIVE LOAFING (Nov. 4, 2019), <http://creativeloafing.com/content-464715-MY-BODY-MY-VOICE-The-courts-won-t-protect-us-anymore> [<http://perma.cc/NCK9-J9FF>].

²³² See Cummings, *supra* note 31, at 165.

²³³ Abigail Abrams, *‘We Are Grabbing Our Own Microphones’: How Advocates of Reproductive Justice Stepped Into the Spotlight*, TIME (Nov. 21, 2019), <http://time.com/5735432/reproductive-justice-groups/> [<http://perma.cc/X4TJ-SYJQ>]; see also *Georgia House Biography of Rep. Stacey Abrams*, <http://www.house.ga.gov/Documents/Biographies/abramsStacey.pdf> [<http://perma.cc/MCZ8-6DPH>] (last visited Nov. 29, 2019).

spotlight and, while in the spotlight, she chose to center the most attention on the marginalized and what the reproductive justice framework calls for. Moreover, her campaign repeatedly and explicitly centered around the reproductive justice movement and a reproductive justice organization.²³⁴

Following Abrams' loss, Brian Kemp became Georgia's new Governor and House Bill 481, also known as the Living Infants Fairness and Equality (LIFE) Act, was signed into law in 2019.²³⁵ Often referred to simply as HB 481 or Georgia's abortion ban, HB 481 criminalizes abortion once a doctor detects a fetal heartbeat and treats fetuses as natural persons.²³⁶ Echoing the reproductive control of women of color, especially Black women as slaves, one opponent of HB 481 called it a "forced birthing bill," because it essentially criminalizes all abortions, since the majority of people who can get pregnant may not have knowledge of the pregnancy in time to seek a legal abortion under the ban.²³⁷

SisterSong, along with other plaintiffs, filed a lawsuit challenging the constitutionality of HB 481. Hailed as "part lawsuit, part feminist manifesto," *SisterSong v. Kemp* embodies elements of movement lawyering despite being a traditional legal strategy.²³⁸ Indeed, it is no mistake that SisterSong, a Georgia-based nonprofit and membership organization, is the lead plaintiff amongst eleven, including healthcare providers and individual doctors.²³⁹ Most challenges to the constitutionality of state abortion bans have been taken on by healthcare providers.²⁴⁰ Yet, SisterSong, unlike its co-plaintiffs, does not

²³⁴ Abigail Abrams, 'We Are Grabbing Our Own Microphones': How Advocates of Reproductive Justice Stepped Into the Spotlight, TIME (Nov. 21, 2019), <http://time.com/5735432/reproductive-justice-groups/> [<http://perma.cc/X4TJ-SYJQ>]; see also *Georgia House Biography of Rep. Stacey Abrams*, <http://www.house.ga.gov/Documents/Biographies/abramsStacey.pdf> [<http://perma.cc/MCZ8-6DPH>] (last visited Nov. 29, 2019).

²³⁵ See H.B. 481, 155th Gen. Assemb., Reg. Sess. (Ga. 2019); see also *Georgia 'Living Infants Fairness and Equality (LIFE) Act' (HB 481)*, REWIRE, <http://rewire.news/legislative-tracker/law/georgia-living-infants-fairness-and-equality-life-act-hb-481/> [<http://perma.cc/FJ93-2DML>] (last updated May 7, 2019).

²³⁶ See *Georgia 'Living Infants Fairness and Equality (LIFE) Act' (HB 481)*, *supra* note 235.

²³⁷ See Renitta Shannon (@RenittaShannon), TWITTER (Mar. 26, 2019, 9:04 AM), <http://twitter.com/renittashannon/status/1110573250252288000> [<http://perma.cc/GHV6-EBLQ>].

²³⁸ Jim Galloway, *SisterSong v. Brian Kemp is part lawsuit, part feminist manifesto*, AJC (June 28, 2019), <http://www.ajc.com/blog/politics/sistersong-brian-kemp-part-lawsuit-part-feminist-manifesto/xlOgSYL1KjxOyJeH3uhRkM/#> [<http://perma.cc/Z3Y3-V423>].

²³⁹ See Complaint at 6, *SisterSong v. Kemp*, No. 1:19-cv-02973-SCJ, 2019 U.S. Dist. LEXIS 194134 (N.D. Ga. 2019) (argued Sept. 23, 2019), ECF No. 1.

²⁴⁰ See Julianne Escobedo Shepherd, 'We're Not Playing Games': *SisterSong's Monica Simpson On a New Legal Challenge to Georgia's Abortion Ban*, JEZEBEL (July 1, 2019, 4:30 PM), <http://theslot.jezebel.com/were-not-playing-games-sistersongs-monica-simpson-on-a-1835999731> [<http://perma.cc/3TQB-K7XH>].

provide healthcare; nonetheless, the federal court reasoned SisterSong has standing to sue given the “organization’s purpose of protecting ‘the human right to reproductive justice.’”²⁴¹ Describing the collaboration between SisterSong and the ACLU lawyers to frame the lawsuit, Monica Simpson says, “We were really able to lean on the ACLU a lot, and I think they really leaned on us about language”²⁴² For example, the complaint includes a footnote about the use of “woman” and “women” throughout the document and pointedly acknowledges people outside of the gender binary who can become pregnant.²⁴³ Moreover, while “[a] lot of abortion lawsuits erase women of color,” *SisterSong* focuses on women of color by detailing how Georgia’s abortion ban will specifically exacerbate issues affecting women of color, including Black maternal mortality.²⁴⁴ The ACLU’s collaboration with SisterSong enabled the lawyers to create a unique lawsuit and a powerful, stand-alone example of reproductive justice lawyering.

What’s next? A federal judge granted a preliminary injunction for *SisterSong* and opponents to abortion hope the ban eventually gets reviewed by the Supreme Court as a challenge to *Roe*.²⁴⁵ Although a direct challenge is not likely, even if it does occur, the Supreme Court may weaken *Roe* with another case that has progressed further up the pipeline.²⁴⁶ Regardless, when it comes to reproductive rights, voting rights do matter. *SisterSong* would not exist had there been no voter suppression leading to Governor Brian Kemp’s election in Georgia. Similarly, the continued dismantling, and now possible overturning of *Roe*, would not be possible if President Donald Trump had lost the U.S. presidential election in 2016.

Put differently, “elections matter” and Part III demonstrated that women and other marginalized groups are not only major voting blocs, but also the primary target of voter suppression.²⁴⁷

²⁴¹ Court Order Granting Preliminary Injunction at 23, *SisterSong v. Kemp*, No. 1:19-cv-02973-SCJ, 2019 U.S. Dist. LEXIS 194134 (N.D. Ga. 2019) (argued Sept. 23, 2019), ECF No. 97.

²⁴² Shepherd, *supra* note 240.

²⁴³ Complaint at 4, *SisterSong v. Kemp*, *supra* note 239.

²⁴⁴ Abrams, *supra* note 233.

²⁴⁵ *SisterSong v. Kemp*, ACLU (June 28, 2019), <http://www.aclu.org/cases/sistersong-v-kemp> [<http://perma.cc/J7LT-DY8X>].

²⁴⁶ While writing this Article, the Supreme Court announced an early 2020 hearing date for *June Medical Services, LLC v. Gee*. This case requires Louisiana doctors to have admitting privileges within thirty miles of a facility where they are providing abortion care. See *June Medical Services, LLC v. Gee*, CTR. FOR REPROD. RTS., <http://reproductiverights.org/june-medical-services-llc-v-gee> [<http://perma.cc/QWV4-PS7U>] (last visited Nov. 29, 2019). If this law goes into effect, and is not struck down by the Supreme Court, then Louisiana’s citizens are at risk of losing access to abortion care. See *id.* In addition, more states may be encouraged to pass abortion laws that render abortion inaccessible.

²⁴⁷ Luttrell, *supra* note 231.

Part II proved protecting reproductive rights is about more than abortion. Indeed, abortion is not the only right that can be banned if women's voting rights—especially women of color—continue to be attacked and suppressed. Therefore, voting rights and fighting to secure those rights, especially for the most marginalized, is, and always was, a reproductive justice issue. When Stacey Abrams—already a case study for reproductive justice lawyering—announced Fair Fight 2020, a nationwide based voter protection campaign aimed at increasing voter registration and turnout, she made clear what she is prioritizing: justice.²⁴⁸

²⁴⁸ Oliver Laughland, *'I'm not convinced we will have fair elections in America': Stacey Abrams' fight against voter suppression*, GUARDIAN (Nov. 7, 2019, 6:01 PM), <http://www.theguardian.com/us-news/2019/nov/07/stacey-abrams-georgia-suppression-voting-rights-campaign-democracy> [<http://perma.cc/B2LW-RH75>].

Women in STEM and the Laws That Enabled Diverse Innovation

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I. INTRODUCTION

This Article reviews select legislation at both federal and state levels since the ratification of the Nineteenth Amendment in 1920 and its influence on broadening opportunities for women to become educated and employed in the fields of science, technology, engineering, and mathematics (“STEM”). Legislation in the United States over the past one hundred years has played a significant role in increasing the participation of women in a society where they had previously been disenfranchised. From legal matters, to voting, to access to education, and equal opportunity for employment—this Article examines the relationship between legislation and opportunities for women in STEM.

Even though laws exist to ensure women are not prohibited from pursuing education or employment in any field of study, women continue to be underrepresented in STEM.¹ Thus, STEM-related fields were identified as a particular area of interest for this Article. There are many factors that may lead to this key finding, including instructor biases against girls, personal preference, encouragement, mentorship, and introduction to STEM activities at a young age.²

The diverse thought and innovation that women bring to the workforce have economic benefits.³ This increases the importance of encouraging young women to pursue STEM-related fields and closing the gender gap. This Article explores research findings and shares feedback from interviews with two professional women about a number of potential solutions that may improve awareness and encourage young women to pursue careers in STEM.

II. SCIENCE, TECHNOLOGY, ENGINEERING, & MATHEMATICS

As mentioned, these STEM fields contribute significantly to America’s innovation and economy.⁴ However, women have been

¹ *Science and Engineering Indicators 2018 Chapter 3: Science and Engineering Labor Force*, NAT’L SCI. BD. 106 (Jan. 15, 2018), <http://nsf.gov/statistics/2018/nsb20181/assets/901/science-and-engineering-labor-force.pdf> [<http://perma.cc/3kxd-bz2r>].

² *Id.*

³ See CATHERINE HILL ET AL., *WHY SO FEW? WOMEN IN SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS 2* (2010).

⁴ *Id.*

consistently underrepresented in STEM undergraduate degrees and careers.⁵ Although women now make up over 50% of undergraduates, only about 30% graduate with a degree in a STEM-related field.⁶

There are many ways to specifically define STEM. For purposes of this Article, STEM refers to “the physical, biological, and agricultural sciences; computer and information sciences; engineering and engineering technologies; and mathematics.”⁷ It is also important to note the areas that are not included as STEM fields. The social and behavioral sciences, such as psychology and economics, are excluded, as are health workers, such as doctors and nurses.⁸ College and university STEM faculty are included, when possible, but conversely, high school teachers in STEM subjects are excluded.⁹

Paying attention to the gender disparity in STEM fields is of particular importance. While women over the last fifty years have made impressive progress in many historically male fields—such as business, law, and medicine—these gains for women are not translating equally to careers in scientific fields.¹⁰ As of 2015, women hold only 28% of STEM jobs.¹¹ Fewer women participating in STEM industries may dramatically impact America’s ability to make new scientific discoveries, generate ideas, and design new technologies.¹² For example, the limited involvement of female scientists and engineers came at a great cost in the first generation of air bags.¹³ “[A] predominantly male group of engineers tailored the first generation of automotive airbags to adult male bodies, resulting in avoidable deaths for women and children.”¹⁴

The costs of exclusion of women from STEM fields is not only harmful to innovation, but to the women who are excluded as well. Women are “appreciably underrepresented” in high paying STEM fields and are, as a result, being financially hamstrung, which unnecessarily increases the impact on women because of

⁵ See RYAN NOONAN, U.S. DEP’T OF COMMERCE, WOMEN IN STEM: 2017 UPDATE 1–2 (2017), <http://files.eric.ed.gov/fulltext/ED590906.pdf> [<http://perma.cc/J63J-936R>].

⁶ *Id.* at 1.

⁷ CATHERINE HILL ET AL., *supra* note 3, at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Science and Engineering Indicators 2018 Chapter 3: Science and Engineering Labor Force*, *supra* note 1.

¹² See CATHERINE HILL ET AL., *supra* note 3, at 3.

¹³ See *id.*

¹⁴ *Id.*

the gender disparity.¹⁵ Notably, the problem of women in STEM is not just in recruiting women into the field, but also in retaining them. Women are more likely than men to leave the STEM workforce.¹⁶

Many factors may contribute to this disparity. For example, a study on negative biases toward girls in early childhood STEM education shows that teachers underestimated the mathematical proficiencies of girls, and that the “teachers’ more negative perceptions of girls’ proficiency are substantially related to their future performance.”¹⁷ Other ideas have also been postulated, including the difference in choices that men and women tend to make, early exposure to STEM activities, and the availability of female role models.¹⁸ Once women are in STEM careers, issues such as isolation, hostile work environments, ineffective feedback, and work schedule flexibility issues may cause women to leave.¹⁹ These factors are independently explored to find possible legal solutions that would create more opportunities for women in STEM-related degree programs and careers.

Two of the most underrepresented STEM fields are engineering and computer science, where women represent only 15% and 26% of the workforce, respectively.²⁰ A woman from each of these fields was interviewed to examine how the laws have impacted their employment options, why they decided to pursue a STEM career, what advice they have for success in the workplace, and what they believe the future holds for women in STEM.

The interview subjects include Christine Szalai, a Systems Engineer, and Cora Carmody, who served as the Chief Information Officer (“CIO”) of Fortune 500 companies. After introducing the legislation that is related to STEM, Szalai and Carmody’s professional experiences will be compared to the legislation impacting women. The legislation reviewed in this Article lays a foundation for further exploration of the impact of the laws and the identification of the mechanisms that influence, motivate, and empower women to pursue careers in STEM.

¹⁵ *Science and Engineering Indicators 2018 Chapter 1: Elementary and Secondary Mathematics and Science Education*, NAT’L SCI. BD. 26 (Jan. 15, 2018), <http://nsf.gov/statistics/2018/nsb20181/assets/481/elementary-and-secondary-mathematics-and-science-education.pdf> [<http://perma.cc/JZ79-UYHZ>].

¹⁶ Vitor Silva, *8 Statistics and Facts about Women in STEM*, BUILT BY ME (Apr. 20, 2019), <http://www.builtbyme.com/statistics-facts-women-in-stem/> [<http://perma.cc/5R6Q-LBCT>].

¹⁷ *Science and Engineering Indicators 2018 Chapter 1: Elementary and Secondary Mathematics and Science Education*, *supra* note 15.

¹⁸ CATHERINE HILL ET AL., *supra* note 3, at 41.

¹⁹ Silva, *supra* note 16.

²⁰ *Science and Engineering Indicators 2018 Chapter 3: Science and Engineering Labor Force*, *supra* note 1.

III. HISTORY AND IMPACT OF LEGISLATION

There is a broad consensus in literature that laws permitting equal rights and prohibiting discrimination have expanded opportunities for women to work in previously male-dominated industries. Taking a reflective look at the history of our nation's Constitution and the legislation of the past 100 years reveals the impact that these laws have had on the employment of women in STEM related industries. Although the legislation does not pertain directly to women in any particular field, it has opened doors to women in previously male-dominated industries, including STEM.

Prior to the passage of the Nineteenth Amendment, the Voting Rights Act of 1965, Title IX of the Education Amendments Act of 1972, the Equal Employment Opportunity Act of 1972, and California Senate Bill No. 826 ("S.B. 826"), women faced barriers to advancement in their careers simply because they had no voice. The passage of the Nineteenth Amendment changed that.²¹ Although not specific to women's rights, the Voting Rights Act of 1965 gave a voice to women of color who were subject to disenfranchisement simply because of their race.²² Title IX and the Equal Employment Opportunity Act of 1972 further opened doors to opportunities previously denied to women due solely to their gender.²³ S.B. 826 takes measures to provide balanced leadership on California boards of directors by ensuring mandatory gender diversity in incremental steps.²⁴

A. Women's Right to Vote

In writing the U.S. Constitution, the Founding Fathers empowered a previously disenfranchised group of settlers to forge a path toward freedom in hopes of forming a more perfect union.²⁵ Built on grit, hard work, and persistence, the legislation that followed the signing of the U.S. Constitution has considered all aspects of civil and social freedoms, including race, color, religion, and sex. Where there has been inequality, brave Americans have pursued intellectual discussion, campaigns for equality, and justice for all.

As one of the most extraordinary feats by number, over ten million women received the equal right to participate in general elections through the ratification of the Nineteenth

²¹ U.S. CONST. amend. XIX.

²² See *infra* Part III(B).

²³ See *infra* Parts III(C) & III(D).

²⁴ See *infra* Part III(E).

²⁵ U.S. CONST. pmb1.

Amendment.²⁶ Much can be gleaned from the journey to this pivotal point in history. Future civil rights campaigns succeeded based on similar strategies, which are discussed in this Article.

Civil liberties for women had not been equally defined and granted following the signing of the U.S. Constitution. In 1848, the first women's rights convention was held in Seneca Falls, New York, with the purpose of discussing women's rights, as well as religious, social, and civil conditions of that time.²⁷ Historians mark the Seneca Falls Convention as the beginning of the women's suffrage movement.²⁸

The voices of Susan B. Anthony, Lucy Stone, and Elizabeth Cady Stanton were the battle cry of the women's suffrage movement.²⁹ Women lobbied politicians, marched, picketed the White House, endured jail, and made speeches to inform Americans nationwide.³⁰ In the last words of her speech in 1916, Inez Milholland Boissevain asked of Woodrow Wilson, "Mr. President, how long must women wait for liberty?"³¹

Seventy-two years had passed from the Seneca Falls Convention to the ratification of the Nineteenth Amendment. All but one person who had been in Seneca Falls had passed away before knowing that the efforts of their nearly 500 campaigns had succeeded.³² What began with one generation was brought into fruition by the next generation. Decade upon decade since, women have continued to pick up the gauntlet to write, promote, and vote for legislation, and this has reshaped American history and equal opportunities for women.

Change in legislation has never come all at once or without a fight. On the path to passing the Nineteenth Amendment, several state governments promoted the change by passing state-wide laws granting women the right to vote.³³ This sectoral approach was considered preferable to garner support and bring attention to

²⁶ AKHIL REED AMAR, *AMERICA'S CONSTITUTION: A BIOGRAPHY* 419 (2005).

²⁷ Meredith Worthen, *The Women's Rights Movement and the Women of Seneca Falls*, BIOGRAPHY (June 17, 2019), <http://www.biography.com/news/seneca-falls-convention-leaders> [<http://perma.cc/3J4J-VRV9>].

²⁸ *Id.*

²⁹ *Lucy Stone*, NPS.GOV, <http://www.nps.gov/wori/learn/historyculture/lucy-stone.htm> [<http://perma.cc/V74C-TCU4>] (last updated Mar. 27, 2015).

³⁰ *Women of Protest: Photographs from the Records of the National Woman's Party*, LIBR. CONGRESS, <http://www.loc.gov/teachers/classroommaterials/connections/women-protest/history3.html> [<http://perma.cc/M8K3-29W9>] (last visited Jan. 30, 2020).

³¹ DEBORAH KOPS, ALICE PAUL AND THE FIGHT FOR WOMEN'S RIGHTS 71 (2017).

³² WINIFRED CONKLING, *VOTES FOR WOMEN! AMERICAN SUFFRAGISTS AND THE BATTLE FOR THE BALLOT* 269 (2018).

³³ CONST. RTS. FOUND., *How Women Won the Right to Vote*, CRF-USA.GOV, <http://www.crf-usa.org/bill-of-rights-in-action/bria-20-2-a-how-women-won-the-right-to-vote> [<http://perma.cc/5T9E-5465>] (last visited Jan. 30, 2020).

the cause until the amendment could be passed.³⁴ It also aided the passing of the amendment, which required ratification by three-fourths of the states.³⁵ This approach can be found replicated in other legislative campaigns.

The Nineteenth Amendment, granting women the right to vote,³⁶ did so much more than that. For the first time in American history, it gave women a serious voice in politics by the simple action of casting a vote. The Nineteenth Amendment also gave women the ability to run and hold public office because they were now, finally, legal voters.³⁷

B. Voting Rights Act of 1965

It took another forty-five years before the right to vote reached all minority men and women. With the Voting Rights Act of 1965, Americans expanded and protected voting rights by prohibiting discriminatory laws and practices.³⁸

When the Nineteenth Amendment was passed, it specified only that the right to vote could not be denied or abridged “on account of sex.”³⁹ As a result, an entire group of men and women were still denied their right to vote on other grounds—typically on the basis of their race or color.⁴⁰

The Voting Rights Act of 1965 was originally challenged as unconstitutional on the grounds that Congress had exceeded its power by attempting to regulate States’ rights—specifically, South Carolina’s right to implement literacy tests.⁴¹ However, the Supreme Court, by an eight to one decision, held in the seminal case *South Carolina v. Katzenbach*, that the Voting Rights Act of 1965 was deemed constitutional because it helps accomplish the goals of the Fifteenth Amendment.⁴² The Amendment states, “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”⁴³ The Court in *Katzenbach* concluded their decision by stating, “Hopefully, millions of non-white Americans will now be

³⁴ *Id.*

³⁵ *Id.*

³⁶ “[Woman Suffrage.] The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. [Power to enforce amendment.] Congress shall have power to enforce this article by appropriate legislation.” U.S. CONST. amend. XIX.

³⁷ See *Preston v. Roberts*, 110 S.E. 586, 586 (1922).

³⁸ 52 U.S.C. § 10101 (2020).

³⁹ U.S. CONST. amend. XIX.

⁴⁰ 52 U.S.C. § 10301 (2019).

⁴¹ See *South Carolina v. Katzenbach*, 383 U.S. 301, 323 (1966).

⁴² *Id.* at 337.

⁴³ U.S. CONST. amend. XV.

able to participate for the first time on an equal basis in the government under which they live.”⁴⁴

Congress passed the Voting Rights Act of 1965 with the intent to stop racial discrimination in the voting process,⁴⁵ yet the impact was far more prescient for women. For the first time, women of color, for whom the benefits of the Nineteenth Amendment had been out of reach, were admitted to the franchise. The Voting Rights Act of 1965, which disallowed any voting prerequisite that results in a denial or abridgement of the right of any citizen of the United States to vote “on account of race [or] color,”⁴⁶ including such means as literacy tests, finally granted the right to vote to all women.

C. Title IX: Equal Access to Education

Title IX was signed by President Richard Nixon in 1972 with the purpose of prohibiting discrimination on the basis of sex in any education program or activity that is federally funded.⁴⁷

Title IX of the Education Amendments Act of 1972 specifically states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”⁴⁸

According to the Supreme Court, this title was passed for two main purposes. In 1979, the court, in *Cannon v. University of Chicago*, stated that the purposes of Title IX are to “[f]irst, . . . avoid the use of federal resources to support discriminatory practices; second, . . . provide individual citizens effective protection against those practices.”⁴⁹

The Court in *Cannon* expanded on their explanation of the first purpose. The Court described it as a “statutory procedure,” where federal financial support would be terminated to institutions that are discriminatory.⁵⁰

The second purpose of effective protection could be achieved by the termination of federal funding to a discriminatory institution. Yet, the Court in *Cannon* noted that, in the case of an isolated incident, such as the denial of admission to an educational

⁴⁴ *Katzenbach*, 383 U.S. at 337.

⁴⁵ *Id.* at 315.

⁴⁶ U.S. CONST. amend. XV.

⁴⁷ Uncle Sam, *Title IX and Its Benefits*, COMSWIKI, <http://coweb.cc.gatech.edu/PubPolicy/693> [<http://perma.cc/MH2G-9EWA>] (last updated Apr. 19, 2005, 4:28 PM).

⁴⁸ 20 U.S.C. § 1681 (2019).

⁴⁹ *Cannon v. Univ. of Chi.*, 441 U.S. 677, 704 (1979).

⁵⁰ *Id.*

program,⁵¹ terminating all funding may be too severe and may not be the appropriate way to protect an individual.⁵² This is one of the reasons the *Cannon* Court found that a private right of action for enforcement of Title IX violations was a good means of achieving effective protection.⁵³ Indeed, terminating all federal funding to an institution could end up doing more harm than good in the interest of preventing discriminatory practices. Thus, the Court looked to other remedies such as a private right of action.

A private right of action was not specifically identified in Title IX. To conclude that a private right of action was permitted under Title IX, the *Cannon* Court had to look at the four factors of the *Cort v. Ash* Supreme Court decision which were necessary to imply a private right of action to a criminal statute.⁵⁴ The *Cannon* Court found that all four factors had been met to allow for a private right of action in Title IX compliance cases.⁵⁵

First, the Court needed to determine “whether the statute was enacted for the benefit of a special class of which the plaintiff is a member.”⁵⁶ Second, the Court considered the legislative history to see if there was an intent to create a private right of action by the legislator.⁵⁷ Third, the Court looked to see if a private remedy “would frustrate the underlying purpose of the legislative scheme.”⁵⁸ Fourth, the Court contemplated “whether implying a federal remedy is inappropriate because the subject matter involves an area basically of concern to the States.”⁵⁹

After reviewing these factors, the *Cannon* Court held, “Not only the words and history of Title IX, but also its subject matter and underlying purposes, counsel implication of a cause of action in favor of private victims of discrimination.”⁶⁰ Thus, the Court paved the way for a citizen to bring a private cause of action to enforce their rights under Title IX.

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[A]n educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

20 U.S.C. § 1681(c).

52 *Cannon*, 441 U.S. at 704–05.

53 *Id.* at 705–06.

54 *Id.* at 688.

55 *Id.* at 709.

56 *Id.* at 689.

57 *Id.* at 694.

58 *Id.* at 703.

59 *Id.* at 708.

60 *Id.* at 709.

For an educational program or activity to qualify to receive federal financial assistance under Title IX, the applicants are required to give affirmative assurances under the Code of Federal Regulations.⁶¹ This provides that the institutions must “(1) give assurances to federal granting agencies that programs and activities comply with Title IX; (2) designate at least one employee to coordinate Title IX compliance efforts; (3) establish a Title IX grievance procedure; and (4) disseminate information about Title IX nondiscrimination policy.”⁶²

Enforcing compliance under Title IX can be dealt with in several ways. If it is determined that discrimination has resulted in a disparate impact on the basis of sex, the Federal government may initiate administrative action.⁶³ The Office of Civil Rights of the Department of Education may conduct an audit, either as a result of a private complaint or on its own.⁶⁴ Once an educational institution has been given notice of a Title IX violation, it has an opportunity to come into compliance or risk suspension of its federal funding.⁶⁵

Additionally, Title IX, by its terms, cannot be:

[I]nterpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity.⁶⁶

The Eighth Circuit, considering equity in collegiate sports programs, has interpreted this section to mean that, “although Title IX does not require proportionality, the statute does not forbid it either.”⁶⁷ Therefore, if an academic institution wishes to engage in gender balancing to remedy a disparity with respect to participation or benefit of a program, they may.

Furthermore, if an institution wants to use statistical evidence to analyze if there is a gender imbalance, it may do so because Title IX goes on to further clarify:

[T]his subsection shall not be construed to prevent the consideration in any hearing or proceeding under this title of statistical evidence

⁶¹ 34 C.F.R. § 106.4 (2019).

⁶² Laura Marini Davis & Victoria Geyfman, *The Business of Title IX—Using the Law to Improve Gender Equity in Undergraduate Colleges of Business*, 46 J.L. & EDUC. 163, 176 (2017) (footnotes omitted). See also 34 C.F.R. § 106.4.

⁶³ See CONG. RES. SERV., TITLE IX AND SEXUAL HARASSMENT: PRIVATE RIGHTS OF ACTION, ADMINISTRATIVE ENFORCEMENT, AND PROPOSED REGULATIONS 19 (2019).

⁶⁴ *Id.* at 20.

⁶⁵ Zachary Nathan Klein, *STEMing Out Disparities: The Challenges of Applying Title IX to the Study of Sciences, Technology, Engineering, and Mathematics*, 64 RUTGERS L. REV. 895, 912 (2012).

⁶⁶ 20 U.S.C. § 1681(b) (2019).

⁶⁷ *Chalenor v. Univ. of N.D.*, 291 F.3d 1042, 1047 (8th Cir. 2002).

tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.⁶⁸

Relating specifically to athletics, the Eighth Circuit stated that the use of data in determining the “gender make-up of athletic participation is certainly relevant to a determination of whether a school is in compliance with Title IX.”⁶⁹ Thus, the application of Title IX to educational programs is clear.

Nonetheless, it appears that awareness of Title IX compliance is relatively unknown in STEM fields, despite evidence of gender disparity.⁷⁰

D. Equal Employment Opportunity Act

Furthermore, in 1972, the Equal Employment Opportunity Act was signed, which prohibited discrimination in the workplace on the basis of race, color, religion, sex, and nation of origin.⁷¹ Again, the position of women in the workplace was advanced.

The Equal Employment Opportunity Act of 1972 as amended prevents discrimination on the basis of several things, including sex.⁷² An employer failing to hire, fire, or limit employment opportunities on the basis of sex are only a few examples of discriminatory practices that are presented under the law.⁷³

In more detail, the Act also prevents employment agencies from refusing or failing to refer an individual for employment on the basis of sex.⁷⁴ It prevents labor organizations from excluding, expelling, limiting, segregating, depriving labor opportunities, or “caus[ing] or attempt[ing] to cause an employer to discriminate against an individual” on the basis of sex.⁷⁵ Furthermore, the Act prevents individuals from being discriminated against regarding training programs on the basis of sex.⁷⁶ Also, the Act prohibits the use of sex as a “motivating factor for any employment practice, even though other factors also motivated the practice.”⁷⁷

Under the Equal Employment Opportunity Act, women entered the workforce and could focus on productive business work with reduced employment process difficulties and an

⁶⁸ 20 U.S.C. § 1681(b).

⁶⁹ *Chalenor*, 291 F.3d at 1047.

⁷⁰ *See Klein*, *supra* note 65, at 913.

⁷¹ The Equal Employment Opportunity Act of 1972 also prevents discrimination on the basis of race, color, religion, or national origin. *See* 42 U.S.C. §§ 2000e–2000e-17 (2019).

⁷² *See id.*

⁷³ *See id.* § 2000e-2(a).

⁷⁴ *See id.* § 2000e-2(b).

⁷⁵ *Id.* § 2000e-2(c).

⁷⁶ *See id.* § 2000e-2(d).

⁷⁷ *Id.* § 2000e-2(m).

improved workplace environment. However, the fact that women are still underrepresented in the executive office roles, and on the board of advisors for foreign and domestic corporations based in California, was a motivation for California State Senators to push for new legislation in 2018.

E. California Senate Bill No. 826

In September 2018, then Governor Jerry Brown signed into law S.B. 826, which required that, by the close of the 2019 calendar year, domestic and foreign general corporations having their “principal executive offices” in California must have at least one female director on their board.⁷⁸ By the end of the 2021 calendar year, unless the number of directors is less than four, that number must increase to two women board members.⁷⁹ For larger boards of directors (six or more seats), the Bill requires a minimum of three female directors.⁸⁰

Citing studies that conclude publicly held companies perform better when women sit on their boards of directors, the Senate passed a resolution in 2013 urging that by December 2016 public companies increase the number of women directors on their boards, ranging from one to three depending on the size of the board.⁸¹ Despite this, as of June 2017, among the 446 publicly traded companies indexed and headquartered in California, women held only 15.5% of seats on their boards of directors.⁸² The legislature went on to cite performance studies by MSCI and Credit Suisse which found that boards with women performed better, including reported higher earnings per share, higher average return on equity, and increased price-to-book value.⁸³ The legislature found that a 2012 study by the University of California, Berkeley determined that companies with more women on their boards were more likely to “create a sustainable future” by instituting strong governance structures.⁸⁴ S.B. 826 went on to note significant economic benefits reported by the 2014 Credit Suisse study, including increased performance and return, risk aversion, and a tendency to carry less debt on average than companies with no women directors on their

⁷⁸ S.B. 826 (Cal. 2018).

⁷⁹ See CAL. CORP. CODE § 301.3(b)(2)-(3) (Deering 2019).

⁸⁰ See *id.* § 301.3(b)(1).

⁸¹ *California Enacts Law Requiring Public Company Boards to Include Women*, DAVISPOLK (Oct. 1, 2018), http://www.davispolk.com/files/2018-10-01_california_enacts_law_requiring_public_company_boards_to_include_women.pdf [<http://perma.cc/7KS6-LTSR>].

⁸² See S.B. 826(e)(1).

⁸³ *Id.* at 826(a).

⁸⁴ *Id.* at 826(c)(3); see also Kellie A. McElhaney & Sanaz Mobasserri, *Women Create a Sustainable Future*, U.C. BERKELEY HAAS SCH. BUS. (Oct. 2012), http://www.ibe.org.uk/userfiles/women_create_sustainable_valueoct2012.pdf [<http://perma.cc/JYT6-LK7N>].

boards.⁸⁵ Despite this, the legislature cited multiple studies showing that it will take decades—as many as forty to fifty years—to achieve gender parity among directors.⁸⁶

Because California corporations failed to achieve gender parity with the resolution passed in 2013, efforts were undertaken to enact affirmative steps to reduce the disparity on California boards. The passage of S.B. 826 authorized the Secretary of State to publish public reports of compliance on its website⁸⁷ and imposed fines beginning at a minimum of \$100,000 for the violations.⁸⁸

What is of particular interest in this case are findings in the public record that illustrate the lack of gender parity, citing that “[n]early one-half of the 75 largest IPOs from 2014 to 2016 went public with NO women on their boards.”⁸⁹ Even more concerning with regard to women in STEM, is another 2017 study by 2020 Women on Boards that reported that many technology companies in California have gone public with no women on their boards, which was also referenced in the legislation.⁹⁰

There are genuine concerns that mandating quotas can undermine equality and reduce the benefits of having women on boards of directors. The dangers to the legitimacy of a woman’s role on the board was addressed by the legislature, which cited studies that illustrate that at least three women on a board of directors are needed to take full advantage of the “critical mass” often required to interact and exercise an influence on the processes of the board.⁹¹

Mandating a quota system runs the risk of downgrading the experience of women and their merit. So too are concerns that a quota system runs the risk of being overturned by the Supreme Court in a manner reminiscent of the *Bakke* Court decision on affirmative action in 1978.⁹² And what of gender biases in the other direction—does the same hold true of men? Should there be

⁸⁵ S.B. 826(c)(5).

⁸⁶ *See id.* at 826(f).

⁸⁷ *See* CAL. CORP. CODE § 301.3(d) (Deering 2019).

⁸⁸ *See id.* § 301.3(e).

⁸⁹ S.B. 826(f)(3).

⁹⁰ *See id.*

⁹¹ *See id.* at 826(g)(1)(A).

⁹² *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 310 (1978) (“[T]he purpose of helping certain groups whom . . . [are] . . . perceived as victims of ‘societal discrimination’ does not justify a classification that imposes disadvantages upon persons like respondent, who bear no responsibility for whatever harm the beneficiaries of the special admissions program are thought to have suffered. To hold otherwise would be to convert a remedy heretofore reserved for violations of legal rights into a privilege that all institutions throughout the Nation could grant at their pleasure to whatever groups are perceived as victims of societal discrimination. That is a step we have never approved.”).

complete gender parity on California boards of directors? And does that lead to an “us vs. them” scenario pitting men against women in the boardroom? Since studies consistently show that women on boards result in increased profitability and more productive boards,⁹³ these questions should become moot, regardless of the future of the legislation.

IV. INTERVIEWS WITH STEM PROFESSIONALS

To obtain a direct perspective from prominent women in the STEM professions, two interviews were conducted. The interview subjects included Christine Szalai, a Systems Engineer with Jet Propulsion Laboratory (“JPL”), who notably was one of only two women who successfully manned the landing of the Mars InSight in November of 2018, and Cora Carmody, who has served as the CIO of Fortune 500 companies for over twenty years, including, most recently, at Jacobs Engineering Group (“Jacobs”). Both women followed their passion for math and computer programming in an era before the acronym “STEM” was coined. Rather than consciously opting for a STEM career, they did what they were good at—math and engineering—and doors opened for them because of their skills.

Early on, Szalai navigated her career with an aptitude in math and encouragement from her family of engineers. Carmody embarked on her path by virtue of recognition of her extraordinary prowess in math and the doors that those skills opened. It is interesting to note that neither of the women interviewed for this Article attribute their success in STEM fields to anything but an overwhelming passion for math and engineering. Both are trailblazers in STEM careers that have been opened to them by virtue of legislation, which was passed to, if not protect, at least enable women to participate in fields that were traditionally male. Both interviewees also encountered few women in their ranks as peers, and fewer still available to serve as their mentors. During their interviews, their shared experiences as women in engineering, mathematics, aerospace, and computer programming reflect the paucity of women in these fields. After providing more details of the journeys of these two women in STEM, the impact of legislation on their careers is discussed.

A. A Conversation with Christine Szalai

As mentioned above, Christine Szalai is a Systems Engineer at JPL and was one of only two women who worked the main console in mission control during the successful landing of Mars

⁹³ *Id.*

InSight in November 2018.⁹⁴ In addition to her engineering responsibilities for the mission, Szalai was part of a team that was unusual because half of the core team were women. It is not possible to practice landing on Mars, so the success of the mission is extraordinary. Only two landings in the last decade have been attempted and the U.S. is one of only two nations to have successfully landed on the planet.⁹⁵

After the successful landing of InSight, Szalai and the women on the team at JPL were featured in *Rolling Stone Magazine*,⁹⁶ one of the things of which she is most proud—not because of the fame, but because she believes that the popularity and notoriety of *Rolling Stone Magazine* will encourage young women to pursue careers in aerospace and engineering.⁹⁷ Szalai believes that her parents, particularly her father, a NASA engineer, encouraged her fascination with the mysteries of space. She stated:

[G]rowing up in the Antelope Valley with a father who worked at NASA really got me interested in [the] technical and engineering field. We would see the space shuttle land at Edwards Air Force Base on a regular basis[;] see it get towed by my house[;] see things like SR71 or the B2 Bomber flying overhead on a regular basis. It's things like that that I think really excited me.⁹⁸

Szalai went on to say:

Certainly, both my parents encouraged me to pursue a technical career path, and I never felt like it was out of reach, if that is what I wanted to do. I have two brothers and both of them also are engineers, and I never felt any different. You know my dad encouraged us each; helped us each throughout school. I never felt any different than my brothers. If I wanted to go into engineering that's something I could do. I always felt like if that's what I wanted to do, I can do it.⁹⁹

Responding to a question about female role models, Szalai said that one that stood out to her occurred when she was working at NASA Ames, her first aerospace engineering job.¹⁰⁰ She was influenced by a female engineer who had immigrated from Vietnam, where she was born and raised.¹⁰¹ This engineer encouraged her to approach problems by thinking outside the box,

⁹⁴ See Shannon Stirone, *Mission to Mars, The Engineers and Scientists Uncovering the Red Planet's Secrets*, ROLLING STONE (Mar. 1, 2019), <http://www.rollingstone.com/culture/culture-news/nasa-insight-mission-mars-799914/> [<http://perma.cc/96W2-7Q6J>].

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Telephone Interview with Christine Szalai, Systems Engineer, JPL (Nov. 9, 2019) (transcript on file with author).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

and seemed to impress Szalai, less because she was a woman, and more because of the remarkable accomplishments and personal challenges she had overcome.¹⁰² Gender did not appear to play a role, although it is unclear whether that is because there were simply very few women working as engineers as she was coming up in her profession.¹⁰³ As for the impact of role models in general, she shared, “Role models also are key, seeing women in top leadership positions at JPL. That kind of thing.”¹⁰⁴

Szalai believes that role models typically occur organically, in the natural course of working together, but recalled one positive experience:

I did have someone specifically ask me to be their mentor. It’s a woman engineer, amazing woman engineer at JPL and I thought, I was very—I was very humbled and honored to be asked that question. Which I had never actually been asked that straightforward before . . . that’s been a real cool experience.¹⁰⁵

The act of asking someone directly can have an empowering effect. Managers can motivate employees by paying attention to talents, creating stretch assignments, and shoulder tapping staff members for new roles.¹⁰⁶ Szalai confirmed the role of networking, noting that in her experience at JPL, advancement was much more about technical skills and knowledge than about gender.¹⁰⁷

When Szalai was asked about barriers she experienced, she stated they were focused on the challenges of work-life balance and motherhood.¹⁰⁸ As a new mother, she returned to work when her leave was up to find that leaving a newborn was harder than she had anticipated.¹⁰⁹ Having “on-site day care where I could literally walk over there throughout the day or at lunch and just see my newborn” made it much easier for her to assimilate back into her work as an engineer and as a new parent.¹¹⁰ She had time to concentrate on the job at hand.¹¹¹ With advances in remote collaboration technology, such as Google Drive, Slack, and iCloud, this is less of a barrier for women today.

Now in senior management at JPL, Szalai reports that she has found that, in addition to needing exceptional technical skills, communication is one of the key things she looks for when

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

hiring Systems Engineers: “Management in a technical field is sort of interesting because sometimes the smartest person isn’t necessarily the best manager. There’s such a key aspect of the soft skills that are required for management. So, it’s got to be a combination of both technical and soft skills.”¹¹²

She believes that people who possess soft skills, such as the ability to read subtle cues, regardless of gender, make better communicators and, thus, better managers.¹¹³ Szalai has found that women, despite the fact that they are often not very good at self-promotion, are frequently more aware of these subtle cues.¹¹⁴ Nonetheless, Szalai recognizes that positive role models are key and seeing women in top management, in critical positions, or at the helm of an organization, is encouraging to young female engineers.¹¹⁵

In terms of the future, Szalai reports some phenomena she attributes to the next generation—an impatience that seems to have less to do with gender than it does with a growing confidence in their skills and their desire to work on a dream project.¹¹⁶ “I think I’ve seen a more generational thing right now where newer employees are very impatient, want promotions very quickly . . . move on to other things; maybe work at JPL for one to two years and then move on to Space-X or something.”¹¹⁷ She added, “It just feels [like more] . . . movement I guess than what I was used to. It’s like you find something you love, you’re there for your entire career. So, I think that it’s just something I’ve noticed recently.”¹¹⁸ She clarified that she did not believe it to be gender based and reflected that she thought it was encouraging.¹¹⁹

Industry standards in allowing for flexible work options and telecommuting enhances the work/life balance for engineers, regardless of gender, and will no doubt make STEM fields more attractive to young women.¹²⁰ She is, however, quick to note that in her experience, being seen as hard working and curious is often the result of onsite exposure.¹²¹ Legislation mandating these types of options is sparse.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

B. A Conversation with Cora Carmody

Cora Carmody is a powerful force for the advancement of women in STEM, or as she terms it, “STEAM,” with the incorporation of “Arts” into the acronym.¹²² From an early age, she noticed that women were underrepresented in her increasingly advanced math classes and even did a project on girls in math while still in high school.¹²³ Carmody found few female role models or mentors as she progressed in her career and into her role as CIO.¹²⁴

Carmody stated that, for her, everything changed because she took calculus in college, instead of in high school.¹²⁵ She was extraordinarily proficient in mathematics and was invited to attend college during her senior year of high school.¹²⁶ She explained, “I had the opportunity to leave high school a year early and go to school in Manhattan for a year. The New School for Social Research. They had a freshman year program.”¹²⁷ This program was only one year long and the students went on to finish up their degrees elsewhere.¹²⁸ Carmody went on to attend Johns Hopkins, in part because they offered her a chance to play lacrosse and field hockey, but for her the most important reason “was that they had a combined bachelors and masters in mathematics, which I thought was pretty efficient.”¹²⁹ So, earning her first masters at twenty, she attributes her successful career in technology to the decision to take calculus.¹³⁰

While serving on the women’s advisory board for George Mason University in Fairfax, Carmody took note of gender differences in acquiring math and technology skills.¹³¹ She believes in encouraging girls, particularly through the organization she founded, Technology Goddesses, which she now runs in a partnership with Girl Scouts U.S.A.¹³² She believes that early exposure through programs like Technology Goddesses will grow the number of women who will be in a position to advance in STEM careers.¹³³ When asked why she thought there were

¹²² Telephone Interview with Cora Carmody, CIO, Carmody Technology (Nov. 11, 2019) (transcript on file with author).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

fewer women in STEM, she was quick to point to age.¹³⁴ “You’ve really got to start young. If you don’t, if you haven’t snagged a girl or a boy’s interest in math and technology by third grade it gets increasingly harder.”¹³⁵ She observed that parents and teachers should start integrating technology at an early age, regardless of their child’s gender.¹³⁶ When she first started Technology Goddesses, she targeted seventh through eleventh grade, but noticed that the seventh graders caught on much more quickly than their older counterparts.¹³⁷ She also noticed that girls were more likely to drop out of math than boys, even if they earned the same grades.¹³⁸ “A difference between girls and boys—and this is still true, is that . . . if a girl gets a ‘C’ in calculus in high school she goes, ‘That’s it, I can’t study engineering. I can’t [] major in math.’ Whereas a guy will go, ‘Yes! I passed!’”¹³⁹

Regarding S.B. 826,¹⁴⁰ although Carmody believes the bill as a means to increase women on boards of directors will help to diversify leadership, she is skeptical of mandating quotas over talent in the long term.¹⁴¹ She is a believer in the Rooney Rule.¹⁴² The Rooney Rule is an NFL strategy originally espoused by the late former Pittsburgh Steelers owner Dan Rooney, which advocates the benefits of diversity by requiring minorities to be included in the interview process.¹⁴³

She believes that inclusion in the interview process will help secure diversity and gender parity by endorsing a process in which applicants of minority status (including gender) are considered for positions.¹⁴⁴ In the immediate future, she is hopeful that the number of women serving on boards will increase due to S.B. 826.¹⁴⁵ For the long term, she is hedging her bets by providing technology and leadership opportunities to girls as young as six through Technology Goddesses so that bills such as S.B. 826 will be unnecessary.¹⁴⁶ It is in this role, as the

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ S.B. 826, 2017–2018 Leg., Reg. Sess. (Cal. 2018).

¹⁴¹ See Carmody, *supra* note 122.

¹⁴² *Id.*

¹⁴³ See *NFL expands Rooney Rule requirements to strengthen diversity*, NAT’L FOOTBALL LEAGUE (Dec. 12, 2018, 5:20 PM), <http://www.nfl.com/news/story/0ap3000000999110/article/nfl-expands-rooney-rule-requirements-to-strengthen-diversity> [<http://perma.cc/5FJY-Y7FA>].

¹⁴⁴ Carmody, *supra* note 122.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

founder and director of Technology Goddesses, that the very accomplished Carmody seems to have found her calling: providing a platform for young minds, in particular, young female minds, to grow and thrive.

It is telling that Carmody encourages volunteers at the annual camp to bring their young sons to attend as well—not necessarily as independent “campers,” but as a bona fide unit all the same.¹⁴⁷ Though this may seem counterintuitive, Carmody sees this inclusion as natural.¹⁴⁸ The young men who participate are led by the next generation of aids, mostly female, who run the labs. She is showing them what leadership looks like, too. They serve as a catalyst to ending gender disparity.

It is worth mentioning that the burgeoning acceptance of “smart,” “nerd,” and “geek” in today’s pop culture helps. In fact, both of our interviewees acknowledged this.¹⁴⁹ In response to a question about stereotypes of working in STEM, Szalai responded with a laugh and said:

[T]he first one that comes to mind, is that you’re a nerd and frankly I don’t mind that stereotype, and I think it was just really cool when we were featured in *Rolling Stone* and those types of things. Maybe that’s becoming less and less a stereotype with astronauts. But that’s the first one that comes to mind. And I don’t care if someone calls me a nerd. I’m actually proud of it.¹⁵⁰

Likewise, Carmody, replied to the question with a chuckle:

We’re geeks, I mean we’re nerds. However, the big difference between now and when I was in high school—[i]t’s kind of cool to be a nerd. Now we’ve got Silicon Valley. And we’ve got billionaires formed out of nerds. So yeah, there are stereotypes, and they’re stereotypes for a reason. We’re geeky. I’m proud to be a geek.¹⁵¹

With Technology Goddesses, Carmody helps young girls explore their “geek,” their inner “nerd.”¹⁵² More than that, Carmody allows the girls to see that they can embrace science and technology in a multitude of industries.¹⁵³ She takes the girls on “field trips” to some expected destinations like Google offices and Microsoft campuses, but more than that, she shows them that careers in technology exist everywhere.¹⁵⁴ She has taken them to Sony Studios to see how films are edited, to sound rooms

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

¹⁵⁰ Szalai, *supra* note 97.

¹⁵¹ Carmody, *supra* note 122.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

to watch how movie soundtracks are engineered, and lighting sets to see how scenes are shot.¹⁵⁵ She has taken them to the “Kids Choice Awards” with backstage passes to see how an awards show is produced.¹⁵⁶ She shows them that technology exists everywhere, and does so with a glee and enthusiasm that is contagious to be around. She makes herself accessible so there are no excuses.¹⁵⁷

She also runs an informal group that started when her own daughter was in elementary and middle school, which she calls “Cupcakes and Coefficients.”¹⁵⁸ It consists of tutoring sessions in which Carmody creates innovative cupcakes at her home, while her daughter and her daughter’s friends come and get help with mathematical concepts.¹⁵⁹ An avid seamstress and quilter, she was interested in the technology behind fonts and explored sewing machines and their computer programs.¹⁶⁰ She expanded this with Technology Goddesses and showed them how to “bling” their camp t-shirts each year.¹⁶¹ She explained the science behind the adhesive used to attach them. She brought a 3D printer in to teach them not just how to use it, but also to show them how it worked.¹⁶² She teaches them how to connect circuit boards, and as they progress, how to become teachers and leaders. She allows the few boys at camp to stay and volunteer as they grow old enough not to have to follow their moms to camp, because as much as Carmody continues to support girls in technology, she understands innately that the future demands gender neutrality.¹⁶³

Barriers to women in male-dominated industries still exist, yet because STEM careers typically take good care of their technical talent, with good pay and generous maternity and family leave, Carmody acknowledged that she and others often are able to afford high-quality childcare. Szalai, as a single parent, benefitted from having access to on-site childcare.¹⁶⁴ Both Szalai and Carmody agree that having a passion and a natural curiosity, regardless of gender, is what they look for in an applicant.¹⁶⁵ Neither Szalai nor Carmody see gender, in and of itself, as the ultimate factor in hiring; however, both recognize

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Szalai, *supra* note 97.

¹⁶⁵ *See id.*; *see also* Carmody, *supra* note 122.

the benefit of diversification to the success of a team.¹⁶⁶ Both Szalai and Carmody have seen an increase in females in STEM careers and believe that gender parity, in fact, diversification of all types, lends itself to a stronger team. Providing the right to vote through the Nineteenth Amendment enabled women to advocate for the right to a gender-neutral education which, in turn, has allowed women to make inroads in male-dominated fields such as STEM.

V. INTERSECTING INTERVIEWEE EXPERIENCES, STEM RESEARCH, AND LEGISLATION

The interviews of Szalai and Carmody revealed some common threads when comparing the legislation and STEM research to their personal and professional experiences. Neither interviewee was witness to the enactment of most laws mentioned in this Article; however, they recognized that they have benefited from the efforts of those that advocated for change throughout the past 100 years of legislation.¹⁶⁷ As a result of increased access to education and equal employment through the implementation of these laws, these women, in particular, have become leaders in STEM and work to inspire young women to consider the same career path.

As mentioned previously, encouragement at a young age can play a significant role in whether more women will enter STEM fields:

[W]hen teachers and parents tell girls that their intelligence can expand with experience and learning, girls do better on math tests and are more likely to say they want to continue to study math in the future. That is, believing in the potential for intellectual growth, in and of itself, improves outcomes. This is true for all students, but it is particularly helpful for girls in mathematics, where negative stereotypes persist about their abilities. By creating a “growth mindset” environment, teachers and parents can encourage girls’ achievement and interest in math and science.¹⁶⁸

Research on societal beliefs about girls and their perceived competence in science and math illustrates the importance of capturing the interest of girls at an early age.¹⁶⁹

Most people associate science and math fields with “male” and humanities and arts fields with “female,” according to research examined in this report. Implicit bias is common, even among

¹⁶⁶ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

¹⁶⁷ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

¹⁶⁸ CATHERINE HILL ET AL., *supra* note 3, at xiv.

¹⁶⁹ *Id.*

individuals who actively reject these stereotypes. This bias not only affects individuals' attitudes toward others but may also influence girls' and women's likelihood of cultivating their own interest in math and science.¹⁷⁰

It highlights how other factors, such as implicit bias, can actually alter girls' test performances.¹⁷¹ When eliminating bias, gender differences disappear:

Research profiled in this report shows that negative stereotypes about girls' abilities in math can indeed measurably lower girls' test performance. Researchers also believe that stereotypes can lower girls' aspirations for science and engineering careers over time. When test administrators tell students that girls and boys are equally capable in math, however, the difference in performance essentially disappears, illustrating that changes in the learning environment can improve girls' achievement in math.¹⁷²

Increasing awareness of the power of implicit bias can change the attraction of girls to the STEM subjects and lead to an increase in women entering STEM fields.¹⁷³

Szalai and Carmody did not have negative mindsets or associations with STEM because, as youths, they discovered that they were interested in STEM, enjoyed STEM activities, and felt encouraged to succeed.¹⁷⁴ Overall, they have had a positive mindset about the possibilities of working in STEM and were shoulder tapped to take on leadership positions when they demonstrated their skills at work.¹⁷⁵ They grew more confident to take on new roles and work in STEM over time as they developed their abilities.¹⁷⁶ The experiences of both Szalai and Carmody demonstrate how powerful eliminating these inhibiting forces can be. Szalai expressed how she was encouraged in her youth by her father and her exposure to the space program.¹⁷⁷ She shared, "[O]f course, having a dad that worked at NASA also very much I think got me headed in that direction."¹⁷⁸ Szalai's experience illustrates how early STEM exposure and educational opportunities can influence a career in STEM. Szalai also had the encouragement of her family and role models to pursue her dreams.¹⁷⁹ Capturing her interest before she was affected by societal beliefs or implicit bias seemingly inoculated her against them.

¹⁷⁰ *Id.* at xvi.

¹⁷¹ *Id.*

¹⁷² *Id.* at xiv–xv.

¹⁷³ *Id.*

¹⁷⁴ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

¹⁷⁵ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

¹⁷⁶ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

¹⁷⁷ Szalai, *supra* note 97.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

Carmody too experienced the impact of her extraordinary skills in mathematics as a youth.¹⁸⁰ Her invitation to attend college when she would have still been in high school shifted her interest.¹⁸¹

It was pretty much by accident. In high school I was good at math, but I loved history. And if I had stayed in high school, I would have gotten around to calculus in twelfth grade, but I got the opportunity to go to college a year early and took calculus there and then that changed everything.¹⁸²

Once bitten by the technology bug, she pressed on, fueled by her interest and encouraged by her success.¹⁸³ Indeed, Carmody's foray into technology happened by accident as well, as she was hired by PRC Litton to be a programmer because of her advanced degree in mathematics—not because of her interest in computer programming.¹⁸⁴ “I started being a programmer without having ever touched a computer and took to it like a fish to water. I taught myself Assembler because they didn't send anybody to classes anymore because the people who took it got better jobs elsewhere.”¹⁸⁵ Nobody got in the way of her confidence in her ability, which was strengthened in her youth and fueled by competence and passion.¹⁸⁶

The role of mentors can have a profound effect on women and their achievement in STEM fields.¹⁸⁷ As illustrated by both Szalai and Carmody, in addition to a positive mindset about the possibilities of working in STEM from an early age, they benefited from recognition from others.¹⁸⁸ Both were encouraged to shoulder new roles and responsibilities they had not contemplated for themselves.¹⁸⁹ In Szalai's case, encouragement from her colleagues prompted her to apply for a position she might not have considered. “I probably lacked some self-confidence and thought you know I wasn't qualified for the supervisor position. But there were certain people who I respected very highly that said absolutely you are qualified, and you can do it. And that's why I applied.”¹⁹⁰ Carmody too, experienced this. She explained,

[I]n one of my performance reviews at space station my manager said: Hey look, you've got to learn how to say no to some of it. And then a couple of months later, I had this opportunity to lead this quality

¹⁸⁰ See Carmody, *supra* note 122.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

¹⁸⁸ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

¹⁸⁹ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

¹⁹⁰ Szalai, *supra* note 97.

improvement team and I said no two or three times. Finally, I said okay I will get the program started, but you've got to do it on your own. And he pulled me aside and said: Now is not the time to say no.¹⁹¹

This shoulder tapping to take on leadership positions when they demonstrated their skills at work helped propel them to their current status.¹⁹² They grew more confident to take on new roles and work, and in turn, developed their abilities and increased their visibility.¹⁹³

Despite the paucity of women in her field, Szalai credits her achievements not with the protections of Title IX, but with the accolades she received for her academic achievements, positive encouragement from her father, and the female mentor and role model she had at her first job with NASA Ames, who encouraged her to think outside the box.¹⁹⁴ Szalai was often the only woman in some of her engineering classes at UCLA, bearing the burden of trailblazing simply because she was good at what she did and was passionate about space exploration.¹⁹⁵ Recounting an interaction with a professor during college, Szalai recalls him commenting that she must have been reading a *Good Housekeeping* magazine over the weekend.¹⁹⁶ Rather than take offense at the sexist nature of the remark, she simply thought he was being rude.¹⁹⁷ It was not until later when he apologized that she realized it was related to her gender.¹⁹⁸ Even then, Szalai did not consider her sex to be a barrier, she simply thought she had to work hard just like everyone else.¹⁹⁹

Carmody recalled a similar incident during the time she was working on the Space Station as a Systems Engineer at PRC Litton.²⁰⁰ The Chief Systems Engineer on the contract remarked, as they were leaving a meeting, that she had been the only woman with seventeen men and asked her, "How did that feel?"²⁰¹ She answered, "I didn't notice," but what she left unsaid was, "So why did you?"²⁰² Her response was not based on a belief that she was different because she was a woman in a male-dominated industry, rather, incredulity that her gender

¹⁹¹ Carmody, *supra* note 122.

¹⁹² See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

¹⁹³ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

¹⁹⁴ See Szalai, *supra* note 97.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ See Carmody, *supra* note 122.

²⁰¹ *Id.*

²⁰² *Id.*

should make a difference to anyone.²⁰³ She had utter confidence in her own skills and value and seemed baffled that one might attribute that to her gender.²⁰⁴

Overcoming bias in the workplace has a dual benefit: not only does the increased diversity increase ideas and innovation, it also encourages females to stay in the field longer.²⁰⁵ Keeping females in the field longer increases the number of positive female role models, who in turn increase acceptance.²⁰⁶ As noted in one study:

[C]olleges and universities can attract more female science and engineering faculty if they improve departmental culture to promote the integration of female faculty. Research described in this report provides evidence that women are less satisfied with the academic workplace and more likely to leave it earlier in their careers than their male counterparts are. College and university administrators can recruit and retain more women by implementing mentoring programs and effective work-life policies for all faculty members.²⁰⁷

Only in the past twenty to thirty years have new technologies, such as computers, search engines, social media, and iPhones, drawn increased attention to employment opportunities in STEM. The previous stereotype of “nerds” is diminishing.²⁰⁸

In the next few decades, it is hoped that the United States may begin to see more women working in STEM as they graduate school and earn the necessary experience as a result of these youth programs.²⁰⁹ It took Szalai about fifteen years to obtain her manager position,²¹⁰ and it took Carmody about sixteen years to become CIO.²¹¹ The time to mature or choose to take a leadership position varies based on each person’s individual path. What is clear is that it may take a few decades before someone develops the necessary skills and experience to reach the level of management Carmody reached. It is only a matter of time before the influence of twenty-first century technologies produce more women in positions of leadership within STEM. The equation is fairly simple: the higher percentage of women who choose STEM in youth, the higher the production of women leaders in STEM decades later.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ CATHERINE HILL ET AL., *supra* note 3, at xv.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ Szalai, *supra* note 97.

²⁰⁹ GENERATION STEM: WHAT GIRLS SAY ABOUT SCIENCE, TECHNOLOGY, ENGINEERING, AND MATH, GIRL SCOUT RESEARCH INSTITUTE 2, 4, 34 (2012), http://www.girlscouts.org/join/educators/generation_stem_full_report.pdf [<http://perma.cc/5HA9-F4Z9>].

²¹⁰ Szalai, *supra* note 97.

²¹¹ Carmody, *supra* note 122.

On a positive note, these interviews and research reveal that if someone has the personal drive and ambition, they can succeed in STEM. The objective of mentors and professionals in STEM are to support youth programs that encourage and inspire both genders to consider a future profession in STEM. Gender parity in youth programs will hopefully lead to gender parity in the STEM professions, thus, creating diversity of ideas, which may increase economic growth.

As for the future of women in STEM careers, both Szalai and Carmody are remarkably gender neutral.²¹² They value the achievements, qualifications, and temperament of potential team members over gender distinctions.²¹³ Nonetheless, both Szalai and Carmody take the effort and commitment to promote women in their field: Szalai, by participating in women's groups through JPL, and Carmody, by bringing awareness and skills to the next generation by introducing them to STEM through youth programs.²¹⁴ Many youths are unaware that, with the rise of new technologies in Silicon Valley and globally, there are a variety of non-traditional employment opportunities in STEM.²¹⁵ Through these efforts, awareness, and the influence of new technology, both interviewees are confident that there will be more gender parity in STEM fields in the future.²¹⁶

VI. CONCLUSION

The efforts of litigation and the ratification of the Nineteenth Amendment, along with progressive laws that came after it, have opened opportunities for women to pursue careers.²¹⁷ The pursuit should now focus on maintaining these freedoms and creating opportunities for youth to equally experiment and become confident in STEM. In regard to maintaining the equal rights that have been obtained, much can be learned from the strategies and methods used to establish them.

Girls are growing up in a different time—a time of advanced technology, new innovations, increased methods of communication,

²¹² See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

²¹³ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

²¹⁴ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

²¹⁵ Panel: *Women in STEM and Non-Traditional Occupations Careers—Barriers and Successful Strategies*, EDCHOICE (Nov. 10, 2018), <http://appam.confex.com/appam/2018/webprogram/Session10912.html> [<http://perma.cc/H3NG-UJZQ>].

²¹⁶ See Szalai, *supra* note 97; see also Carmody, *supra* note 122.

²¹⁷ Heidi Williamson, *Women's Equality Day: Celebrating the 19th Amendment's Impact on Reproductive Health and Rights*, CENTER FOR AM. PROGRESS (Aug. 26, 2013, 4:41 PM), <http://www.americanprogress.org/issues/women/news/2013/08/26/72988/womens-equality-day-celebrating-the-19th-amendments-impact-on-reproductive-health-and-rights/> [<http://perma.cc/BYU7-P46T>].

and equal access to education.²¹⁸ This could influence more girls to take a path toward STEM. However, it is a path of choice. This year more women own their own businesses than ever before.²¹⁹ Likewise, it may only be a matter of time before more women choose STEM occupations and decide to serve as executives in companies.

There is an increased cultural acceptance by parents, mentors, teachers, and managers to encourage young women to consider careers in STEM, to follow their passions in these fields, and to accept leadership positions in STEM-related careers.²²⁰ Non-profit organizations, such as Technology Goddesses in Southern California, hope to increase the number of women in STEM-related fields through interactive youth programs that inform girls of the opportunities to pursue careers in STEM-related fields.²²¹ Encouraging activities and promoting possibilities in our youth has been shown to increase positive associations with scientific pursuits.²²² New legislation, such as S.B. 826, and NASA's mission to have the first woman on the moon, will likely increase the number of women who are role models in STEM. In turn, women in highly esteemed positions are role models and demonstrate possible achievements in STEM to the next generation. Although it may take a few decades to see the results, the efforts being undertaken today will likely serve as a catalyst for increasing gender parity in STEM fields in the near future.

²¹⁸ GENERATION STEM: WHAT GIRLS SAY ABOUT SCIENCE, TECHNOLOGY, ENGINEERING, AND MATH, *supra* note 209.

²¹⁹ AMERICAN EXPRESS, THE 2019 STATE OF WOMEN-OWNED BUSINESSES REPORT 3 (2019), http://about.americanexpress.com/sites/americanexpress.newshq.businesswire.com/files/doc_library/file/2019-state-of-women-owned-businesses-report.pdf [<http://perma.cc/EEU9-9BP5>].

²²⁰ CATHERINE HILL ET AL., *supra* note 3, at xiv–xvi.

²²¹ See Carmody, *supra* note 122.

²²² Rep. Marcia L. Fudge, *Early Exposure to STEM Education Benefits Children, Economy*, HILL (Apr. 12, 2013, 5:00 PM), <http://thehill.com/blogs/congress-blog/education/293569-early-exposure-to-stem-education-benefits-children-economy> [<http://perma.cc/JM9R-YE2M>].

Analyzing Roles of Eleanor Roosevelt, Nancy Pelosi, and Ivanka Trump in U.S. Politics

*Kishor Dere**

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I. INTRODUCTION

This Article is a modest attempt to understand the contributions of Eleanor Roosevelt, Nancy Pelosi, and Ivanka Trump to United States politics. It is an opportunity to celebrate the achievements of women in politics and introspect on what needs to be done to ensure greater participation of women in politics. A lot has already been said and written in popular literature and scholarly work about the accomplishments of women in politics. Readers should note that this Article is not intended to be a complete comparative analysis of the roles of Eleanor Roosevelt, Nancy Pelosi, and Ivanka Trump in U.S. politics. Rather, it intends to highlight the stories and success of three unique women operating within the realm of U.S. politics. Their political experiences represent how women have successfully exercised political influence through socio-political positions, elected positions, and appointed positions. Comparison of all three women is complicated by virtue of the fact that each one hails from a different era of U.S. politics (although Nancy Pelosi and Ivanka Trump are both still active politically) and occupies or occupied different positions. Each one of them played or continues to play a unique role in the U.S. government as a result of the novel way they approached their positions and the circumstances of their times.

II. ELEANOR ROOSEVELT

Eleanor Roosevelt (“ER”) (October 11, 1884 to November 7, 1962) was the First Lady of the United States from March 4, 1933 to April 12, 1945.¹ ER is famous not merely as the First Lady, but also as a woman who before, during, and after her stay in the White House played a multifaceted role as an activist, author, lecturer, and public speaker.² In order to understand ER’s contribution to U.S. politics, it may be useful to familiarize oneself with her background, her personal life, and her experiences in politics.

Subsection A below will undergo an effort to demonstrate how ER’s background laid the groundwork for her political contribution. ER “shattered the ceremonial mold in which the

¹ *First Lady Biography: Eleanor Roosevelt*, NAT’L FIRST LADIES’ LIBR., <http://www.firstladies.org/biographies/firstladies.aspx?biography=33> [http://perma.cc/XG67-BP6T] (last visited Mar. 2, 2020); see also *Eleanor Roosevelt Biography (1884–1962)*, BIOGRAPHY, <http://www.biography.com/us-first-lady/eleanor-roosevelt> [http://perma.cc/PLE8-Z6FL] (last updated Mar. 2, 2020).

² *First Lady Biography: Eleanor Roosevelt*, *supra* note 1; see also GARE THOMPSON, WHO WAS ELEANOR ROOSEVELT? 2 (2004); STEPHEN DRURY SMITH, THE FIRST LADY OF RADIO 10 (2014).

role of the first lady had traditionally been fashioned” by reshaping it around her life experiences, skills, and dynamic vision.³ ER’s name had become synonymous with autonomy.⁴ At the age of nineteen, while serving as a volunteer, ER had inspected sweatshops in New York for the National Consumers League.⁵ This experience exposed her to the difficult conditions immigrant families were living in and the health risks faced by the children in those families, who worked with their parents.⁶ ER was ahead of her times and enjoyed having discussions with older people about politics or philosophy, but she was ill at ease having casual conversation with people her own age.⁷ At a time where her husband was focused on World War II, ER’s agenda was focused on the best interests of American society on the home front.⁸ ER told the Democratic Convention of 1940, “[t]his is no ordinary time, and no time for weighing anything except what we can best do for the country as a whole.”⁹ She was inspired and guided by this noble conviction.¹⁰ Relying on this conviction, ER and her husband accomplished unprecedented achievements in spite of difficult obstacles faced by the nation at the time.¹¹ It is noteworthy that ER’s political exposure and interest occurred prior to her involvement in her husband’s political life. This distinction reflects the power and strength behind ER’s role and contribution to U.S. politics.

Before becoming the First Lady of the U.S., she was the First Lady of New York from 1929 to 1933.¹² Subsection B below analyzes how ER’s position as the First Lady of New York further defined her socio-political persona. During her time as the New York Governor’s wife, ER remained socially and politically active. She used her broader platform as the First Lady of New York to go beyond politics and reform movements; she specifically advocated for the entry of more women in new roles in society.¹³

Subsection C demonstrates how ER, by melding her interests and past experiences with the public role of First Lady, was highly active in U.S. policy. Since her husband, President

³ See DORIS KEARNS GOODWIN, *NO ORDINARY TIME* 10 (1994).

⁴ PATRICIA BELL-SCOTT, *THE FIREBRAND AND THE FIRST LADY* 357 (2016).

⁵ *Id.* at 5.

⁶ *Id.*

⁷ GOODWIN, *supra* note 3, at 374.

⁸ *Id.* at 10.

⁹ *Id.* at 11.

¹⁰ *Id.*

¹¹ *Id.*

¹² *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

¹³ *Id.*

Franklin D. Roosevelt (“FDR”), was affected by polio, ER worked closely with him and his staff on policy-related issues.¹⁴ She was active amidst the devastation caused by the Great Depression across American society.¹⁵ Her unique background in progressive advocacy policy, media, education, and women’s issues enabled her to establish a distinct agenda and call upon professional contacts.¹⁶

As the First Lady, ER visited veterans, held press conferences in the White House for female reporters, kept working in mass media and communications, was a monthly magazine columnist, ran radio shows, took an active interest in newsreels and movies, had the largest ever public correspondence, and dominated popular culture.¹⁷ ER was deeply involved in both the New Deal and the fight for racial and gender equality, justice, dignity, labor rights, civil rights, human rights, and democracy, among several others.¹⁸ She opposed Fascism, Nazism, and Communism, promoted peace, supported international institutions like the United Nations, sympathized with Israel, and visited several foreign countries.¹⁹ ER served as the First Lady for the longest period ever: twelve years, one month, one week and one day.²⁰ During this period, the U.S. witnessed two national traumas: the Great Depression and World War II.²¹

Finally, subsection D concludes by articulating how ER’s impact did not halt when she left the role of First Lady of the U.S., but how it was really a culmination of her lifetime of experiences.

A. Impact of Privileged Ancestry, Broken Childhood, and a Good Teacher

ER had a privileged and influential ancestry. Her childhood experiences contributed to the formation of her political and social beliefs and were the foundation of her drive and ambitions. ER was the daughter of Elliott Roosevelt and Anna Rebecca Hall.²² She was the niece of the 26th President of the U.S.

¹⁴ *Id.*

¹⁵ *Id.*; see also *Eleanor Roosevelt*, HISTORY, <http://www.history.com/topics/first-ladies/eleanor-roosevelt> [<http://perma.cc/5H52-R5KW>] (last updated Mar. 25, 2020).

¹⁶ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

¹⁷ *Id.*

¹⁸ *Id.*; see also *Eleanor Roosevelt*, *supra* note 15.

¹⁹ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*; *Eleanor Roosevelt Biography*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBR. & MUSEUM, <http://www.fdrlibrary.org/er-biography> [<http://perma.cc/7GQB-RLNB>] (last visited Mar. 30, 2020).

Theodore Roosevelt.²³ ER had one of the closest blood connections to a President, besides her husband FDR. ER's maternal grandmother, Mary Livingston Ludlow (1843 to 1919), was the great-granddaughter of Robert R. Livingston, chancellor of New York.²⁴ Robert R. Livingston had administered the presidential oath of office to founding father and first President, George Washington in 1789 and served on the Second Continental Congress committee that helped draft the Declaration of Independence.²⁵ He, however, did not sign the document because it would have harmed some of his commercial interests. ER's paternal grandfather, Theodore Roosevelt Sr. (1831 to 1878), was a leading philanthropist in New York.²⁶ He supported the establishment of the New York Orthopedic Hospital.²⁷ He also funded the set-up of the American Museum of Natural History, provided that the museum would be kept open seven days a week to ensure that working-class people—who worked six days a week—could access it.²⁸ He was also a member of the fundraising committee that paid for the stone pedestal of the iconic Statue of Liberty.²⁹ ER's politically active family tree helped to expose her to politics at a time when women were not necessarily on the front lines of politics.

Despite these extensive family connections, ER's immediate family structure endured multiple hardships that shaped her experiences as a young girl. ER's father suffered from alcoholism and a narcotic addiction.³⁰ His addictions were thought to be a result of “nervous sickness,” or epilepsy.³¹ ER's childhood was emotionally challenging. Within a span of two years, ER's sense of family was devastated. She lost her mother at the age of eight, her four-year-old brother the following year, and her father when she was ten.³² ER had been orphaned. She and her surviving

²³ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1; *see also Eleanor Roosevelt Biography*, *supra* note 22.

²⁴ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

²⁵ *See id.*; Robert Livingston, REVOLUTIONARY WAR (Feb. 15, 2020), <http://revolutionary-war.net/robert-livingston/> [<http://perma.cc/U2J5-3CBY>].

²⁶ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1; *see also Theodore Roosevelt, Sr.*, NAT'L PARK SERVICE, <http://www.nps.gov/thrb/learn/historyculture/theodorerooseveltsr.htm> [<http://perma.cc/EYZ6-8C5L>] (last updated Aug. 14, 2019).

²⁷ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1; *see also Theodore Roosevelt, Sr.*, *supra* note 26.

²⁸ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1; *see also Theodore Roosevelt, Sr.*, *supra* note 26.

²⁹ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

³⁰ Stacy A. Cordery, *Roosevelt, Elliot*, in THE ELEANOR ROOSEVELT ENCYCLOPEDIA 446–47 (Maurine H. Beasley et al. eds., 2001); *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

³¹ Cordery, *supra* note 30.

³² *Id.* at 86; *see also Eleanor Roosevelt*, *supra* note 15.

sibling, second brother Gracie Hall, became the ward of her maternal grandmother, who lived in the Hudson River Valley.³³

Nonetheless, ER was blessed to have a teacher like Marie Souvestre who influenced her educational and emotional development.³⁴ Souvestre taught ER dance, painting, music, composition, drawing, as well as German, French, Italian, and English literature.³⁵ Souvestre privately directed ER's pursuit of history, geography, and philosophy, as the school did not offer classes in these subjects.³⁶ Souvestre also took ER as a fellow traveler through France and Italy during school holidays. This exposed the young pupil to new worlds, including low-income areas of the working-class, which were far away and much different from the standard tourist attractions.³⁷ These experiences were very distinct from her upbringing as a member of a politically prominent family. Moreover, Souvestre was known for questioning the political status quo and working to safeguard the rights of the working-class.³⁸ Souvestre's bold and compassionate approach molded ER's outlook and motivated her to pursue activism. ER recalled her three years at Allenswood Academy in London, which was run by Souvestre, as the "happiest years" of her life.³⁹ However, ER's big regret was that she never received a college education.⁴⁰ The experiences she received through her childhood, and as a result of her invaluable teacher, dictated how she chose to tackle life moving forward.

1. ER Joins Social Reform Movement Rather than Making a Social Debut

In deference to the wishes of her grandmother, ER returned from the UK to the U.S. a year early.⁴¹ However, instead of making her social debut, ER chose to participate in the social reform movement of the Progressive Era. She was inspired by the example of the reform-oriented incumbent of the White House, her uncle, President Theodore Roosevelt.⁴² This led her to meet with people of different socio-economic classes and learn about their problems. Through these interactions, she learned the

³³ See J. William T. Youngs, *Childhood*, in THE ELEANOR ROOSEVELT ENCYCLOPEDIA, *supra* note 30, at 83, 85–86.

³⁴ See Russell Freedman, *Souvestre Marie*, in THE ELEANOR ROOSEVELT ENCYCLOPEDIA, *supra* note 30, at 488–90.

³⁵ See *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*; see also GOODWIN, *supra* note 3, at 60.

⁴⁰ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

⁴¹ See *id.*; see also Freedman, *supra* note 34, at 490.

⁴² *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

strength of organized political reform and the process required to lawfully implement fair labor practices.⁴³

B. Politically Active First Lady of New York

In 1928, ER's position in politics took on a different shape, as she became the First Lady of New York through her husband's election as governor. Although ER now played a new role as governor's wife, she did not let this role supersede her political activity. As First Lady of a state, ER sought to avoid as many potential conflicts of interest as possible.⁴⁴ "She continued her own private enterprises at the Todhunter School and Val-Kill Industries, splitting her time between the capital city of Albany and her private home in New York City."⁴⁵ "Although she quit most of her political affiliations, [ER] remained highly politically active, if not always in public."⁴⁶ "She continued to broadcast her 'Women in Politics' series on NBC radio for the Women's City Club, and edited without credit the Women's Democratic News."⁴⁷ She also "became the Women's Trade Union League's legislative advocate in the statehouse in support of a five-day work week."⁴⁸ "She voiced her support for the International Ladies Garment Workers Union and its president David Dubinsky in their famous 1930 Dressmaker's Strike."⁴⁹ "She also was able to make the case to the national Democratic Party chairman John Raskob to increase funding for the New York State Democratic Committee, and on her own did considerable fundraising for the National Democratic Committee's Women's Activities Committee."⁵⁰ While not necessarily staying in the spotlight of politics, ER continued her work and passions in a more subtle way.

"With her own formidable and independent political experience and skill, ER could not help bring her background to her role as a supportive wife of the governor."⁵¹ "In this context, her considerable political influence was simply an outgrowth of

⁴³ *Id.*

⁴⁴ See Agnes Hooper Gottlieb, *Hickock, Lorena A.*, in THE ELEANOR ROOSEVELT ENCYCLOPEDIA, *supra* note 30, at 232; *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

⁴⁵ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1; see also Hooper Gottlieb, *supra* note 44, at 232; Ginger Ridesael Carter, *Lehand Marguerite "Missy,"* in THE ELEANOR ROOSEVELT ENCYCLOPEDIA, *supra* note 30, at 316, 317; Kelly A.J. Powers, *Travels*, in THE ELEANOR ROOSEVELT ENCYCLOPEDIA, *supra* note 30, at 518, 520.

⁴⁶ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

her natural interests, passions and beliefs, but adapting it all to a manner which aided her husband.”⁵² “She was instrumental in FDR’s reforming the Public Employment Service, as well as his promoting labor leader Frances Perkins from a committee member to head of the State Industrial Relations Commission.”⁵³ “She further made the case for Perkins as New York’s Secretary of Labor and for her replacement at the Industrial Relations Commission, Nell Schwartz.”⁵⁴

ER stepped in to fill the void left by other political leaders. “She began to substitute for the Governor when either his immobility or his schedule precluded his presence at political meetings and conferences.”⁵⁵ Furthering this role, she began to inspect schools, orphanages, hospitals, homes for aged, and other state-supported institutions as what she called his “eyes and ears.”⁵⁶ “In this role, she learned to poke into kitchens and garages, and check out plumbing, food service and electricity, rather than just taking the word of the director of the institution in question.”⁵⁷ This is reflective of her exposure to low-income areas of the working-class during her childhood travels.

She also put to use her growing, but already considerable, tactical skill in managing political personalities.⁵⁸ “When the Governor was organizing a conference of the state’s mayors, she was successful in helping convince him to open the invitation to both Republicans and Democrats.”⁵⁹ “She often helped avoid intra-Democratic squabbles between FDR’s advisor Louis Howe and Jim Farley, manager of . . . FDR’s gubernatorial and FDR’s presidential campaigns.”⁶⁰ “It was on Eleanor Roosevelt’s urging that the Governor decided not to keep . . . Secretary of State Robert Moses and Personal Secretary Belle Moskowitz.”⁶¹ ER’s tactical skill helped her manage personalities in her husband’s administration.

C. Reluctant and Unusual First Lady with Courage of Conviction

When FDR became president in 1932, ER was obviously delighted. However, ER told her friend and Associated Press (“AP”) corespondent Lorena Hickok⁶² that she “never wanted to

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² LORENA A. HICKOK, RELUCTANT FIRST LADY 2 (1962); BELL-SCOTT, *supra* note 4, at 16.

be a President's wife. And [she didn't] want it now."⁶³ In a letter to Hickock, soon after becoming the First Lady, ER wrote:

My zest in life is rather gone for the time being . . . If anyone looks at me, I want to weep . . . I get like this sometimes. It makes me feel like a dead weight & my mind goes round & round like a squirrel in a cage. I want to run, & I can't, & I despise myself. I can't get away from thinking about myself. Even though I know I'm a fool, I can't help it!⁶⁴

This letter reflected her anxieties and concerns about her husband becoming president of the U.S. ER was worried that FDR's journey towards, and within, the White House meant she would have to give up several activities that gave her personal meaning and self-satisfaction.⁶⁵ For example, "her post as a teacher and administrator at the Todhunter School for girls in New York City."⁶⁶ While her husband was governor of New York, ER had commuted between Albany to Manhattan, and kept teaching.⁶⁷ As the president's wife, ER knew she would not be able to continue doing so. This realization made ER apprehensive of the life she would live as First Lady.⁶⁸

However, ER did not allow her role as First Lady to impact how she conducted herself in social situations. ER did not wear makeup and had resolved to be the "common, ordinary Mrs. Roosevelt," despite her new role.⁶⁹ She continued to be autonomous and did not succumb to expectations of how a First Lady should act. ER drove herself to various events and refused the use of a driver or secret agent.⁷⁰ At an inaugural luncheon, ER astonished Washington's elites by positioning herself next to the wait-staff to serve ham sandwiches.⁷¹ This was a manifestation of her innate desire to serve others and to be informal in spite of her position. ER did not censor herself in her new role and kept expressing her controversial opinions. She once hosted a garden party on the grounds of the White House for residents of the National Training School for Girls.⁷² This school—which actually resembled a prison, lacked teachers or counselors, and had deplorable living quarters—provided education to both black and white students.⁷³ When ER was

⁶³ *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

⁶⁴ GOODWIN, *supra* note 3, at 57.

⁶⁵ BELL-SCOTT, *supra* note 4, at 16.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

advised that politicians might dislike her decision to host black and white girls together, she asserted, “It may be bad politics, but it’s a thing I would like to do as an individual, so I’m going to do it.”⁷⁴

ER did not let her husband’s presidency limit her involvement in social reform and activism. Six years prior to her becoming the First Lady, ER was arrested and charged with disorderly conduct when she joined 300 picketers in solidarity with a strike by paper box makers in New York.⁷⁵ Even after her arrival in the White House, she continued her association and work with union leaders and lobbied for fair wages, better working conditions, and against child labor.⁷⁶ Additionally, ER dramatically altered the complexion of the White House by employing solely black maids.⁷⁷ The First Lady’s dinner guests were typically friends, artists, young people, and sometimes even “destitute” men she had come across in the park.⁷⁸ This reflected her desire to get to know people from diverse backgrounds.⁷⁹ A journalist once said ER used to prefer “unconventional thinkers and ‘people who do things’ over ‘stuffed shirts, fat-heads and very proper people.’”⁸⁰ ER had even secretly shared with a friend that, had FDR not been a presidential candidate, she would have voted for the socialist candidate Norman Thomas.⁸¹

Following a suggestion by her friend and journalist Hickok, ER set a new precedent by holding weekly press conferences with female journalists.⁸² She even urged people to write to her about their problems and promised to try to help them. In her first year as First Lady, over 300,000 individuals responded to her request.⁸³ Though she could not help everyone, she responded to each letter or passed the letter on to someone who could help.⁸⁴ ER’s determination to scrutinize social issues and engage in social reform captivated the public. The far-off places she traveled to and the conditions she exposed herself to in the name of social reform were unusual for a First Lady.⁸⁵ She endured the dirt, filth, squalor, soot, and ash of a West Virginia mining town

⁷⁴ *Id.*

⁷⁵ *Id.* at 17.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

to learn about the living conditions of black miners.⁸⁶ She stomped through an army bonus camp to discuss the unpaid pensions of World War I veterans in shoes covered with mud.⁸⁷ “An able-bodied man at the pink of condition would have difficulty in keeping up with her when she walks,” noted a reporter for the *Washington Post*.⁸⁸ The Secret Service aptly nicknamed her “Rover.”⁸⁹

While ER may have been concerned with how the role of First Lady would impact her social and political work, she managed to not only stick to her beliefs, but also used her new platform to advance her goals.

1. Women’s Movement and White House Press Conferences for Female Reporters

The position of First Lady allowed ER an opportunity to reach a much broader audience for her social and political messages. The things ER witnessed and learned from working with women in the labor movement, as well as the FDR administration, led her to host three White House conferences on the needs of women.⁹⁰ One of the proposals presented at the second conference was a program of camps for unemployed women.⁹¹ Hosting these conferences was not the only way that she promoted women during her time in the White House.

ER also advanced her agenda and impacted the women’s movement by employing the tool of press conferences. ER was and is a unique First Lady who held as many as 348 press conferences in the White House between March 6, 1933 and April 12, 1945.⁹² These conferences impacted the history of first ladies and female journalists. Except during World War II, ER used to exclusively invite female journalists to attend the weekly events.⁹³ Many female journalists attending these press conferences covered topics only related to female readers. This situation helped to encourage the employment of women in the news corps. As men were refused entry to these events, some of the news organizations recruited female journalists to cover

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*; Martha H. Swain, *White House Conferences*, in THE ELEANOR ROOSEVELT ENCYCLOPEDIA, *supra* note 30, at 557–58.

⁹¹ Swain, *supra* note 90, at 558.

⁹² Ann Cottrell Free, *Press Conferences*, in THE ELEANOR ROOSEVELT ENCYCLOPEDIA, *supra* note 30, at 411.

⁹³ *Id.* at 411–12.

them.⁹⁴ Gradually, the First Lady's press conferences created more opportunities for female correspondents, although women had established themselves in journalism much before ER arrived at the White House. ER, however, permitted male journalists to cover her press conferences when she was not in Washington D.C. and her interactions with the press at the Office of Civilian Defense in her capacity as its assistant director from 1941 to 1942.⁹⁵ She did not allow male reporters at the White House conferences except once, when she came back from the Pacific war zone.⁹⁶ ER's press conferences occasionally were used to focus on young generations, the elderly, and low-income people.⁹⁷ This drew attention to socio-economic inequalities, especially in the District of Columbia, and thereby paved the way for adopting necessary measures to take corrective action through public and political institutions. For instance, in 1940, the U.S. administration's focus on Social Security and the welfare of elderly low-income people was reflected in press conference discussions on not so satisfactory conditions in the District of Columbia's Blue Plains home for the indigent senior citizens.⁹⁸ ER testified about Blue Plains before a Congressional committee, and efforts were made to ameliorate the conditions.⁹⁹

The White House press conferences of ER brought greater recognition to quite a few female reporters because their coverage of news from the White House was occasionally published in main news sections. Thus, ER—as well as the female correspondents—got more visibility due to the White House press conferences.¹⁰⁰ The press conferences are remembered as historic, as neither ER's predecessors nor successors met with the press in such a manner. ER was of the view that frequent press conferences could serve a public purpose.¹⁰¹ She used the White House to further her activist agenda when she attempted to better the situation during the Great Depression.¹⁰² Immediate predecessor of ER, Lou Henry Hoover, made radio broadcasts urging individuals to help others, yet, Hoover herself did not interact with the press like ER did.¹⁰³

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 412.

¹⁰² *Id.*

¹⁰³ *Id.*

The idea of holding the women's press conferences was a brainchild of Lorena Hickok.¹⁰⁴ The latter subsequently became ER's close friend while covering her in 1932.¹⁰⁵ Hickok believed that female reporters needed their own news sources for job security during the Great Depression.¹⁰⁶ Also, it would be easier for ER and the female reporters to meet at a particular time and venue instead of fixing individual appointments.¹⁰⁷ Hickok, however, resigned from her job with the AP because she thought that her relationship with the First Lady would impact the objectivity of her reporting.¹⁰⁸ In fact, Hickok avoided covering any of the women's conferences in the White House.¹⁰⁹

There has been quite a heated debate over the contributions of ER to the movement of modern women. It is argued by some that ER was far from being a feminist because she opposed the setting up of the National Women's Party and passage of the Equal Rights Amendment ("ERA").¹¹⁰ Gloria Steinem, cofounder of *Ms. Magazine*, however, begs to differ.¹¹¹ In Steinem's opinion, since ER used her influence to support women against inequality and injustice, the First Lady was certainly a feminist.¹¹² Pauli Murray argues that ER was a feminist par excellence not in the popular sense of the term, but by her actions, which catalyzed the women's movement.¹¹³ Murray adds that ER was not alone in opposing the Women's Party or ERA.¹¹⁴ Moreover, ER and others' opposition to the ERA was based on an apprehension that it would weaken the protection afforded by labor laws to women.¹¹⁵ Later on, ER revised her position and supported the ERA.

While Mrs. Roosevelt's brand of feminism did not lead her to give active support to the Equal Rights Amendment [ERA] which she and many women reformers had earlier opposed for fear the adoption of ERA would undermine state protective labor laws for women, by the 1950's she had dropped her strong objections to a constitutional guarantee of equality. Also, while the [President's] Commission [on the Status of Women] itself did not recommend ERA, several of the women who worked with the Commission under her leadership,

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ BELL-SCOTT, *supra* note 4, at 356.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See id.* at 356–57.

¹¹⁴ *Id.* at 357.

¹¹⁵ *Id.*

including myself, were the founders of the NOW which became the foremost advocate of ERA¹¹⁶

According to Murray, ER was an icon for women of her time.¹¹⁷ Her presence in public life from the 1920s to the 1960s made her a living example of a bold and courageous woman not only in the U.S., but also abroad.¹¹⁸

Perhaps Mrs. Roosevelt's greatest contribution to feminism during the forty years, which spanned the period from securing the vote for women in 1920 to the resurgence of the women's movement in the 1960's, was the example she set. . . . Eleanor Roosevelt was the most visible symbol of autonomy and therefore the role model of women of my generation. Although she did not live to see many of the spectacular gains—both substantive and symbolic—women have made in the past two decades, her own life and work pointed the way and helped to set in motion forces which made these gains possible. Just as she became the First Lady of the World, in a very real sense she was also the Mother of the Women's Revolution.¹¹⁹

2. Opposition to Communism and Support for a Democratic Finland

ER also advocated for a democratic Finland and pushed to use U.S. resources. In September of 1939, the only European country to withstand the military attacks of authoritarian regimes and to retain its independence by mid-summer of 1940 was Finland.¹²⁰ In northern Europe, neutral Sweden and fighting Finland survived as the lone democracies neither conquered nor occupied. The American public opinion, save the American Communist Party, generously supported Finland.¹²¹ A Gallup poll revealed eighty-eight percent of Americans favored Finland and only one percent supported Russia.¹²² President FDR, hamstrung by isolationist criticism and the Neutrality Acts prohibiting military aid, could initially offer Finland only moral support.¹²³ By the end of the war, however, a \$30 million loan for foodstuffs and agricultural credits was sanctioned by the federal government.¹²⁴ The president supported Finland and openly lambasted the pro-Moscow American Youth Congress ("AYC") that did not favor aid to Finland.¹²⁵ FDR told them that

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ MELVIN G. HOLLI, *THE WIZARD OF WASHINGTON* 101 (2002).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 101–02.

¹²⁴ *Id.*

¹²⁵ *Id.*

ninety-eight percent of the Americans stood by the Finns and that the Communist argument that aid to Finland was part of an imperialist war, smacked of ignorance. ER too was upset by the AYC's dogmatic opposition to the President and by their adherence to the Moscow line.¹²⁶ ER sarcastically said their opposition—to all and any aid by U.S. to democracies under attack in Europe by the despots—relented only when the Nazis pounced on the USSR.¹²⁷

3. Diversity Recruitment in Defense Forces in an Effort to Win All Wars and Make the U.S. a Better Place

ER was committed to making the U.S. a better place where everyone, irrespective of race or other differences, could live equally and with opportunity. She promised to offer her “faith, cooperation and energy” to realize this dream.¹²⁸ In ER's view, the proper meaning of national defense was the mobilization of all Americans, so that every American could receive training to overcome poverty and make the community a better place in which to live.¹²⁹ ER was very much concerned about racial discrimination in various walks of life, including jobs in defense and its impact on national security.¹³⁰ During the World War II, ER's main preoccupation was domestic affairs—such as race relations—which in her view determined the present as well as the future of the nation.¹³¹ After the Pearl Harbor attack, ER told a few Washington church women that “[t]he nation cannot expect colored people to feel that the U.S. is worth defending if they continue to be treated as they are treated now.”¹³² She travelled from coast to coast to convince the people about the critical significance of recruiting blacks into defense jobs.¹³³ This infuriated the white supremacists in the south. ER, however, continued to pursue her progressive stance on civil rights.¹³⁴

When FDR was busy fighting and winning the World War II, ER firmly believed that the war at home would not be won in any real sense as long as orthodoxy and conservatism prevailed in American society.¹³⁵ She favored the renewal of democracy at home so that the U.S. efforts to establish democracy abroad could

¹²⁶ *Id.*

¹²⁷ *Id.* at 101–02.

¹²⁸ GOODWIN, *supra* note 3, at 167.

¹²⁹ *See id.*

¹³⁰ *See id.* at 249.

¹³¹ *See id.* at 10, 328.

¹³² *See id.* at 328.

¹³³ *Id.* at 330.

¹³⁴ *See id.* at 330–31.

¹³⁵ *See id.* at 10.

succeed.¹³⁶ Of course, ER was not alone in this struggle against inequality and injustice. She was supported by many civil-rights leaders, labor leaders, and liberal spokesmen in search for social justice.¹³⁷ Without her sustained support in the top echelons of the decision-making circles, the priority of the administration would have remained to succeed in the international war, without getting distracted by the domestic war.¹³⁸ ER, however, changed the course.

4. ER Honored for Her Work on Civil Rights and Poverty

On May 3, 1940, ER was honored at New York's Astor Hotel by *The Nation* magazine for her phenomenal work on civil rights and poverty.¹³⁹ Over a thousand people came to watch her receive a bronze plaque for "distinguished service in the cause of American social progress."¹⁴⁰ One of the speakers that night, Stuart Chase, praised the First Lady's exclusive focus on domestic problems.¹⁴¹ Chase said:

I suppose she worries about Europe like the rest of us, but she does not allow this worry to divert her attention from the homefront. She goes around America, looking at America, thinking about America . . . helping day and night with the problems of America. . . . New Deal is supposed to be fighting a war, too, a war against depression.¹⁴²

Author John Gunther began speaking by asking a question, "What is an institution?"¹⁴³ He observed, "An institution [is] something that had fixity, permanence, and importance . . . something that people like to depend on, something benevolent as a rule, something we like."¹⁴⁴ And going by that definition, he opined that the lady being felicitated that night was no less an institution than her husband was, who was already being talked about for a record third term.¹⁴⁵ Reflecting Gunther's feelings, National Association for Advancement of Colored People head, Walter White, turned to ER and said, "My dear, I don't care if the President runs for the third or fourth term as long as he lets you run the bases, keep the score and win the game."¹⁴⁶ ER, in her acceptance speech, said she was quite puzzled and embarrassed to see people whom she respected so

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *See id.*

¹³⁹ *Id.* at 18.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

much, laud and grant her an honor.¹⁴⁷ She said her feeling was that they ought to have been talking about someone else.¹⁴⁸ She went on to add:

I will do my best to do what is right, . . . not with a sense of my own adequacy but with the feeling that the country must go on, that we must keep democracy and must make it mean a reality to more people. . . . We should constantly be reminded of what we owe in return for what we have.¹⁴⁹

It was this unstinted commitment of ER to democracy that made Americans, in a Gallup poll taken in the spring of 1940, rate her even higher than her husband, with sixty-seven percent of those interviewed endorsing her activities.¹⁵⁰ The survey suggested:

Mrs. Roosevelt's incessant goings and comings have been accepted as a rather welcome part of the national life. Women especially feel this way. But even men betray relatively small masculine impatience with the work and opinions of a very articulate lady. . . . The rich, who generally disapprove of Mrs. Roosevelt's husband, seem just as friendly toward her as the poor. . . . Even among those extremely anti-Roosevelt citizens who would regard a third term as a national disaster there is a generous minority . . . who want Mrs. Roosevelt to remain in the public eye.¹⁵¹

ER has been honored and recognized for her work through tangible awards and public approval.

D. ER Continues Her Work During Her Post-White House Years

Even when ER and her husband left the White House, her social and political work did not stop. In December 1945, President Harry B. Truman called up ER, as the first ever meeting of the United Nations General Assembly was to take place in January 1946 in London.¹⁵² He asked whether she would be interested in serving as a member of the U.S. delegation.¹⁵³ She refused, saying that she had neither expertise nor experience in international affairs.¹⁵⁴ Truman, however, did not give up and asked her to seriously consider this matter and promised that she was qualified for the job.¹⁵⁵ ER weighed the pros and cons before finalizing her decision.¹⁵⁶ She used to treat the United Nations as the most important legacy of her husband, and she

¹⁴⁷ *Id.* at 19.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 633.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

aspired to be part of the U.S. delegation.¹⁵⁷ Unfortunately, she feared failure.¹⁵⁸ Eventually, she overcame her apprehensions and accepted the position, setting a new path in the arena of human rights that made her the most respected person of that time both nationally and internationally.¹⁵⁹ She sought to make the rest of her life worthy of her husband's memory by fighting for his ideals.¹⁶⁰

Thus, ER continued to be an influential political person until her sad demise in 1962 at the age of seventy-eight.¹⁶¹ She was a catalyst behind the Declaration of Human Rights, which was adopted by the United Nations in 1948.¹⁶² She was also a champion of the Jewish homeland in Israel, a leading player in New York politics, a prominent backer of politician Adlai Stevenson, and one of the founders of Americans for Democratic Action.¹⁶³ In her advanced age, she was affectionately referred to as "the greatest woman in the world."¹⁶⁴ Tributes to ER came from around the world after her death from anemia and tuberculosis on November 7, 1962 in New York City.¹⁶⁵ ER's funeral was attended by the who's who of U.S. politics at that time, including President John F. Kennedy and Mrs. Kennedy, Vice-President Lyndon B. Johnson, former Presidents Harry B. Truman and General Dwight D. Eisenhower, Chief Justice Earl Warren, Adlai Stevenson, Frances Perkins, James Farley, and Sam Rosenman.¹⁶⁶ About 10,000 people attended a memorial service held for her at the Cathedral Church of St. John the Divine in New York City on November 17, 1962.¹⁶⁷ Adlai Stevenson paid glowing tributes to ER and recalled her contribution to world peace and vulnerable people.¹⁶⁸

ER's portrayal in all obituaries was not totally reverential.¹⁶⁹ Commentators drew attention towards ER's "unhappy childhood,"¹⁷⁰ her "perception of herself as plain,"¹⁷¹ her

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *See id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 636.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *See* Mieke van Thoor, *Death of Eleanor Roosevelt*, in THE ELEANOR ROOSEVELT ENCYCLOPEDIA, *supra* note 30, at 122; *see also* *First Lady Biography: Eleanor Roosevelt*, *supra* note 1.

¹⁶⁶ *See* GOODWIN, *supra* note 3, at 636.

¹⁶⁷ *See* Thoor, *supra* note 165, at 123.

¹⁶⁸ *See id.*

¹⁶⁹ *See id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

“protruding teeth,”¹⁷² and her “long-lasting difficulties with her mother-in-law, Sara Delano Roosevelt.”¹⁷³ *Chicago Tribune* on November 9, 1962 ran a story with a headline, “Red Bloc Joins in Tribute to F.D.R. Widow.”¹⁷⁴ An AP dispatch from New York on November 8, 1962 stated, “Mrs. Roosevelt was as controversial as she was prominent. . . . But loved or despised, she was a woman too vital ever to be ignored.”¹⁷⁵ *Los Angeles Herald-Examiner* on November 9, 1962 published a tribute by AP feature writer Cynthia Lowry to ER.¹⁷⁶ Lowry wrote, “[ER] was a curious mixture of kindly, deep concern for people and impersonality”¹⁷⁷ and “Mrs. Roosevelt really became interested in individuals only when they had problems.”¹⁷⁸ Journalist May Craig wrote in *Kennebec (Maine) Journal* on November 10, 1962 that ER did a praiseworthy job of supporting FDR’s return to politics after his polio attack.¹⁷⁹ Craig wrote:

[ER became] his “legs” and his eyes and ears, painfully overcoming her natural shyness, as a political campaigner and public speaker in her efforts to keep him from becoming “a crippled invalid, pampered in the Hyde Park mansion by his mother.”¹⁸⁰

News of ER’s passing was widely reported across the world.¹⁸¹ *The Daily Telegraph* (London), published on November 8, 1962, specifically mentioned her “admiration and friendship for Britain,”¹⁸² applauded her association with causes “of peace and of the welfare of humanity,”¹⁸³ and for her “personal quality of selflessness.”¹⁸⁴ *De Haagse Courant*, a Dutch daily, described ER as “one of the most influential women of the century.”¹⁸⁵ *The Times of India*, on November 9, 1962, referred to ER as “a Friend of the Common People”¹⁸⁶ and noted her deep influence “on the thought and manners of the women of her country for more than a quarter of century,”¹⁸⁷ besides her global activities that “prompted writers to call her the ‘First Lady of the World’¹⁸⁸ and

172 *Id.*

173 *Id.*

174 *Id.*

175 *Id.*

176 *See id.*

177 *Id.*

178 *Id.*

179 *See id.*

180 *Id.*

181 *See id.*

182 *Id.* at 124.

183 *Id.*

184 *Id.*

185 *Id.*

186 *Id.*

187 *Id.*

188 *Id.*

the ‘Number One World Citizen.’”¹⁸⁹ *Le Monde* (France), published on November 9, 1962, wrote that ER’s activities “greatly increased in importance after her husband’s death.”¹⁹⁰ *Japan Times*, on that very day, reported that even after the death of FDR, she “continued to retain her international fame as a traveler, writer and broadcaster, and active promoter of her political and social ideals.”¹⁹¹ On November 9, 1962, the then-USSR, or by now ex-Soviet Union newspaper, *Pravda*, quoted an excerpt from Foreign Minister Andrei Gromyko’s telegram to ER’s family.¹⁹² It read, “Those who were personally acquainted with Eleanor Roosevelt . . . will always have the best memories of her.”¹⁹³ *China News* (Taipei), on November 9, 1962, reported an executive order issued by President John F. Kennedy on November 8, 1962 that “flags be flown at half mast at all U.S. government buildings until the burial of ER.”¹⁹⁴ *Morning News* (Sudan), in its edition of November 9, 1962, reported a dispatch from New York highlighting that Adlai Stevenson managed to find time “to go to ER’s bedside at the height of the crises between the United States and the Soviet Union over missiles in Cuba.”¹⁹⁵

ER’s contributions to social and political issues were a culmination of her extensive and varied life experiences. She serves as a model for what women can achieve in various occupations. Despite the time period in which she lived, ER is an extremely noteworthy individual and many lessons can be learned from understanding her story.

III. NANCY PELOSI

Nancy Pelosi has served and continues to serve as a model of powerful women in U.S. politics. Like ER, Pelosi exemplifies a female political figure that created her own path and has left behind lasting impacts.¹⁹⁶ Unique to Pelosi is the fact that her work is not done yet. This section aims to provide an overview of Pelosi’s career and breakthroughs in politics, key areas of

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See Sheryl Gay Stolberg, *Nancy Pelosi, Icon of Female Power, Will Reclaim Role as Speaker and Seal a Place in History*, N.Y. TIMES (Jan. 2, 2019), <http://www.nytimes.com/2019/01/02/us/politics/nancy-pelosi-house-speaker.html?auth=login-email&login=email> [<http://perma.cc/LHW6-ST8B>].

legislation and policy that she has supported, and how her actions serve as a model for other women.

A. Public Service: A Noble Cause

Similar to both ER and Ivanka Trump, Nancy Pelosi comes from a family of politically inclined and prominent individuals. Pelosi's father, Thomas D'Alesandro Jr., was Mayor of Baltimore for twelve years.¹⁹⁷ He then represented Baltimore for five terms in Congress.¹⁹⁸ Pelosi's brother, Thomas D'Alesandro III, also was Mayor of Baltimore.¹⁹⁹ Her mother, Annunciata D'Alesandro, was an active strategist and organizer.²⁰⁰ Pelosi studied at Trinity College in Washington, D.C.²⁰¹ She, along with her husband, Paul Pelosi, are the parents of five grown children and grandparents of nine grandchildren.²⁰²

Pelosi has achieved a lot in U.S. politics, and she continues to lead. Many of her accomplishments are breakthroughs and records for women in politics. In the early 2000s, Pelosi accomplished many firsts. In 2001, she was elected as the Democratic Whip, becoming the first woman to hold that position.²⁰³ Following on the heels of that success, Pelosi was elected the Democratic leader, again achieving a first for women.²⁰⁴ Pelosi made history in 2007 when she was elected as the first woman to serve in the capacity of Speaker of the House.²⁰⁵ Today, she is in her third term as Speaker.²⁰⁶ She once again made history in January 2019, when she regained her position, second-in-line to the presidency.²⁰⁷ Pelosi is the first person to accomplish this feat in over six decades.²⁰⁸ Currently, Pelosi is the 52nd Speaker of the House of Representatives.²⁰⁹ Pelosi cares about trying to minimize health care costs, enhancing the pay of workers through robust economic growth, rebuilding America, and cleaning up corruption by making Washington work for all.²¹⁰ Pelosi has successively represented

¹⁹⁷ *Full Biography*, CONGRESSWOMAN NANCY PELOSI CAL.'S 12TH DISTRICT, <http://pelosi.house.gov/biography-0> [<http://perma.cc/8J9X-LAGR>] (last visited Feb. 7, 2020).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Stolberg, *supra* note 196.

²⁰¹ *Full Biography*, *supra* note 197.

²⁰² *Id.*

²⁰³ Stolberg, *supra* note 196.

²⁰⁴ *Id.*

²⁰⁵ *Full Biography*, *supra* note 197.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

San Francisco, California's 12th Congressional District, for thirty-one years.²¹¹ She has been leader of House Democrats for sixteen years and has also been a House Democratic Whip.²¹² Her name was included in the National Women's Hall of Fame in 2013 at a ceremony in Seneca Falls, where the American women's rights movement was launched.²¹³

Under the leadership of [Speaker] Pelosi, the 111th Congress was heralded as 'one of the most productive Congresses in history' by Congressional scholar Norman Ornstein.²¹⁴

President Barack Obama called Speaker Pelosi "an extraordinary leader for the American people," and the Christian Science Monitor wrote: "... make no mistake: Nancy Pelosi is the most powerful woman in American politics and the most powerful House Speaker since Sam Rayburn a half century ago."²¹⁵

During the Obama presidency, Pelosi led the House adoption of the American Recovery and Reinvestment Act in 2009.²¹⁶ It was done to generate and save a lot of American jobs, offer relief for American families, and provide tax reductions to over ninety percent of working Americans.²¹⁷ In collaboration with the House Democratic Caucus, Pelosi continues to focus on the need to create jobs in America.²¹⁸

Pelosi pioneered the work on the Affordable Care Act ("ACA") that has provided protections to Americans with pre-existing medical conditions, stopped annual and lifetime limits on health care coverage, and offered affordable health care coverage to several millions, while slashing healthcare expenditures in the long run.²¹⁹ In the 111th Congress, Pelosi also led Congress in passing strong Wall Street reforms to regulate big banks and protect consumers, as well as the Student Aid and Fiscal Responsibility Act to widen educational opportunities and reform the financial aid system to save taxpayers' money.²²⁰ Another law was passed under her leadership—Lilly Ledbetter Fair Pay Act—to restore the ability of women and all workers to access the judicial system to fight pay discrimination.²²¹ Pelosi also led in passing law to provide

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*; see Stolberg, *supra* note 196.

²²⁰ *Full Biography, supra* note 197.

²²¹ *Id.*

healthcare for 11 million American children, as well as national service legislation, and hate crimes legislation.²²² Pelosi led Congress in passing child nutrition and food safety legislation, as well as rescinded the biased “Don’t Ask, Don’t Tell” policy in 2010 that prevented gays and lesbians from “openly serving” in the defense services.²²³

Nancy Pelosi has an impressive track record of firsts for women in U.S. politics. The below sections highlight multiple key legislative and political issues that Pelosi greatly impacted.

B. Pelosi’s Stance and Impacts on Noteworthy Issues

1. Leadership in Environmental Issues and Climate Crisis

In a statement marking the fourth anniversary of the Paris Agreement, Pelosi said, the “landmark Paris Climate Agreement” represents a commitment by the nations “to boldly tackle the existential threat posed by the climate crisis.”²²⁴ She opined, U.S. leadership is now critical to protect the people and places to ensure “a healthy sustainable future for our children and grandchildren to grow and thrive.”²²⁵ She has criticized policies of President Donald Trump and stated that the Trump Administration “recklessly abandoned” the Paris agreement.²²⁶ She added that Democrats were committed to taking action on the climate crisis.²²⁷ That was the message delivered to the international allies at the COP25 in Madrid in November 2019.²²⁸ She said, “House Democrats have delivered on this commitment with bold action.”²²⁹ She reiterated commitment to invest in a clean energy future capable of creating decent jobs and leading to 100 percent clean energy by 2050.²³⁰ Pelosi warned this was time for action, as inaction would have disastrous consequences for our children and our future.²³¹

²²² *Id.*

²²³ *Id.*

²²⁴ *Pelosi Statement on the Fourth Anniversary of the Paris Climate Agreement*, CONGRESSWOMAN NANCY PELOSI CAL.’S 12TH DISTRICT (Dec. 12, 2019), <http://pelosi.house.gov/news/press-releases/pelosi-statement-on-the-fourth-anniversary-of-the-paris-climate-agreement> [<http://perma.cc/2Q6T-9QPQ>].

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

Pelosi has accorded priority to the climate crisis.²³² She helped enact comprehensive energy legislation in 2007 to raise vehicle fuel efficiency standards for the first time in thirty-two years and made a historic commitment to use home grown biofuels.²³³ In 2009, under her leadership, the House passed the American Clean Energy and Security Act to create clean energy jobs, curb the climate crisis, and move America to a clean energy economy.²³⁴ Although the legislation was stalled by Republicans in the Senate, it sent a strong message to the world about U.S. commitment to combating climate change.²³⁵ She helped pass the “Pelosi Amendment” in 1989 to assess the potential environmental impacts of development.²³⁶ In San Francisco, Pelosi drafted the law to establish the Presidio Trust and transform a former military post into an urban national park.²³⁷ In order to promote accountability and transparency in government, Pelosi led the House in passing ethics reform legislation, including the creation of an independent ethics panel, and increased accountability and transparency in House operations.²³⁸ Pelosi struggled to pass the DISCLOSE Act in the House to fight a corporate takeover of U.S. elections and assure additional disclosure.²³⁹ Other laws passed under Pelosi’s leadership include: “[A]n increase in the minimum wage for the first time in 10 years; the largest college aid expansion since the GI bill; a new GI education bill for veterans of the Iraq and Afghanistan wars; and increased services for veterans, caregivers, and the Veterans Administration.”²⁴⁰

2. Legislative Wins Amidst a Republican Majority

As House Democratic leader, Pelosi secured legislative wins from the GOP majority. In the 114th Congress, she spearheaded a bipartisan agreement to strengthen Medicare.²⁴¹ After the Iran Nuclear Agreement, Pelosi made the effort to secure votes to override a possible presidential veto of the Republican effort to disapprove the Joint Comprehensive Plan of Action.²⁴² Pelosi’s negotiating skills have resulted in a significant rise in funds for

²³² *Id.*

²³³ *Full Biography, supra* note 197.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

key Democratic priorities.²⁴³ In the fiscal year 2016 omnibus, Pelosi got the permanent authorization of the World Trade Center Health Program, as well as a massive five-year extension of expiring wind and solar renewable energy tax credits.²⁴⁴ During the fiscal year 2018 omnibus, Pelosi secured striking increases in domestic investments, “including a \$3.2 billion increase in opioid epidemic funding, a \$3 billion increase for NIH medical research, and the largest single year funding increase for Child Care Development Block Grants in the initiative’s history.”²⁴⁵ Despite the Republican tirade against Americans’ healthcare, Pelosi held the House Democrats together through dozens of votes to weaken the ACA.²⁴⁶ She used Democrats to mobilize a nationwide campaign to block House Republicans’ “Trumpcare” legislation.²⁴⁷ Under her dynamic leadership, House Democrats also unanimously opposed the GOP tax concessions to the affluent.²⁴⁸

3. Inspiration to Face Challenges with Hope and Courage

Like ER, Pelosi has also been recognized for her achievements. On December 13, 2019, Pelosi was honored with the Robert F. Kennedy Human Rights Ripple of Hope Award in recognition of her steadfast commitment to social change and humanitarian advocacy.²⁴⁹ In her acceptance speech, Pelosi quoted a statement made in 1964 by Attorney General Robert Kennedy at the World Assembly of Youth about his hopes for the future: “Modern industry gives us the capacity for great wealth—but do we have the capacity to make that wealth meaningful to the poor of the world?”²⁵⁰ This was her concern for bridging the income gap among peoples of the world. She added that hope is needed to face the challenges of our time, including assaults on the U.S. Constitution, climate change, gun violence, and poverty.²⁵¹ Pelosi recalled that in the same speech, Robert Kennedy quoted the renowned historian Arnold Toynbee, who wrote, this is “the first age since the dawn of history in which mankind has dared to believe it practicable to make the benefits of civilization available

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Speaker Pelosi Remarks Upon Accepting the RFK Human Rights Ripple of Hope Award*, CONGRESSWOMAN NANCY PELOSI CAL'S 12TH DISTRICT (Dec. 13, 2019), <http://pelosi.house.gov/news/press-releases/speaker-pelosi-remarks-upon-accepting-the-rfk-human-rights-ripple-of-hope-award> [<http://perma.cc/26NL-AADM>].

²⁵⁰ *Id.*

²⁵¹ *Id.*

to the human race.”²⁵² Toynbee had further said, in his work, *A Study of History*, in a hopeful country the political leadership was a “creative minority” that encouraged the blossoming of a civilization.²⁵³ But in certain nations, leaders turned out to be a “dominant minority” of “exploiters.”²⁵⁴ Thus, two mindsets—hopeful and exploitive—divide the society and the polity. Pelosi is certainly in favor of the “creative minority.” Looking around the room, she said she saw “faith and human goodness.”²⁵⁵ She saw in the work of Robert F. Kennedy human rights which have made, in his own words, “tame the savageness of man and make gentle the life of this world.”²⁵⁶ Pelosi praised the courage of young Americans who are striving for equality, protecting rights of women, combating climate action, and in the unfortunate case of gun violence, saving their precious lives.²⁵⁷ She congratulated other awardees too.²⁵⁸ For instance, while praising J.K. Rowling, the celebrated author of the *Harry Potter* books, Pelosi said: “[Y]ou taught—you encouraged many, many, many children—more than you could imagine to read.”²⁵⁹ She called Rowling “a magician [who turned her] compassion into improving the lives of so many children.”²⁶⁰ Talking about yet another awardee, Wendy Abrams, Pelosi highlighted her passion for “making a difference in [the] world.”²⁶¹

Pelosi said in her acceptance speech she was brought up with the Kennedy philosophy: “[P]ublic service was a noble cause, and that we all had a responsibility to help those in need.”²⁶² She emphasized the need to respect fellow human beings, as all of us are the children of the same God.²⁶³ She added:

[W]e carried reverence that we’re all God’s children, and we were brought up to believe that there is a spark of divinity in every person in this world and everyone must respect that spark of divinity and be good stewards of every one of God’s children. And not only that, we must respect the spark of divinity in ourselves and the responsibility that goes with it.²⁶⁴

²⁵² *Id.*

²⁵³ *Id.*; see generally ARNOLD J. TOYNBEE, *A STUDY OF HISTORY* 1 (1946).

²⁵⁴ *Speaker Pelosi Remarks Upon Accepting the RFK Human Rights Ripple of Hope Award*, *supra* note 249.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

4. Congressional Oversight Supports People

In a statement regarding Congressional oversight, Pelosi said the courts have time and again upheld the Congressional authority to conduct oversight on behalf of the American people.²⁶⁵ They have categorically recognized that the Committees' subpoenas of the President's financial records are legal and enforceable. She added that the courts have stated that there are "no special privileges for information unrelated to the President's official duties," but related to "Congress's need for legislation and oversight."²⁶⁶ She regretted that Americans would have to wait months for final rulings.²⁶⁷ She hoped that the Supreme Court would uphold the Constitution and the rulings of the lower courts besides guaranteeing that Congressional oversight could proceed.²⁶⁸ She added that Congress would continue to conduct oversight for the people and uphold the cardinal constitutional principle of separation of powers.²⁶⁹ This shows Pelosi's commitment to the constitutional principles and norms to strengthen the democratic form of government.

5. A Democrat Committed to Internet Freedom and Privacy

On December 14, 2017, Pelosi issued a statement in the wake of the Federal Communications Commission's ("FCC") decision to do away with the historic net neutrality protections.²⁷⁰ She said that an arbitrary manner of rule change imposed higher costs on consumers and curtailed their choices, strangled competition, and penalized small businesses and entrepreneurs.²⁷¹ Her concern was that its enforcement would deprive users of the control of their own browsing experience, and make them pawns in the hands of giant internet providers.²⁷² Pelosi stated:

The FCC's radical, partisan decision to dismantle net neutrality strikes a stunning blow to the promise of a free and open Internet. . . . FCC Chairman Ajit Pai is proving himself an eager executor of the Trump Administration's anti-consumer, anti-competition agenda. . . . [T]oday's dangerous rule change saddles consumers with higher costs and less

²⁶⁵ *Pelosi Statement on Next Steps in Court Cases on Congressional Oversight*, CONGRESSWOMAN NANCY PELOSI CAL.'S 12TH DISTRICT (Dec. 13, 2019), <http://pelosi.house.gov/news/press-releases/pelosi-statement-on-next-steps-in-court-cases-on-congressional-oversight> [<http://perma.cc/25CW-V9A4>].

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Pelosi Statement on Net Neutrality Ruling*, CONGRESSWOMAN NANCY PELOSI CAL.'S 12TH DISTRICT (Dec. 14, 2017), <http://pelosi.house.gov/news/press-releases/pelosi-statement-on-net-neutrality-ruling> [<http://perma.cc/DK7M-JLGG>].

²⁷¹ *Id.*

²⁷² *Id.*

choice, throttles competition and punishes entrepreneurs and small businesses. If implemented, these changes would rip away users' control of the own browsing experience, and put it in the hands of big providers.²⁷³

[Pelosi] contended that the FCC's decision-making process on rule change was hasty, secretive, and technically erroneous.²⁷⁴ It was made without holding any public hearing and amidst stiff resistance from Internet experts and technology practitioners.²⁷⁵ A disturbing element was the refusal of FCC to curb the risk of internet users' identity theft and bogus comments in the record of the agency.²⁷⁶ The FCC had also disregarded the Freedom of Information (FOIA) requests or requests for information from the New York Attorney General's Investigation.²⁷⁷

Pelosi said Americans want an open and dynamic Internet without interference by the providers.²⁷⁸ She urged Congressmen and Congresswomen to stand by the American people by implementing Rep. Mike Doyle's resolution to undo the decision of the FCC by exercising the authority vested in them by the Congressional Review Act.²⁷⁹ Pelosi said if Republicans overlooked the demands of their electors, Democrats would go to the courts.²⁸⁰ Her expectation was that the courts would adjudicate upon the matter as per the law and the views of the American people.²⁸¹

On October 1, 2019, Pelosi issued a statement after the D.C. Circuit Court of Appeals' ruling that permitted the FCC repeal of net neutrality protections to go forward, but simultaneously struck down provisions preventing states from implementing their own net neutrality laws.²⁸² She expressed her disappointment over the court ruling, which according to her, was beneficial to the corporate world and big providers, but harmful to the U.S. economy and the spirit of entrepreneurship.²⁸³ She urged Senator McConnell to hold a vote on the House-passed Save The Internet Act to bring back net

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *See id.*

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Pelosi Statement on Net Neutrality Appeals Court Ruling*, CONGRESSWOMAN NANCY PELOSI CAL.'S 12TH DISTRICT (Oct. 1, 2019), <http://pelosi.house.gov/news/press-releases/pelosi-statement-on-net-neutrality-appeals-court-ruling> [<http://perma.cc/LR72-CUYX>].

²⁸³ *Id.*

neutrality provisions and provide a level playing field for U.S. small businesses, entrepreneurs, and consumers.²⁸⁴

Pelosi, however, hailed the court ruling for compelling the FCC to reexamine how revoking net neutrality jeopardized vulnerable communities, and ordering the FCC not to forbid states from enforcing their better net neutrality laws.²⁸⁵ She said that when the federal government did not protect hard-working families, California's stewardship in enforcing the strongest net neutrality protections in America was a model to assure that the internet remained available and accessible to all, promoted innovation, created jobs, and safeguarded freedom of speech.²⁸⁶

Pelosi spoke in the House of Representatives to demand rescission of a FCC rule on privacy and internet service providers.²⁸⁷ She accused the Trump Administration and the FCC of selling internet users' intimate personal information without their knowledge or consent.²⁸⁸ She termed this as an attack on innovation, competition, and entrepreneurship—which are hallmarks of the internet.²⁸⁹ While appreciating the role of such technologies in promoting prosperity and innovation, she pointed out that these technologies can also challenge people's privacy and freedom, which are sacrosanct in a democracy.²⁹⁰ In her opinion, free and open internet that provides a level playing field to all (irrespective of their ideas), not just to those who have deep pockets, can only guarantee its success.²⁹¹ She sought robust rules to protect innovators and consumers in addition to ensuring free, fair, fast, competitive, and equal access to the internet.²⁹² Pelosi reiterated the commitment of Democrats to safeguard the openness and freedom that characterizes the internet and U.S. culture of innovation in the new millennium.²⁹³ Pelosi promised Americans internet neutrality and privacy.²⁹⁴

6. Advocating for Middle Class Economics and Pay Equity

Pelosi has also been an advocate for middle class economics and pay equity, similar to ER's priorities. Pelosi addressed the

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Internet Freedom*, CONGRESSWOMAN NANCY PELOSI CAL.'S 12TH DISTRICT, <http://pelosi.house.gov/issues/internet-freedom> [<http://perma.cc/2CB8-54L7>] (last visited Feb. 28, 2020).

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

Department of Labor's San Francisco Forum on Working Families.²⁹⁵ She sought to communicate to people the plan of the Democratic Party to raise the minimum wage, guarantee equal pay for women, and create good-paying jobs for the middle class.²⁹⁶ In order for the American economy to progress, active efforts should be made to provide a secure financial future for all.²⁹⁷ This would help hardworking families buy a home, send their children to school, and save for unforeseen circumstances.²⁹⁸

Pelosi credited the U.S. labor force for contributing to the nation's success and observed that they deserve an economy that suits them.²⁹⁹ In her opinion, Americans need middle-class economics, not the trickle-down system that protects the rich and powerful.³⁰⁰ It is imperative to increase the federal minimum wage, assure overtime pay, cement collective bargaining rights and the right to organize in the workplace, combat discrimination, and guarantee equal pay for equal work.³⁰¹

American workers drive our nation's success and deserve an economy that works for them. . . . We need middle-class economics, not the failed trickle-down economics that drove our economy into a ditch as House Republicans continue to stack the deck for the wealthy. We must raise the federal minimum wage, extend overtime pay, secure collective bargaining rights and the right to organize in the workplace, protect workers from discrimination and ensure equal pay for equal work.³⁰²

7. Republicans Obstruct Prevention of Gun Violence

Gun violence and regulation is a topic of high importance in today's society, one which Pelosi has been working on for some time. On the National Day of Action for Commonsense Gun Violence Prevention, Pelosi joined Bay Area members of Congress, law enforcement, community leaders, and survivors of gun violence.³⁰³

Tragically, each day ninety-one people in America are killed by guns. Too many families in our nation bare the painful stories of loved ones lost to gun violence and this heartbreak ripples through our

²⁹⁵ *Jobs and Economic Justice*, CONGRESSWOMAN NANCY PELOSI CAL'S 12TH DISTRICT, <http://pelosi.house.gov/issues/jobs-and-economic-justice> [<http://perma.cc/CTT9-ZKN5>] (last visited Feb. 28, 2020).

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Gun Violence Prevention*, CONGRESSWOMAN NANCY PELOSI CAL'S 12TH DISTRICT, <http://pelosi.house.gov/issues/gun-violence-prevention> [<http://perma.cc/BDM4-63KH>] (last visited Feb. 28, 2020).

communities with each new gun death. Americans deserve a nation where their homes, their neighborhoods, their dance clubs, their places of worship and their classrooms are free from fear.³⁰⁴

Pelosi reminded members of Congress of the pledge they made while assuming their offices; they promised to safeguard the American people.³⁰⁵ In order to keep it, Congressmen and Congresswomen ought to do whatever possible to protect their communities from the menace of gun violence.³⁰⁶ Although she favored former President Barack Obama's holistic approach to check antecedents and implement extant law, her view was that such simple steps cannot supplant any Congressional action.³⁰⁷ Her work on gun violence regulation has crossed many years and spans more than one presidency.

Pelosi lamented that even after the horrible mass shooting at Pulse Night Club in Orlando, Republicans in the House of Representatives blocked a vote on legislation aimed at introducing rigorous background checks and the No Fly, No Buy bill to prevent individuals on the terrorist watch list from purchasing guns.³⁰⁸ Interestingly, this demand was supported by eighty-five percent of U.S. citizens.³⁰⁹

On December 16, 2019, Pelosi issued a statement to commemorate the tragic gun shooting at Sandy Hook Elementary School in Newtown, Connecticut in 2012.³¹⁰ Twenty-six innocent lives were lost in that frightening incident.³¹¹ Recalling the measures taken by Democrats in the House of Representatives to stop spiraling gun violence and protect lives, Pelosi regretted that Republicans invariably impeded such legislative initiatives.³¹² She added that the resistance by Republicans persisted in spite of the fact that shooter lockdown drills had become order of the day for a generation.³¹³ Listening to the voices of young leaders struggling to save their lives, House Democrats passed the Bipartisan Background Check Act and the Enhanced Background Checks Act, to stop routines of gun

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Pelosi Statement Marking Seven Years Since the Shooting in Newtown*, CONGRESSWOMAN NANCY PELOSI CAL.'S 12TH DISTRICT (Dec. 16, 2019), <http://pelosi.house.gov/news/press-releases/pelosi-statement-marking-seven-years-since-the-shooting-in-newtown> [<http://perma.cc/Y6VT-MYPN>].

³¹¹ *Id.*

³¹² *Id.*

³¹³ *Id.*

violence and safeguard children.³¹⁴ Unfortunately, Senate Leader Mitch McConnell was reluctant to pass these crucial bills which could stop the bloodshed.³¹⁵ Senate Leader McConnell remains a mute spectator to the loss of 100 innocent lives to senseless violence.³¹⁶ Despite the common need to reduce gun violence, finding bipartisan support has been a difficult process. Pelosi has been fighting against the opposition from the Republican Party.

Pelosi stressed that Americans want effective action to end the horrible gun violence because it devastates families and communities.³¹⁷ She promised that: “In memory of those we lost in Newtown, and in cities and town across the country, House Democrats will never rest until we make our schools, houses of worship and other public places safe for our children to grow and thrive.”³¹⁸

Unfortunately, Pelosi is not new to issuing commemorative statements. On February 14, 2020, Pelosi issued a statement to commemorate the conclusion of two years since the shooting in Parkland, Florida, in which seventeen innocent people were killed and seventeen others were injured at Marjory Stoneman Douglas High School.³¹⁹ She said this tragedy was “part of an epidemic of gun violence”³²⁰ that has “torn families and communities apart across the country.”³²¹ She again criticized Senator McConnell for miserably failing to do anything to stop the deadly tragedy of gun violence that occurs almost daily across the nation.³²² Pelosi reiterated the commitment and support of Democrats to the cause of ending the menace of gun violence.³²³

8. Commitment to Quality and Affordable Health Care

One of Pelosi’s most prominent legislative moments has been her involvement in affordable health care.³²⁴ On February 6, 2020, Pelosi issued a statement after the House of Representatives passed House Resolution 826.³²⁵ The Resolution shows the

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ *Pelosi Statement on Two Years Since Parkland Shooting*, CONGRESSWOMAN NANCY PELOSI CAL.’S 12TH DISTRICT (Feb. 14, 2020), <http://pelosi.house.gov/news/press-releases/pelosi-statement-on-two-years-since-parkland-shooting> [<http://perma.cc/D2YK-SWKV>].

³²⁰ *Id.*

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ Stolberg, *supra* note 196.

³²⁵ *Pelosi Statement on the Passage of Disapproval Resolution Against President Trump’s Attack on Medicaid*, CONGRESSWOMAN NANCY PELOSI CAL.’S 12TH DISTRICT (Feb. 6, 2020),

House's disapproval of the Trump Administration's detrimental measures toward Medicaid.³²⁶ This was in response to the Administration's illegal Medicaid block grant plan to limit and reduce Medicaid.³²⁷ The statement criticized the White House's Medicaid block grant scheme as it directly attacked an essential lifeline for hundreds of thousands of families.³²⁸ It cautioned the Administration against depriving Medicaid recipients of lifesaving drugs, extracting unaffordable premiums, or leaving vulnerable families exposed to whopping medical bills.³²⁹ Democrats, and Pelosi, were against the actions taken by the current administration. Pelosi stated:

In the courts and in Congress, House Democrats are fighting to protect the right of every American to access quality, affordable health care. While the President continues his all-out attack on Americans' health care, Democrats are working to lower health care costs and the price of prescription drugs, protect individuals with pre-existing conditions and strengthen the pillars of health and financial security for every American.³³⁰

In order to further sharpen her principled fight with Republicans on the issue of health care in the public domain, on February 4, 2020, Pelosi announced the names of her guests for the State of the Union address who have suffered because of President Donald Trump's policy offensive against "protections for people with pre-existing conditions, broken promise to negotiate lower prescription drug prices, and broader health care sabotage."³³¹ It is noteworthy that House and Senate Democrats brought over eighty health care advocates, doctors, and patients from across the nation as guests to the State of the Union.³³² They included California Surgeon General, Dr. Nadine Burke Harris, an award-winning physician, researcher, and San Francisco-based advocate known for serving vulnerable communities and fighting the basic causes of health disparities.³³³ Another such guest was San Francisco-based twelve-year-old Jonah Cohen and his mother Jennifer Pliner.³³⁴

<http://pelosi.house.gov/news/press-releases/pelosi-statement-on-the-passage-of-disapproval-resolution-against-president> [<http://perma.cc/9ANA-D3KS>].

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Pelosi Announces State of the Union Guests with Health Care Stories*, CONGRESSWOMAN NANCY PELOSI CAL.'S 12TH DISTRICT (Feb. 4, 2020), <http://pelosi.house.gov/news/press-releases/pelosi-announces-state-of-the-union-guests-with-health-care-stories> [<http://perma.cc/RBG4-88W8>].

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

In 2017, Jonah was diagnosed with Type I diabetes.³³⁵ He is afraid of needles, but he tries to live a normal life.³³⁶ Other guests were twins Cheyanne Faulkner and Morgan Faulkner from San Francisco that have Type I diabetes and volunteer as patient advocates.³³⁷ Both of them were active members of the Young Leadership Committee that offered emotional, social, and practical support to young adults with Type I diabetes and their families.³³⁸ Yet another guest announced by Speaker Pelosi was a Maryland-based courageous Little Lobbyist, Xiomara Hung, along with her mother, Elena Hung.³³⁹ Xiomara spent the first five months of her life in the hospital and then wanted to see the world outside.³⁴⁰ Xiomara had Tracheobronchomalacia, Chronic Lung Disease, Chronic Kidney Disease, and Global Development Delays.³⁴¹ She had a tracheostomy and heavily depended upon ventilators and oxygen. She required a feeding tube as well for her nutrition.³⁴² For Xiomara, access to quality health care covered by health insurance meant she received the required level of care during an extended NICU hospitalization, and thereafter she could be at home with her family and be regularly monitored by specialists in outpatient appointments.³⁴³ Medicaid enormously helped Xiomara get habilitative therapies.³⁴⁴ In such a challenging scenario, if lifetime ceilings or pre-existing conditions restrictions were to be restored, she could not be insured, her family could go bankrupt, and she would not get the requisite medical care thereby irreversibly deteriorating the quality of her life.³⁴⁵ These individuals represented the people and values that Pelosi was advocating for with her efforts on affordable health care.

This unique mobilization of the affected people by Speaker Nancy Pelosi, on the occasion of State of the Union address, was a marvelous effort to reach out to the helpless and hapless patients and their families. It helped draw the attention of all stakeholders towards the scale, magnitude, and gravity of the problem of healthcare millions of Americans face.

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

9. Pelosi Reiterates Her Support for Abortion Rights

Pelosi has also been a supporter of abortion rights. On January 22, 2020, Pelosi issued a statement to mark the 47th anniversary of the landmark *Roe v. Wade*³⁴⁶ decision of the U.S. Supreme Court that upheld women's right to make decisions on reproductive issues.³⁴⁷ The statement said that the principle laid down by the Court in *Roe v. Wade* ensures that "a woman's reproductive health decisions are her own."³⁴⁸ This basic principle has its genesis in the American values of liberty and equality for all.³⁴⁹ It should be zealously upheld amidst desperate efforts to weaken constitutional rights of women.³⁵⁰ Pelosi criticized Republicans for attempting to "insert themselves into women's private health care decisions."³⁵¹ According to Pelosi, for American women and their families, the brazen Republican conspiracy against abortion rights of women threatens to "jeopardize their future"³⁵² and reverse years of "progress towards women's equality."³⁵³ Pelosi praised American women for boldly resisting Republicans' "outrageous efforts to undermine the landmark *Roe v. Wade* decision."³⁵⁴ She expressed solidarity with these women, and reaffirmed unwavering commitment of House Democrats to "end[] the attack on women's health care and fundamental rights,"³⁵⁵ and promised "to protect and build upon the legacy of *Roe v. Wade*."³⁵⁶ The Democratic leader promised to provide "all women . . . access to the comprehensive health care they need and [ensure they] are treated equally under the law."³⁵⁷ This is an endeavor by Pelosi to uphold constitutional and legal rights of American women, especially abortion rights.

10. Commitment to Reducing the Incidence of HIV and AIDS

Since her first day in Congress, Pelosi consciously made combating the epidemic of HIV and AIDS a paramount

³⁴⁶ 410 U.S. 113 (1973).

³⁴⁷ *Pelosi Statement on the Anniversary of Roe v. Wade*, CONGRESSWOMAN NANCY PELOSI CAL'S 12TH DISTRICT (Jan. 22, 2020), <http://pelosi.house.gov/news/press-releases/pelosi-statement-on-the-anniversary-of-roe-v-wade-0> [<http://perma.cc/R5L6-RL4J>].

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.*

concern.³⁵⁸ Pelosi said, in her maiden speech on the House floor on June 9, 1987, “now we must take leadership of course in the crisis of AIDS. And I look forward to working with you on that.”³⁵⁹ On the basis of the lessons drawn from the communitycentered care model of San Francisco, Pelosi sought to expedite development of an HIV vaccine, broaden access to Medicaid for people suffering from HIV, and enhance funds for the Ryan White CARE Act, the AIDS Drug Assistance Program (“ADAP”), the Minority HIV/AIDS Initiative, and other research, care, treatment, prevention, and search for a cure initiatives essential to people either living with HIV/AIDS or vulnerable to HIV/AIDS.³⁶⁰ It may be recalled that in 1989, Pelosi and Representatives Jim McDermott and Charles Schumer introduced the AIDS Opportunity Housing Act.³⁶¹ It led to the Housing Opportunities for People with AIDS initiative.³⁶² This was a critical lifeline for people who had contracted HIV and AIDS.³⁶³

Pelosi happened to engage in some of the earliest meetings for the NAMES Project AIDS Memorial Quilt.³⁶⁴ She embroidered her own patch for the flower girl in her wedding who unfortunately died of AIDS.³⁶⁵ Pelosi also helped secure the much needed permits from the National Park Service to pave the way for displaying the AIDS memorial quilt on the National Mall.³⁶⁶ In 1996, Pelosi led the passage of legislation to designate San Francisco’s AIDS Memorial Grove, located in Golden Gate Park, as a national memorial.³⁶⁷

Pelosi’s efforts to control HIV/AIDS were not confined to the U.S. alone.³⁶⁸ In order to control the global pandemic, in her capacity as ranking Democrat on the State and Foreign Operations Appropriations Subcommittee, Pelosi mobilized the efforts to increase the U.S. funding for bilateral AIDS initiatives in dire need of international attention and lacking adequate funds.³⁶⁹ In 2000, she provided leadership in the House Appropriations Committee to provide the first U.S. contribution

³⁵⁸ *HIV/AIDS*, CONGRESSWOMAN NANCY PELOSI CAL.’S 12TH DISTRICT, <http://pelosi.house.gov/issues/hivaid>s [http://perma.cc/JH3C-3QZ2] (last visited Mar. 11, 2020).

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ *Id.*

to the Global Fund to Fight AIDS, Tuberculosis, and Malaria.³⁷⁰ She also led efforts to pass amendments on the House floor to raise U.S. bilateral AIDS funding and debt waivers for the poorest nations.³⁷¹ During her role as Speaker of the House, and the Bush and Obama Administrations, the U.S. contribution for global health initiatives doubled from less than \$4 billion annually in the 2006 fiscal year to over \$8 billion in the 2010 fiscal year.³⁷² The House doubled bilateral funding for global AIDS, and also doubled the U.S. contribution to the Global Fund.³⁷³

In 2008, the House of Representatives, under the dynamic leadership of Pelosi, raised the international AIDS initiatives by adopting the Lantos-Hyde U.S. Global Leadership Act against HIV/AIDS, Tuberculosis, and Malaria. This move had authorized \$48 billion over five years from fiscal year 2009 through fiscal year 2014.³⁷⁴ There was an increase of \$35 billion as compared to the immediately preceding five years, and \$20 billion more than had been advocated for by President Bush.³⁷⁵

During her time as House Speaker, Pelosi also witnessed the domestic discretionary funding for HIV/AIDS rise by over half a billion dollars between the 2006 fiscal year and the 2010 fiscal year.³⁷⁶ Congress has lifted the ban on federal funding for syringe exchange and the travel ban for people with HIV/AIDS.³⁷⁷ Pelosi relentlessly pursued these legislative battles for several years in Congress.³⁷⁸ She also fought for the adoption of the ACA.³⁷⁹ The ACA helped those diagnosed with HIV/AIDS by widening access to Medicaid for people with HIV, improving Medicare Part D (prescription drug coverage) for people participating in the ADAP, stopping discrimination based on pre-existing conditions, and removing annual as well as lifetime restrictions on health benefits.³⁸⁰ These initiatives rescued millions from the death trap by offering testing, counseling, and better care to highly vulnerable patients globally.³⁸¹

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.*

11. Support for LGBTQ Rights

Pelosi's support and activism also spreads to equality and support for LGBTQ rights. Pelosi attended the ceremony to commemorate the Harvey Milk Forever Stamp's first day of issue.³⁸² It was an attempt to honor the life and legacy of Harvey Milk, a San Francisco native who devoted his life to equality.³⁸³ Pelosi underlined San Francisco's large and vibrant LGBTQ community and its reputation for advocacy to ensure equal rights for all.³⁸⁴ She said that since her arrival in Congress, "ending discrimination against gays and lesbians has been a top priority."³⁸⁵ She invariably supported laws "to better reflect the diverse society in which we live."³⁸⁶ She acknowledged the role of Congress in helping move towards the goal of "equal rights for every American."³⁸⁷ Pelosi highlighted protection against violence by passage of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, besides providing equal visitation rights for all hospital patients and bringing an end to discrimination in the military by repealing the discriminatory "Don't Ask, Don't Tell" policy.³⁸⁸ Pelosi joined Democratic leaders in the House and Senate to introduce the Equality Act.³⁸⁹ It is a comprehensive bill to stop discrimination against LGBTQ Americans forever.³⁹⁰ She promised to continue her struggle until there was an end to discrimination in the workplace, all American families are treated equally under the law, and bullying of LGBTQ youth in American schools and in society would cease.³⁹¹ She added that policies ought to be based on the ideals of "fairness, equality and justice."³⁹²

12. Israel-Palestine Conflict

Pelosi's work also expands beyond the confines of the U.S. On February 13, 2020, Pelosi issued a statement on the United Nations Human Rights Council's announcement on Israel.³⁹³

³⁸² *LGBTQ*, CONGRESSWOMAN NANCY PELOSI CAL.'S 12TH DISTRICT, <http://pelosi.house.gov/issues/lgbtq> [<http://perma.cc/C49U-KR5C>] (last visited Feb. 29, 2020).

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Pelosi Statement on United Nations Human Rights Council's Announcement on Israel*, CONGRESSWOMAN NANCY PELOSI CAL.'S 12TH DISTRICT (Feb. 13, 2020), <http://pelosi.house.gov/news/press-releases/pelosi-statement-on-united-nations-human-rights-council-s-announcement-on-israel> [<http://perma.cc/STE2-7ERC>].

Pelosi said, on the issue of setting up a code of conduct for businesses operating in Israel, that the U.S. House of Representatives has been quite clear. For example, on July 23, 2019, the House of Representatives voted to:

Oppose the Global Boycott, Divestment, and Sanctions Movement (BDS) targeting Israel, including efforts to target United States companies that are engaged in commercial activities that are legal under United States law, and all efforts to delegitimize the State of Israel.³⁹⁴

As a result, the U.S. House of Representatives was concerned that the United Nations Human Rights Council's announcement hardly helps settle the Israeli-Palestinian conflict.³⁹⁵ The statement added, "Therefore, we are concerned that the U.N. Human Rights Council's announcement is not in furtherance of resolving the Israeli-Palestinian conflict."³⁹⁶

13. War Powers Resolution and Commitment to Upholding the Constitution

Pelosi's world influence also went to matters distinct from the Israel-Palestine conflict. On February 13, 2020, Pelosi's press office issued a statement in light of the Senate adopting a Joint War Powers Resolution.³⁹⁷ Senator Tim Kaine played a key role in passing this resolution, which seeks to curb the President's military action in Iran.³⁹⁸ In her statement, Pelosi suggested that the passage of the robust War Powers Resolution by the Senate showed that it was aligning with the House of Representatives to discharge its primary Congressional obligation of safeguarding the people of the U.S.³⁹⁹ Pelosi criticized the policy of the Trump Administration to embark on the path of conflict with Iran without ever involving Congress.⁴⁰⁰ This policy harms Americans working in that region.⁴⁰¹ The White House neglects views of ordinary Americans facing the consequences of such policies.⁴⁰²

The President's reckless decision to engage in hostilities against Iran without consulting Congress continues to endanger our servicemembers, diplomats and others. Yet, for weeks now, the

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Pelosi Statement on Senate Passage of Joint War Powers Resolution*, CONGRESSWOMAN NANCY PELOSI CAL.'S 12TH DISTRICT (Feb. 13, 2020), <http://pelosi.house.gov/news/press-releases/pelosi-statement-on-senate-passage-of-joint-war-powers-resolution> [<http://perma.cc/T84U-3GTA>].

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² *Id.*

Administration has kept the Congress and American people in the dark about its actions and lack of strategy, including the resulting threats to our troops. More than 100 servicemembers have now been diagnosed with Traumatic Brain Injury from Iran's retaliatory strike, yet the President dismisses their wounds of war as 'headaches' and as being "not very serious."⁴⁰³

Pelosi stated that the House of Representatives is leading this legislative struggle to curtail the presidential powers on declaring wars.⁴⁰⁴ Representative Elissa Slotkin also provided leadership in this matter.⁴⁰⁵

The House has maintained a drumbeat of action to limit the President's dangerous military action and to save American lives by passing our War Powers Resolution under the leadership of Congresswoman Elissa Slotkin. We have also passed Congresswoman Barbara Lee's legislation to repeal the 2002 Iraq Authorization for Use of Military Force and legislation under Congressman Ro Khanna to prohibit funding for military action against Iran not authorized by Congress. Now, we will prepare to take up Senator Kaine's Joint Resolution in the coming weeks.⁴⁰⁶

The House leader reiterated the need for the President to take cognizance of the views of Congress and fellow citizens on lessening rising tensions and avoid wars.⁴⁰⁷ Her press statement read:

The President needs to listen to the will of Congress and the American people and work with Congress on a de-escalatory strategy that will protect American lives and interests. America and the world cannot afford war.⁴⁰⁸

C. The Cumulative Impacts of Women on U.S. Politics

Many of Pelosi's efforts and triumphs demonstrate not only that women can excel, but that America reaps the benefits of successful women in U.S. politics.

In 2014, Pelosi recalled her trip to Seneca Falls, New York, where she was inducted in the National Women's Hall of Fame.⁴⁰⁹ This was of course a moment of pride to her. She was thrilled because after the votes, nineteen of her House colleagues—women colleagues—came up there.⁴¹⁰ She vividly recounted how the crowd reacted to seeing a diverse group of

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ Nancy Pelosi, *When Women Succeed, America Succeeds*, 25 HASTINGS WOMEN'S L.J. 173, 173 (2014).

⁴¹⁰ *Id.*

women Congressional Members.⁴¹¹ Pelosi said that was, however, a secondary issue to paying respects to what happened at Seneca Falls 165 years ago.⁴¹² When the women colleagues gathered, it showed their courage. Once upon a time, women were not even allowed to speak in mixed company, but there, those women were breaking out, fighting for women's rights. They quoted the Declaration of Independence, that every man and woman is created equal. Then they said: "Such is now the necessity which constrains [women] to demand the equal station to which they are entitled."⁴¹³ According to Pelosi, it was quite exciting.⁴¹⁴ While the work of women in U.S. politics did not start with Pelosi—and it certainly will not end with her—she is a force to be reckoned with and has achieved many noteworthy firsts that serve as a model for future generations of American women.

Thus, Pelosi has made remarkable contributions to U.S. politics by leading from the front and giving priority to public service.

IV. IVANKA TRUMP

Ivanka Trump is the First Daughter of the nation and serves in the capacity of advisor to her father President Donald Trump.⁴¹⁵ While Nancy Pelosi's career highlights the influence a woman can wield in elected office, Ivanka demonstrates that influence can also be found by serving in unofficial and appointed capacities. Her story shares similarities with ER's, as each hails from a family with pre-existing social and political connections. It also shares characteristics with Nancy Pelosi's story, because both of these women have taken a front-line role in modern-day U.S. politics.

In her capacity as Advisor to the President, Ivanka has focused her attention "on the education and economic empowerment of women and their families."⁴¹⁶ She also has focused on "job creation and economic growth through workforce development, skills training and entrepreneurship," which all harken back to her business background.⁴¹⁷ Before her father was elected the forty-fifth President of the United States, "Ivanka oversaw development and acquisitions at the Trump Organization."⁴¹⁸ Ivanka negotiated "some of the company's

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ *Id.*

⁴¹⁴ *Id.*

⁴¹⁵ *Ivanka Trump*, WHITE HOUSE, <http://www.whitehouse.gov/people/ivanka-trump/> [<http://perma.cc/X9W8-P2K3>] (last visited Feb. 27, 2020).

⁴¹⁶ *Id.*

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

largest and most complex transactions.”⁴¹⁹ As with ER and Pelosi, Ivanka has used her upbringing and experiences to shape her involvement in U.S. politics. “Ivanka graduated from the Wharton School of Business at the University of Pennsylvania in 2004.”⁴²⁰ She has written two books that have been deemed bestsellers by *New York Times* and *Wall Street Journal*.⁴²¹ Ivanka’s name was featured “in *Fortune* magazine’s prestigious ‘40 Under 40’ list (2014).”⁴²² She was noted “as a Young Global Leader by the World Economic Forum in 2015.”⁴²³ Ivanka also appeared “in Time’s [sic] 100 Most Influential list (2017) and Forbes’ [sic] ‘World’s 100 Most Powerful Women’ (2017).”⁴²⁴ Ivanka has a unique pedestal to stand upon given her public background and notable awards. Each of those accolades has assisted in shoring up her status as a public figure. This public position, along with her political role as advisor to her father, made it possible for her to advocate for women, families, and economic growth.

A. Leadership in Workforce Reform

Exercising her position as Advisor to the President, Ivanka Trump made efforts to promote the re-training of the American workforce, in order to combat the shortage of qualified applicants for open positions. In an article entitled “Trump Administration’s Industry-Recognized Apprenticeships Will Keep America Working,” dated June 25, 2019, Ivanka wrote that the surging U.S. economy created “abundant job opportunities.”⁴²⁵ She claimed, “Tax cuts and deregulation have boosted job creation.”⁴²⁶ She further claimed, “Since President Donald Trump’s inauguration in January 2017, 5.4 million jobs [were] created and more people [were] working in America than ever before.”⁴²⁷ She went on to note that “[t]he unemployment rate has dropped to 3.6%,” and that in 2018 the U.S. witnessed “the highest share of people joining [the] labor force from the sidelines”⁴²⁸ She pointed out that “job creators around the nation have committed

⁴¹⁹ *Id.*

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² *Id.*

⁴²³ *Id.*

⁴²⁴ *Id.*

⁴²⁵ Ivanka Trump, *Trump Administration’s Industry-Recognized Apprenticeships Will Keep America Working*, WHITE HOUSE (June 25, 2019), <http://www.whitehouse.gov/articles/trump-administrations-industry-recognized-apprenticeships-will-keep-america-working/> [<http://perma.cc/GPE5-HT79>].

⁴²⁶ *Id.*

⁴²⁷ *Id.*

⁴²⁸ *Id.*

to nearly 10 million training, upskilling or reskilling opportunities for American students and workers.”⁴²⁹ Ivanka noted that a booming market posed challenges of its own, with “7.4 million open jobs, and for fourteen months in a row, it has had more job openings than job seekers.”⁴³⁰ She advocated for the U.S. to “look for new ways to empower America’s workforce with the in-demand skills” sought after by employers.⁴³¹

She went on to write:

Our nation needs to empower more industries and professions to embrace apprenticeship opportunities. That is why the Trump administration is proposing a second apprenticeship model: the Industry-Recognized Apprenticeship. The Industry-Recognized Apprenticeship program would stand alongside the Labor Department’s existing registered apprenticeships, which have found success in the building trades. This program would enable industries to come together through associations, consortia, nonprofits and other mechanisms to offer skills education to American students and workers.⁴³²

1. Empowered Women Lead Towards Economic Progress

Ivanka has further used her position to advocate for the economic empowerment of women abroad, as well as at home. Ivanka wrote on April 30, 2019, that the empowerment of women leads to economic progress.⁴³³ She visited Africa to promote the White House’s Women’s Global Development and Prosperity Initiative, “which seeks to reach 50 million women in the developing world by 2025.”⁴³⁴ She noted that the White House sought to accomplish “this goal by supporting women in the workplace, helping them succeed as entrepreneurs, and by advancing legal reforms that will create greater gender equality.” She considered “the most remarkable part of [her] trip” to be the opportunity it presented to “[connect] with women from across the continent who have overcome tremendous barriers to pave the way to change.”⁴³⁵ She wrote that the stories of these women served as “tangible proof of what is possible if we deliver smart development assistance to empower women to succeed in their economies.”⁴³⁶ Ivanka wrote of her experience in Ethiopia, where she met a woman named Sara Abera, who had started a textiles

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ *See id.*

⁴³² *Id.*

⁴³³ *See* Ivanka Trump, *Empowered Women Pave the Way to Economic Progress*, WHITE HOUSE (Apr. 30, 2019), <http://www.whitehouse.gov/articles/empowered-women-pave-way-economic-progress/> [<http://perma.cc/FSM5-EDPF>].

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ *Id.*

and pottery manufacturing business fourteen years prior.⁴³⁷ “With assistance from the United States Agency for International Development (“USAID”) and private sector partners,” Sara “[grew] her business from less than ten to nearly 600 employees.”⁴³⁸ She noted that the initial investment the USAID made in Sara “creat[ed] a direct multiplier effect, benefiting thousands of families far past the initial investment of American foreign development assistance.”⁴³⁹

2. Building Workers’ Skills More Effectively

Ivanka has used her position to advocate for increased investment in American workers. In a newspaper column, she wrote about the need for further and better investment in workers.⁴⁴⁰ She argued that by developing the skills of workers, and augmenting the strength of the workforce by increasing the engagement of nonworking individuals, the U.S. “economic future could be even brighter.”⁴⁴¹ She noted that initiatives to help American workers re-skill were imperative as artificial intelligence and automation loomed large over the economy.⁴⁴² Ivanka advocated for re-skilling efforts to bridge the gap faced by American employers in order to overcome the shortage of skilled employees.⁴⁴³ She observed, “Smarter investment in our workers will ensure that a more flexible workforce is ready to continue this growth into the future.”⁴⁴⁴ She noted that the economic outlook of the country hinged upon how it responded to an economy undergoing rapid and uncertain change in the face of increased automation in manufacturing.⁴⁴⁵

B. Advancing the Cause of Paid Family Leave

Another area in which Ivanka has expressed support in her political capacity has been on the issue of paid family leave. Ivanka recalled in an opinion piece that in September 2016, then-Republican presidential candidate Donald J. Trump’s call

⁴³⁷ *Id.*

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ See Ivanka Trump, *We Must Build Workers’ Skills More Effectively to Ensure a Bright Economic Future*, WHITE HOUSE (July 24, 2018), <http://www.whitehouse.gov/articles/must-build-workers-skills-effectively-ensure-bright-economic-future/> [<http://perma.cc/9TTJ-BBGC>].

⁴⁴¹ Ivanka Trump, *Paid Family Leave is an Investment in America’s Families—It Deserves Bipartisan Support*, WHITE HOUSE (July 11, 2018), <http://www.whitehouse.gov/articles/paid-family-leave-investment-americas-families-deserves-bipartisan-support/> [<http://perma.cc/R68S-4S2Y>].

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

⁴⁴⁵ *Id.*

for a national family paid leave plan was termed by political commentators as a break from the past, “a striking departure from GOP orthodoxy.”⁴⁴⁶ She endorsed the views of commentators and pointed out that after the election of Donald Trump as President, conservatives were building a majority in support of this policy.⁴⁴⁷ While social conservatives hailed paid leave “as a way to forge more tightly bonded families and protect infants and parents at their most vulnerable,”⁴⁴⁸ the fiscal conservatives conceded that such a policy would enhance “efficiency of increasing workforce attachment”⁴⁴⁹ and “minimiz[e] government dependence.”⁴⁵⁰ Ivanka claimed there was consensus that birth rates in the U.S. were the lowest ever and this phenomenon would have far-reaching consequences upon the American society and economy.⁴⁵¹ Proper implementation of such a policy would make American citizens more independent.⁴⁵² In her view, “[i]f executed responsibly, paid family leave is targeted government action with the right incentives—designed to increase the independence, health and dignity of our citizens.”⁴⁵³ The advantage of paid family leave is that parents can pay attention to both work and family life.⁴⁵⁴ She urged members of Congress to build on the progress made by the nation since the passage of Family and Medical Leave Act of 1993.⁴⁵⁵ This law enabled eligible American workers to take advantage of unpaid leave for twelve weeks.⁴⁵⁶ Although Democrats and Republican Congressmen and Congresswomen individually support the idea of paid family leave, they are unable to secure majority or reach a bipartisan consensus.⁴⁵⁷ Republicans want effective solutions to “empower American working families.”⁴⁵⁸

C. Women’s Global Development and Prosperity Initiative

On February 15, 2020, Ivanka visited Abu Dhabi, the United Arab Emirates (“UAE”), ahead of two-day-long Global Women’s

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.*

⁴⁴⁸ *Id.*

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ *Id.*

⁴⁵⁴ *See id.*

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.*

⁴⁵⁷ *See id.*

⁴⁵⁸ *Id.*

Forum in Dubai.⁴⁵⁹ She interacted with women business leaders at Louvre Abu Dhabi.⁴⁶⁰ Ivanka discussed economic empowerment of women in the UAE with businesswomen and government officials.⁴⁶¹ She also announced that Senators Lindsey Graham and Jeanne Shaheen supported her Women’s Global Development and Prosperity Initiative.⁴⁶² She claimed that the proposed law would make economic empowerment of women a top priority of the U.S. foreign policy.⁴⁶³ This would ensure that such initiatives continue even after the Trump administration.⁴⁶⁴ Passage of such a law is a “long overdue goal.”⁴⁶⁵ The Graham-Shaheen Bill ought to be passed by both the Democratic-controlled House of Representatives and Republican-led Senate before the President can sign it into law.⁴⁶⁶

On February 16, 2020, Ivanka fortified her position “as the global spokesperson for women’s economic empowerment.”⁴⁶⁷ She told attendees at the Global Women’s Forum Dubai and World Bank Women Entrepreneurs Finance Initiative (“We-Fi”) Middle East and North Africa Regional Summit in Dubai that efforts made by her and international banks during the last two years could lead to a \$7 trillion boost in the world gross domestic product, with a \$600 billion boost in the Middle East itself.⁴⁶⁸ In her opinion, this staggering figure is not just an indicator of economic growth.⁴⁶⁹ Ivanka noted:

That number represents far more than an economic boom—it represents millions of lives full of promise—mothers who could provide for their children, daughters who could be the first to graduate high school, and young women who could start businesses and become job creators. This is the future we can and must achieve together.⁴⁷⁰

In her capacity as a senior advisor to the U.S. President, Ivanka “has emerged as the domestic jobs czar,” and globally “as a champion of women” in search of funds aspiring to run

⁴⁵⁹ The Associated Press, *Ivanka Trump in Abu Dhabi Ahead of Women’s Conference*, BLOOMBERG (Feb. 15, 2020, 7:55 AM), <http://www.bloomberg.com/news/articles/2020-02-15/ivanka-trump-in-abu-dhabi-ahead-of-women-s-conference> [http://perma.cc/444L-FWFT].

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ Paul Bedard, *Ivanka Trump Takes Lead in Global Fight to Empower Women, Could Boost GDP \$7 Trillion*, WASH. EXAMINER (Feb. 16, 2020, 8:15 AM), <http://www.washingtonexaminer.com/washington-secrets/ivanka-trump-takes-lead-in-global-fight-to-empower-women-could-boost-gdp-7-trillion> [http://perma.cc/223G-QKNL].

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

businesses, especially in those nations where “sexual discrimination is often crushing.”⁴⁷¹

D. Women Charting their Own Courses

The 2017 Global Entrepreneurship Summit (“GES”), held at Hyderabad in Andhra Pradesh, India, was co-hosted by the Indian and U.S. governments.⁴⁷² Its theme was “Women First, Prosperity for All.”⁴⁷³ Ivanka, in her opening address to the GES, congratulated women entrepreneurs because they constituted the majority of the 1,500 attendees.⁴⁷⁴ Ivanka said, “Only when women are empowered to thrive, will our families, our economies, and our societies reach their fullest potential.”⁴⁷⁵ She recalled her experience as a former entrepreneur, employer, and executive in an industry which is heavily male-dominated.⁴⁷⁶ Ivanka went on to note that women are required to do more work than men and are at the same time expected to look after their families.⁴⁷⁷ She expressed regret that in some countries, women do not have property rights, are prohibited from travelling freely, or are prohibited from seeking jobs without their husbands’ permission.⁴⁷⁸ Ivanka further noted that in other nations, due to tremendous cultural and family pressure, women lack time and freedom to work outside their homes.⁴⁷⁹ She hailed progress made by developed and developing nations in passing equitable laws, but added that much more needed to be done.⁴⁸⁰

After her father’s election, Ivanka left her “businesses for the privilege of serving our country, and empowering all Americans—including women—to succeed.”⁴⁸¹ She observed that, despite the phenomenal growth in the last few years of the rate at which women become entrepreneurs, women in the U.S. encounter obstacles to “starting, owning, and growing their businesses.”⁴⁸² Ivanka further asserted that the Trump administration was pursuing policies that help women, impart

⁴⁷¹ *Id.*

⁴⁷² *Ivanka Trump Gets the Red Carpet Treatment in Indian City of Hyderabad*, FORTUNE (Nov. 28, 2017, 3:38 AM), <http://fortune.com/2017/11/28/ivanka-trump-visit-to-hyderabad/> [<http://perma.cc/Y22W-EYBK>].

⁴⁷³ *Complete Text of Ivanka Trump’s Hyderabad Speech*, NDTV (Nov. 28, 2017, 5:51 PM), <http://www.ndtv.com/india-news/complete-text-of-ivanka-trumps-hyderabad-speech-1781045> [<http://perma.cc/U8Q3-J8P8>].

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.*

⁴⁸² *Id.*

skills to workers, remove unnecessary official obstacles to innovation, and encourage entrepreneurship.⁴⁸³ Addressing the Trump administration's response to the plight of female business owners, Ivanka said:

Our administration is advancing policies that enable women to pursue their careers and care for their families, policies that improve workforce development and skills training, and policies that lift government barriers and fuel entrepreneurship so that Americans can turn their dreams into their incredible legacies.⁴⁸⁴

Referring to a report published in *Harvard Business Review*, Ivanka said “investors ask men questions about their potential for gains”⁴⁸⁵ while women are asked “questions about their potential for loss.”⁴⁸⁶ She attributed this mindset in part as the reason why female entrepreneurs received less than three percent of venture capital funding in 2016.⁴⁸⁷ She further noted that the Trump Administration was attempting to alter this trend.⁴⁸⁸ She cited the U.S. Small Business Administration's increased lending to women by more than 500 million dollars in 2017 alone.⁴⁸⁹ Ivanka added that the Hyderabad Summit was concrete proof of a U.S. initiative to connect entrepreneurs across the globe.⁴⁹⁰ She congratulated and thanked the more than 350 U.S. business leaders present at Hyderabad who were selected to represent the business talent of America.⁴⁹¹

Critics, however, blamed Ivanka for doing little to raise her voice on labor and human rights violations in China.⁴⁹² They claimed China is the principal source of her merchandise and lamented that Ivanka did not take a public stand on blatant violations of rights in her brand's own supply chain.⁴⁹³

An online newspaper wrote that there were several reasons for Ivanka to visit India.⁴⁹⁴ *Daily O* noted that Ivanka's visit to India could be explained in part by her personal interest in

⁴⁸³ *Id.*

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ *See id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

⁴⁹² *See Ivanka Trump's India Visit Raises Questions About Her Brand*, CNBC (Nov. 28, 2017, 9:49 AM), <http://www.cnbc.com/2017/11/28/ivanka-trumps-india-visit-raises-questions-about-her-brand.html> [<http://perma.cc/6ANM-V5PN>].

⁴⁹³ *Id.*

⁴⁹⁴ *5 Reasons Why Ivanka Trump is Visiting India*, DAILY O (Nov. 28, 2017), <http://www.dailyo.in/variety/ivanka-trump-narendra-modi-hyderabad-global-entrepreneurship-summit-2017/story/1/20813.html> [<http://perma.cc/4AHS-Q9NS>].

business, the importance of affirming the U.S.-India geopolitical relationship, laying the groundwork for a visit by President Trump to India, and Ivanka's own desire to consolidate her place in the White House.⁴⁹⁵ This was her first visit to India as a senior advisor to the U.S. President.⁴⁹⁶ Her rising influence in the White House had raised questions, "as she was on her way to becoming the most 'influential first daughter.'"⁴⁹⁷ This was reportedly the reason why then-Secretary of State Rex Tillerson disallowed senior State Department officials from accompanying Ivanka during her visit to India.⁴⁹⁸ Over 1,200 young entrepreneurs from 127 nations, mostly women, attended the three-day summit in Hyderabad.⁴⁹⁹ Ivanka was behind the U.S. World Bank We-Fi.⁵⁰⁰ Former Secretary of State John Kerry had previously represented the U.S. in this high-profile event.⁵⁰¹ Attending this prestigious event was likely to strengthen Ivanka's position in the White House.⁵⁰²

V. CONCLUSION

Eleanor Roosevelt, Nancy Pelosi, and Ivanka Trump have each made unique contributions to United States politics. Politics does not merely mean participating in elections and winning votes. Public service, progressive reform, advocacy, lobbying for social issues, and using one's influence to support needy people are among the many political objectives. There cannot be doubt that from time to time notions of what is truly in the public interest will change, and advocated-for reforms will change along with them. And yet, these three remarkable women have demonstrated that regardless of the political era, women can and have made their voices heard, whether through traditional positions of power or by reinventing the roles assigned to them. Eleanor Roosevelt, Nancy Pelosi, and Ivanka Trump come from very different times, political persuasions, and walks of life. And yet, each has advocated for women's rights and empowerment during their time in government.

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*

⁴⁹⁸ *Id.*

⁴⁹⁹ *See id.*

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.*

⁵⁰² *Id.*

Three Steps Forward, Two Back: Shuffling of Women from 1920 Suffragists to 2019 as the “Year of Men.”

*Reshma Kamath**

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I. INTRODUCTION

Much to our dismay, American women are as entrenched and surrounded by patriarchy as are women in other societies worldwide. Demeaning women’s truths, identities, and rationality is evident throughout American history: from suffragists and abolitionists, to the Anita Hill saga with Clarence Thomas’ appointment on the Supreme Court, to Christine Blasey Ford with Brett Kavanaugh-like supporters negating her sound-mindedness as she identified him as the perpetrator, to President Trump screaming, “Grab ‘em by the pussy!,”¹ or to Southern States calling for Taliban-style imprisonment for miscarriages.² Even with changing modern feminist theory, female voices remain unheard and suppressed. As Eve Ensler from *One Billion Rising* states, “Three billion women have vaginas, so that’s a lot of women.”³ Also, important to note is “[n]ot every woman has a vagina, or wants to be defined by [her] vagina.”⁴

With the existence of so many women, it is a natural progression for women to speak up on their travails and raise their experiences in the conversation. The 1990s were strewn by *Vagina Monologues* where “women performers recite[d] vulva-centric stories about childbirth and pap smears and masturbation and sexual assault.”⁵ The #MeToo Movement was an outgrowth of women’s voices being muffled and hushed. In 2017, *TIME* named,

¹ *Transcript: Donald Trump’s Taped Comments About Women*, N.Y. TIMES (Oct. 8, 2016), <http://www.nytimes.com/2016/10/08/us/donald-trump-tape-transcript.html> [<http://perma.cc/K9MU-v427>].

² See generally Grace Panetta, *Women could get up to 30 years in prison for having a miscarriage under Georgia’s harsh new abortion law*, BUS. INSIDER (May 10, 2019, 9:02 AM), <http://www.businessinsider.com/women-30-years-prison-miscarriage-georgia-abortion-2019-5> [<http://perma.cc/SU4Y-96U6>].

³ Katherine Gillespie, *Do We Still Need ‘The Vagina Monologues’?*, VICE (Oct. 2, 2017, 7:07 PM), http://www.vice.com/en_nz/article/j5gk8p/is-the-vagina-monologues-still-woke [<http://perma.cc/T77X-FVXC>].

⁴ *Id.*

⁵ *Id.*

as Person of the Year, “The Silence Breakers”—those who shared stories of their sexual assault and harassment.⁶

Even with increased dialogue surrounding rights of women, an overlay of dialogue emphasizing patriarchy exists in America. “Patriarchy says to American women—‘I can protect you from annihilation. I alone can protect you.’ (Sound familiar? It should.) ‘All that you have to [do] is submit to me, and realize that every time I hurt you, it’s for your own good.’”⁷ Patriarchal rhetoric is alive and thriving in American culture, society, and politics.

Despite momentous, global progress in women’s rights, some critics claim 2019 as the “Year of Men.”⁸ The question then becomes: have we taken two steps back from the three steps forward? Are we, as women, shuffling back and forth, in ebbs and flows, with no end in sight? Have we truly progressed on paper, in theory, or are there practical ramifications of women’s suffrage and the #MeToo Movement? What next? Do women need a male figure to guide them through life when walking on a dark street or while being in a male-dominated environment? Will tables turn if women are provided power rivaling that of men?

First, this Article introduces the present state of women’s rights in light of the #MeToo Movement and 2019 being the “Year of Men,” in order to demonstrate how change happens at an uneven pace.

Second, this Article provides a synopsis of women’s rights from the suffragists and the abolitionist era, to the modern-day digital movement; more anonymous and where more is often at stake. Are women braver, or more cowardly—hiding behind a digital screen to name men who have harassed them? Are female superiors more apt and sensitive in listening to women and prioritizing their needs? What qualities do we imbibe in our institutions and societies to better accommodate our women, our sisters, and our daughters? How do we unshackle women from patriarchy rampant in our societies?

The subsequent section analyzes women’s rights through different domains—church, military, prison, immigration, homelessness, ruralism, disability, and abortion. In each domain,

⁶ See Stephanie Zacharek et al., *Person of the Year 2017: The Silence Breakers*, TIME, <http://time.com/time-person-of-the-year-2017-silence-breakers/> [<http://perma.cc/ES69-X6TW>] (last visited Feb. 19, 2020).

⁷ Umair Haque, *Why Do (So Many) American Women Still Support Patriarchy?*, EUDAIMONIA & CO. (May 16, 2019), <http://eand.co/why-do-enough-american-women-still-support-patriarchy-53767f2d7a4> [<http://perma.cc/URT9-LSNY>].

⁸ Ephrat Livni, *There’s a problem at the heart of #MeToo—here’s how to solve it*, QUARTZ (Oct. 14, 2018), <http://qz.com/1422215/metoo-backlash-will-2019-be-the-year-of-men/> [<http://perma.cc/6H9F-PFA6>].

a common theme is found to be the abuse of women—in which women cope, try to cope, or are told how they should cope, with physical, mental, emotional, and sexual abuse. Women’s spiraling, vicious cycles of entrapment, leading them to worse plights than they were once in, are evident.

The final section of this Article refocuses on the progress propelled by the #MeToo Movement, and strides we as a society have to make, to move forward three steps, instead of two steps back. Women’s shuffle for rights has to turn into a movement forward.

II. 2019 AS THE “YEAR OF MEN”

Change happens—unevenly.

In 1991, Clarence Thomas was confirmed to the Supreme Court despite testimony from lawyer Anita Hill, who accused Thomas of sexual harassment before an all-male Senate Judiciary Committee. The [following] year, in 1992, more women ran for political office and were elected to the Senate than ever before. [This was] dubbed The Year of the Woman.⁹

The year 2019 has been labeled, “Year of Men,” based on the re-emergence of accused men in cultural conversations: from Louis CK masturbating in the presence of women comics, to Aziz Ansari with creepy behavioral issues.¹⁰ In 2019, all such men were back in the limelight with a woe-is-me attitude. Most shocking is Brett Kavanaugh being sworn in as the 114th Justice of the United States Supreme Court, even upon the Senate Judiciary Committee’s hearing on sexual assault allegations against the nominee.¹¹ Journalist Connie Chung’s write up encompasses the struggle women face amidst the upheaval of the #MeToo Movement and other women’s rights movements. While she revealed she was molested by her family doctor in college, Connie writes, “Will ‘She Too’ be etched on my tombstone instead? I don’t *want* to tell the truth. I *must* tell the truth.”¹² Most women, such as Connie, feel an obligation, *an impasse burden*, to tell the truth.

In the same vein, “none of the men who appear on the Shitty Media Men List, even those who were accused of multiple counts

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Amy Howe, *Kavanaugh confirmed as 114th justice (Updated)*, SCOTUSBLOG (Oct. 6, 2018, 4:10 PM), <http://www.scotusblog.com/2018/10/kavanaugh-confirmed-as-114th-justice/> [<http://perma.cc/F4SP-8Z6L>].

¹² Connie Chung, *Dear Christine Blasey Ford: I, too, was sexually assaulted—and it’s seared into my memory forever*, WASH. POST (Oct. 3, 2018, 9:47 AM), http://www.washingtonpost.com/opinions/dear-christine-blasey-ford-i-too-was-sexually-assaulted-and-its-seared-into-my-memory-forever/2018/10/03/2449ed3c-c68a-11e8-9b1c-a90f1daae309_story.html [<http://perma.cc/2LHJ-LBUE>].

of rape, have faced criminal charges.”¹³ The Shitty Men Media List, a crowdsourced Google spreadsheet, collected allegations and rumors of sexual misconduct against approximately seventy men in the media industry.¹⁴ As an anonymous online spreadsheet, the List was a supplement to existing whisper networks on allegations of sexual harassment and violence in the media industry.¹⁵ Active for twelve hours, the list swiftly went viral within media circles.¹⁶ Reputations of those men, however, preceded them.¹⁷ Thus, even with industry-wide common knowledge, women are yet to see tangible, real, long-lasting impacts of their actions and speech.

What brought the #MeToo Movement to the forefront of American life was sexual misconduct and rape allegations against Harvey Weinstein.¹⁸ In 2006, #MeToo Founder “Tarana Burke, veteran organizer, activist and movement builder,” started her work to help “survivors of sexual violence, particularly Black women and girls, find ways to heal.”¹⁹

Although Burke appreciates that in 2018 there existed an amazing, global #MeToo platform to talk about sexual violence, to deal with sexual violence, and to galvanize survivors, she wishes the conversation around the movement was different and that our culture was different.²⁰ Burke wants the #MeToo Movement to focus on those who have labored to step forward and voice “MeToo.”²¹ Instead, she sees some in our culture perceiving the Movement as taking men down, which is not what is happening, nor was it her intention.

¹³ Constance Grady, *The “Shitty Media Men” list, explained*, VOX (Jan. 11, 2018, 3:00 PM), <http://www.vox.com/culture/2018/1/11/16877966/shitty-media-men-list-explained> [<http://perma.cc/2MF4-KGKK>].

¹⁴ Moira Donegan, *I Started the Media Men List: My Name is Moira Donegan*, CUT (Jan. 10, 2018), <http://www.thecut.com/2018/01/moira-donegan-i-started-the-media-men-list.html> [<http://perma.cc/3JYU-QMWY>].

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See id.*

¹⁸ *See* Tom Hays & Michael R. Sisak, *Weinstein rape trial opens, marking milestone for #MeToo*, AP NEWS (Jan. 22, 2020), <http://apnews.com/2d1427a79ef085495b63a45b5f8fb6a7> [<http://perma.cc/D35A-CY9L>].

¹⁹ *“Me Too Movement” turns 2*, SUNDANCE (Oct. 18, 2019), <http://v103.iheart.com/content/2019-10-18-me-too-movement-turns-2/> [<http://perma.cc/2QFY-7FBG>].

²⁰ *See History & Vision*, ME TOO, <http://metoomvmt.org/about/> [<http://perma.cc/EL2J-VRNK>] (last visited Feb. 19, 2020); Courtney Connley, *#MeToo founder Tarana Burke has a new hashtag to encourage presidential candidates to address sexual violence*, CNBC (Oct. 22, 2019, 10:15 AM), <http://www.cnbc.com/2019/10/22/metoo-founder-tarana-burkes-new-hashtag-for-presidential-candidates.html> [<http://perma.cc/6L3G-D7YK>].

²¹ *See* Connley, *supra* note 20.

As Burke stated, we must listen to untold stories of minority women.²² Minority women who have spoken up and shared their stories, even prior to the #MeToo Movement, must be lauded. In her acceptance speech of the Cecil B. DeMille Award for lifetime achievement at the Golden Globes, Oprah Winfrey mentioned being “inspired by all the women who have felt strong enough and empowered enough to speak up and share their personal stories. . . . But it’s not just a story affecting the entertainment industry. It’s one that transcends any culture, geography, race, religion, politics or workplace.”²³

The #MeToo Movement and the “Year of Men” only represent the most recent efforts to grapple with women’s rights. The women’s rights movement has a long and complex history.

III. WOMEN’S RIGHTS MOVEMENT: A HISTORICAL REVIEW

According to *Women and the Constitution*, the United States Constitution was ordained and established by men in the 1780s.²⁴ “[W]omen did not participate in the conventions that framed and ratified the Constitution. Women did not vote for convention delegates. And women—as women—did not publicly participate in constitutional debates in the press, in pamphlets, and so on.”²⁵

The year 1848 marked the women’s suffragist movement, or woman suffrage;²⁶ the struggle of women to vote and run for office. The Seneca Falls convention in New York was the launchpad for the women’s rights movement.²⁷ Lack of governmental action pushed a segment of woman suffragists to become more militant.²⁸ Thus, prominent female activists demanded more. For example, Mary Wollstonecraft declared “war against the patriarchy . . . nothing less than ‘a revolution in female manners.’”²⁹ This was in no way comparable to dinner etiquette, but “rather sought to overthrow the system of

²² ‘Our Pain is Never Prioritized.’ #MeToo Founder Tarana Burke Says We Must Listen to ‘Untold’ Stories of Minority Women, TIME (Apr. 23, 2019), <http://time.com/5574163/tarana-burke-metoo-time-100-summit/> [<http://perma.cc/372Z-TFJC>].

²³ Giovanni Russonello, *Read Oprah Winfrey’s Golden Globes Speech*, N.Y. TIMES (Jan. 7, 2018), <http://www.nytimes.com/2018/01/07/movies/oprah-winfrey-golden-globes-speech-transcript.html> [<http://perma.cc/EG34-UYRV>].

²⁴ Akhil Reed Amar, *Women and the Constitution*, 18 HARV. J.L. & PUB. POL’Y 465, 465 (1994).

²⁵ *Id.*

²⁶ *Seneca Falls Convention*, HISTORY (Nov. 20, 2019), <http://www.history.com/topics/womens-rights/seneca-falls-convention> [<http://perma.cc/H6BX-33KX>].

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Mary Wollstonecraft’s A Vindication of the Rights of Woman (1792)*, ORDINARY PHILOSOPHY (July 26, 2018), <http://ordinaryphilosophy.com/2018/07/26/mary-wollstonecrafts-a-vindication-of-the-rights-of-woman-1792-annotated-and-introduced-by-eileen-hunt-botting/> [<http://perma.cc/EX3K-PYDA>].

socialisation that made men and women prisoners of each other's tyranny"³⁰ In print, "[s]he targeted literary and intellectual giants—John Milton, Jean-Jacques Rousseau, Edmund Burke—for propagating absurd and pernicious ideas about the innate inferiority and natural subordination of women to men."³¹

The struggle for growing women's rights also extended into the literary realm. In abolitionist literature, slave women and girls iterated graphic accounts of their lives as enslaved women.³²

The 1856 Republican platform defines slavery and polygamy as "twin relics of barbarism." . . . Slave women were breeders against their will as women. They were forced to be wet nurses as women, and sexual playthings as women. . . . Slave masters intimately associated with slave women. They were the fathers of slave women. They were the (half) brothers of slave women. They were the sexual partners of slave women. And sometimes they were more than one of these things at the same time. They were having sex with their daughters and their (half) sisters.

Discourse on these matters featured women, speaking and writing publicly as women—the Grimke sisters' and Harriet Martineau's public lectures against slavery, Harriet Beecher Stowe's *Uncle Tom's Cabin*. . . . In a famous speech, Senator Charles Sumner makes a very similar argument, and he's caned on the floor of the Senate for suggesting that slave masters are sleeping with their slave women³³

The cruelty exposed through the telling of these women's narratives shed light on the plight of enslaved women during this time. "[B]lack women refugees suffered tragic losses that would have long-term economic, political, social, and psychological consequences. . . . Black women in refugee camps fought mightily against ideas that rendered them undeserving claimants to the nation's attention or freedom and citizenship."³⁴ The abolitionist literature provided insight into the plight of enslaved women, highlighting the situation of not only white women, but women of color as well.

During Reconstruction, women became "agents and the subjects of the Thirteenth Amendment."³⁵ Agents, "because women publicly mobilized for the Abolitionist movement."³⁶ Subjects, "because half of the people who were emancipated were

³⁰ *Id.*

³¹ *Id.*

³² See Amar, *supra* note 24, at 466.

³³ *Id.* at 466–67.

³⁴ Thavolia Glymph, "Invisible Disabilities": *Black Women in War and in Freedom*, 160 *PROC. AM. PHIL. SOC'Y* 237, 241 (Sept. 2016).

³⁵ Amar, *supra* note 24, at 467.

³⁶ *Id.*

female.”³⁷ Then, the Fourteenth Amendment—the lynchpin of civil rights—examined “*privileges and immunities*’ of all citizens,” native-born men and women, “and ‘*equal protection*’ of all persons”; yet designed and defined by the status of “unmarried white women.”³⁸ In effect, it was stating that “America would let [African Americans]—black men and black women—have the rights that unmarried white women” were entitled to for long enough.³⁹ Lastly, the United States Constitution, with the Nineteenth Amendment, restored “symmetry between race and gender . . . [upon] years of hard labor of a women’s rights crusade . . . about women’s equality.”⁴⁰

The history of women’s rights, particularly of women of color, is a complex and intricate history. (Her) story did not stop with the passage of the Thirteenth and Fourteenth Amendments. It carries on through the present and is seen in various aspects of our society.

The following section discusses different domains for women—church, military, prison, immigration, homelessness, ruralism, disability, and abortion—which have seen the battles and abuses of women and their struggles until this day.

IV. DIFFERENT DOMAINS FOR WOMEN’S ABUSE AND RIGHTS

A. Church

“In February 2019, Pope Francis spoke out against what he described as the ‘sexual slavery’ that nuns all-too-frequently suffered at the hands of Catholic priests.”⁴¹ This is not a nascent phenomenon, however:

Writing in the early 16th century, the Dutch scholar Erasmus already lamented that the faithful “often fall into the hands of priests who, under the pretense of confession, commit acts which are not fit to be mentioned.” . . . [I]n Spain in 1558, . . . a female penitent of Granada disclosed to a Jesuit that her confessor was harassing her. . . . For a woman to denounce the offending priest carried serious risks for her honor and even her life. . . . Jesuit superiors and Pedro Guerrero, archbishop of Granada, decided . . . another confessor could report the case on the woman’s behalf . . . [which] was strongly contested by

³⁷ *Id.*

³⁸ *Id.* at 467–68 (emphasis added).

³⁹ *Id.* at 468–69.

⁴⁰ *Id.* at 471.

⁴¹ Wietse De Boer, *The Catholic Church and Sexual Abuse, Then and Now*, 12 ORIGINS (Mar. 2019), <http://origins.osu.edu/article/catholic-church-sexual-abuse-pope-confession-priests-nuns> [<http://perma.cc/XGM8-WGKE>].

members of other religious orders, who objected to the inevitable breach of the secrecy of confession.⁴²

“The suspicion that all too often priests abused or seduced their flock—usually young women—was common in the late Middle Ages. When the Reformation erupted, it became fodder for Protestant critics of the Catholic Church.”⁴³ The abuse and suppression of women within the domain of the church is not necessarily a thing of the past. The impacts on women in the religious realm can take on more indirect forms as well.

Do religious, “good” women take more shit? A study published in 2002 used:

[A] South Carolina sample to describe the perceptions of 199 parishioners and 57 battered women attitudes toward whether church teaching contributes to domestic violence, whether women should be submissive toward their husbands, and formal services offered by churches. Different perceptions emerged. More battered women believed church teaching contributed to domestic violence. Neither group believed that women should be submissive toward their spouse.⁴⁴

Factors were the “loss of innocence, a period of self-blame, the loss of religious faith, immense pressure to maintain silence, recognition of the imbalance of power, and healing through outside help.”⁴⁵ Some church teachings result in ripple effects on women’s plights external to physical religious boundaries.

Sexual abuse and church power deem women’s silence to be a sign of submission. A campus life administrator warned students at Divine Child High School in Dearborn, Michigan, during a presentation on dealing with sexual harassment and rape, that “if you dress provocative[ly] . . . and leave absolutely nothing to the imagination younger girls look and go, ‘Oh, my gosh. She’s got plenty of boys around her.’”⁴⁶ Additionally, the administrator stated such clothing was contributing to the boys’ and mens’ bad behavior and that all the blame is on the girls.⁴⁷ The administrator added, “Those younger guys go, ‘Oh. That’s how you talk about women. That’s how you look at women as an object, something to be dissected.’”⁴⁸ Another example is a

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Ameda A. Manetta et al., *The Church—Does it Provide Support for Abused Women? Differences in the Perceptions of Battered Women and Parishioners*, 5 J. RELIGION & ABUSE 5, 5 (2003).

⁴⁵ See generally Katherine Van Wormer & Lois Berns, *The Impact of Priest Sexual Abuse: Female Survivors’ Narratives*, 19 AFFILIA 53 (2004).

⁴⁶ Zeinab Najm, *Female DC students protest sexual harassment lesson*, DOWNRIVER SUNDAY TIMES (June 14, 2019), <http://www.downriversundaytimes.com/2019/06/14/female-dc-students-protest-sexual-harassment-lesson/> [<http://perma.cc/TZT5-5KYS>].

⁴⁷ *Id.*

⁴⁸ *Id.*

statement made by Mike Shoemsmith, a pastor, who said, “Men are visually stimulated and unwanted stimulation should meet the basic definition of assault.”⁴⁹ Shoemsmith was “asserting that women who dress in a suggestive manner are ‘guilty of indecent visual assault on a man’s imagination, which does cause mental anguish and torment.’”⁵⁰ These perspectives and implications about what values women should adhere to end up impacting women at a young age and sticking with them as they grow.

In addition to abuse and violence, modern day churches ratify latent attitudes of female inferiority within them; reflected in church priesthood rankings and female promotions. While roughly six in ten American Catholics (59%), in a 2015 Pew Research Center survey, said they support ordaining women in their church,⁵¹ 87% of Mormons (including 90% of Mormon women) in a 2011 Pew Research Center survey said they do not support allowing women to enter the LDS priesthood.⁵² In a succeeding Mormon survey, in 2016, a study showed younger Mormons far more likely to be troubled by women’s roles in the LDS Church.⁵³

Male leaders often act as spiritual coverings for women. For example, “preserving a de facto ‘male headship,’ . . . a female leader would be required to be in an accountable relationship with a male, perhaps her husband or a more senior minister”⁵⁴ Some church boards do not authorize women to exercise formal senior leadership roles but will allow them to exercise other roles.⁵⁵

Again, not a novel phenomenon: within Christianity, the New Testament has been cited in order to deny women the right

⁴⁹ Kyle Mantyla, *Trump-Allied Pastor Carl Gallups Says Women Are Sexually Assaulting Men By Dressing Provocatively*, RIGHT WING WATCH (Oct. 23, 2017, 1:58 PM), <http://www.rightwingwatch.org/post/trump-allied-pastor-carl-gallups-says-women-are-sexually-assaulting-men-by-dressing-provocatively/> [<http://perma.cc/93M3-MXQN>].

⁵⁰ *Id.*

⁵¹ See PEW RESEARCH CTR., U.S. CATHOLICS OPEN TO NON-TRADITIONAL FAMILIES 73 (Michael Lipka et al. eds., 2015), <http://www.pewresearch.org/wp-content/uploads/sites/7/2015/09/Catholics-and-Family-Life-09-01-2015.pdf> [<http://perma.cc/KD4D-Q926>].

⁵² *Id.*; see also Aleksandra Sandstrom, *Women relatively rare in top positions of religious leadership*, PEW RESEARCH CTR. (Mar. 2, 2016), <http://www.pewresearch.org/fact-tank/2016/03/02/women-relatively-rare-in-top-positions-of-religious-leadership/> [<http://perma.cc/2L7E-GYU3>].

⁵³ See Jana Riess, *Younger Mormons far more likely to be troubled by women’s roles in the LDS Church, study shows*, RELIGION NEWS (Nov. 26, 2018), <http://religionnews.com/2018/11/26/younger-mormons-far-more-likely-to-be-troubled-by-womens-roles-in-the-lds-church-study-shows/> [<http://perma.cc/WRG4-XK48>].

⁵⁴ Tanya Riches & Mark Jennings, *Explainer: why some churches teach that women are ‘separate but equal’*, CONVERSATION (Dec. 21, 2016, 2:01 PM), <http://theconversation.com/explainer-why-some-churches-teach-that-women-are-separate-but-equal-64305> [<http://perma.cc/9YKT-ZKTR>].

⁵⁵ *Id.*

to be priests and pastors for much of its history. One of these is found in 1 Timothy 2:12: “I do not permit a woman to teach or to assume authority over a man; she must be quiet.”⁵⁶ A different text offers evidence that women should not be in leadership roles in churches and is found in 1 Corinthians 14:34–35:

Women are to be silent in the churches. They are not permitted to speak, but must be in submission, as the Law says. If they wish to inquire about something, they are to ask their own husbands at home; for it is dishonorable for a woman to speak in the church.⁵⁷

Restoring a sense of manliness to men in the church, through “The *Emangelization*,” Cardinal Raymond Burke delivered a whopper of a manifesto in an interview.⁵⁸ Burke offered a lengthy meditation on what he perceived to be the problem with the modern church, beginning with the advent of the women’s rights movement during the 1960s for female participation in the Catholic Church.⁵⁹ Deriding it as “radical feminism,” the “‘goodness and importance of men became very obscured,’ which gave rise to a ‘very feminized’ Church.”⁶⁰ He also discusses a period of time “when men who were feminized and confused about their own sexual identity had entered the priesthood; sadly some of these disordered men sexually abused minors; a terrible tragedy for which the Church mourns.”⁶¹ “[H]e also appears rankled by ordinary women doing ordinary Church activities,” which, according to him, “constitutes the dangerous feminization of the Church that has alienated, disenchanting and made men sexually confused.”⁶² Manly discipline was his basis for boys to choose being altar boys.⁶³ Girl servers made young men uncomfortable and unwilling to do things with girls.⁶⁴ He also, ironically, stated how girls excelled at altar service and how boys drifted away over time.⁶⁵ This interview demonstrates some of the pre-existing perceptions and expectations regarding girls and young women.

⁵⁶ 1 *Timothy* 2:12.

⁵⁷ 1 *Corinthians* 14:34–35.

⁵⁸ See *The New Emangelization Project*, NEW EMANGELIZATION, <http://www.newemangelization.com/the-new-emangelization-project-2/> [<http://perma.cc/UJ9D-SR6T>] (last visited Dec. 11, 2019).

⁵⁹ Terrence McCoy, *Former highest-ranking U.S. cardinal blames ‘feminization’ for the Catholic Church’s problems*, WASH. POST (Jan. 13, 2015, 2:46 AM), <http://www.washingtonpost.com/news/morning-mix/wp/2015/01/13/former-highest-ranking-u-s-cardinal-blames-feminized-church-for-the-catholic-churchs-problems> [<http://perma.cc/W2PC-6DR4>].

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

Last, the idea of complementarianism, of separate but equal, i.e., men and women play different, yet “complementary roles in life, society and . . . religious practice.”⁶⁶ They “are equal in personhood, [yet] they are created for different roles.”⁶⁷ Although seemingly benign facially, the notion of complementarianism has shackling effects on women’s progress and their roles in church and society. For instance, while women may assist in the church’s decision-making processes, the extreme authority lies within the purview of the man in marriage, courtship, and in the polity of churches.⁶⁸ The notion also precludes women from a predefined set of roles and functions within the church ministry and society.⁶⁹ Therefore, on the whole, churches, though imparting wisdom and age-old teachings, are rampant with the same archaic notions of the fifteenth and sixteenth century of abuse and patriarchy, which prevented women from rising up in the ranks and progressing in their church-ordained roles.

B. Military

On paper, the military has made tremendous progress.⁷⁰ The United States Department of Defense (“DOD”) “announced new policies that will open more than 14,000 military job opportunities to women . . . [but] 200,000 positions will still remain exclusive to men, from front-line infantry positions to high-level special operations roles.”⁷¹ The DOD is the nation’s largest employer.⁷² With 3.2 million employees and 1.4 million

⁶⁶ Riches & Jennings, *supra* note 54.

⁶⁷ Alyssa Roat, *What are Complementarianism and Egalitarianism? What’s the Difference?*, CHRISTIANITY.COM, <http://www.christianity.com/wiki/christian-terms/what-are-complementarianism-and-egalitarianism-what-s-the-difference.html> [<http://perma.cc/M6Mw-YEPQ>] (last visited Feb. 19, 2020).

⁶⁸ *See id.*

⁶⁹ *See id.*

⁷⁰ *See* Major Shelly S. McNulty, *Myth Busted: Women are Serving in Ground Combat Positions*, 68 A.F. L. REV. 119, 150 (2012). The DOD and the Services should eliminate the combat exclusion policies for women, including the removal of barriers and inconsistencies, to create a level playing field for all qualified service members. The Commission recommends a time-phased approach: (1) women in career fields/specialties currently open to them should be immediately able to be assigned to any unit that requires that career field/specialty, consistent with current operational environment; (2) DOD and the Services should take deliberate steps in a phased approach to open additional career fields and units involved in “direct ground combat” to qualified women; and (3) DOD and the Services should report to Congress the process and timeline for removing barriers that inhibit women from achieving senior leadership positions. Jennifer L. Barry, *A Few Good (Wo)men: Gender Inclusion in the United States Military*, COLUM. SIPA (Nov. 19, 2013), <http://jia.sipa.columbia.edu/online-articles/few-good-women-gender-inclusion-united-states-military> [<http://perma.cc/YQ88-SGMW>].

⁷¹ Dani Moritz, *Women in the Military: Why Can’t We Serve on the Front Lines?*, MUSE, <http://www.themuse.com/advice/women-in-the-military-why-cant-we-serve-on-the-front-lines> [<http://perma.cc/2RX8-JTES>] (last visited Feb. 19, 2020).

⁷² Barry, *supra* note 70.

active-duty service members, a mere 14.5% are women.⁷³ DOD rules and regulations prevented women over the years from being assigned to units below brigade level (those engaging in ground combat).⁷⁴ Women were, thus, barred from serving in infantry, artillery, armor, combat engineers, and special operations units of battalion size or smaller.⁷⁵

Harries Jenkins envisions:

[A] four-stage, sequential policy change: from [a complete] exclusion of women from all or most military occupational specialties through partial exclusion and qualified inclusion to full inclusion. Women have generally been relegated to support roles, the ground combat-arms occupations having been the most resistant to the inclusion of women. . . . Stage 4 employment in the core operational military specialties of the direct fighting arms as a prerequisite for advancement to more senior positions at both the commissioned and non-commissioned officer levels . . . has been a limiting factor for women in uniform.⁷⁶

Historically within the U.S. military, women served alongside their husbands or disguised as men. In 1775 and 1783, women followed their husbands, through necessity, as laundresses, cooks, and nurses.⁷⁷ Over time, their positions evolved to clerking and supply, and then to espionage assignments.⁷⁸ World War II formalized female involvement through Women's Auxiliary Army Corps in 1942 and Women's Army Corps in 1943.⁷⁹

The Armed Forces Integration Act of 1948 for the first time integrated women and granted them full status in the military services and the reserves. . . . [However,] [f]or the first time women were explicitly excluded from combat positions by law. . . . No statute addressed combat in the Army. In 1948, the Army rejected statutory coverage to maintain maximum flexibility in assignment.⁸⁰

In the 1960s, socio-legal demands for employment equality and efforts to stabilize persistent shortfalls in technical personnel pushed the U.S. military to allow excluded groups, like

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Franklin C. Pinch, *An Introduction to Challenge and Change in Military: Gender and Diversity Issues*, in CHALLENGE AND CHANGE IN THE MILITARY: GENDER AND DIVERSITY ISSUES 1, 5 (Franklin C. Pinch et al. eds., 2004).

⁷⁷ See *Time Line: Women in the U.S. Military*, COLONIAL WILLIAMSBURG FOUND. (2008), http://www.history.org/history/teaching/enewsletter/volume7/images/nov/women_military_time_line.pdf [<http://perma.cc/Q752-VHUS>].

⁷⁸ See *id.*

⁷⁹ Lucy V. Katz, *Free a Man to Fight: The Exclusion of Women from Combat Positions in the Armed Forces*, 10 LAW & INEQ. 1, 4–5 (1992).

⁸⁰ *Id.* (footnotes omitted).

women, to participate.⁸¹ Thus was born the Institutional Model. Stemming from traditional military norms, the Institutional Model depicts a “paternalistic . . . custodial management style.”⁸² Women developed greater roles in the military, but they were still constrained in their opportunities as a result of their gender.

On January 24, 2013, in a momentous shift, the DOD lifted a ban on women serving in combat fields and assignments, overcoming the participation barrier for women.⁸³ Then Secretary of Defense, Leon Panetta, rescinded the ban, thereby permitting military departments and services to review their occupational standards and assignment policies to make recommendations in authorizing all combat roles to women no later than January 1, 2016.⁸⁴ On December 3, 2015, in a marked change from 1994, Secretary Aspin approved a new Direct Combat Exclusion Rule:

[W]omen shall be excluded from assignment] to units below brigade level . . . Secretary of Defense Ashton Carter ordered the military to open all combat jobs to women with no exceptions. . . . On March 10, 2016, Secretary Carter announced that the Services’ and SOCOM’s implementation plans for the integration of women into direct ground combat roles were approved.⁸⁵

A few years thereafter, “[i]n February 2019, a U.S. District judge ruled that requiring all men to register for a military draft, while excluding women, is unconstitutional.”⁸⁶ Previously, “[l]egislation prohibited assignment of Navy women to combat aircraft or to any ships and of Air Force women to duty in combat missions.”⁸⁷ The new law eliminates “Navy bars to women in combat aviation,” but retains the statutory ban on women in combat vessels.⁸⁸

In February 23, 2010, Secretary of Defense Robert Gates notified Congress of a decision by the Navy to allow women to serve on nuclear submarines.⁸⁹ In 2011, the Navy began

⁸¹ Pinch, *supra* note 76, at 5.

⁸² *Id.*

⁸³ See KRISTY N. KAMARCK, CONG. RESEARCH SERV., R42075, WOMAN IN COMBAT: ISSUES FOR CONGRESS 1 (2016).

⁸⁴ *Id.*

⁸⁵ *Id.* at Summary, 1, 6.

⁸⁶ Erin Blakemore, *How Women Fought Their Way Into the U.S. Armed Forces*, HISTORY, <http://www.history.com/news/women-fought-armed-forces-war-service> [<http://perma.cc/B88X-VGY>] (last updated Feb. 26, 2019).

⁸⁷ Katz, *supra* note 79, at 5 (footnotes omitted).

⁸⁸ *Id.* at 6.

⁸⁹ See David Kerley & Luis Martinez, *Exclusive: Navy to Lift Ban on Woman Serving Aboard Submarines*, ABC NEWS (Feb. 23, 2010, 9:24 AM), <http://abcnews.go.com/Politics/navy-end-ban-women-serving-aboard-submarines-congress/story?id=9921378> [<http://perma.cc/T9TM-YHYS>].

assigning female officers to submarines.⁹⁰ In 2015, the Navy started accepting applications for assignment of enlisted women to submarines, and on June 22, 2015, announced a list of thirty-eight female enlisted sailors who would begin training to convert to a submarine rating.⁹¹

Even with the tremendous, albeit slow, progress over the years, “gender equality issues in the military go beyond rules about what positions women are allowed to serve in.”⁹² Even when new roles are opened up to women, there are other barriers to their advancement. For example:

A new survey of active-duty troops has found that the number of sexual assaults in the U.S. military rose by 38% from 2016 to 2018, a dramatic increase that comes despite years of efforts to halt rape and other sex crimes in the ranks. The Defense Department’s fiscal 2018 Report on Sexual Assault in the Military, released Thursday, found that roughly 20,500 service members experienced sexual assault, up from an estimated 14,900 in 2016.⁹³

Scores of incidents dictate vicious abuses women have undergone in the military. For instance:

Kate Ranta said that despite reporting physical abuse to her husband’s commanding officer, he was protected by the system because he might lose his pension so near to retirement. While he was referred to a court martial, he faced no charges; she was instead told the issue was handled “administratively.” But then her husband showed up at her house with a gun, shooting both herself and her father—right in front of their toddler. “Thomas did this in front of William, his own son, who was only 4—his own son who screamed, ‘Don’t do it Daddy, don’t shoot Mommy,’” Ranta said. “By some miracle, we all lived.” . . . Favoritism and a complex bureaucracy cannot shield dangerous perpetrators.⁹⁴

Sexual assault, harassment, and a lack of respect for female bodies are visible in the military. “Jeannie Crosby, who served in the Air Force for 20 years,” brings up an underlying factor for

⁹⁰ See Luis Martinez, *Secret Submarine Videos of Female Officers Investigated*, ABC NEWS (Dec. 12, 2014, 5:05 PM), <http://abcnews.go.com/Politics/secret-submarine-videos-female-officers-investigated/story?id=27571331> [<http://perma.cc/HQL9-2CTS>].

⁹¹ See Rear Admiral Chas Richard, *First Enlisted Women to Serve on Submarines Announced*, NAVY LIVE (June 22, 2015), <http://navylive.dodlive.mil/2015/06/22/first-enlisted-women-to-serve-on-submarines-announced/> [<http://perma.cc/U9YR-AK69>].

⁹² Moritz, *supra* note 71.

⁹³ Patricia Kime, *Despite Efforts, Sexual Assaults Up Nearly 40% in US Military*, MILITARY.COM (May 2, 2019), <http://www.military.com/daily-news/2019/05/02/despite-efforts-sexual-assaults-nearly-40-us-military.html> [<http://perma.cc/2HTS-DFKA>].

⁹⁴ Jessica Taylor, *Lawmakers Hear Emotional Stories From ‘Forgotten Crisis’ Of Military Domestic Violence*, NPR (Sept. 18, 2019 7:09 PM), <http://www.npr.org/2019/09/18/762100271/lawmakers-hear-emotional-stories-from-forgotten-crisis-of-military-domestic-viol> [<http://perma.cc/2PMM-6BUA>].

discrimination: “respect—or lack thereof.”⁹⁵ The “ideal ‘military image of the physically strong, emotionally tough, masculine war hero.’ Such policies are internally sustained by the cultural influence of a combat masculine war-fighting (CMW) model, shaped largely by men.”⁹⁶ Windham describes a not-atypical scenario:

Sometimes, before you even check into a command,⁹⁷ they will look at the orders of the incoming personnel and see that it’s a woman. The first thing people start talking about is, “I wonder if she’s hot, I wonder if she puts out, I wonder if she’s fat.”⁹⁸

Sexual crimes and separate sleeping quarters are arcane, yet relevant, arguments on why women should not serve in some roles within the military. In a sad, but real, instance, Marine Corporal Amanda Downs was raped while in Military Operational Specialty School.⁹⁹ Downs remained silent for two years, because one of her superiors cited her underage drinking as the reason she would get into more trouble than the man who raped her.¹⁰⁰ Other incidents include how, in 2006, male shipmates clandestinely snuck into female barracks, placed videotapes in there, and set it to record female shipmates.¹⁰¹ Even when women report such matters to male chiefs, very little is done. A woman reveals how her male chief assured her that “he would get to the bottom of it. By lunchtime, the strange looks from everyone became obvious. Another shipmate told [her] that everyone in the company office had passed the camera around and saw the video of [her] naked, getting into and out of the shower.”¹⁰²

One account of Florence Shmorgoner of the Marine Corps, talks about how in 2015 she was sexually assaulted, but how she waited until 2017 to report it:

[She] was scared that [she] would not be believed or, worse, that [she] would be deemed a “troublemaker” in [her] platoon. It took about a year for the whole process to end. [She] was fortunate enough to go to counseling and see a psychologist and was found to have depression, anxiety disorder and PTSD—all stemming from the assault. [She] struggled with [her] self-worth . . . ha[d] nightmares of the assault . . . [and] contemplated suicide.¹⁰³

⁹⁵ Moritz, *supra* note 71.

⁹⁶ Pinch, *supra* note 76, at 6.

⁹⁷ The above phrase “check into a command” means to present orders to superiors after being transferred.

⁹⁸ Moritz, *supra* note 71.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Lauren Katzenberg, *40 Stories From Women About Life in the Military*, N.Y. TIMES (Mar. 8, 2019), <http://www.nytimes.com/2019/03/08/magazine/women-military-stories.html> [<http://perma.cc/96ML-C9BV>].

¹⁰² *Id.*

¹⁰³ *Id.*

In a different incident, retired Petty Officer First Class Jean Coriat of the Navy, recounts structural and infrastructure changes:

In 2004, I had orders to be stationed on the U.S.S. Fitzgerald, which at the time was stationed in San Diego. When my ship finally pulled in, I found out I was the first female enlisted sailor to ever be stationed onboard. They didn't even have a place for me to sleep.¹⁰⁴

Until recent times, women on submarines faced similar issues. While laws allowed women to serve on surface combatants in the early 1990s, the Navy barred women from submarine assignments.¹⁰⁵ Instead of direct combat concerns, the Navy cited privacy and habitability in cramped spaces, as well as budgeting issues in retrofitting submarines to accommodate both men and women.¹⁰⁶ Even as early as 2000, recommendations were “met with some opposition from senior Navy officials and Members of Congress who cited” the aforementioned concerns, along with “the possibility of sexual misconduct affecting unit cohesion and effectiveness.”¹⁰⁷

1. Advances for Women in Military

Although the preceding accounts take two steps back in telling the stark reality of women in the military, they should not stymie the three steps forward the military has made; instead, they should propel us as a society to implement changes in steering away from the male-dominated, locker room environment women often have to face.

Harries-Jenkins sees three concepts as relevant to developing micro-policy that will optimize diversity: tokenism, equal opportunities, and positive discrimination. According to leading analysts, women must number 15 percent of an organization to be considered more than a token. Most Western militaries do not meet this standard. Women are being treated . . . as highly visible “tokens,” rather than as fully contributing military members.¹⁰⁸

This is more true in operational combatant areas.

The author cites research showing several negative outcomes from this absence of gender neutrality, [such as] acute work stress for those women involved. . . . Harries-Jenkins contrasts this with the diversity model, which “starts from the fundamental premise that the organization, structure, and management of the military reflect the norms and values of civilian society.” This represents the movement to “an inclusionary ideal-type image, . . . created and reinforced by the adopted micro-level personnel policies.” The diversity model, however,

¹⁰⁴ *Id.*

¹⁰⁵ See KAMARCK, *supra* note 83, at 9.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Pinch, *supra* note 76, at 6.

is “noticeably complex” and depends on a balance between socio-legal demands and what is required to maintain “combat capability.”¹⁰⁹

Some progress encompasses changes in statutory regimes to reflect changing norms and times to allow women to fully participate in varied roles in different aspects of the military. One story which is slightly heartening:

I served in the Army for nine years as someone else. About two years ago, I was able to start serving openly as a transgender woman. I’ve faced discrimination since I’ve come out and lost some friends, but it has been worth it. I’ve gained a lot personally and professionally and have become part of a community that is open and willing to embrace change. I’ve had several soldiers tell me I’ve changed their views on not only transgender service members but also female service members being in combat arms.¹¹⁰

In sum, “[t]he [DOD] must learn to believe women and take action based on their claims and evidence.”¹¹¹ History of women in the military highlights the many changes that have occurred to open up opportunities to women. However, it also serves as a reminder of the indirect restrictions and barriers women face, such as sexual assault.

C. Prison

According to the Bureau of Justice Statistics, female prison population has rapidly risen. “Since 1990, the female inmate population has increased annually on average 8.3%, while the annual rate of growth of male inmates has been 6.4% on average.”¹¹² In the last ten years, women inmates markedly increased 81%.¹¹³ Specifically, in 2007, of the entire U.S. prison population, female prisoners comprised 7%.¹¹⁴ In the same year, the female population in prison rose 3.2%, whereas the male population grew by 1.9%.¹¹⁵ “Racial minority groups comprise the majority of the prison population,” with “female imprisonment rates” showing that 150 Black women, seventy-nine Hispanic, and fifty White females were imprisoned, per 100,000 U.S. residents, as per Bureau of Justice Statistics.¹¹⁶

¹⁰⁹ *Id.*

¹¹⁰ Katzenberg, *supra* note 101.

¹¹¹ Taylor, *supra* note 94.

¹¹² Hye-Sun Kim, Prisoner Classification Re-visited: A Further Test of the Level of Service Inventory-Revised (LSI-R) Intake Assessment 4 (May 2010) (unpublished Ph.D. dissertation, Indiana University of Pennsylvania) (citation omitted).

¹¹³ Laurence French, *The Incarcerated Black Female: The Case of Social Double Jeopardy* 8 J. BLACK STUDIES 321, 323 (1978).

¹¹⁴ Kim, *supra* note 112, at 5.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 7–8.

[M]any have been swept up in the War on Drugs and subject to increasingly punitive sentencing policies for nonviolent offenders. . . . [M]ore than 200,000 women [are] behind bars and more than one million on probation and parole. Many of these women struggle with substance abuse, mental illness, and histories of physical and sexual abuse. Few get the services they need.¹¹⁷

The study of the incarceration of women reveals the large role sexual abuse plays in the lives of women both prior to and during incarceration.

1. Abuse in Prisons and Its Effects

According to Human Rights Watch, “[b]eing a woman prisoner in U.S. state prisons can be a terrifying experience.”¹¹⁸ “Sexual abuse behind bars is one of the most widespread and neglected human rights crises in the U.S. today.”¹¹⁹ Sexual and physical abuse prior to, within, and after prison is a common experience faced by women. Victimization as a child and during adulthood is also connected to subsequent offending.¹²⁰ “According to the best available research, 20 percent of inmates in men’s institutions are sexually abused at some point during their incarceration. The rate for women’s institutions varies, with one in four inmates being victimized at the worst facilities.”¹²¹ Moreover, “[g]overnment statistics show that 79% of women in federal and state prisons have reported past physical abuse, and over 60% have reported past sexual abuse.”¹²²

In 2007, the Bureau of Justice Statistics (BJS) estimated that 60,500 federal and state prisoners had been sexually abused at their current facility in the past year alone, and that 25,000 county jail inmates had been sexually abused at their current jail in the past six months. Youth are at even higher risk; in 2010, BJS reported that nearly one in eight youth confined to a juvenile detention facility were victimized at that facility in the preceding year—80 percent of them by staff. Nationally, the estimates of actual sexual assaults in detention

¹¹⁷ *Women in Prison*, ACLU, <http://www.aclu.org/issues/prisoners-rights/women-prison> [http://perma.cc/MS37-55J9] (last visited Feb. 19, 2020).

¹¹⁸ *All too Familiar: Sexual Abuse of Women in U.S. State Prisons*, HUMAN RIGHTS WATCH (Dec. 1, 1996), <http://www.hrw.org/report/1996/12/01/all-too-familiar/sexual-abuse-women-us-state-prisons> [http://perma.cc/X9eA-553A].

¹¹⁹ Linda McFarlane & Melissa Rothstein, *Survivors Behind Bars: Supporting Survivors of Prison Rape and Sexual Assault*, in SUPPORT FOR SURVIVORS TRAINING MANUAL 1, 5 (2010), <http://www.calcasa.org/wp-content/uploads/2010/12/Survivors-Behind-Bars.pdf> [http://perma.cc/GN2Q-QDFN].

¹²⁰ See Barbara Owen & Barbara Bloom, *Profiling Women Prisoners: Findings From National Surveys and a California Sample*, 75 PRISON J. 165, 169 (1995).

¹²¹ McFarlane & Rothstein, *supra* note 119, at 5 (footnotes omitted).

¹²² *Words From Prison: Violence Against Women, Homelessness and Incarceration*, ACLU, <http://www.aclu.org/other/words-prison-violence-against-women-homelessness-and-incarceration> [http://perma.cc/WB2X-GH6N] (last visited Feb. 19, 2020).

facilities are some fifteen times higher than the number of official reports filed for the same time period.¹²³

Human Rights Watch examined this serious problem in their review of sexual abuse in selected U.S. prisons. The damage of the abuse itself is compounded by four specific issues: (1) the inability to escape one's abuser; (2) ineffectual or nonexistent investigative and grievance procedures; (3) lack of employee accountability (either criminally or administratively); and (4) little or no public concern.¹²⁴

Additionally, victims must meet an incredibly high burden of proof to substantiate a constitutional claim. The Eighth Amendment establishes the right to be free from cruel and unusual punishment. However, for victims to establish a violation of their Eighth Amendment rights they must prove that the prison official had a "seriously culpable state of mind" by satisfying the subjective deliberate indifference test. The test requires that the prison official must (1) "both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists" and (2) "also draw the inference." For victims, the difficulty lies in proving that prison administrators were aware of the risk and ignored it. In applying the test courts have severely limited the liability of prison officials.¹²⁵

This provides a losing proposition for women prisoners.

An alternate reason for the high incidence of prison sexual assault is state prisons' limited oversight. The Federal government made history by passing the Prison Rape Elimination Act ("PREA").¹²⁶ "The PREA implemented national standards for the detection, prevention and punishment of prison rape."¹²⁷ However, the PREA standards are limited to federal jurisdictions.¹²⁸ "Thus, because state and local facilities confine the majority of inmates, most inmates are not protected by the PREA standards."¹²⁹

Women in prison are also at risk for infectious diseases, including HIV, tuberculosis, sexually transmitted diseases, . . . and hepatitis B and C infections. Pregnancy and reproductive health needs are another neglected area of health care. Problems of pregnant inmates

¹²³ McFarlane & Rothstein, *supra* note 119, at 5.

¹²⁴ *Prisons: Prisons for Women*, LAW LIBR.—AM. L. & LEGAL INFO., <http://law.jrank.org/pages/1805/Prisons-Prisons-Women-Problems-unmet-needs-in-contemporary-women-s-prison.html> [<http://perma.cc/694F-7HCK>] (last visited Feb. 19, 2020).

¹²⁵ Christina Picora, *Female Inmates and Sexual Assault*, JURIST (Sept. 15, 2014, 7:00 PM), <http://www.jurist.org/commentary/2014/09/christina-picora-female-inmates/> [<http://perma.cc/BT7G-RMUK>]. See also U.S. CONST. amend. VIII.

¹²⁶ See Prison Rape Elimination Act of 2003, 34 U.S.C. §§ 30301–30309 (2012).

¹²⁷ Picora, *supra* note 125. See also *Prison Rape Elimination Act of 2003 (PREA)*, ACLU (Apr. 4, 2011), <http://www.aclu.org/other/prison-rape-elimination-act-2003-prea?redirect=prisoners-rights-womens-rights/prison-rape-elimination-act-2003-prea> [<http://perma.cc/9JVE-6L2V>].

¹²⁸ Picora, *supra* note 125.

¹²⁹ *Id.*

include lack of prenatal and postnatal care, inadequate education regarding childbirth and parenting, and little or no preparation for the mother's separation from the infant after delivery.¹³⁰

According to the ACLU, nearly 60% of people in women's prison nationwide, and as many as 94% of some women's prison populations, have a history of physical or sexual abuse before being incarcerated.¹³¹

Violence perpetrated against women and girls puts them at risk for incarceration because their survival strategies are routinely criminalized. From being coerced into criminal activity by their abusers to fighting back to defend their lives or their children's lives, survivors of domestic violence can find themselves trapped between the danger of sometimes life-threatening violence and the risk of spending the rest of their lives in prison. . . . A study of women incarcerated in New York's Rikers Island found that most of the domestic violence survivors interviewed reported engaging in illegal activity in response to experiences of abuse, the threat of violence, or coercion by a male partner.¹³²

2. Women's Abuse Impacting Mental Health

Amongst the female prison population, mental health problems and sexual abuse are rampant. "[Seventy-three] percent of women in state prisons and 75 percent in jails have mental health problems, compared with 55 percent and 63 percent of men, respectively. In state prisons, 75 percent of women met the criteria for substance abuse problems, and 68 percent had past physical or sexual abuse."¹³³ Women in prison have a much higher rate of mental health problems as compared to men.¹³⁴ Solitary confinement exacerbates such underlying mental health conditions.¹³⁵ "While many prisoners of both genders have abusive pasts in common, incarcerated women have a greater statistical likelihood of experiencing physical and sexual trauma. The resulting pain often drives them into the

¹³⁰ *Prisons: Prisons for Women*, *supra* note 124.

¹³¹ *Prison Rape Elimination Act of 2003*, *supra* note 126.

¹³² *Fact Sheet on Domestic Violence & the Criminalization of Survival*, FREE MARISSA NOW, <http://www.freemariissanow.org/fact-sheet-on-domestic-violence--criminalization.html> [<http://perma.cc/46AV-VG4T>] (last visited Feb. 19, 2020).

¹³³ Jared C. Clark, *Inequality in Prison*, 40 AM. PSYCHOL. ASS'N 55, 55 (2009).

¹³⁴ *More Incarcerated Women than Men Report Mental Health Problems*, EJI (July 10, 2017), <http://eji.org/news/more-incarcerated-women-report-mental-health-problems/> [<http://perma.cc/V4FN-5S47>].

¹³⁵ ACLU, *STILL WORSE THAN SECOND-CLASS: SOLITARY CONFINEMENT OF WOMEN IN THE UNITED STATES* 8 (2019).

most frequent convictions for women: substance abuse and property crime to support addictions.”¹³⁶

A related study found:

[O]f 525 abused women at a mental health center who had committed at least one crime, nearly half had been coerced into committing crimes by their batterers as “part of a structural sequence of actions in a climate of terror and diminished, violated sense of self.” Rita Smith, the executive director of the National Coalition Against Domestic Violence asserts that, “Most battered women who kill in self-defense end up in prison.”¹³⁷

Mothers represent the majority of people in women’s prisons, creating a devastating impact on families, children, pregnancy, and childbirth. 70% of people in women’s prisons are mothers. The number of mothers in prison in the US increased by 122% between 1991 and 2007. . . . [A] vast majority of people in women’s prisons [are] mothers when they enter prison, but many of these people are also the primary caretakers of their children at home. 1.3 million children are affected by female imprisonment . . . [inclusive of] the children at home when the mother is imprisoned and the babies born and raised in prison. In 33 states in the U.S. it is legal to shackle a female inmate while she is giving birth. Thirty-one of these states do not require prison employees to check with medical staff before determining whether or not a prisoner should be restrained.¹³⁸

Women in prison are often ignored and left vulnerable in their needs, which threatens their mental and physical health. The prior abuse these women experience sets them on a vicious cycle of abuse and its negative impacts carry through to their experiences in prison.

Substance use is a common experience of incarcerated women. “[T]o cope with the pain of abuse,” women often use drugs.¹³⁹ For example, “40% of incarcerated women had used drugs at the time of the offense [at] a rate higher than that of male offenders.”¹⁴⁰ Drug use positively correlates with recidivism for women.¹⁴¹ Lastly, incarcerated women, “particularly women of color, return to impoverished neighborhoods following release from prison.”¹⁴² The experiences that these women undergo often set them up for recidivism—particularly women of color.

¹³⁶ *Needs of Female Prisoners*, PRISON FELLOWSHIP, <http://www.prisonfellowship.org/resources/training-resources/in-prison/prison-culture/needs-of-female-prisoners/> [<http://perma.cc/Y4T9-33N9>] (last visited Feb. 19, 2020).

¹³⁷ *Fact Sheet on Domestic Violence & the Criminalization of Survival*, *supra* note 132.

¹³⁸ *Id.*

¹³⁹ Beth M. Huebner et al., *Women Coming Home: Long-Term Patterns of Recidivism*, 27 JUST. Q. 225, 228 (Apr. 2010).

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 241.

¹⁴² *Id.* at 230.

Numerous race-specific effects develop for women. Regardless of gender, African Americans and Hispanics disproportionately represent the prison population.¹⁴³ “Many risk measurement variables are related to race.”¹⁴⁴ “Using follow-up periods of 2–5 years, recidivism rates of female offenders vary from 22% to 57.6%.”¹⁴⁵

[W]hite women with lower salient factor scores (higher risk) and more prior convictions were more likely to fail and to recidivate more quickly. For non-white women, obtaining a high school diploma decreased the probability of failure and increased the time until failure, but education was unrelated to the timing of failure.¹⁴⁶

In terms of mental health, “13% of white women were classified as having some form of mental illness while only 7% of women of minority race had a similar diagnosis.”¹⁴⁷ These numbers should be read in the light of “underassessment of female parolee’s mental health and substance abuse needs.”¹⁴⁸

Black women and other marginalized people are especially likely to be criminalized, prosecuted, and incarcerated while trying to navigate and survive the conditions of violence in their lives. In 1991, the ratio of black women to white women convicted of killing their abusive husbands was nearly two to one. Women of color and low income women are disproportionately affected by mandatory arrest policies for domestic violence. Of survivors in a New York City study who had been arrested along with their abusers (dual arrest cases) or arrested as a result of a complaint lodged by their abuser (retaliatory arrest cases), 66% were African American or Latina, 43% were living below the poverty line, and 19% percent were receiving public assistance at the time.¹⁴⁹

In order to analyze female patterns of recidivism, a study by the 1994 Bureau of Justice Statistics revealed the most important predictors of recidivism for women three years post release are: number of prior arrests, age at release, and being African American.¹⁵⁰ The report was missing “substance abuse, institutional programming, and post-release context . . .”¹⁵¹

The processes that place victims under correctional control are the “criminalization” of women’s survival strategies and “entrapment”

¹⁴³ See Kim, *supra* note 112, at 8.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 6. See also MEDA CHESNEY-LIND, *THE FEMALE OFFENDER: GIRLS, WOMEN, AND CRIME* 149–50 (C. Terry Hendrix et al. eds., 1997).

¹⁴⁶ Huebner et al., *supra* note 139, at 243.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* (citation omitted).

¹⁴⁹ *Fact Sheet on Domestic Violence & the Criminalization of Survival*, *supra* note 132.

¹⁵⁰ Huebner et al., *supra* note 139, at 227.

¹⁵¹ *Id.*; see also ELIZABETH DESCHENES ET AL., *RECIDIVISM AMONG FEMALE PRISONERS: SECONDARY ANALYSIS OF THE 1994 BJS RECIDIVISM DATA SET 2* (2006).

into crime by abusers and by gender, race and class oppression. Once entrapped and criminalized, women are re-victimized and subjected to “enforcement violence” by the state through coercive laws, immigration policies, social welfare policies and law enforcement practices. . . . Women of color activists call for both the battered women’s movement and the prison abolition movement to join together to stop violence against women who are “victimized by both interpersonal and state violence.”¹⁵²

By targeting substance, physical and sexual abuse, and allowing inmates to maintain healthy connections to their families and significant others, penal institutions can help women stay tied to their communities and successfully rejoin them, opening up better possibilities for educational and job opportunities. Without such interventions, these women have little chance of succeeding after prison. . . . “Many women come out of these systems in worse condition than when they went in.” . . . “You have to acknowledge that gender makes a difference,” said Covington. “Many places today are still trying to do everything gender-neutral. There is no gender-neutral. In our society, gender-neutral is male.”¹⁵³

Disparate disciplinary practices are evident between men and women prisoners. Women tend to receive disciplinary action at a greater rate than men, although “male prisons typically hold a much greater percentage of violent offenders”¹⁵⁴ According to research, “women prisoners were cited more frequently and punished more severely than males,” even though “[t]hese infractions committed by women in prison tend to be petty when compared to the more serious infractions committed by male prisoners.”¹⁵⁵

Women, more so than other inmates, “import histories of economic marginalization, physical and sexual abuse, drug and alcohol addictions, and familial responsibilities that can affect their imprisonment experience” and reentry into their communities of habitat.¹⁵⁶ Minority women and women of color face an even harder time undergoing the burdening wheels of the American criminal justice process. I call it process, a supply chain of criminal justice, an assembly line of checkpoints. Although linear and sequential, its outcomes are *non-linear and non-sequential*, with daunting, cumbersome barriers to potential freedom. For women and women of color, these stages closely parallel hell’s stages in Dante’s *Inferno*. In addition:

¹⁵² Mary E. Gilfus, *Women's Experiences of Abuse as a Risk Factor for Incarceration*, VAWNET 1 (Dec. 2002), http://vawnet.org/sites/default/files/assets/files/2017-08/AR_Incarceration.pdf [<http://perma.cc/2M7D-TZUS>] (citations omitted).

¹⁵³ Clark, *supra* note 133, at 5.

¹⁵⁴ *Prisons: Prisons for Women*, *supra* note 124.

¹⁵⁵ *Id.* (citation omitted).

¹⁵⁶ Huebner et al., *supra* note 139, at 226.

Stephanie Covington, PhD, co-director of the Center for Gender and Justice in La Jolla, Calif., at an APA 2009 Annual Convention session [states] women are poor, undereducated, unskilled, single mothers and disproportionately women of color . . . [with] their paths to crime . . . marked by abuse, poverty and addiction.¹⁵⁷

For such women, when asked on their post-prison opportunities, their response is: “One is the drug dealer and the other is the pimp.”¹⁵⁸ Moreover, research shows “[l]icensing restrictions, stigma, and perceived risk in hiring decisions in female-dominated occupations and industries, along with barriers to childcare subsidies are all likely to exert a heightened burden on women.”¹⁵⁹

Psychiatrist Judith Herman writes the following:

[T]hree stages in the process of healing from trauma: safety, remembrance and mourning, and reconnection. “Survivors feel unsafe in their bodies. Their emotions and their thinking feel out of control. They also feel unsafe in relation to other people.” Stage One (safety) addresses the woman’s safety concerns in all of these domains. In the second stage of recovery (remembrance and mourning) the survivor tells the story of the trauma and mourns the old self that the trauma destroyed. In Stage Three (reconnection) the survivor faces the task of creating a future; now she develops a new self. . . . [T]he difficulty is that many women are *not* safe in our criminal justice system where they are vulnerable to abuse and harassment from correctional staff. Stage One recovery from trauma, safety, is the appropriate level of intervention for women in early recovery from addiction. If we want women to heal from addiction, we must set up a safe environment in which the healing process can begin to take place. Dr. Herman uses Twelve Step groups as an example of the type of group appropriate for Stage One (safety) recovery because of their focus on present-tense issues of self-care, in a supportive, homogeneous environment.¹⁶⁰

Belknap and Holsinger argued, “[o]ne of the greatest limitations of existing criminological research is the low priority given to the role of gender in the etiology of offending.”¹⁶¹ Nevertheless, gender frequently has been overlooked in assessing offenders’ risk and needs because of ““there being too few [female]

¹⁵⁷ Clark, *supra* note 133, at 5.

¹⁵⁸ *Id.*

¹⁵⁹ Joni Hersch & Erin E. Meyers, *The Gendered Burdens of Conviction and Collateral Consequences on Employment*, 45 J. LEGIS. 171, 191–92 (2018).

¹⁶⁰ Stephanie S. Covington, *Women in Prison: Approaches in the Treatment of Our Most Invisible Population*, 21 WOMEN & THERAPY J. 141, 149 (1998). See also JUDITH L. HERMAN, *TRAUMA AND RECOVERY* 160 (1992).

¹⁶¹ Joanne Belknap & Kristi Holsinger, *Chapter 7: The Gendered Nature of Risk Factors for Delinquency*, in *GIRLS, WOMEN, AND CRIME: SELECTED READINGS* 101, 101 (Jerry Westby et al. eds., 2d ed. 2013).

to count.”¹⁶² Women often have very distinct experiences while in prison, or related to their time in prison, than their male counterparts do.

“[The] Table [below] shows the change of the prison population by gender and race since 1995.”¹⁶³

Number of Prisoners under State or Federal Jurisdiction

Year	Male				Female			
	Total ^a	White	Black	Hispanic	Total ^a	White	Black	Hispanic
1995	1,021,059	487,400	509,800	N/A	63,963	30,500	31,900	N/A
1996	1,068,123	511,300	528,600	N/A	69,599	33,800	33,900	N/A
1997	1,121,663	541,700	548,900	N/A	73,835	36,300	35,500	N/A
1998	1,216,053	N/A	N/A	N/A	84,354	N/A	N/A	N/A
1999	1,222,799	403,700	558,700	219,500	82,594	27,100	38,300	14,100
2000	1,247,000	401,900	532,400	242,600	84,300	33,600	32,200	13,100
2001	1,259,481	449,200	585,800	199,700	85,031	36,200	36,400	10,200
2002	1,291,326	436,800	586,700	235,300	89,044	35,400	36,000	15,000
2003	1,316,495	454,300	586,300	215,900	92,785	39,100	35,000	16,200
2004	1,337,700	449,300	551,300	260,600	96,100	42,500	32,100	15,000
2005	1,362,500	459,700	547,200	279,000	98,600	45,800	29,900	15,900
2006	1,401,400	478,800	535,100	291,000	103,300	49,200	28,600	17,500
2007	1,427,300	471,400	556,900	301,200	105,500	50,500	29,300	17,600

^a includes “others” such as Asian, American Indians, Alaska Natives, Native Hawaiians, and other Pacific Islander. (Bureau of Justice Statistics, 1995-2007)

One study explored:

[P]atterns by which women enter into criminal activities. [The research drew] upon in-depth life history interviews with a sample of 20 incarcerated women. The author constructs a conceptual framework for understanding the progression from victim to survivor to offender in the subjects’ life histories. This framework shows that the best available options for escape from physical and sexual violence are *often survival strategies which are criminal: i.e., running away from home, use of drugs, and the illegal street work required to survive as a runaway*.¹⁶⁴

Women deemed as survivors, not as victims, based on their narratives, talk about their commitments to important

¹⁶² Kim, *supra* note 112, at 4. See also Jean Folsom & Jill Atkinson, *The Generalizability of the LSI-R and the Cat to the Prediction of Recidivism in Female Offenders*, 34 CRIM. JUST. & BEHAV. 1044, 1044 (2007); Kirk Heilbrun et al., *How “Specific” are Gender-Specific Rehabilitation Needs?*, 35 CRIM. JUST. & BEHAV. 1382, 1382 (2008); PATRICIA VAN VOORHIS ET AL., *ACHIEVING ACCURATE PICTURES OF RISK AND IDENTIFYING GENDER-RESPONSIVE NEEDS: TWO NEW ASSESSMENTS FOR WOMEN OFFENDERS 1* (2008).

¹⁶³ Kim, *supra* note 112, at 4–5.

¹⁶⁴ Mary E. Gilfus, *From Victims to Survivors to Offenders: Women’s Routes of Entry and Immersion Into Street Crime*, 4 WOMEN & CRIM. JUST. 63, 63 (1992) (emphasis added).

relationships in their lives which discuss their entry into and commitments to criminal activities.¹⁶⁵ “Women’s responses to victimization and women’s relational identities are seen as factors which both motivate and restrain women’s criminal activities. The concept of *immersion* in street crime is offered as a more accurate term than criminal career in describing women’s criminal histories.”¹⁶⁶ Overall, “[i]f women are to be successfully reintegrated back into society after serving their sentences, there must be a continuum of care that can connect them to a community.”¹⁶⁷

Women have understandably distinct experiences from men when adding prison to the equation. Gender, and its impacts, plays heavily into the life experiences of women prior to prison, during prison, and in recidivism.

D. Immigrants

Women immigrating to the United States are confined due to structural processes severely restraining them. For example, they “must remain ‘properly married,’” i.e., live with their husbands, a United States citizen or permanent resident, for two years prior to applying for permanent resident status.¹⁶⁸ Socially marginalized women risk fatal injury from abusive husbands shrouded in silence for fear of deportation.¹⁶⁹ These restrictions create structural barriers to the advancement of immigrant women.

E. Violence and Homelessness

Domestic violence is a primary cause of female homelessness.¹⁷⁰ It has resulted in homelessness for between 0.25% and 0.50% of women.¹⁷¹ Statistics show:

Three women die each day from intimate partner violence. Black women are almost three times more likely to die at the hands of a current or ex-partner than members of other racial backgrounds. Among African American women killed by their partner, almost half were killed while in the process of leaving the relationship, highlighting the need to take extra precautions at that time.¹⁷²

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Stephanie S. Covington, *A Woman’s Journey Home: Challenges for Female Offenders*, in PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES 1, 15 (Jeremy Travis & Michelle Waul eds., Jan. 5, 2004), <http://www.stephaniecovington.com/assets/files/3.pdf> [<http://perma.cc/SUL7-DU7P>].

¹⁶⁸ *Words From Prison: Violence Against Women, Homelessness and Incarceration*, *supra* note 122.

¹⁶⁹ *Id.*

¹⁷⁰ *Domestic Violence and Homelessness*, ACLU, <http://www.aclu.org/sites/default/files/pdfs/dvhomelessness032106.pdf> [<http://perma.cc/2Z85/QS47>] (last visited Mar. 2, 2020).

¹⁷¹ *Fact Sheet on Domestic Violence & the Criminalization of Survival*, *supra* note 132.

¹⁷² *Id.*

Pregnant women or women who gave birth face a higher risk of escalating domestic violence.¹⁷³ Each year, 324,000 pregnant women are physically or sexually assaulted by an intimate partner.¹⁷⁴ “Pregnancy can be an especially dangerous time for people in abusive relationships, and abuse can often begin or escalate during the pregnancy.”¹⁷⁵

Pregnancy complications, including low weight gain, anemia, infections, and first and second trimester bleeding, are significantly higher for victims of domestic violence. . . . Domestic violence accounts for a large portion of maternal mortality. Homicide is the second leading cause of injury related deaths in pregnant and postpartum women in the United States.¹⁷⁶

Beyond domestic violence, “over 90 percent of homeless women have experienced severe violence or sexual assault at some point in their lives.”¹⁷⁷ Violence and homelessness tend to go hand in hand. Moreover, law enforcement targets homeless women as a visible population.

For instance, while being released from prison, as part of her efforts to begin her life again, “Rosa sought public housing. However, the public housing authority told her she was ineligible for housing assistance due to her prior conviction. Because of her conviction, Rosa was also unable to find an employer who would hire her; as a result, she wasn’t able to afford housing in the private market.”¹⁷⁸ Her inability to obtain housing or employment put Rosa on the streets again.¹⁷⁹

Out of desperation and without a legal source of income, she occasionally supported herself through prostitution though she knew she risked re-imprisonment or even deportation for this. With no place to live, she was physically and sexually assaulted on multiple occasions. She never reported these crimes to law enforcement as she believed she would likely be arrested if she did so.¹⁸⁰

¹⁷³ See *Reproductive Justice & Marissa Alexander*, FREE MARISSA NOW, <http://www.freemariissanow.org/fact-sheet-on-reproductive-justice--marissa-alexander.html> [<http://perma.cc/2MD2-KX3G>] (last visited Mar. 3, 2020).

¹⁷⁴ *Pregnancy and Domestic Violence Facts*, NAT’L COALITION AGAINST DOMESTIC VIOLENCE, http://www.uua.org/sites/live-new.uua.org/files/documents/ncadv/dv_pregnancy.pdf [<http://perma.cc/V3S6-QTE2>] (last visited Mar. 3, 2020).

¹⁷⁵ *Pregnancy and Abuse: How to Stay Safe for Your 9 Months*, NAT’L DOMESTIC VIOLENCE HOTLINE (July 23, 2013), <http://www.thehotline.org/2013/07/23/pregnancy-and-abuse-how-to-stay-safe-for-your-9-months/> [<http://perma.cc/C63N-8RMP>]; *Reproductive Justice & Marissa Alexander*, *supra* note 173.

¹⁷⁶ *Reproductive Justice & Marissa Alexander*, *supra* note 173. See also Jeani Chang et al., *Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991–1999*, 95 AM. J. PUB. HEALTH 471, 474 (2005).

¹⁷⁷ *Words From Prison: Violence Against Women, Homelessness and Incarceration*, *supra* note 122.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

Violence against women enhances the chances of homelessness, which, as seen, can contribute to the likelihood of prison time and subsequent negative, cyclical impacts against women.

F. Rural Women and Abuse

Geographical isolation, and thereby, a lack of communal support, places rural women in abusive partner relationships at severe risk.¹⁸¹ “A supportive network with access to resources would thus, enable rural women in abusive partner relationships” on a path to freedom.¹⁸² One study:

[I]nterviewed rural women in previous abusive partner relationships . . . [on three dimensions:] past and current abuse, supportive and nonsupportive networks, and access to resources. [S]upportive persons predicted declines in long-term abuse when information and advice were provided to help women access resources. Nonsupportive persons hindered women from access to resources and were a factor in keeping them bound in abusive relationships.¹⁸³

The geographic isolation of women in rural areas can often exasperate the issues of domestic violence because access to support and resources are more limited. Without support, the abuse can often begin the cycles described above.

G. Women and Disabilities

According to the National Study of Women With Physical Disabilities, the prevalence of abuse was not significantly different between women with and without disabilities. Women with physical disabilities, however, reported significantly longer durations of abuse. Unique vulnerabilities to abuse experienced by women with disabilities include social stereotypes of asexuality and passivity, lack of adaptive equipment, inaccessible home and community environments, increased exposure to medical and institutional settings, dependence on perpetrators for personal assistance, and lack of employment options.¹⁸⁴

Properly identifying “women with disabilities who are in abusive situations and their referral to appropriate community services” is, therefore, important.¹⁸⁵ These range from policy changes in increasing “training for all types of service providers in abuse interventions,” improving “architectural and attitudinal accessibility of programs for battered women,” increasing

¹⁸¹ Kathy Bosch & Walter R. Schumm, *Accessibility to Resources: Helping Rural Women in Abusive Partner Relationships Become Free from Abuse*, 30 J. SEX & MARITAL THERAPY 357, 357 (2004).

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Margaret A. Nosek et al., *Abuse of Women with Disabilities: Policy Implications*, 8 J. DISABILITY POL'Y STUD. 157, 158 (1997).

¹⁸⁵ *Id.*

“responsiveness of adult protective services,” increasing “options for personal assistance,” expanding “affordable and accessible legal services,” and improving “communication among community services.”¹⁸⁶

As with women in rural areas, women with disabilities are often cut off from the level of support they need and are left in positions where abuse can dictate their lives. As such, additional protections need to be implemented to adequately protect vulnerable women.

H. Abortion and Women’s Rights

Fetal personhood has dire and long-lasting consequences for women. Lawmakers in numerous states are enacting laws recognizing fetuses as people, separate from the mother.¹⁸⁷ Pregnant women are at a high risk of facing criminal charges for miscarriages or stillbirths.¹⁸⁸ Fetal personhood has implications for “constitutional rights to due process, a fair trial, and the right to counsel for fetuses whose mothers have been charged with a criminal offense.”¹⁸⁹ If fetal personhood statutes are “upheld by a court, [they] could also jeopardize the legality of fertility treatments like in vitro fertilization or even surrogacy, . . . involv[ing] the destruction of embryos [which] would qualify as people under the law.”¹⁹⁰

For example, “Gov. Brian Kemp of Georgia signed the ‘heartbeat bill’ HB 481 into law, . . . establish[ing] fetuses as full people under the law.”¹⁹¹ This means “women could be held criminally responsible for seeking an abortion or even for having a miscarriage.”¹⁹² The bill has granted full Fourteenth Amendment rights to all unborn children.

Georgia’s law goes further than other states in holding women criminally responsible. Women could be charged with murder as per the law’s personhood provisions—those who perform their own abortions, travel out of state for an abortion, or are found to be responsible for a miscarriage.¹⁹³ Similarly, the 2018 Alabama personhood statute provides wide latitude for

¹⁸⁶ *Id.*

¹⁸⁷ See Grace Panetta, *Women could get up to 30 years in prison for having a miscarriage under Georgia’s harsh new abortion law*, BUS. INSIDER (May 10, 2019, 9:02 AM), <http://www.businessinsider.com/women-30-years-prison-miscarriage-georgia-abortion-2019-5> [<http://perma.cc/2U54-4G5J>].

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*; see H.B. 481, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

¹⁹² Panetta, *supra* note 187.

¹⁹³ *Id.*

actions impacting a fetus as criminal behavior with potential for prosecution.¹⁹⁴ For example, on a suit initiated by the embryo's would-be father, the district court gave the estate of a six-week-old aborted embryo legal standing to sue an abortion clinic for wrongful death.¹⁹⁵

Experiences of women in a myriad of different domains demonstrates that the work towards women's equality is not a thing of the past. Numerous indirect barriers, such as sexual abuse, impact advancements of women to this day.

V. REVISITING 2019 AS THE "YEAR OF MEN"¹⁹⁶

Women supporting women is a double-edged sword. Powerful men in America are playing "victim and advancing it with the brutality of oppressors. While women accuse men of sexual misconduct, the accused and their allies often rewrite the narrative."¹⁹⁷ Instead of negating the blame, such accused men of power belittle their accusers and blame a "hysterical culture," making the accuser sound hopeless and befuddled.¹⁹⁸ For example, Kavanaugh supporters and Kavanaugh himself hesitated from stating "that Ford was lying about being assaulted."¹⁹⁹ Instead they stated she "confused her assailant with someone else,"²⁰⁰ thereby demeaning Ford's intelligence and rational, sound mind.

A. Intersectional Feminism: Triple Constraints of Gender, Race, and Class

For many women of color, the triple constraints of gender, race, and class are shackles holding women back from advancing in life and employment. Coined by scholar and civil rights advocate Kimberlé Crenshaw, *intersectionality*, also called *intersectional feminism*, is a branch of feminism asserting that all aspects of social and political identities (gender, race, class, sexuality, disability, etc.) discrimination overlap or "intersect."²⁰¹ For example, race with gender, in the case of a black woman. For Crenshaw, "women of colour . . . [were] doubly discriminated against, particularly in

¹⁹⁴ *See id.*

¹⁹⁵ *Id.*

¹⁹⁶ Livni, *supra* note 8.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *What Does Intersectional Feminism Actually Mean?*, IWDA (May 11, 2018), <http://iwda.org.au/what-does-intersectional-feminism-actually-mean/> [<http://perma.cc/DT43-3RAZ>].

law.”²⁰² The 1976 case of *Degraffenreid v. General Motors* shows how the court found that five African American women working as secretaries at GM were not discriminated against by race or gender by the car manufacturer, because the company employed African American factory workers.²⁰³ The court lost sight of the fact that “the sheer majority of secretaries were white women, and factory workers were all men. So the women lost.”²⁰⁴ In modern rhetoric, intersectionality represents the “interplay between [many] kinds of discrimination, whether it’s based on gender, race, age, class, socioeconomic status, physical or mental ability, gender or sexual identity, religion, or ethnicity.”²⁰⁵

B. Legislative Progress and Citizen Movement

The House Ethics Committee called for a swift resolution in “reporting sexual harassment and other abusive workplace behavior on Capitol Hill. . . . [T]he 10 members of the Ethics Committee wrote to congressional leaders . . . to tout the House-passed reform bill and highlight the ‘overwhelming’ bipartisan support in the lower chamber for changing the process for reporting misconduct.”²⁰⁶

Additionally, the (mis)use of nondisclosure agreements and buying of female silence was:

One of the systemic problems exposed by coverage of Harvey Weinstein and other powerful men. . . . For example, Zelda Perkins, Weinstein’s former assistant, signed an agreement as part of a settlement that prevented her from telling even family members that Weinstein had exposed himself to her repeatedly, including forcing her to take dictation while he bathed²⁰⁷

Thus, came about the #MeToo law restricting, and even prohibiting, the use of non-disclosure agreements in sexual misconduct cases. In Perkins’s case:

The agreement kept [her] from speaking out for almost 20 years. . . . In September 2018, California banned the agreements in

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ Elise Viebeck, *House ethics panel calls for resolution of sexual harassment reform talks*, WASH. POST (Nov. 20, 2018, 10:07 AM), http://www.washingtonpost.com/powerpost/house-ethics-panel-calls-for-resolution-of-sexual-harassment-reform-talks/2018/11/20/349915d4-ece4-11e8-8679-934a2b33be52_story.html [<http://perma.cc/92DU-PHEG>].

²⁰⁷ Anna North, *7 positive changes that have come from the #MeToo movement*, VOX (Oct. 4, 2019, 7:00 AM), <http://www.vox.com/identities/2019/10/4/20852639/me-too-movement-sexual-harassment-law-2019> [<http://perma.cc/8BSK-9TMG>]. See also Stacy Perman, *#MeToo law restricts use of nondisclosure agreements in sexual misconduct cases*, L.A. TIMES (Dec. 31, 2018, 3:00 AM), <http://www.latimes.com/business/hollywood/la-fi-ct-nda-hollywood-20181231-story.html> [<http://perma.cc/JW9T-3ZKH>].

cases involving sexual assault, harassment, or sex discrimination. New York and New Jersey enacted similar laws. . . . Last year, Congress passed legislation addressing a number of issues advocates had raised with its process for congressional employees to report harassment or assault. The law eliminated a mandatory three-month waiting period for people reporting misconduct, during which the survivor would have to go through counseling and mediation before filing a lawsuit. It also barred legislators from using taxpayer money to cover harassment settlements, [in years prior since 2003] \$300,000 of taxpayer funds had been used for that purpose.²⁰⁸

Moreover, millions of domestic and farm workers—the people who clean Americans’ homes, care for their children, and harvest their food—lack sexual harassment protections because they work for employers with fewer than 15 employees. . . . [H]undreds of domestic and farm workers rallied in Washington last year to urge Congress to extend harassment protections to cover them.²⁰⁹

Senator Patty Murry (D., Wash.) and Representatives Katherine Clark (D., Mass.) and Ayanna Pressley (D., Mass.) enacted the federal BE HEARD Act banning some types of nondisclosure agreements.²¹⁰

Furthermore, sexual harassment lawsuits are irrationally expensive.²¹¹ Monetary awards have seen an uptick in the #MeToo era.

Time’s Up, a group of women in Hollywood working to fight harassment, started the Time’s Up Legal Defense Fund, aimed at helping survivors of sexual misconduct, especially in low-wage industries, get legal representation. . . . Since . . . January 2018, [the fund] has raised over \$24 million and connected 3,677 people with attorneys to pursue possible legal action²¹²

Accused of ignoring victims and not acting on the athletes’ reports, officials at Michigan State University, where Larry

²⁰⁸ North, *supra* note 207. See also Juliet Linderman, *Congress agrees on bill holding lawmakers financially liable in sexual harassment settlements*, USA TODAY (Dec. 12, 2018, 9:09 PM), <http://www.usatoday.com/story/news/politics/2018/12/12/house-senate-agree-anti-sexual-harassment-bill/2295234002/> [<http://perma.cc/BW2X-2TTE>]; Perman, *supra* note 207; Juliet Linderman, *\$300k in taxpayer funds has been spent settling sexual harassment claims against Congress, report says*, PBS (Jan. 12, 2018, 6:42 PM), <http://www.pbs.org/newshour/politics/300k-in-taxpayer-funds-has-been-spent-settling-sexual-harassment-claims-against-congress-report-says> [<http://perma.cc/6UGC-Y35W>]; *Combating Sexual Harassment: Frequently Asked Questions*, N.Y. STATE, <http://www.ny.gov/combating-sexual-harassment-workplace/combating-sexual-harassment-frequently-asked-questions> [<http://perma.cc/22GB-BMZQ>] (last visited Mar. 2, 2020); Vincent N. Avallone & Meghan T. Meade, *New Jersey’s Latest #METOO Law Goes Beyond Sexual Harassment*, NAT’L L. REV. (Mar. 25, 2019), <http://www.natlawreview.com/article/new-jersey-s-latest-metoo-law-goes-beyond-sexual-harassment> [<http://perma.cc/329H-W3RV>].

²⁰⁹ North, *supra* note 207.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

Nassar was a sports medicine physician, created a \$500 million settlement fund.²¹³ Largest in the university system, survivors could get between \$250,000 and \$2.5 million each from the fund.²¹⁴

[F]ormer USA Gymnastics team doctor Larry Nassar . . . was sentenced to 40 to 175 years in prison for sexually abusing more than 100 young athletes, in addition to an earlier 60-year sentence on child pornography charges. . . . In 2018, the Equal Employment Opportunity Commission filed 41 sexual harassment lawsuits, more than a 50 percent increase over 2017, according to MarketWatch. The EEOC won \$70 million from companies on behalf of harassment survivors in 2018, up 47 percent from 2017.²¹⁵

VI. TAKEAWAYS

Patriarchy, psychologically, is striking up such an abusive bargain with American women. Rights of women have witnessed ebbs and flows throughout history. Each time women march three steps forward, their progress is stymied two steps back.

It is heartening that the talk on gender and power is on the rise in American societies. “[O]ne reason Justice Kavanaugh was confirmed is because white men want to hold onto their power in government.”²¹⁶ Abused, uneducated, and poor female victims addicted to alcohol and drugs are drawn to patriarchy’s tenets: “I alone can protect you! I am strong! I am violent. You need violence to protect you from violence.’ . . . [A] woman who-[is] dedicated to patriarchy is born.”²¹⁷ To overcome this, we as a society must take several preventative, as well as forward-looking, steps.

Community support—whether offline or online—is an important factor for women to feel sustained and empowered in overcoming their abusive pasts and spiraling negative present. In the 2019 post #MeToo era, a digital anonymity and covertness is allowing ordinary women to come forward. Anonymized lists, whisper networks, and informal alliances are becoming stronger forces in pinpointing men as abusers and accused. The anonymity of the web has created global voices to stand in solidarity.

Women face different problems than those of men. Systemic and infrastructural changes in traditional institutions have been slow, e.g. military, to non-existent, e.g. church. Transformation in female institutions, female rhetoric, and female vulnerabilities, has to come from inside out and outside in, within these structures and frameworks.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Haque, *supra* note 7.

Listening to women and believing women is the most underrated aspect of modern female rights movements. We, as a society, have to start charting out solutions to women's issues and problems, as a collective, as different from men, and tailored and streamlined to address women in the totality of their circumstances and in the wholeness of their beings.

Laws by Women, Laws About Women: A Retrospective Survey of Laws by California State and Federal Legislators

Sherry L. Leysen*

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I. INTRODUCTION

In 1895, nearly fifteen years before the ratification of the Nineteenth Amendment to the United States Constitution, the *Los Angeles Times* invited “famous thinkers” to consider and respond to an important question.¹ The *Times* correspondent introduced the question as follows:

The “New Woman” is rapidly coming to the front in the United States. She already votes in many localities, and within the past year she has made herself felt in many of the States upon the public school boards.

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¹ Frank G. Carpenter, *If Women Came to Congress*, L.A. TIMES, Nov. 10, 1895, at 25.

The question will soon come as to whether she ought to have a place in the halls of Congress at Washington. This question has already been discussed, and during the past few weeks I have sent requests for an expression as to the effect of such an innovation to a number of our prominent statesmen, and also to the leading women of the United States. My question was:

“If women came to Congress, what would be the result?” It was accompanied by a reply postal card, and the answers were necessarily short.²

The views of thirty-two people were printed, with many supportive opinions expressed.³ Susan B. Anthony remarked that “justice, not bargain and sale, will decide legislation. May the good time come speedily!”⁴ Belva A. Lockwood, who years prior had become the first woman to practice before the U.S. Supreme Court,⁵ wrote that a woman “would go there by the votes of the people, and would therefore be likely to be a wise woman . . . and would probably say the right thing in the right place, and vote the right way.”⁶ But the notion of women holding elected office at the national level was not without harsh criticism, with some lamenting it “would be the deterioration of Congress,”⁷ “injurious, [and] detrimental to the moral influence,”⁸ and ultimately resulting in “chaos!”⁹ Following the publication of this piece, it would take nearly two decades for a woman to be elected to the United States Congress—Jeannette Rankin—and to the California legislature.¹⁰ Now, a century later, what is the result of women having an active role as legislators in our democracy?

² *Id.*

³ See *id.* It seems that the banishment of tobacco smoke was a very popular reason to support women in Congress. *E.g.*, Letter from Henry W. Blair, in Carpenter, *supra* note 1, at 25 (“Congress would become a genuine good-government club, and the problem of the ventilation of the hall of the House of Representatives would be solved without expense to the country by the exclusion of the use of tobacco in all its forms.”); Letter from Elijah A. Morse, in Carpenter, *supra* note 1, at 25 (“For one thing, the dirty, vile, poisonous tobacco smoke and spit would have to leave the House . . . [t]obacco kills the men who use it as well as those who have to breathe it.”).

⁴ Letter from Susan B. Anthony, in Carpenter, *supra* note 1, at 25.

⁵ See JILL NORGRÉN, BELVA LOCKWOOD: THE WOMAN WHO WOULD BE PRESIDENT 83 (2007).

⁶ Letter from Belva A. Lockwood, in Carpenter, *supra* note 1, at 25.

⁷ Letter from Thomas Dun English, in Carpenter, *supra* note 1, at 25 (“[F]rom my experience in legislation I should say the result would be the deterioration of Congress, and the moral degradation of such of the gentler sex as become members.”).

⁸ Letter from Patrick Walsh, in Carpenter, *supra* note 1, at 25 (“Women do not need to go to Congress to have their rights protected. I cannot imagine anything that would be more injurious, more detrimental to the moral influence and solid status of woman . . . unto the low and demoralizing plane of politics.”).

⁹ Letter from James H. Kyle, in Carpenter, *supra* note 1, at 25.

¹⁰ See Rankin, *Jeannette*, U.S. HOUSE REPRESENTATIVES, HIST., ART & ARCHIVES, [http://history.house.gov/People/Listing/R/RANKIN,-Jeannette-\(R000055\)/](http://history.house.gov/People/Listing/R/RANKIN,-Jeannette-(R000055)/) [<http://perma.cc/AT78-QXZL>] (last visited Apr. 4, 2020).

Has it resulted in “[j]ustice, liberty and equality for women,” as Elizabeth Cady Stanton predicted?¹¹

It is easy to become discouraged by the seemingly constant bombardment of contemporary headlines drawing attention to the status of women. Gender disparities and inequities continue to exist for women, particularly in the workplace. Whether working as entrepreneurs,¹² professional athletes,¹³ physicians,¹⁴ lawyers,¹⁵ scientists,¹⁶ advertising executives,¹⁷ coaches,¹⁸ in technology,¹⁹ in entertainment,²⁰ or any number of other

11 Letter from Elizabeth Cady Stanton, in Carpenter, *supra* note 1, at 25.

12 See Jena McGregor, ‘We Blew It’: Forbes Named 99 Men and Only One Woman on Its List of ‘Most Innovative Leaders,’ WASH. POST (Sept. 10, 2019, 4:00 AM), <http://www.washingtonpost.com/business/2019/09/10/we-blew-it-forbes-named-men-only-one-woman-its-list-most-innovative-leaders/> [<http://perma.cc/P5LA-6MTJ>] (discussing the backlash in connection with Forbes 2019 list in which only one woman appeared, at number seventy-five).

13 See, e.g., Andrew Das, *U.S. Women’s Soccer Team Sues U.S. Soccer for Gender Discrimination*, N.Y. TIMES (Mar. 8, 2019), <http://www.nytimes.com/2019/03/08/sports/womens-soccer-team-lawsuit-gender-discrimination.html> [<http://perma.cc/9EEC-AKFT>] (reporting on the collective action lawsuit filed in March 2019 by twenty-eight athletes against the United States Soccer Federation); see also Plaintiffs’ Collective Action Complaint for Violations of the Equal Pay Act and Class Action Complaint for Violations of Title VII of the Civil Rights Act of 1964 at 1–2, *Morgan v. U.S. Soccer Fed’n, Inc.*, No. 2:19-CV-01717, 2019 WL 1199270 (C.D. Cal. Mar. 8, 2019).

14 See, e.g., Christina Mangurian et al., *What’s Holding Women in Medicine Back from Leadership*, HARV. BUS. REV. (Nov. 7, 2018), <http://hbr.org/2018/06/whats-holding-women-in-medicine-back-from-leadership> [<http://perma.cc/MC4C-VW8X>] (summarizing research on women physicians and reasons for gender disparities and suggesting solutions).

15 See, e.g., ROBERTA D. LIEBENBERG & STEPHANIE A. SCHARF, *WALKING OUT THE DOOR: THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE 17–20* (2019) (reporting on statistics showing the low percentages of women lawyers that are law firm equity partners or that hold law firm leadership positions, and recommending best practices to increase gender diversity, advancement, and retention of experienced women lawyers).

16 See, e.g., Andrew Jacobs, *Another Obstacle for Women in Science: Men Get More Federal Grant Money*, N.Y. TIMES (Mar. 5, 2019), <http://www.nytimes.com/2019/03/05/science/women-scientists-grants.html> [<http://perma.cc/7EX6-BM26>] (describing results from a research study finding that, among the top fifty institutions receiving National Institutes of Health grant money, the median award to women versus men was \$94,000 and \$135,000, respectively).

17 See Tiffany Hsu, *#MeToo Clashes With ‘Bro Culture’ at Ad Agencies*, N.Y. TIMES (Dec. 22, 2019), <http://www.nytimes.com/2019/12/22/business/media/ad-industry-sexism.html> [<http://perma.cc/WH4D-ZB4L>] (reporting on issues and problems of diversity and equity at various advertising agencies).

18 See Carol Hutchins, Edniesha Curry & Meredith Flaherty, *Where Are All the Women Coaches?*, N.Y. TIMES (Dec. 31, 2019), <http://www.nytimes.com/2019/12/31/opinion/Women-coaching-sports-title-ix.html> [<http://perma.cc/QA7R-P6NP>] (noting that, before the passage of Title IX, ninety percent of women’s teams at the college level were coached by women; now that figure is forty percent for women’s teams, and three percent for men’s teams).

19 See Cade Metz, *The Gender Gap in Computer Science Research Won’t Close for 100 Years*, N.Y. TIMES (June 21, 2019), <http://www.nytimes.com/2019/06/21/technology/gender-gap-tech-computer-science.html> [<http://perma.cc/4ZW2-BH99>] (discussing results from a research study that analyzed millions of papers in computer science published over a nearly fifty-year period and finding parity might be reached by 2137).

professions, collectively women are still struggling to reach the hoped-for equality. Yet we should not lose sight of the progress made. This Article attempts to briefly survey the law's role in that progress. Its intention is not to provide a comprehensive overview,²¹ nor is it a study of voting records, nor a commentary on partisan politics. Rather, its intent is to shine a light on a small selection of work by federal and state legislators that have strived to move things forward. Part I discusses the advancement of statutory authority by women, highlighting bill introduction or sponsorship and select legislative records of the first women elected to the California State Assembly and Senate. Part II highlights a selection of laws about women in three policy areas: employment, corporate governance, and health—particularly those supported by California state and federal legislators.

II. LAWS BY WOMEN

At the time of this writing, record numbers of women are serving as legislators. One hundred thirty women—one hundred one in the House, and twenty-six in the Senate²²—are currently serving in the 116th Congress, representing just under twenty-five percent of voting members.²³ The California Legislature, with thirty-eight women in office, also has set a record in 2019.²⁴ But reaching these numbers at the federal and state levels has not been easy. Research indicates that women in public office successfully advance policy priorities, often for issues concerning women, children, and families,²⁵ and that their representation is

²⁰ See, e.g., Derek Thompson, *The Brutal Math of Gender Inequality in Hollywood*, ATLANTIC (Jan. 11, 2018), <http://www.theatlantic.com/business/archive/2018/01/the-brutal-math-of-gender-inequality-in-hollywood/550232/> [<http://perma.cc/D8HA-6A5C>] (reporting on a 2017 study finding low numbers of women working behind the camera in key roles).

²¹ For compiled overviews of relevant statutory authority, see, for example, KAREN KEESLING & SUZANNE CAVANAGH, CONG. RESEARCH SERV., 79-112 GOV, SELECTED WOMEN'S RIGHTS LEGISLATION ENACTED BETWEEN 1919-1978 (1979) (chronicling selected legislation from the sixty-sixth to the ninety-fifth Congresses); LESLIE W. GLADSTONE, CONG. RESEARCH SERV., RL30658, WOMEN'S ISSUES IN CONGRESS: SELECTED LEGISLATION 1832-1998 (2000) (providing a topical summary of federal legislation in areas such as civil rights, employment, pensions and social security, housing, taxes, crimes, and more); CAL. COMM'N ON THE STATUS OF WOMEN, LAWS AFFECTING WOMEN 1973-1998 (providing an annual compilation of California enactments from 1973-1998).

²² JENNIFER E. MANNING & IDA A. BRUDNICK, CONG. RESEARCH SERV., R43244, WOMEN IN CONGRESS: STATISTICS AND A BRIEF OVERVIEW 2 (2020) (noting that, in the House, 101 women are representatives and four are nonvoting members).

²³ *Id.* at 1.

²⁴ See Devin Lavelle, *Demographics in the California Legislature: 2019-2020 Session*, CAL. STATE LIBR., <http://public.tableau.com/views/LegislativeDemographics2019-20/UserView?:showVizHome=no> [<http://perma.cc/HH6M-WQYW>] (last visited Feb. 12, 2020). Of this number, fourteen women are serving in the Senate, and twenty-four are serving in the Assembly. *Id.*

²⁵ See KELLY DITTMAR, KIRA SANBONMATSU & SUSAN J. CARROLL, A SEAT AT THE TABLE 1, 9, 148-66 (2018) (presenting qualitative findings and insights of interviews with

important.²⁶ Yet the growth in numbers has been painfully slow.²⁷ The number of women legislators in California did not reach double digits until the 1979–1980 legislative session,²⁸ and it has been nearly fifteen years since Californians have seen representation mirroring today’s numbers.²⁹ Perhaps most surprising, these low numbers are not due to a historical lack of candidates. Compiled statistics show that between 1912 and 1970, only eighteen women were elected to a California state office, even though there were 520 candidates running for state and national office in primary elections.³⁰ For more than a century, the doors to elective office have opened—ever so slowly—to women of color,³¹ women veterans,³² single mothers,³³

eighty-three women that served in the 114th Congress and discussing their approach to policy issues impacting women and children); Sue Thomas, *The Impact of Women on State Legislative Policies*, 53 J. POL. 958, 974 (1991) (discussing findings from a research study of twelve state legislatures and concluding that “[women] are more likely than men to introduce and successfully steer legislation through the political process that addresses issues of women, children, and the family.”); cf. TRACY L. OSBORN, HOW WOMEN REPRESENT WOMEN: POLITICAL PARTIES, GENDER, AND REPRESENTATION IN THE STATE LEGISLATURES 7 (2012) (“[T]he pursuit of women’s policy in the states is an inherently partisan endeavor based in both the effect of partisan identity on women’s issues and partisan legislative structure.”).

²⁶ See Susan Gluck Mezey, *Increasing the Number of Women in Office: Does It Matter?, in THE YEAR OF THE WOMAN: MYTHS AND REALITIES* 267 (Elizabeth Adell Cook et al. eds., 1994) (“Although many men champion women’s issues . . . research shows that women are better champions.”); MICHELE L. SWERS, THE DIFFERENCE WOMEN MAKE 128 (2002) (“[I]t is critical for women and minorities to have a seat at the table when legislators negotiate the final deals on public policy.”); MANNING & BRUDNICK, *supra* note 22, at 16 n.27 (collecting scholarship on the effectiveness of women legislators).

²⁷ See LORI COX HAN & CAROLINE HELDMAN, WOMEN, POWER, AND POLITICS: THE FIGHT FOR GENDER EQUALITY IN THE UNITED STATES 139 (2018) (“[W]omen are still nowhere close to reaching parity with men as members of Congress or state legislatures.”); see also *Women in Elective Office 2020*, CTR. FOR AM. WOMEN & POL., <http://cawp.rutgers.edu/women-elective-office-2020> [<http://perma.cc/6KXP-V3HD>] (last visited Feb. 10, 2020) (calculating the percentages of women in elective office from 1971 through 2020 and reporting 23.7% in U.S. Congress, 28.9% in statewide elective office, and 29% in state legislatures in 2020); see also *Women in State Legislatures 2020*, CTR. FOR AM. WOMEN & POL., <http://cawp.rutgers.edu/women-state-legislature-2020> [<http://perma.cc/V5RJ-YAHS>] (last visited Feb. 10, 2020) (noting that California currently ranks eighteenth with 31.7%).

²⁸ Lavelle, *supra* note 24 (noting eleven women legislators in the 1979–1980 legislative session).

²⁹ *Id.* (noting thirty-seven women legislators in the 2005–2006 legislative session).

³⁰ LINDA VAN INGEN, GENDERED POLITICS: CAMPAIGN STRATEGIES OF CALIFORNIA WOMEN CANDIDATES, 1912–1970, app. at 207–09 (Pam Parry & David R. Davies eds., 2017). Fourteen of these women were elected to the Assembly. *Id.* Among the remaining four, one was elected as the California Secretary of Treasury, and three served in Congress (two by special election to replace their spouses). *Id.*

³¹ See, e.g., *Women of Color in Elective Office*, CTR. FOR AM. WOMEN & POL., <http://cawp.rutgers.edu/women-color-elective-office-2020> [<http://perma.cc/Y3HB-2X3Q>] (summarizing historical and current statistics on women of color serving in state and federal elective office); JOHN CORNELISON, CAL. RESEARCH BUREAU, CAL. STATE LIBRARY, S-15-003, WOMEN OF COLOR IN CALIFORNIA’S LEGISLATURE (2015), <http://library.ca.gov/Content/pdf/crb/reports/S-15-003.pdf> [<http://perma.cc/AT4R-LXQJ>] (summarizing trends from 1996–2015).

and others with unique backgrounds and experiences, all of whom are bringing to elective office a great level of diversity in interests, objectives, and expertise.

A. The First Women of the California Assembly

The legacy of women in the California state legislature began in 1918, when four of twelve women³⁴ on the general election ballot were successful in their attempts to serve in public office: Esto Broughton, Grace Dorris, Elizabeth Hughes, and Anna Saylor were elected to the Assembly as California's first women legislators.³⁵ These first women would each serve several terms, beginning to carve the path to double-digit representation by women in the California legislature.³⁶

During this time period, manufacturing by still-burgeoning industries was redirected to support America's war efforts,³⁷ with expanding production attributed to the "war spirit."³⁸ Record numbers of women were entering the work force to "fill new positions,"³⁹ leading to the creation of a new policy-making body in 1918 within the Department of Labor, Woman in Industry Service—their purpose was "to safeguard the interests of women workers and to make their service effective for the national good" whether "in peace or in war."⁴⁰ Americans also were facing another war at home: the influenza pandemic. With at least 100,000 cases

³² See, e.g., JENNIFER E. MANNING, CONG. RESEARCH SERV., R45583, MEMBERSHIP OF THE 116TH CONGRESS: A PROFILE 9 (2020) (reporting ten women veterans in the 116th Congress, seven in the House, and three in the Senate).

³³ See, e.g., VAN INGEN, *supra* note 30, at 46–47 (discussing the challenges faced by single mother and widow Mae Ellen Nolan, the first woman from California to serve in the House of Representatives following the death of her husband who previously held the seat).

³⁴ *California Turns Cold Shoulder on Women Candidates*, SACRAMENTO BEE, Nov. 9, 1918 ("California is perfectly willing that her daughters should vote, but she is somewhat dubious about the advisability of putting them in office, as shown by Tuesday's election, in which only four out of twelve women candidates were elected.")

³⁵ See H.R. 122, 2017–2018 Reg. Sess. (Cal. 2018) (recognizing "August 27, 2018, as the 100th anniversary of the election of the first four women to the California State Assembly").

³⁶ See Lavelle, *supra* note 24 (graphing the number of women legislators from 1919–1920 through 2019–2020).

³⁷ See *Half Billion Dollars of War Orders to Motors*, WALL ST. J., Jan. 1, 1918, at 1 (detailing the automobile industry's contributions to "war products").

³⁸ *City's Growth in Year Greatest in History*, L.A. TIMES, Feb. 21, 1918, at 118 ("All lines of industry in this city are shown to have caught the war spirit during the year and to have increased production and enlarged their activities in every direction.")

³⁹ *Women by Thousands Fill Men's Positions*, L.A. TIMES, Sept. 17, 1918, at 16 ("Women by thousands are responding to the appeal to take the place of men entering the army and to fill new positions created by industrial expansion.")

⁴⁰ U.S. DEP'T OF LABOR, FIRST ANNUAL REPORT OF THE DIRECTOR OF THE WOMAN IN INDUSTRY SERVICE FOR FISCAL YEAR ENDED JUNE 30, 1919, at 3 (1919); see also *Our History*, U.S. DEP'T LAB., http://www.dol.gov/wb/info_about_wb/interwb.htm [<http://perma.cc/E4KS-ZQMU>] (last visited Feb. 10, 2020) (noting that the Woman in Industry Service was the predecessor agency to the Women's Bureau under the Department of Labor).

reported in California in the fall of 1918,⁴¹ the death toll in Los Angeles alone over a four-month period was several thousand.⁴² This period also marked the beginning of prohibition, with ratification of the Eighteenth Amendment in 1919.⁴³ In California, the strength of its economy was rooted in the “spread of irrigation.”⁴⁴ Expanding hydroelectric power in the state was a priority, and with the state’s “unfailing supply of raw materials and its easy access by cheap water transportation to the great markets of the world,” California was expected to be “one of the greatest manufacturing states in the Union.”⁴⁵ On the political front, a “partisan shift” was afoot, helping to pave the way for the first women candidates to reach elected office.⁴⁶

The forty-third session of the California State Assembly commenced on January 6, 1919.⁴⁷ The press reported on the women’s arrival to the state capitol, noting that the “fair legislators” were “com[ing] to Sacramento with some definite ideas as to what they want done in the way of law making.”⁴⁸ This included pursuing the agenda of the Women’s Legislative Council⁴⁹ on three policy priorities: community property issues, a state home for “delinquent women,”⁵⁰ and more funding for elementary schools.⁵¹ A few days into the legislative session, the women were welcomed by Governor William D. Stephens in his first biennial message, in which he stated, “Many of our best laws

41 See *State Board Reports Influenza Subsiding*, L.A. TIMES, Nov. 3, 1918, at 15.

42 See *Here are Exact Facts About the Influenza*, L.A. TIMES, Feb. 9, 1919, pt. II at 6.

43 See U.S. CONST. amend. XVIII (repealed 1933). California’s ratification of the Eighteenth Amendment was filed with the Secretary of State on January 15, 1919. S.J. Res. 4, 43rd Sess., 1919 Cal. Stat. 1363.

44 CAL. STATE BD. OF AGRIC., STATISTICAL REPORT OF THE CALIFORNIA STATE BOARD OF AGRICULTURE FOR THE YEAR 1918, at 1 (1919) (“The spread of irrigation and of intensive cultivation . . . have made California what it is today.”).

45 ASSEMB. JOURNAL, 43rd Sess., at 36 (Cal. 1919) (printing the first biennial message of Governor Stephens).

46 VAN INGEN, *supra* note 30, at 13 (“A partisan shift occurred in the state that helped change the fortunes of women candidates: the Republican Party healed its rift with progressives and began supporting women in winnable, open seat-elections.”).

47 ASSEMB. FINAL HISTORY, 43rd Sess. (Cal. 1919).

48 *Women Lawmakers Take Up Duties*, SACRAMENTO BEE, Jan. 6, 1919, at 10.

49 See GAYLE GULLETT, BECOMING CITIZENS: THE EMERGENCE AND DEVELOPMENT OF THE CALIFORNIA WOMEN’S MOVEMENT, 1880–1911, at 204–05 (Mari Jo Buhle et al. eds., 2000) (discussing the origins, objectives, and successes of the Women’s Legislative Council).

50 Act of May 3, 1919, ch. 165, 1919 Cal. Stat. 246. In 1919, Senator William Kehoe successfully introduced legislation for a home for “delinquent women,” the California industrial farm. S.B. 281, 43rd Sess. (Cal. 1919). The law, which committed women for terms of six months to five years for prostitution and related offenses, was challenged unsuccessfully in *In re Carey*. 207 P. 271, 273 (Cal. Dist. Ct. App. 1922). There, Betty Carey, who was charged with soliciting prostitution in San Francisco and ordered detained at the industrial farm, challenged her detention on various grounds. See *id.* at 271. The court found that detention under the statute was neither a punishment nor a penalty, but “wholly for purposes of assistance and reformation.” *Id.* at 273.

51 See *Women Lawmakers Take Up Duties*, *supra* note 48, at 10.

are directly due to the fact that women have the ballot. Now that they not only vote but as well directly assist in making the laws we may be certain that there will be still further improvement in our laws and in our institutions.”⁵²

The four women were assigned to sit next to one another in the Assembly Chamber, in seat numbers forty-one through forty-four.⁵³

Elected to represent the 46th District was Assembly member Esto B. Broughton of the city of Modesto, the county seat of Stanislaus County.⁵⁴ A graduate of Berkeley Law in 1916,⁵⁵ she became a member of the California Bar in May 1916.⁵⁶ She was twenty-eight years old when she took office in 1919,⁵⁷ becoming the first woman lawyer to serve in the California Legislature. Broughton was quoted as saying, “I am now in the Legislature, and while I have my opinions, my mind is open to conviction in all matters. I shall not be a busybody on the floor of the Assembly.”⁵⁸

Broughton’s initial policy interests included “irrigation problems and reclamation work.”⁵⁹ Around the time of her election, the population of Modesto was approximately 7,200 people, and with more than 1,900 farms in the county requiring irrigation, the region contributed heavily to the production of numerous crops essential for the economy, including peaches, nectarines, and figs.⁶⁰ During the forty-third regular session, Broughton served on six committees⁶¹ and introduced eighteen Assembly Bills (“A.B.”).⁶² Five bills were approved by Governor Stephens, including acts addressing electrical power (A.B. 168)⁶³ and refunding of outstanding bond debts by irrigation districts (A.B. 207).⁶⁴ Another bill addressed compensation for county

⁵² ASSEMB. JOURNAL, 43rd Sess., at 38 (Cal. 1919).

⁵³ See ASSEMB. FINAL HISTORY, 43rd Sess., at 8–9 (Cal. 1919).

⁵⁴ *Id.* at 4.

⁵⁵ See William Benemann, *Ask the Archivist: Women in Sacramento*, BERKELEYLAW (Dec. 16, 2013), <http://www.law.berkeley.edu/article/women-in-sacramento/> [http://perma.cc/UU6U-7JND].

⁵⁶ There have been an estimated eighteen women elected to the California legislature that also are, or were, members of the California State Bar. See *infra* Appendix A.

⁵⁷ VAN INGEN, *supra* note 30, at 22. In her first primary, she ran against two other candidates, winning with forty-nine percent of the vote. See *id.*

⁵⁸ *Women Lawmakers Take Up Duties*, *supra* note 48, at 10.

⁵⁹ *Id.*

⁶⁰ See CAL. STATE BD. OF AGRIC., *supra* note 44, at 448–49.

⁶¹ See ASSEMB. FINAL HISTORY, 43rd Sess., at 14 (Cal. 1919) (serving on “Civil Service, Direct Legislation, Engrossment and Enrollment, Irrigation, Public Morals, [and] Ways and Means”).

⁶² See *id.* at 17, 26.

⁶³ See Act of May 21, 1919, ch. 370, 1919 Cal. Stat. 778 (“provid[ing] for the development of electrical power by irrigation districts”).

⁶⁴ See Act of May 25, 1919, ch. 489, 1919 Cal. Stat. 1004 (“authoriz[ing] irrigation districts to refund outstanding bonded indebtedness”).

officers, and created the office of county librarian, for counties of the twenty-fifth class (A.B. 603).⁶⁵

The law of community property in California has a long history,⁶⁶ and the first women legislators were in the thick of early reform attempts. In 1919, Broughton introduced three bills that addressed community property issues (A.B. 696, 697, 698), with A.B. 696 and 698 receiving quite a bit of attention.⁶⁷ The *Sacramento Bee* vigorously opposed the “Broughton Bills” (A.B. 696 and 698) in an editorial.⁶⁸ The piece warned that A.B. 696 would make a wife “practically a legal partner, with unrestricted power to hamper or ruin [her husband’s] business . . . however incapable, meddlesome or mischievous she might be.”⁶⁹ The press reported that while Assembly opposition to the bills “did not lack vigor,” there was some support, with one member of the Assembly quoted as saying, “Deal with the women now . . . or they will deal with you later. They deserve this right; it is theirs.”⁷⁰ Scholarly commentary on these bills and others gave dire warnings that “[i]f the proposed legislation passes it will be necessary for a man to be as careful in choosing a wife as in selecting a business partner.”⁷¹ All three bills were ultimately unsuccessful, with two of the three pocketed by Governor Stephens (A.B. 697 and 698) and one left in committee (A.B. 696).⁷² In his veto message, Stephens was quoted as saying, “I feel that the women of California believe that it is necessary and proper that the husband remain as the manager of the active business of the marital partnership . . . the best interests of

⁶⁵ See Act of May 27, 1919, ch. 508, 1919 Cal. Stat. 1057 (“relating to compensation of officers . . . and creating office of county librarian . . .”).

⁶⁶ See, e.g., Susan Westerberg Prager, *The Persistence of Separate Property Concepts in California’s Community Property System, 1849–1975*, 24 UCLA L. REV. 1, 1 (1976) (providing an excellent history and analysis of community property reforms).

⁶⁷ A.B. 696 proposed to amend and repeal sections of the Civil Code (1401 and 1402) “relating to the disposition, succession, administration, and distribution of community property on the death of the husband or wife . . .” ASSEMB. FINAL HISTORY, 43rd Sess., at 216 (Cal. 1919). A.B. 697 proposed “to amend section 1723 of the Code of Civil Procedure relating to the disposition of life estates or homesteads, or community property, on owner’s death, in certain cases.” *Id.* A.B. 698 proposed to amend and repeal sections of the Civil Code (164 and 167) “relating to community property.” *Id.* at 217.

⁶⁸ *Community Property Bills Bad for Husbands and Wives*, SACRAMENTO BEE, Mar. 24, 1919, at 16.

⁶⁹ *Id.*

⁷⁰ *Community Property Bills Passed by the Assembly Last Night*, SACRAMENTO BEE, Apr. 15, 1919, at 2.

⁷¹ A.M. Kidd, *The Proposed Community Property Bills*, 7 CALIF. L. REV. 166, 180 (1919) (discussing community property issues in the context of A.B. 696 and 698, and S.B. 470 and 471).

⁷² See ASSEMB. FINAL HISTORY, 43rd Sess., at 216. One community property bill that addressed testamentary disposition of community property (S.B. 471, introduced by Senator Thompson) was signed by the Governor. S. FINAL HISTORY, 43rd Sess., at 145 (Cal. 1919), Act of May 27, 1919, ch. 611, 1919 Cal. Stat. 1274.

business and commercial life demands that the husband should be the manager.”⁷³ The first of many reforms to California’s community property laws would take place a few years later in 1923 with Senate Bill (“S.B.”) 228, introduced by Senator Herbert Jones with the support of the California Federation of Women’s Clubs.⁷⁴

Grace Dorris, from the city of Bakersfield in Fresno county, was elected to the 56th District.⁷⁵ Like Hughes and Saylor, Dorris was a teacher.⁷⁶ In 1908, she graduated with a Bachelor of Arts from Berkeley, and thereafter taught three languages to high school students.⁷⁷ She also was an avid supporter of women’s rights,⁷⁸ including improved conditions for working women.⁷⁹ Dorris served on six committees⁸⁰ in her first session, and introduced twenty-one bills, of which the governor approved four and pocketed four.⁸¹ A.B. 25 addressed compensation for county and township officers for counties of the eleventh class and jurors’ fees.⁸² Several bills concerned education. She successfully introduced a school census bill to require school districts to appoint a registrar of minors and to prepare accompanying reports of registration (A.B. 671)⁸³—an important measure due to the influenza epidemic, which caused the closure of public schools for extended time periods.⁸⁴ A fruitful measure amending the Political Code addressed “the powers and duties of the state board of education” concerning the granting of teaching credentials (A.B. 867).⁸⁵ Dorris also introduced a bill “to create the office of public defender” in every county (A.B. 487).⁸⁶ It was tabled by the Committee on the Judiciary, with the press reporting it was opposed by some counties that did not want it implemented throughout the state.⁸⁷

⁷³ *Wife Can Will Her Interests*, L.A. TIMES, May 28, 1919, at 19.

⁷⁴ *See Senate Acts on Bills*, L.A. TIMES, Mar. 20, 1923, at 12.

⁷⁵ *See* ASSEMB. FINAL HISTORY, 43rd Sess., at 4.

⁷⁶ *Id.*

⁷⁷ *See* VAN INGEN, *supra* note 30, at 20.

⁷⁸ *See id.* at 21.

⁷⁹ *See Women Lawmakers Take Up Duties*, *supra* note 48, at 10.

⁸⁰ *See* ASSEMB. FINAL HISTORY, 43rd Sess., at 14 (serving on “County Government, Education, Labor and Capital, Normal Schools, Oil Industries, [and] Public Health and Quarantine”).

⁸¹ *See id.* at 17, 26.

⁸² *See* Act of May 27, 1919, ch. 500, 1919 Cal. Stat. 1024 (amending Political Code relative to compensation and fees).

⁸³ *See* Act of May 9, 1919, ch. 257, 1919 Cal. Stat. 437 (providing “for the registration of minors”).

⁸⁴ *See* ASSEMB. JOURNAL, 43rd Sess., at 38 (Cal. 1919).

⁸⁵ Act of May 27, 1919, ch. 563, 1919 Cal. Stat. 1214 (amending Political Code “relating to the powers and duties of the state board of education”).

⁸⁶ ASSEMB. FINAL HISTORY, 43rd Sess., at 165 (Cal. 1919).

⁸⁷ *See Public Defender Bill to Die in Committee*, SACRAMENTO BEE, Apr. 1, 1919, at 9.

Elizabeth Hughes, from the city of Oroville in Butte county, was elected to represent the 7th District.⁸⁸ Like Saylor, “housewife” was her listed occupation,⁸⁹ but Hughes too had worked as a teacher, and her spouse was a prominent teacher and principal.⁹⁰ She also was regarded as tenacious. In connection with committee assignments, the press reported at the time that “[s]he wants that Chairmanship [of the Committee on Education] and she wants it badly. She is going to get it if she can, and she has told the Administration forces she will be satisfied with nothing less.”⁹¹ Her first session committee assignments did indeed include serving as Chair of the Education committee, along with serving on six other committees.⁹²

Anna Saylor, from the city of Berkeley, was elected to represent the 41st District located in Alameda County.⁹³ “Housewife” was her listed occupation,⁹⁴ but she was an experienced public school teacher, principal, and supervisor.⁹⁵ In her first session, she served as Chair of the Public Morals committee, and served on five others.⁹⁶ One of her primary legislative objectives was to eliminate illiteracy through increased elementary school funding.⁹⁷ She introduced twenty-one bills (ten approved by Governor Stephens),⁹⁸ nearly all of which addressed education. Several approved bills appropriated funds to assist students and graduates of the California School for the Deaf and the Blind (now the California School for the Blind)⁹⁹ with readers, books, and educational opportunities (A.B. 240 and 241),¹⁰⁰ along with appropriations for the school’s maintenance and repair (A.B. 247).¹⁰¹ Saylor also introduced mental health measures, one for the establishment of a department of psychiatry and sociology

⁸⁸ See ASSEMB. FINAL HISTORY, 43rd Sess., at 4.

⁸⁹ *Id.*

⁹⁰ See VAN INGEN, *supra* note 30, at 16.

⁹¹ *Women Lawmakers Take Up Duties*, *supra* note 48, at 10.

⁹² See ASSEMB. FINAL HISTORY, 43rd Sess., at 15 (serving on “Agriculture, Conservation, Drainage, Swamp and Overflowed Lands, Elections, [and] Federal Relations”).

⁹³ See *id.* at 5.

⁹⁴ *Id.*

⁹⁵ See VAN INGEN, *supra* note 30, at 15.

⁹⁶ See ASSEMB. FINAL HISTORY, 43rd Sess., at 16 (serving on “Constitutional Amendments, Education, Hospital and Asylums, Prisons and Reformatories, Public Charities and Corrections”).

⁹⁷ See *Women Lawmakers Take Up Duties*, *supra* note 48, at 10.

⁹⁸ See ASSEMB. FINAL HISTORY, 43rd Sess., at 19, 26.

⁹⁹ See *History of CSB*, CAL. SCH. FOR BLIND, <http://www.csb-cde.ca.gov/about/history/> [<http://perma.cc/ZS7A-R7A3>] (last visited Feb. 8, 2020).

¹⁰⁰ See Act of May 22, 1919, ch. 382, 1919 Cal. Stat. 808 (providing readers for blind students and assisting deaf students); Act of May 22, 1919, ch. 383, 1919 Cal. Stat. 808 (appropriating money to purchase books for the blind).

¹⁰¹ See Act of May 22, 1919, ch. 384, 1919 Cal. Stat. 809 (“appropriating money for repairs, improvements and equipment”).

at San Quentin (A.B. 489),¹⁰² and another to provide temporary psychiatric care (A.B. 566),¹⁰³ but neither measure was successful.

Among the twelve Assembly Bills¹⁰⁴ that Hughes introduced in her first term, nearly all addressed education. Seven of the twelve bills were approved by Governor Stephens,¹⁰⁵ and several addressed appropriations for improvements to the Chico Normal School (now the California State University, Chico).¹⁰⁶ Hughes believed that the school was “pre-eminently the one to develop the primary education feature for rural schools, for it serves a rural territory.”¹⁰⁷ Successful bills in support of the Chico Normal School included appropriations for water supply development (A.B. 476),¹⁰⁸ building improvements and repairs (A.B. 477),¹⁰⁹ and \$32,000 for the building of a trade school (A.B. 567).¹¹⁰ Other measures addressed the educational rights of students, including providing part-time education in civics and vocations for students under eighteen, and citizenship for students under twenty-one (A.B. 516).¹¹¹

During the seventy-seven days that the Assembly was in its regular session, the four women introduced a total of seventy-seven measures.¹¹² These included seventy-two bills proposing new acts or amending existing laws, along with three Concurrent Resolutions and two Joint Resolutions.¹¹³ Among their introductions, Governor Stephens approved a total of twenty-six bills, and two resolutions were filed with the Secretary of State.¹¹⁴

When the regular session of the forty-third Assembly adjourned on April 22, 1919, Assembly member Cromble Allen of the 57th district offered the following resolution, which was read and, on motion, adopted:

¹⁰² See ASSEMB. FINAL HISTORY, 43rd Sess., at 165.

¹⁰³ See *id.* at 184.

¹⁰⁴ See *id.* at 18.

¹⁰⁵ See *id.* at 26.

¹⁰⁶ See *About Chico State*, CAL. STATE UNIV. CHICO, [http://www.csuchico.edu/about/\[http://perma.cc/P7PH-FG8K\]](http://www.csuchico.edu/about/[http://perma.cc/P7PH-FG8K]) (last visited Dec. 17, 2019) (describing its opening in 1889 and its name change in 1972).

¹⁰⁷ *Women Lawmakers Take Up Duties*, *supra* note 48, at 10.

¹⁰⁸ See Act of May 27, 1919, ch. 557, 1919 Cal. Stat. 1211 (“appropriating money for the development of water and equipment”).

¹⁰⁹ See Act of May 27, 1919, ch. 558, 1919 Cal. Stat. 1211 (“appropriating money for repairs to buildings and equipment”).

¹¹⁰ See Act of May 27, 1919, ch. 559, 1919 Cal. Stat. 1212 (“appropriating money to build a trade school unit”).

¹¹¹ See Act of May 27, 1919, ch. 506, 1919 Cal. Stat. 1047 (requiring certain high schools districts to provide part-time educational opportunities and other purposes).

¹¹² See ASSEMB. FINAL HISTORY, 43rd Sess., at 17–19, 26 (Cal. 1919); 1919 Cal. Stat. iii–viii.

¹¹³ See ASSEMB. FINAL HISTORY, 43rd Sess., at 17–19.

¹¹⁴ For bill introduction summary data for Broughton, Dorris, Hughes, and Saylor, see *infra* Appendix B.

Whereas, For the first time in the history of California the electors of the Golden State elected women to serve in the Legislature at the general election last November, and

Whereas, as a result of that election

Miss Esto Broughton of Modesto,

Mrs. Grace Dorris of Bakersfield,

Mrs. Elizabeth Hughes of Oroville,

Mrs. Anna L. Saylor of Berkeley,

were elected to seats in the Assembly; and

Whereas, Miss Broughton, Mrs. Dorris, Mrs. Hughes and Mrs. Saylor have served in this forty-third session of the California Legislature with distinction to themselves and credit to their constituents, now, therefore, be it

Resolved, by the men of the Assembly of the forty-third session of the California Legislature. That we hereby express our appreciation of the honor of being associated with these women in this legislative session and that we congratulate the womanhood of California upon having chosen such representative members of their sex to serve in the Legislature, and be it further

Resolved. That a copy of this resolution be printed in the Journal, and the Chief Clerk directed to have a copy suitably inscribed for each of the four women members of the forty-third session of the Assembly.¹¹⁵

Although California granted suffrage to women in 1911,¹¹⁶ toward the end of the women's first year in office, Governor Stephens convened an extraordinary session of the forty-third California legislature to consider and ratify the Nineteenth Amendment to the U.S. Constitution, at which time Senate Joint Resolution No. 1 was adopted by the Senate and the Assembly and filed with the Secretary of State.¹¹⁷ It was reported that a "lively debate" took place in the Assembly.¹¹⁸ Two no votes were recorded by Assembly members Carlton Greene and Robert Madison. Greene argued that the issue should be left to the

¹¹⁵ ASSEMB. JOURNAL, 43rd Sess., at 2123–24 (Cal. 1919). Although the resolution was likely well-intentioned, at least one commentator has critiqued the resolution as "reinforc[ing] the notion that women voted for women" rather than "welcom[ing] women as equals." VAN INGEN, *supra* note 30, at 24.

¹¹⁶ See *California Wins! Suffragists Celebrate Victory*, 42 WOMAN'S J. 1, 321 (1911) ("This is in one sense, the greatest victory in the history of the movement, since it enfranchises more women than any of the preceding ones, California having a much larger number of women citizens than any one of the other suffrage states."). Senate Constitutional Amendment No. 8 was approved by voters at a specific election on October 10, 1911. See *id.* at 321, 323.

¹¹⁷ See ASSEMB. JOURNAL, 43rd Extra Sess., at 19 (Cal. 1919); S.J. Res. 1, 43rd Leg., Extra Sess. (Cal. 1919), 1921 Cal. Stat. lxxxii.

¹¹⁸ *Two Assemblymen Oppose Amendment*, SACRAMENTO BEE, Nov. 3, 1919, at 11.

states and was not a federal question, while Robert Madison opposed the “unnecessary call” of the legislature.¹¹⁹

When the forty-fourth session of the Assembly commenced on January 3, 1921, the Assembly was less one woman: Grace Dorris. In the 1920 election, Dorris faced three challengers; she was ultimately outspent and lost the seat.¹²⁰

Broughton, Hughes, and Saylor were reelected and continued to pursue their policy objectives, introducing seventy-nine measures (two with others), of which thirty-one bills were approved by the Governor and two resolutions were filed with the Secretary of State.¹²¹

In 1921, Broughton introduced thirty-one bills, of which nine were approved by the Governor, along with one successful Joint Resolution co-authored with Assembly member F.J. Cummings concerning the dairy industry.¹²² Another enacted measure involved establishing working conditions for women working in “any mill, workshop, packing, canning or mercantile establishment” (A.B. 601).¹²³ Employers who required women to lift or move items weighing seventy-five pounds or more without a pulley or other moving device were fined fifty dollars per day.¹²⁴ Similar protective legislation would become a hotspot for decades.¹²⁵ Broughton’s new committee assignment included serving as Chair of the Normal Schools committee.¹²⁶

¹¹⁹ *Id.*; ASSEMB. JOURNAL, 43rd Extra Sess., at 20. One no vote was by Robert Madison representing the 13th District, who stated “I did so, not with any idea of expressing myself as being opposed to the equal right of suffrage for women” but because it was “an unnecessary call of the Legislature” resulting in “an unnecessary expense by which the people of the State of California gained nothing.” *Id.*

¹²⁰ See VAN INGEN, *supra* note 30, at 33.

¹²¹ See ASSEMB. FINAL HISTORY, 44th Sess., at 50–64 (Cal. 1921).

¹²² See *id.* at 20, 34. The dairy industry measure was intended to address “a grave menace” due to the importation of butter “in enormous quantities into our local markets.” Assemb. J. Res. No. 16, Jan. 28, 1921, ch. 21, 1921 Cal. Stat. 2036.

¹²³ Act of June 3, 1921, ch. 903, 1921 Cal. Stat. 1699 (regulating the moving of certain boxes, baskets, and other receptacles where women are employed).

¹²⁴ See *id.*

¹²⁵ See, e.g., NANCY WOLOCH, A CLASS BY HERSELF: PROTECTIVE LAWS FOR WOMEN WORKERS, 1890s–1990s 1 (2015) (“The Progressive Era left in its wake scores of state protective laws that treated women as a separate class, that confirmed and perpetuated a gendered division of labor, and that remained in place for decades to come.”); Arlene Van Breems, *Working Women Caught in State, Federal Law Bind*, L.A. TIMES, Nov. 12, 1969, at H1 (“California’s more than 50-year-old protective laws for women are causing a quandary for the Legislature.”); Arlene Van Breems, *Amended Fair Employment Bill Angers Women*, L.A. TIMES, June 12, 1970, at G1 (quoting the legislative advocate for the Federation of Business and Professional Women’s clubs, “We want equal job opportunity but we, as women, don’t get it by wiping out those protective laws.”).

¹²⁶ See ASSEMB. FINAL HISTORY, 44th Sess., at 14.

The forty-fourth session would be Hughes' second and final term.¹²⁷ She continued as Chair of the Education committee. During the forty-fourth session, Hughes authored twenty-three bills, of which ten were approved by the Governor.¹²⁸ Hughes continued to shepherd significant education bills. A.B. 705 amended sections of the educational rights act addressing compulsory attendance and permits,¹²⁹ while A.B. 709 provided for the organization and funding of junior college districts.¹³⁰

Saylor continued as Chair of the Public Morals committee.¹³¹ During the forty-fourth session, Saylor introduced twenty bills, twelve of which were approved by the Governor.¹³² Unsuccessful in shepherding two mental health bills through in the last session, she again introduced a bill to create the Department of Psychiatry and Sociology at San Quentin (A.B. 797).¹³³ This bill was among several measures put forth by Assembly members addressing prisons and prisoner rights (including a proposed measure to allow a prisoner "to disguise himself" upon release by allowing the growth of hair),¹³⁴ but it again proved to be unsuccessful, failing to pass from committee.

However, Saylor was successful in introducing a measure that was highly controversial, an amendment to section 190 of the Penal Code to eliminate the death penalty for minors. A.B. 1282 raised the ire of legislators and the public, with letters to the editor of the *Sacramento Bee* opining that it "may compliment the kindness of [Saylor's] heart but it is at the expense of good judgment" and that "written in womanly mercy, would not if enacted touch the heart nor stop the bullet of a single youthful murderer."¹³⁵

As introduced, Saylor advocated for the measure to apply to those twenty-one years of age and under, which was later amended to eighteen.¹³⁶ When the bill was considered in the

¹²⁷ See *Record of Members of the Assembly 1849–2019*, S. ARCHIVE, http://archive.senate.ca.gov/sites/archive.senate.ca.gov/files/assembly_service_and_officers_1849_2019_1.pdf [<http://perma.cc/L7PT-G45R>] (last visited Feb. 24, 2020).

¹²⁸ See ASSEMB. FINAL HISTORY, 44th Sess., at 21, 50–64.

¹²⁹ See Act of June 3, 1921, ch. 885, 1921 Cal. Stat. 1673.

¹³⁰ See Act of May 27, 1921, ch. 495, 1921 Cal. Stat. 756.

¹³¹ See ASSEMB. FINAL HISTORY, 44th Sess., at 14.

¹³² See *id.* at 22, 50–64.

¹³³ See *id.* at 270.

¹³⁴ *Many Improvements at Reformatories, State Prisons and Hospitals Planned; More Legislation Proposed for Humanitarian Treatment of Prisoners, Including Psychiatry Department*, SACRAMENTO BEE, Feb. 1, 1921, at 13.

¹³⁵ *Misguided Sentiment Suggests a Weakening of Law*, SACRAMENTO BEE, Mar. 9, 1921, at 13.

¹³⁶ See *Assembly Passes Bill to Prevent Hanging Youths*, SACRAMENTO BEE, Mar. 24, 1921, at 1. For a contemporary discussion of capital punishment for young adults aged eighteen to twenty-one, see Zoe Jordan, Note, *The Roper Extension: A California*

Senate, the issue was framed as a measure “inspired by the ‘sentimentalists’ opposed to capital punishment in any form”¹³⁷ The press coverage of Saylor’s bill was especially harsh, referring to the abolishment of “hanging for youthful slayers . . . no matter how heinous the crime.”¹³⁸ Some Senators argued that the measure would place an extreme burden on prosecutors to determine the defendant’s age, “[i]f this bill became a law it would be utterly impossible to prove the age of a youthful looking person charged with murder. . . . [I]f [the defendant] swore that he was under 18 years, it would be impossible for the prosecution to prove otherwise.”¹³⁹ The bill as passed took this concern into account, shifting the burden of proving age to the defendant.¹⁴⁰

Saylor’s other successful introductions continued to advance education, both for capital improvements and to advance student learning. For example, appropriations at the University of California included significant construction funds for the school of education (A.B. 791)¹⁴¹ and the physics building (A.B. 792).¹⁴²

Incumbents Broughton and Saylor, along with former colleague Dorris, kept their seats in the 1922 election, and were joined by two more women: Eleanor Miller and Cora Woodbridge. Miller from the city of Pasadena was elected to represent the 67th District.¹⁴³ A teacher of expression and music,¹⁴⁴ Miller would be elected nine times between 1922 and 1940.¹⁴⁵ Following the 1922 primary, she was quoted as saying, “I hardly need to

Perspective, 71 HASTINGS L.J. 197, 197 (2019) (arguing against the death penalty for adults twenty and under).

¹³⁷ *Bill to Save Young Slayers Passes Senate*, SACRAMENTO BEE, Apr. 26, 1921, at 12.

¹³⁸ *Assembly Passes Bill to Prevent Hanging Youths*, *supra* note 136.

¹³⁹ *Bill to Save Young Slayers Passes Senate*, *supra* note 137.

¹⁴⁰ See Act of May 13, 1921, ch. 105, 1921 Cal. Stat. 98 (an act amending the Penal Code relating to punishment for murder). The relevant language read, “[T]he death penalty shall not be imposed or inflicted upon any person for murder committed before such person shall have reached the age of eighteen years; *provided, further*, that the burden of proof as to the age of said person shall be upon the defendant.” *Id.* A version of that language is currently codified at CAL. PENAL CODE § 190.5(a) (West, Westlaw through ch. 870 of 2019 Reg. Sess.), which states, “Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.”

¹⁴¹ See Act of June 3, 1921, ch. 681, 1921 Cal. Stat. 1154 (appropriating \$100,000 for construction and equipment).

¹⁴² See Act of June 3, 1921, ch. 682, 1921 Cal. Stat. 1154 (appropriating \$500,000 for construction and equipment).

¹⁴³ ASSEMB. FINAL HISTORY, 45th Sess., at 5 (Cal. 1923).

¹⁴⁴ See VAN INGEN, *supra* note 30, at 41 (describing Miller’s educational background and the founding of the Eleanor Miller School of Expression).

¹⁴⁵ See *Pasadena Assemblywoman Ends Service After 20 Years*, L.A. TIMES, June 16, 1941, at 1A.

say, I think, that I shall be for those laws that are for the welfare of women and children, but I realize that these are not the only measures that should engage the attention of a woman in the Assembly.”¹⁴⁶ Cora Woodbridge, from the city of Roseville in Placer County, was elected to represent the 9th District.¹⁴⁷

At the start of the forty-fifth legislative session, Governor Friend Richardson admonished the legislature to keep bill introductions to a minimum, stating, “The value of your work will depend upon its merit, and not upon volume” and hoping that “the statute book of 1923 will be the smallest in size”¹⁴⁸ Nevertheless, the women collectively introduced 102 measures in the forty-fifth session, with twenty of the ninety-five bills ultimately approved by Governor Richardson.¹⁴⁹

In her first legislative session, Miller introduced seventeen measures, with two successful bills,¹⁵⁰ while Woodbridge successfully introduced five of nineteen bills in her first session.¹⁵¹

Among the twenty-four measures introduced by Saylor, nineteen addressed education (administrators, teachers, students, and school buildings), prison conditions, and the treatment of those with mental illness.¹⁵² Among the enacted introductions was an important measure permitting women prisoners at San Quentin to earn money from the sale of their needlework, to be paid upon release (A.B. 185).¹⁵³

All five would lead successful reelection campaigns in 1924 and serve together in the forty-sixth legislative session in 1925. Collectively, the five women would introduce just sixty-three bills (A.B. 789 and 1109 were cosponsored), of which only eight were approved by Governor Richardson.¹⁵⁴ The small number of bills put forth was likely due to Richardson’s directive. As in the prior session, Richardson warned the legislature, “Your work as legislators will be judged by its quality and not by its

¹⁴⁶ *Pasadenan Wins Primary Fight*, L.A. TIMES, Sept. 1, 1922, at II12.

¹⁴⁷ See VAN INGEN, *supra* note 30, at 34–40 (describing Woodbridge’s three-term political career, and losing her seat in 1928 for reasons such as failing to push hydraulic mining legislation).

¹⁴⁸ ASSEMB. JOURNAL, 45th Sess., at 99 (Cal. 1923).

¹⁴⁹ See *id.* at 22–26, 34.

¹⁵⁰ See ASSEMB. FINAL HISTORY, 45th Sess., at 24, 53–60 (Cal. 1923); Act of Apr. 26, 1923, ch. 44, 1923 Cal. Stat. 80 (amending an act concerning retirement salaries of teachers); Act of June 15, 1923, ch. 383, 1923 Cal. Stat. 775 (authorizing payment of claim against the state for \$1,500.00).

¹⁵¹ See ASSEMB. FINAL HISTORY, 45th Sess., at 26, 53–60.

¹⁵² See *id.*

¹⁵³ See Act of May 15, 1923, ch. 158, 1923 Cal. Stat. 321 (amending Penal Code). Similar authority remained in effect until at least the early 1940s. See Act of Apr. 15, 1941, ch. 106, § 3324, 1941 Cal. Stat. 1080, 1115.

¹⁵⁴ See *infra* Appendix B.

quantity . . . [t]he legislator who introduces the fewest bills should be given the most credit by his constituents.”¹⁵⁵ Only two approved bills were of any consequence. Saylor successfully introduced a measure where a woman’s estate could be sold or mortgaged for her care.¹⁵⁶ Other bills introduced by Saylor addressed transportation for physically challenged children,¹⁵⁷ but none were successful. Miller introduced ten bills (one with Dorris), of which two were approved by the Governor; one measure (A.B. 1285) provided criminal penalties for a father’s failure (“who wilfully omits”) to provide food, clothing, shelter, medical attention, or other care for his child.¹⁵⁸

At the close of the forty-sixth legislative session, it would be more than fifty years before more than five women would serve together again.¹⁵⁹ And while women did have a seat at the legislative table between the forty-third legislative session in 1919 and the legislature of 1966, for nearly five decades only white women held these seats.¹⁶⁰ Finally in 1966, two women of color—attorney Yvonne Brathwaite Burke and educational consultant March K. Fong Eu—were elected to the Assembly.¹⁶¹

B. The First Women of the California Senate

“I was in the race to win—all the way. Why do people always ask how he lost instead of why I won?”¹⁶²

—Senator Rose Ann Vuich upon her successful election to the California State Senate in 1976

In the year that Rose Ann Vuich was elected as California’s first woman senator, twenty-seven women ran for seats.¹⁶³ In addition to Vuich’s successful Senate bid, three women were

¹⁵⁵ ASSEMB. JOURNAL, 46th Sess., at 27 (Cal. 1925). Richardson’s message discussed problems with drought and illness, noting the impact of “extraordinary situations . . . which caused the people of the state great loss” including “[a]n unusually dry year, . . . a deficiency of water power for electric energy caused by the dry year, and an epidemic . . . unfortunately called a ‘plague.’” *Id.* at 25.

¹⁵⁶ See Act of May 22, 1925, ch. 322, § 1, 1925 Cal. Stat. 541.

If the husband is unable to provide suitably for the care or support of a wife over whose estate a guardian has been appointed by reason of incompetency, the expense of providing such care . . . may . . . be charged against . . . such estate, . . . the guardian may sell or mortgage estate of the ward as provided in this code.

Id.

¹⁵⁷ See *School Aid for Cripples Voted*, L.A. TIMES, Apr. 1, 1925, at 5.

¹⁵⁸ Act of May 22, 1925, ch. 325, 1925 Cal. Stat. 544–45 (amending Penal Code).

¹⁵⁹ See Lavelle, *supra* note 24 (1977–1978 Term count).

¹⁶⁰ See *id.*

¹⁶¹ See CORNELISON, *supra* note 31, at 1.

¹⁶² Jerry Gillam, *A Woman Senator—Profile of Victory*, L.A. TIMES, Nov. 15, 1976, at D16.

¹⁶³ See Jerry Gillam, *California Women Seek Major Election Victories*, L.A. TIMES, Oct. 17, 1976, at C1.

elected to the Assembly in 1976: Carol Hallett, Marilyn Ryan, and Maxine Waters.¹⁶⁴ This would bring the total number of women serving in the legislature in 1977 to six, the highest number since 1925.¹⁶⁵

Never considered to be the seat's frontrunner, Vuich won the 15th District Senate seat by 2,628 votes over her opponent, Ernest Mobley, a ten-year member of the California State Assembly.¹⁶⁶ Vuich did not run on a platform of strictly women's issues. Research studies published around the time that Vuich was elected revealed that many "women were not anxious to identify themselves as women's candidates and did not confer a higher priority on women's issues than men once in office."¹⁶⁷ In an interview following her election, she shared her sentiments:

I am not a part of the women's liberation movement . . . but if a woman is as qualified as a man she should receive the same pay for the same job. A woman shouldn't be hired, however, just because she is a woman if she isn't qualified to do the job.

I intend to represent women to the best of my knowledge and beliefs, but I do not intend to be in there just as a women's libber representing only the women.¹⁶⁸

When Vuich took office in 1977, California was wrestling with four state priorities:¹⁶⁹ achieving property tax relief (Proposition 13¹⁷⁰ would not be approved by voters until the following year), implementing the *Serrano*¹⁷¹ decision, establishing conservation (particularly, water conservation as a result of some of the most severe drought conditions in the state's history),¹⁷² and tackling criminal justice reform.

During the 1977–1978 session, Vuich was the lead author on thirty Senate Bills, one Senate Constitutional Amendment, two Senate Concurrent Resolutions, and one Senate Joint Resolution.¹⁷³ Twenty-two of the thirty Senate Bills were

¹⁶⁴ See *Record of Members of the Assembly 1849–2019*, *supra* note 127.

¹⁶⁵ See Lavelle, *supra* note 24 (1977–1978 Term count).

¹⁶⁶ See Gillam, *supra* note 162.

¹⁶⁷ See Mezey, *supra* note 26, at 264.

¹⁶⁸ Gillam, *supra* note 162.

¹⁶⁹ See ASSEMB. JOURNAL, 1977–1978 Reg. Sess., at 159–62 (Cal. 1978) (printing Governor Edmund G. Brown, Jr.'s Report to the Legislature).

¹⁷⁰ See CAL. CONST. art. XIII A, § 1 (West, Westlaw through ch. 870 of 2019 Reg. Sess.).

¹⁷¹ See *Serrano v. Priest*, 487 P.2d 1241, 1244 (Cal. 1971).

¹⁷² See CAL. DEP'T WATER RES., CALIFORNIA'S MOST SIGNIFICANT DROUGHTS: COMPARING HISTORICAL AND RECENT CONDITIONS i, 48 (2015), http://water.ca.gov/LegacyFiles/waterconditions/docs/California_Significant_Droughts_2015_small.pdf [<http://perma.cc/NP6C-ST4H>] (noting that the 1969–1977 drought was characterized as having "severe hydrology," ranking 1977 as the driest year in 114 years).

¹⁷³ See S. FINAL HISTORY, 1977–1978 Reg. Sess., at 1302–03, 1315, 1318–26, 1328–31 (Cal. 1978) (resulting in a seventy-three percent passage rate).

chaptered.¹⁷⁴ Having spent nearly all of her life on a farm in Dinuba (which included responsibility for “240 acres of citrus, grapes, other fruits and olives”),¹⁷⁵ Vuich was a committed advocate for agriculture throughout her political career. Many of the measures that she introduced and that became chaptered laws addressed farming interests. These successful measures included everything from establishing vermiculture (earthworms) as a branch of the agricultural industry (S.B. 1818),¹⁷⁶ to the protection of bees from pesticides (S.B. 1049),¹⁷⁷ and the labeling of honey (S.B. 2047).¹⁷⁸ One of Vuich’s main campaign issues in 1976 was the failure of the incumbent to secure funding to complete a highway through Fresno.¹⁷⁹ Vuich was ultimately successful in this endeavor; the highways were opened to traffic in 1982.¹⁸⁰

California’s first woman senator of color, Diane Watson, was elected in 1978.¹⁸¹ Having worked as an educator and a school psychologist, measures concerning women, children, families, and education were a high priority. For example, in her first term she was the lead author on a measure to provide child care facilities for state employees within state buildings (S.B. 764),¹⁸² along with measures related to child support (S.B. 1032) and nutrition (S.B. 953).¹⁸³ At the very start of her long political career, she was the lead author on forty-four Senate bills, one Senate Concurrent Resolution, and one Senate Joint Resolution in the 1979–1980 regular session, of which twenty-four bills were enacted.¹⁸⁴

Another measure was a critical piece of legislation for victims—both men and women—of sexual assault, S.B. 500.¹⁸⁵ The bill added section 1112 to the Penal Code, which read as passed, “The trial court shall not order any prosecuting witness,

¹⁷⁴ See *id.* at 1315, 1318–26, 1328–31.

¹⁷⁵ Bella Stumbo, *Rose Vuich—The Reluctant State Senator*, L.A. TIMES, Sept. 19, 1977, at D1.

¹⁷⁶ See Act of Sept. 6, 1978, ch. 589, 1978 Cal. Stat. 2017 (relating to agriculture); *Worms—An Official Farm Product?*, L.A. TIMES, June 5, 1978, at 2.

¹⁷⁷ See Act of Sept. 27, 1977, ch. 1096, 1977 Cal. Stat. 3509 (relating to bees).

¹⁷⁸ See Act of Sept. 6, 1978, ch. 587, 1978 Cal. Stat. 2012 (relating to honey).

¹⁷⁹ See Gillam, *supra* note 162.

¹⁸⁰ See S. Con. Res. 25, 1997 Reg. Sess., 1997 Cal. Stat. 6967, 6969 (relating to highways).

¹⁸¹ See CORNELISON, *supra* note 31.

¹⁸² See Act of Sept. 17, 1980, ch. 913, 1980 Cal. Stat. 2908 (codified as amended at CAL. GOV’T CODE §§ 4560–4563 (West, Westlaw through ch. 870 of 2019 Reg. Sess.)).

¹⁸³ See Act of Sept. 26, 1979, ch. 1030, 1979 Cal. Stat. 3546 (“relating to parent and child”); Act of Sept. 19, 1979, ch. 817, 1979 Cal. Stat. 2821 (“relating to health”).

¹⁸⁴ See S. FINAL HISTORY, S. 1979–1980 Reg. Sess., at 1279, 1292–1308 (Cal. 1980) (representing a fifty-five percent passage rate).

¹⁸⁵ See *id.* at 315 (co-authors Senator Robbins and Assembly members Bergeson and McVittie).

complaining witness, or any other witness, or victim in any sexual assault prosecution to submit to a psychiatric or psychological examination for the purpose of assessing his or her credibility.”¹⁸⁶ Prior to its enactment, court-ordered psychiatric examinations of sexual assault victims were allowed under a *Ballard v. Superior Court* motion.¹⁸⁷ Research around the time the bill was considered revealed the *Ballard* motion’s “uneven application,” with some counties granting the motion more often than others.¹⁸⁸ The bill was opposed by various groups, including California Attorneys for Criminal Justice and the California Trial Lawyers Association.¹⁸⁹

Reflecting on key pieces of legislation, including the authority above, and her tenure, Watson shared:

Well one of them that really stands out was the Ballard motion bill . . . made by a defense attorney to require a psychiatric examination of a rape victim [or] sexual assault victim. It was the only crime where the *victim* was required to take a psychiatric examination. It was biased against women. It took me three years to get that bill passed—you talk about the complexities.¹⁹⁰

. . .

It was very difficult in the beginning for a woman. It was a struggle. The abuse that I had to endure because I was trying to do this along with the threats and the accusations these guys made gave me an even greater resolve. I found it to be really a boys’ club. Those were the kinds of battles I went through simply because I was a woman.¹⁹¹

With the exception of an amendment (also introduced by Watson) in 1984,¹⁹² the language of section 1112 of the Penal Code remains unchanged.

¹⁸⁶ Act of Feb. 25, 1980, ch. 16, 1980 Cal. Stat. 63.

¹⁸⁷ See *Ballard v. Sup. Ct. of San Diego Cty.*, 410 P.2d 838, 849 (Cal. 1966); see also *Criminal Procedure*, 12 PAC. L.J. 331, 340 (1981).

¹⁸⁸ J.C. Bangle & L.A. Haage, Comment, *Psychiatric Examinations of Sexual Assault Victims: A Reevaluation*, 15 U.C. DAVIS L. REV. 973, 980–81, 981 nn. 41–42.

¹⁸⁹ See *Criminal Procedure*, *supra* note 187, at 340.

¹⁹⁰ Interview by Susan Douglass Yates with Diane Watson, Cal. State Senator 1975–1998, Cal. State Senate, in L.A., Cal., 315–16 (1999) (footnote omitted).

¹⁹¹ *Id.* at 318.

¹⁹² See Act of Sept. 12, 1984, ch. 1101, 1984 Cal. Stat. 3726 (amending the Penal Code “relating to evidence”). S.B. 856 further amended the language of Penal Code section 1112 to add, “Notwithstanding the provisions of subdivision (d) of Section 28 of Article I of the California Constitution” The amendment to Penal Code section 1112 was effective immediately because “[m]any pending cases demonstrate a need for reaffirmation of evidence rules relating to sex crimes.” *Id.* Section 28(d) was part of the Victims’ Bill of Rights initiative (Proposition 8) and considered to be its “most far-reaching provision.” Miguel A. Méndez, *The Victims’ Bill of Right—Thirty Years Under Proposition 8*, 25 STAN. L. & POL’Y REV. 379, 380 (2014).

The legacy of the first women cannot be understated. From the forty-third to the forty-sixth legislative sessions, women introduced or carried an estimated 325 measures. Of these, eighty-five Assembly Bills were approved by the Governor, and another nine were filed with the Secretary of State, representing a passage rate of nearly thirty percent.¹⁹³ Their work touched agricultural interests, the flow of water and irrigation, public employee positions and compensation, appropriations for schools, the rights and interests of children and students, concerns for people suffering from mental health and drug addiction, rights and protections for workers, conditions for the incarcerated, concerns of veterans, and more.

III. LAWS ABOUT WOMEN

There are powerful laws drafted with the intent to improve the lives of women. At both the federal and state level, these laws push—some quietly, some forcefully—to move societal issues forward. While some laws have never made headlines and others have failed to meet hoped-for expectations, they nevertheless address—or attempt to address—extremely serious and complicated issues.

At the federal level, there are currently less than fifty Acts of Congress with the words “female” or “women” appearing in their title.¹⁹⁴ Rather, many laws about women do not even mention, use, or define the words “woman” or “women” in their short title or statutory text. As but one example, California’s Constitution and legislative enactments have used the language “on the basis of sex,” “based on sex,” or “on account of sex,”¹⁹⁵ to address discrimination since the Nineteenth century. In the year that the first four women in California began their term in office, 1919, “on the basis of sex” was discussed by the Woman in Industry Service in its contribution to the Department of Labor’s annual report, which recommended that “[w]ages should be established on the basis of occupation and not on the basis of sex.”¹⁹⁶ And, of course, the length of the statutory text makes no difference; some of the most important constitutional and statutory laws

¹⁹³ Data compiled from Assembly Final Histories and the *Statutes of California* from the forty-third through the forty-sixth legislative sessions.

¹⁹⁴ See *Acts Cited by Popular Name*, U.S. CODE, <http://uscode.house.gov/popularnames/popularnames.pdf> [<http://perma.cc/7NXX-4YKR>] (last visited Mar. 15, 2020) (providing a list of popular and statutory names).

¹⁹⁵ See, e.g., CAL. CONST. Art. I, § 8 (1879) (“No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.”).

¹⁹⁶ DEP’T OF LABOR, SEVENTH ANNUAL REPORT OF THE SECRETARY OF LABOR FOR THE FISCAL YEAR ENDED JUNE 30, 1919, at 142 (1919), <http://hdl.handle.net/2027/hvd.hl0iw7> [<http://perma.cc/5HAT-6TBN>].

impacting women take up no space at all in the *United States Statutes at Large* or the *United States Code*.¹⁹⁷ Indeed, the substantive portion of the Nineteenth Amendment is all of twenty-seven words long.¹⁹⁸

This Part highlights a small snapshot of meaningful state and federal laws about women and some of the legislators that helped shepherd them through. While these policy areas are often framed as women’s issues, they are much more than that: they are legislative attempts to achieve fairness, correct prior injustices, raise awareness, and reach balance.

A. Women and Employment

We believe it is the right of every woman to be gainfully employed if she so desires . . . in order to improve the economic status of herself and her dependents. . . . We believe that it is the job that counts and not the sex nor marital status of the worker.¹⁹⁹

—Laura M. Lorraine, State President, California Federation of Business and Professional Women’s Clubs, 1947

The quote above could have appeared in today’s headlines. California legislators have attempted to statutorily enforce gender pay equity for decades. Before the successful introduction and passage of A.B. 160 in 1949, which added section 1197.5 to the California Labor Code for the first time,²⁰⁰ there were numerous other legislative attempts over at least a thirty-year period to improve or regulate the employment of women. These bills typically attempted to address issues of minimum compensation, regulate working hours (maximum daily and weekly hours; rest periods), or mandate minimum working conditions.²⁰¹

Many of these early bills proposed further amendments to an act of March 22, 1911, an early law addressing working

¹⁹⁷ The Equal Pay Act of 1963, Pub. L. No. 88–38, 77 Stat. 56, takes up less than two pages of the *Statutes at Large*, while the Education Amendments of 1972, Pub. L. No. 92–318, 86 Stat. 235, take up 147 pages of the *Statutes at Large*. Title IX appears on just three of those pages.

¹⁹⁸ U.S. CONST. amend. XIX (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.”).

¹⁹⁹ Bess M. Wilson, *Women Urged to Defend Status as Job Holders*, L.A. TIMES, Nov. 16, 1947, at 3 (reporting on Lorraine’s speech “to 300 members of the Los Angeles District Federation”).

²⁰⁰ See CAL. LAB. CODE § 1197.5 (West, Westlaw through ch. 870 of 2019 Reg. Sess.).

²⁰¹ See, e.g., ASSEMB. FINAL HISTORY, 46th Sess., at 102 (Cal. 1925) (A.B. 157 (Woodbridge) failed in committee); ASSEMB. FINAL HISTORY, 45th Sess., at 86–87, 200 (Cal. 1923) (A.B. 88 (Woodbridge) failed through pocket veto and A.B. 559 (Saylor) failed in committee).

women.²⁰² As passed, the 1911 act required very little of employers, but did impose penalties for non-compliance.²⁰³ For certain places of employment, the act limited a woman's hours of employment to no more than eight hours a day, or forty-eight hours in one week.²⁰⁴ The second section of the act, requiring an employer to provide female employees with "suitable seats" to use "when they are not engaged in the active duties of their employment,"²⁰⁵ appeared in the statutes at least as early as 1889 in connection with a sanitation and health enactment for employees working in factories, workshops, and the like.²⁰⁶

While the intent of many of these early bills was to expand women's rights, others tried to limit it. For example, several tried to prohibit the employment of married women in government jobs,²⁰⁷ part of a "back to the home" movement to prevent so-called "pin-money" women from maintaining jobs that could be held by men and single women.²⁰⁸ Others, such as A.B. 2435 introduced in 1937, attempted to limit the work week to forty hours for women employees, but not male employees.²⁰⁹ The bill was met with significant opposition. It was reported that "wave after wave of protest poured into Sacramento. Much, but not all, of it came from business and professional women."²¹⁰ Such protectionist legislation was criticized by women, who "have long taken the stand that there is only one fair basis for similar

²⁰² See Act of Mar. 22, 1911, ch. 258, 1911 Cal. Stat. 437 ("limiting the hours of labor of females" and for other purposes).

²⁰³ See *id.* § 3.

²⁰⁴ See *id.* § 1.

²⁰⁵ *Id.* § 2.

²⁰⁶ See Act of Feb. 6, 1889, ch. V, 1889 Cal. Stat. 3 (providing for sanitary conditions of factories and workshops and preserving the health of employees).

²⁰⁷ See ASSEMB. FINAL HISTORY, 52nd Sess., at 698 (Cal. 1937) (proposing in A.B. 2811 "to prohibit the employment by the State, or any political subdivision thereof, or any municipal corporation, or any other publicly supported municipal corporation, of any married woman whose husband is earning \$1,500 per year, and to require information from all persons employed whose spouses are also employed, and from their employers, concerning their employment"); ASSEMB. FINAL HISTORY, 49th Sess., at 501 (Cal. 1931) (proposing in A.B. 1630 "to prohibit the employment of married women by the state, county, city and county or city government"); see also *Married Woman's Right to Hold Job Defended*, L.A. TIMES, Nov. 10, 1939, at A13.

²⁰⁸ See, e.g., *Aim Stressed by Woman*, L.A. TIMES, July 13, 1939, at 5 (quoting from a speech by Dr. Viva Boothe at a presentation of the National Federation of Business and Professional's Clubs, "The epidemic of legislation against married women working is only a symptom of a more fundamental problem. It is an indication of the struggle of people—men and women—for jobs and money."); Hope Ridings Miller, *Wives Shouldn't Work, Unanimous Opinion of Anthropologist, Club Woman, Economist*, WASH. POST, May 21, 1934, at 12 ("Working wives—those individuals whose activity never constituted a problem so long as they limited their energy to spinning, weaving, candle-making, and baking now constitute a far-reaching problem.").

²⁰⁹ See ASSEMB. FINAL HISTORY, 52nd Sess., at 628.

²¹⁰ Augusta Rosenberg, *Minimum Wage-Maximum Hour Legislation*, L.A. B. ASS'N BULL., Sept. 16, 1937, at 11, 13.

legislation and that is to place any minimum wage and maximum hour limitation upon the job, rather than upon the sex of the worker.”²¹¹

Equal salaries for men and women were legislatively mandated in California at least as early as 1870 in a very specific scenario: teaching. A portion of that law stated:

The Board of Education of the [San Francisco] city and county are hereby authorized and required to equalize the salaries of the male and female teachers employed by them in said public schools, allowing and paying to female teachers the same amount of money per month for their services as male teachers are allowed and paid for similar services in the same grades and classes of the department.²¹²

Equal compensation for teachers also was addressed in section 5.730 of the 1929 California School Code, which stated, “Females employed as teachers in the public schools of this state shall, in all cases, receive the same compensation as is allowed male teachers for like services, when holding the same grade certificates.”²¹³ An early case citing to that statutory authority was *Chambers v. Davis*.²¹⁴ There, Mrs. Chambers and Mr. Wood were the only two teachers classified as “instructors of ‘physical education and hygiene’” at Madera Union High School.²¹⁵ Until 1932, both instructors received \$1,960 a year, the sum of which was reduced, in disproportionate amounts, “[o]n account of the depression.”²¹⁶ The court found that the school board’s action constituted discrimination in violation of section 5.730, and that there was “no excuse for allowing the man \$1,760 a year, and reducing the woman’s salary to \$1,200.”²¹⁷

There were other attempts at equal pay legislation over the years. For example, in 1925, A.B. 1017 was introduced by Byron J. Walters, by request.²¹⁸ This bill proposed “[a]n act prohibiting discriminations between men and women employed by public authority and performing equivalent service,” but it failed to progress from committee.²¹⁹

There were three equal pay bills introduced in the Assembly in 1949: A.B. 949 and A.B. 3086 were set aside and

²¹¹ *Id.*

²¹² Act of Apr. 4, 1870, ch. DLXVII, § 1, 1869–1870 Cal. Stat. 865 (requiring the equalizing of salaries).

²¹³ THE SCHOOL CODE OF THE STATE OF CAL., 48th Reg. Sess. Leg. Supp., at 248 (Cal. 1929).

²¹⁴ See 22 P.2d 27, 30 (Cal. Dist. Ct. App. 1933).

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ See ASSEMB. FINAL HISTORY, 46th Sess., at 306 (Cal. 1925).

²¹⁹ *Id.*

A.B. 160 moved forward.²²⁰ A.B. 160 was first introduced by Assembly member Donald Grunsky and forty-five co-authors on January 6, 1949.²²¹ The bill was introduced at the request of the California Federation of Business and Professional Women's Clubs to address the "common knowledge that in many fields of employment California women are paid less than men for the same work simply because they are women."²²² Although the lone woman in the California legislature at the time, Assembly member Kathryn Niehouse, was not listed as a co-author, she had introduced legislation to amend the relevant Labor Code in the past.²²³

A.B. 160 as introduced was straightforward:

In the payment of wages or salaries to employees with the same qualifications engaged in the same work, an employer shall not discriminate against any employee on the basis of sex.

A differential in pay between employees made pursuant to a seniority or merit increase system, or which is based on a factor other than sex, is not discrimination within the meaning of this section. Wage differentials provided for in a valid collective bargaining agreement between an employer and a bona fide labor organization are not a violation of this section.²²⁴

The language above would undergo significant changes, with further Assembly, Senate, and Conference Committee amendments, such that very little of the original Assembly bill language survived. The legislative representative from both the California Federation of Business and Professional Women's Clubs and employers participated in the Conference Committee.²²⁵

There was some disappointment with the bill in its final form.²²⁶ In a letter to the Governor from C.J. Haggerty, representing the California State Federation of Labor Legislative Committee, Haggerty acknowledged that although the bill was "a

²²⁰ See ASSEMB. FINAL HISTORY, 1949 Reg. Sess., at 242, 419, 864 (Cal. 1949).

²²¹ See Assemb. B. 160, 1949 Reg. Sess. (Cal. 1949) (Jan. 6, 1949 bill introduction).

²²² Letter from Elisabeth Zeigler, Legislative Representative, Cal. Fed'n of Bus. & Prof'l Women's Clubs, Inc., to Earl Warren, Governor of Cal., at 1 (June 24, 1949) (regarding A.B. 160).

²²³ See ASSEMB. FINAL HISTORY, 56th Reg. Sess., at 296 (Cal. 1945) (introducing Assemb. B. 479 with co-author Assembly member Thomas, "[a]n act to add Section 1197.5 to the Labor Code, relating to wages for women").

²²⁴ Assemb. B. 160, 1949 Reg. Sess. (Cal. 1949).

²²⁵ See Letter from Elisabeth Zeigler to Earl Warren, *supra* note 222, at 1.

²²⁶ See *Equal Pay Bill is Headed for Conference*, SACRAMENTO BEE, June 11, 1949, at 4 ("[A]ssemblyman Glenn] Anderson contends the amendments inserted by the senate virtually wipe out the effectiveness of the legislation."); *Equal Pay for Equal Work Bill Goes to Governor*, SACRAMENTO BEE, June 17, 1949, at 3 ("Assemblyman Donald Grunsky of Santa Cruz County, author of the bill, A.B. 160, said the legislation is the best compromise which could be reached.").

step forward in legislating standards to remove a discrimination based solely upon sex,” during the legislative process, it was “impaired almost to the vanishing point” causing Haggerty to “reluctantly request [the Governor’s] favorable action on it.”²²⁷

In a letter to the Governor on the bill, Paul Scharrenberg, the Director of the Department of Industrial Relations, included a comment from Rena Brewster, Division Chief, which stated, “Equal pay bill passed by Legislature was work of joint conference of representatives of union labor, employers association, and business and professional women who sponsored it. . . . Am of opinion it should be approved.”²²⁸ Scharrenberg recommended approval, “even though realizing that this legislation will be most difficult to enforce and will probably give mental anguish to Mrs. Brewster and her staff.”²²⁹

With the Governor’s signature on July 2, 1949, California joined a handful of other states with existing equal pay laws.²³⁰

The law as passed consisted of four paragraphs. The first paragraph addressed wage rates for the same classification of work.²³¹ The relevant equal pay language stated, “No employer shall pay any female in his employ at wage rates less than the rates paid to male employees in the same establishment for the same quantity and quality of the same classification of work.”²³² This statement was followed by a list of exceptions “inherent in this type of legislation,”²³³ where pay variations were allowed, such as shift differences or restrictions on lifting or moving.²³⁴ The second paragraph allowed pay variations when already

²²⁷ Letter from C.J. Haggerty, Exec. Sec’y & Legislative Representative, to Earl Warren, Governor of Cal. (June 23, 1949) (regarding A.B. 160).

²²⁸ Letter from Paul Scharrenberg, Dir. of Indus. Relations, to Beach Vasey, Legislative Sec’y, Governor’s Office (June 22, 1949).

²²⁹ *Id.*

²³⁰ See Letter from Elisabeth Zeigler to Earl Warren, *supra* note 222, at 2 (listing Michigan, Montana, New York, Illinois, Rhode Island, Massachusetts, Washington, and Pennsylvania).

²³¹ See California Equal Pay Act, ch. 804, 1949 Cal. Stat. 1541 (“relating to the prohibition of discrimination on the basis of sex by employers in the payment of wages or salaries”) (codified as amended at CAL. LAB. CODE § 1197.5 (West, Westlaw through ch.1 of 2020 Reg. Sess.)).

²³² *Id.*

²³³ Letter from Elisabeth Zeigler to Earl Warren, *supra* note 222, at 2. See also David Freeman Engstrom, “Not Merely There to Help the Men”: *Equal Pay Laws, Collective Rights, and the Making of the Modern Class Action*, 70 STAN. L. REV. 1, 52 (2018) (“In states like California, the list of exceptions could quickly mushroom during legislative jockeying.”).

²³⁴ See 1949 Cal. Stat. 1541. “[D]ifference in the shift or time of day worked, hours of work, interruptions of work for rest periods or restrictions or prohibitions on lifting or moving objects in excess of specified weight.” *Id.*

established by a labor organization contract.²³⁵ The California Federation of Business and Professional Women's Clubs were opposed to the exception, but ultimately accepted it, noting in correspondence to the Governor's office that it "was essential to the passage of the bill."²³⁶ The third paragraph set forth a six-month statute of limitations within which a grievance may be brought.²³⁷ The California Federation of Business and Professional Women's Clubs found the language in paragraph three to be "fair," noting that "[e]mployees harboring grievances against their employers for long periods of time . . . would endanger their relationship. If an employee has a grievance, she should do something about it promptly."²³⁸ The fourth paragraph placed the burden on the plaintiff to establish that the pay differentiation was based on the fact of gender, and other differences or factors.²³⁹ This would remain the law until amended in 1976.

Since its passage in 1949, to date, section 1197.5 has been amended eleven times.²⁴⁰ This is in addition to numerous unsuccessful attempts to strengthen the law. Among other changes, in 1965, A.B. 1683 added a new recordkeeping provision which required employers to maintain wage records for two years.²⁴¹ During the California Legislature's 2007–2008 term, Assembly member Julia Brownley (a member of Congress at the time of this writing)²⁴² introduced a wage discrimination measure to amend section 1197.5, specifically in connection with wage record requirements and the statutes of limitations.²⁴³ As enrolled, the legislation would have extended the amount of time

²³⁵ See *id.* ("A variation in rates of pay as between the sexes is not prohibited where the variation is provided by contract between the employer and a bona fide labor organization recognized as a bargaining agent of the employees.").

²³⁶ Letter from Elisabeth Zeigler to Earl Warren, *supra* note 222, at 2.

²³⁷ See 1949 Cal. Stat. 1541.

²³⁸ Letter from Elisabeth Zeigler to Earl Warren, *supra* note 222, at 2.

²³⁹ See 1949 Cal. Stat. 1541 ("The burden of proof shall be upon the person bringing the claim to establish that the differentiation in rate of pay is based upon the factor of sex and not upon other differences, factor or factors.").

²⁴⁰ This section was amended in 1957, 1965, 1968, 1976, 1982, 1985, 2015, 2016 (twice), 2017, and 2018. See CAL. LAB. CODE § 1197.5 (West, Westlaw through ch.1 of 2020 Reg. Sess.).

²⁴¹ See Act of July 6, 1965, ch. 825, 1965 Cal. Stat. 2417, 2418 (relating to equal pay for women). As passed, the section read: "(d) Every employer of male and female employees shall maintain records of the wages and wage rates, job classifications and other terms and conditions of employment of the persons employed by him. All such records shall be kept on file for a period of two years." *Id.* at 2418.

²⁴² Before she was elected in 2012 to the 113th Congress, Brownley served three terms in the California Assembly.

²⁴³ Assemb. B. 435, 2007–2008 Reg. Sess. (Cal. 2007) (with coauthors Berg, Jones, Kuehl, and Migden), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200720080AB435 [http://perma.cc/YM89-57U2].

employers were required to maintain wage and job classification records from two years to five, and extended the statute of limitations for an employee civil action alleging sex-based wage discrimination with and without willful employer misconduct, from three to five years, and two to four years, respectively.²⁴⁴

While supporters of the Brownley bill emphasized that “women are often unaware that they are being discriminated against in respect to their wages and may lose the opportunity to file a civil action or may be limited to inadequate recovery because of the statutory period,” those in opposition focused on “concern that employers will be exposed to an extended timeframe of unpredictable liability” leading “to an increased cost of doing business in California.”²⁴⁵ In his veto message, Governor Arnold Schwarzenegger acknowledged the bill’s intent “to eradicate the historical trend of women earning less than men for doing the same work,” yet remained concerned that it would “encourage frivolous litigation against employers and have little impact on the fight against gender pay inequity.”²⁴⁶ The recordkeeping requirement first proposed by Brownley would eventually be inched-up from two years to three with the passage of S.B. 358 in 2015.²⁴⁷

In 1968, an amendment to eliminate gender-specific language from the law was successfully introduced by Senator Donald Grunsky (lead author of the 1949 legislation) and approved by Governor Ronald Reagan. As enacted, the language was changed to, “No employer shall pay any individual in his employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for the same quantity and quality of the same classification of work.”²⁴⁸

Some of the most significant changes to 1197.5 were signed into law by Governor Brown in 1976 with S.B. 1051, introduced in 1975 by Senator Albert S. Rodda.²⁴⁹ The legislation was sponsored by the then-named Commission on the Status of

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ ASSEMB. JOURNAL, 2007–2008 Reg. Sess., at 3496 (Cal. 2008).

²⁴⁷ See California Equal Pay Act, ch. 546, 2015 Cal. Stat. 4605 (codified as amended at CAL. LAB. CODE § 1197.5(e)) (West, Westlaw through ch. 1 of 2020 Reg. Sess.). See *infra* Part II.B.

²⁴⁸ Act of June 20, 1968, ch. 325, § 1(a), 1968 Cal. Stat. 705 (codified as amended at CAL. LAB. CODE §§ 1197.5, 1199 (West, Westlaw through ch. 1 of 2020 Reg. Sess.)) (relating to the equal pay law).

²⁴⁹ See S. FINAL HISTORY, 1975–1976 Reg. Sess., at 509 (Cal. 1976) (with co-authors Alatorre, Greene, Presley, and Robbins).

Women.²⁵⁰ The amendments were intended to conform California's law with the Federal Equal Pay Act.²⁵¹

Prior to its enactment, existing law still allowed pay differentials for employees of the opposite sex "for rather vague and potentially unfairly discriminatory reasons"²⁵² to be based on "seniority, length of service, ability, skill, difference in duties or services performed, whether regularly or occasionally, difference in the shift or time of day worked, hours of work, or restrictions or prohibitions on lifting or moving objects in excess of specified weight."²⁵³ Following its passage, only the factor of seniority remained, along with the addition of merit, quantity or quality of production, or a "bona fide factor other than sex."²⁵⁴ Two important changes included the complete elimination of the statutory language that placed the burden on the plaintiff to prove that the pay differential was based on sex, and an extension of the statute of limitations status from 180 days to two years, whether or not the employee had knowledge.²⁵⁵

The bill was met with unease from various organizations. Concerns included that employers could be subject to "harassment by any individual choosing to file a complaint however groundless,"²⁵⁶ "harassment of an employer by outside organizations or individuals,"²⁵⁷ and that its enactment might "discourage expansion of employment, contribute to the cost of doing business in California, and generally aggravate our

²⁵⁰ See Letter from Anita Miller, Chairperson & Pamela Faust, Exec. Dir., Comm'n on the Status of Women, to Edmund G. Brown, Jr., Governor of Cal. (Aug. 23, 1976). The Commission on the Status of Women began as the Advisory Commission on the Status of Women with S.B. 675. See Act of July 15, 1965, ch. 1378, § 2, 1965 Cal. Stat. 3283, 2384. It was later amended to the Commission on the Status of Women. See Act of Sept. 4, 1973, ch. 382, § 2, 1973 Cal. Stat. 819; Act of Sept. 2, 1977, ch. 579, 1977 Cal. Stat. 1857. The commission was reformed and renamed in 2012 to the Commission on the Status of Women and Girls. See Act of June 27, 2012, ch. 46, § 13, 2012 Cal. Stat. 2070, 2091 (codified as amended at CAL. GOV'T CODE § 8241) (West, Westlaw through ch. 1 of 2020 Reg. Sess.).

²⁵¹ See Letter from Albert S. Rodda, Cal. State Senator, to Edmund G. Brown, Jr., Governor of Cal. (Aug. 20, 1976).

²⁵² *Id.*

²⁵³ Act of June 20, 1968, ch. 325, § 1(a), 1968 Cal. Stat. 705 (codified as amended at CAL. LAB. CODE §§ 1197.5, 1199) (Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to the equal pay law).

²⁵⁴ Act of Sept. 22, 1976, ch. 1184, § 3, 1976 Cal. Stat. 5288 (codified as amended at CAL. LAB. CODE §§ 1195.5, 1197.5) (relating to employment).

²⁵⁵ See Act of Sept. 22, 1976, ch. 1184, §§ 1, 3, 1976 Cal. Stat. 5288 (codified as amended at CAL. LAB. CODE §§ 1195.5, 1197.5) (Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to employment).

²⁵⁶ Letter from Robert T. Monagan, President, Cal. Mfrs. Ass'n, to Albert S. Rodda, Member of the Cal. Senate (Jan. 5, 1976).

²⁵⁷ Letter from Richard L. Dugally, Reg'l Manager, Governmental Affairs, Ford Motor Co., to Albert S. Rodda, Member of the Cal. Senate (July 3, 1975).

existing problems of inflation and unemployment.”²⁵⁸ Others found proposed changes to be “long overdue” and necessary to “eliminate an insidious inequity in the law.”²⁵⁹ In the end, opposition was withdrawn, and the bill moved forward with “the support of business, labor, and organizations concerned with the status of women.”²⁶⁰

The law, as passed in 1976, remained relatively unchanged substantively, until recently. Over the last few years, several measures have further strengthened California’s equal pay laws. These include S.B. 358 (the California Equal Pay Act), introduced by Senator Hannah-Beth Jackson,²⁶¹ and S.B. 1063, introduced by Senator Isadore Hall, which further expanded the protections of 1197.5 to include race and ethnicity.²⁶² A.B. 168 and 2282, introduced by Assembly member Susan Eggman, added and clarified section 432.3 of the Labor Code to further address salary history and disclosure.²⁶³

California now has more than seventy years of pay equality legislation behind it, but to what effect? When the 1976 amendments were considered, women were reportedly earning forty-nine cents for every dollar earned by a man.²⁶⁴ Recent statistics indicate that women’s earnings in California were 88.3% of men’s earnings based on 2018 annual averages—the highest percentage in the country.²⁶⁵ These numbers are encouraging, but alas, still not equal.

But change at the legislative level takes time and persistence. For example, the 2015 S.B. 358 successfully deleted from section

²⁵⁸ Letter from Robert T. Monagan to Albert S. Rodda, *supra* note 256.

²⁵⁹ Letter from Arlene Black, Legislative Advocate, Am. Ass’n of Univ. Women, to George Zenovich, Senate Indus. Relations Comm. (Apr. 7, 1976) (writing on a similar measure, A.B. 2026).

²⁶⁰ Letter from Albert S. Rodda to Edmund G. Brown, Jr., *supra* note 251, at 3.

²⁶¹ See California Equal Pay Act, ch. 546, 2015 Cal. Stat. 4605 (codified as amended at CAL. LAB. CODE § 1197.5(e)) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to private employment). See also Hannah Fuetsch, *Chapter 546: Another Step to Ensure Equal Pay Doesn’t Wait Another Fifty Years*, 47 U. PAC. L. REV. 577, 598 (2016) (summarizing S.B. 358 and suggesting it will serve as an important awareness tool to move the issue forward).

²⁶² See Act of Sept. 30, 2016, ch. 866, 2016 Cal. Stat. 5845 (codified as amended at CAL. LAB. CODE §§ 1197.5, 1199.5) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to employment).

²⁶³ See Act of Oct. 12, 2017, ch. 688, 2017 Cal. Stat. 5138 (relating to employers); Act of July 18, 2018, ch. 127, 2018 Cal. Stat. 2255 (codified as amended at CAL. LABOR CODE §§ 432.3, 1197.5) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to employment).

²⁶⁴ See Letter from Anita Miller, Chairperson & Pamela Faust, Exec. Dir., Comm’n on the Status of Women, to Edmund G. Brown, Jr., Governor of Cal., *supra* note 250.

²⁶⁵ See U.S. BUREAU OF LABOR STATISTICS, No. 1083, HIGHLIGHTS OF WOMEN’S EARNINGS IN 2018, at 41 tbl.3 (2019), <http://www.bls.gov/opub/reports/womens-earnings/2018/pdf/home.pdf> [<http://perma.cc/JUZ2-S4YC>] (reporting 2018 annual averages by state).

1197.5 of the Labor Code the language “in the same establishment.”²⁶⁶ Legislators attempted to delete this language in 1976 with S.B. 1051. In the Bill Analysis for S.B. 1051 in 1976, it was referred to as “a restrictive clause,” and that, “employers who maintain several branches or locations of their business within the same geographical area are paying different wage rates to individuals performing similar work at different locations in that geographic area. Removal of this clause would prevent further abuse of the provision.”²⁶⁷ Yet, keeping the clause was important to industry at the time, reasoning that deleting it “would create havoc in many industries which have establishments in various areas of the state, both rural and urban.”²⁶⁸ Consistent with several other states,²⁶⁹ S.B. 358 also replaced the language, “equal work,” with “substantially similar work.”²⁷⁰

Legislative findings for S.B. 358 noted that, even though California’s law was “virtually identical” to federal law, the state’s “provisions are rarely utilized” because of the statutory barriers “to establish[ing] a successful claim.”²⁷¹ Recent information from the California Department of Industrial Relations (“DIR”) indicates that the recent amendments to section 1197.5 have resulted in “a dramatic and ongoing increase in the number of claims” under that section.²⁷² The DIR reported that 184 wage discrimination or retaliation claims were filed and accepted for its investigation in 2018, as compared to only six claims in 2015.²⁷³ Among the 184, sixty-two claims alleged sex-based wage discrimination under section 1197.5(a), with another thirty-nine claims alleged for sex-based and race or ethnicity discrimination under section 1197.5(a) and (b).²⁷⁴

²⁶⁶ California Equal Pay Act, ch. 546, 2015 Cal. Stat. 4605; *see also* CAL. LABOR CODE § 1197.5(a) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) (“No employer shall pay any individual in the employer’s employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work . . .”).

²⁶⁷ S.B. 1051, 1975–1976 Reg. Sess. (Cal. 1976) (Bill Analysis, Mar. 1, 1976).

²⁶⁸ Letter from Robert M. Shillito, President, Cal. Conference of Emp’r Ass’ns, to Albert S. Rodda, Member of the Cal. Senate (Mar. 1, 1976) (regarding S.B. 1051).

²⁶⁹ *See, e.g.*, 820 ILL. COMP. STAT. ANN. 112/10 (West 2019, Westlaw current through Pub. Acts 101-622) (deleting “equal skill, effort, and responsibility” for “substantially similar skill, effort, and responsibility”); Equal Pay for Equal Work Act, ch. 247, § 4, 2019 Colo. Sess. Laws 2411, 2413 (to be codified at COLO. REV. STAT. ANN. § 8-5-102(1)) (adding “substantially similar work”).

²⁷⁰ *California Equal Pay Act: Frequently Asked Questions*, CAL. DEP’T INDUS. RELATIONS (Mar. 2019), http://www.dir.ca.gov/dlse/California_Equal_Pay_Act.htm [<http://perma.cc/W867-JMR9>].

²⁷¹ California Equal Pay Act, ch. 546, § 1(c), 2015 Cal. Stat. 4605, 4606.

²⁷² PATRICIA K. HUBER, CAL. DEP’T INDUS. REL., 2018 RETALIATION COMPLAINT REPORT (2018), <http://www.dir.ca.gov/dlse/RCILegReport2018.pdf> [<http://perma.cc/N4VN-V9K9>].

²⁷³ *See id.* at 2 n.2.

²⁷⁴ *See id.* at Exhibit A.

As long as a wage gap exists, history shows us that strong legislatures will continue to improve and attempt to perfect the statutory authority surrounding wages. At the time of this writing, California Assembly member Wendy Carrillo introduced A.B. 758 to further amend section 1197.5. An important feature of the bill is to add more inclusive definitions for the terms “sex,” “gender,” and “gender expression,” so as to align it with existing definitions in California’s Fair Employment and Housing Act.²⁷⁵ It is currently held in committee.

At the federal level, the Paycheck Fairness Act has been introduced in multiple congresses, and it is currently under consideration again in the 116th Congress. The bill “addresses wage discrimination on the basis of sex” and would amend the Fair Labor Standards Act of 1938.²⁷⁶ At the time of this writing, the bill had passed the House and was placed on the Senate Legislative Calendar.²⁷⁷ The House bill currently has 239 co-sponsors, including forty-six from California.²⁷⁸ The Senate bill currently has forty-six co-sponsors, including California Senators Feinstein and Harris.²⁷⁹

B. Women and Governance

Two hundred and thirty-six.

In the state of California, that is the most recent number of “Winning Companies”—companies on the *Russell 3000 Index* that have been identified as having exceeded the goal of having at least twenty percent of corporate board seats held by women.²⁸⁰ In its most recent report, *2020 Women on Boards* suggested that the increase in the number of Winning Companies from 168 in 2018 to 236 in 2019 could be attributed to California’s recent and historic legislation.²⁸¹

S.B. 826 is another groundbreaking piece of legislation carried by California Senator Hannah-Beth Jackson.²⁸² Signed into law on September 30, 2018, the measure requires that by the

²⁷⁵ See Assemb. B. 758, 2019–2020 Reg. Sess. (Cal. 2019).

²⁷⁶ H.R. 7, No. 53, 116th Cong. (2019).

²⁷⁷ See *id.*

²⁷⁸ See *id.*

²⁷⁹ S.B. 270, 116th Cong. (2019).

²⁸⁰ See 2020 WOMEN ON BOARDS GENDER DIVERSITY INDEX 6 (2019), http://2020wob.com/wpcontent/uploads/2019/10/2020WOB_Gender_Diversity_Index_Report_Oct2019.pdf [<http://perma.cc/YH7R-C6JX>].

²⁸¹ See *id.*

²⁸² See Act of Sept. 30, 2018, ch. 954, 2018 Cal. Stat. 6263 (codified at CAL. CORP. CODE §§ 301.3, 2115.5) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to corporations).

end of 2019, certain corporations²⁸³ must have a minimum of one female on its board of directors.²⁸⁴ For certain corporations with five or six directors, by the end of 2021, the minimum number of female directors must be two and three, respectively.²⁸⁵ This law also requires the Secretary of State (“SOS”) to publish progress reports at certain intervals,²⁸⁶ and authorizes the SOS to impose significant fines for violations, from \$100,000 to \$300,000.²⁸⁷

To date, no other state has legislatively mandated a minimum number of women on corporate boards, or required a registry to facilitate corporate board opportunities for women. In August 2019, Illinois passed a measure to “gather more data and study this issue” so that “effective policy changes may be implemented to eliminate [the] disparity” of wages and underrepresentation of women and minority groups on corporate boards.²⁸⁸ The law requires that, no later than January 1, 2021, new information must be included in the annual reports of certain corporation, such as the “self-identified gender of each member of its board of directors”²⁸⁹ and the “policies and practices for promoting diversity, equity, and inclusion among its board of directors and executive officers,” but stops short of requiring minimums.²⁹⁰

Research shows the extensive benefits that come with having women on boards.²⁹¹ Yet company pledges to increase their numbers have historically been ineffective.²⁹² Gender quotas to increase board participation by women have never been without

²⁸³ The statute applies to “a publicly held domestic or foreign corporation whose principal executive offices, according to the corporation’s SEC 10-K form, are located in California” and defines “[p]ublicly held corporation” to mean “a corporation with outstanding shares listed on a major United States stock exchange.” CORP. §§ 301.3(a), 301.3(f)(1).

²⁸⁴ “Female” is defined as “an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth.” *Id.*

²⁸⁵ *See id.* § 301.3(b).

²⁸⁶ *See id.* §§ 301.3(c), 301.3(d).

²⁸⁷ *See id.* § 301.3(e)(1).

²⁸⁸ 805 ILL. COMP. STAT. ANN. 5/8.12(a) (West, Westlaw current through Pub. Acts 101-622).

²⁸⁹ *Id.* § 5/8.12(c)(3).

²⁹⁰ *Id.* § 5/8.12(c)(7).

²⁹¹ *See* Jie Chen et al., *Research: When Women Are on Boards, Male CEOs Are Less Overconfident*, HARV. BUS. REV. (Sept. 12, 2019), <http://hbr.org/2019/09/research-when-women-are-on-boards-male-ceos-are-less-overconfident> [<http://perma.cc/S6KR-LZFK>].

²⁹² *See* Jennifer S. Fan, *Innovating Inclusion: The Impact of Women on Private Company Boards*, 46 FLA. ST. U. L. REV. 345, 393 (2019) (discussing efforts to increase diversity and remarking that “pledges are a good place to start, but they do not have the binding effect of law and are only as strong as the commitment of those who signed on to them”).

controversy,²⁹³ and California's enactment is no exception. Litigation has commenced against the measure.

The first lawsuit was filed in Los Angeles Superior Court in August 2019, *Crest v. Padilla*.²⁹⁴ Plaintiffs are taxpayers alleging violation of Article I, section 31 of the California Constitution, contending illegal expenditures of taxpayer funds or resources due to the law's "quota system for female representation on corporate boards" and its "express gender classifications."²⁹⁵ The second lawsuit was filed in the United States District Court, Eastern District of California in November 2019, *Meland v. Padilla*.²⁹⁶ The plaintiff, Creighton Meland, Jr., is a shareholder of a company headquartered in Hawthorne, California and incorporated in Delaware—OSI Systems, Inc.—which has seven men and no women on its board.²⁹⁷ Referring to the measure as a "Woman Quota" throughout its complaint, the complaint states, "The Woman Quota relies on a variety of improper gender stereotypes, such as the belief that women board members bring a particular 'working style' which will impact corporate governance."²⁹⁸ Both lawsuits are pending at the time of this writing.

This legislation was not the first time that California attempted to shine a light on issues of gender equity at the corporate level. In 1993, Senator Lucy Killea successfully introduced S.B. 545, the Corporate Governance Parity Act of 1993.²⁹⁹ At the time the measure was debated, data indicated that "[w]omen comprised only 5.7 percent of corporate board of directors at large companies in 1992" and "only 15 percent of 1,000 companies surveyed had more than one female director in 1992."³⁰⁰ When passed in 1993, legislative findings stated that

²⁹³ See *id.* at 394–95 (discussing usage of quotas outside of the United States and commenting on mixed results); see also Diana C. Nicholls Mutter, *Crashing the Boards: A Comparative Analysis of the Boxing Out of Women on Boards in the United States and Canada*, 12 J. BUS., ENTREPRENEURSHIP, & L. 1, 37–40 (2019) (discussing those in favor of and opposed to quotas in connection with S.B. 826); Ben Taylor, *Why California Senate Bill 826 and Gender Quotas are Unconstitutional: Shareholder Activism as a Better Path to Gender Equality in the Boardroom*, 18 FLA. ST. U. BUS. REV. 117, 117–19 (2019) (predicting that S.B. 826 would fail to become law, and providing an analysis of two constitutional grounds supporting this prediction).

²⁹⁴ See Complaint for Declaratory and Injunctive Relief, *Crest v. Padilla*, No. 19STCV27561, 2019 WL 3771990 (L.A. Super. Ct. Aug. 6, 2019).

²⁹⁵ *Id.* at 4 para. 19.

²⁹⁶ See Complaint for Declaratory and Injunctive Relief, *Meland v. Padilla*, No. 2:19-cv-02288-JAM-AC, 2019 WL 6037825 (E.D. Cal. Nov. 13, 2019).

²⁹⁷ See *id.* at 2, 4.

²⁹⁸ *Id.* at 6 para. 40.

²⁹⁹ See S. FINAL HISTORY, 1993–1994 Reg. Sess., at 422 (Cal. 1994); Corporate Governance Parity Act, ch. 508, 1993 Cal. Stat. 2656 (relating to corporations).

³⁰⁰ S.B. 545, 1993–1994 Reg. Sess., at 1593 (Cal. 1993) (Bill Analysis Senate Floor Aug. 24, 1993).

“[m]en continue to outnumber women on the boards of directors of the nation’s largest corporations by a ratio of 24 to one and over 60 percent of those boards of directors have no minority members,” and that its purpose was “to promote gender, racial, and ethnic parity in corporate governance by facilitating recruitment of qualified women and minorities to serve on corporate boards of directors.”³⁰¹ As codified, the law required that the SOS “develop and maintain a registry of distinguished women and minorities who are available to serve on corporate boards of directors.”³⁰² The law also required the SOS to periodically report on the effectiveness of the registry in so far as it “has helped women and minorities progress toward achieving parity in corporate board appointments or elections.”³⁰³

Senator Killea served in the California State Assembly from 1983 to 1989, and in the California State Senate from 1989 to 1996.³⁰⁴ In an oral history, Killea later shared that the legislation arose from her work on the Senate Commission on Corporate Governance:

It bothered me that on the commission there were so few women so I tried to get a couple of women. And we did. But it was one of the men who came up with the idea. What you need to do is you ought to look into promoting some kind of way to get women on more corporate boards. . . . So what we ended up with was a bill to set up a registry—and there was a lot of discussion on this—where women or minorities could submit their resumes and the desire they have for representation on corporate boards or non profit boards because sometimes that’s the only way women can . . . get into the system.³⁰⁵

Despite its valiant intentions, the registry encountered barriers to its implementation and never reached its full potential. Legislation introduced in 2010 by Assembly member Manuel Perez revealed that in 1999, California State University Fullerton (“CSUF”) accepted responsibility for the registry, and dedicated considerable efforts to getting it off the ground (including a \$50,000 budget commitment, appointing an advisory board, and extensive outreach and marketing to garner support).³⁰⁶

³⁰¹ 1993 Cal. Stat. 2656 § 2.

³⁰² CAL. CORP. CODE § 318(a) (West, Westlaw through ch. 870 of 2019 Reg. Sess.).

³⁰³ *Id.* § 318(s).

³⁰⁴ See *Record of State Senators 1849–2019*, S. ARCHIVE, http://archive.senate.ca.gov/sites/archive.senate.ca.gov/files/rep/senators_and_officers_1849_2019.pdf [http://perma.cc/S3BW-2ZD2] (last visited Feb. 10, 2020); *Record of Members of the Assembly 1849–2019*, *supra* note 127.

³⁰⁵ Interview by Susan Douglass Yates with Lucy L. Killea, former Member of the Cal. Assembly and Cal. Senate, in San Diego, Cal. (2000).

³⁰⁶ See Assemb. B. 1491, 2009–2010 Reg. Sess. (Cal. 2009) (Bill Analysis Assemb. Comm. on Appropriations, Jan. 5, 2010).

Yet, with only fifty-nine registrants and no funding, CSUF ceased operating the registry in 2002.³⁰⁷ Despite the law remaining on the books, practically, the registry appears abandoned.³⁰⁸

Most recently, Assembly member Boerner Horvath successfully introduced A.B. 931 in an effort to increase gender diversity on certain local boards and commissions. The mandate applies to cities with a population of 50,000 or more people, but will not require compliance until 2030.³⁰⁹

C. Women and Health

1. Physical Health

The physical and mental health of women has not always been a legislative policy priority. But over the last few decades, women's health issues and conditions have increasingly become the subject of legislative authority, particularly for diseases where early detection and treatment can make all the difference in improving rates of mortality.³¹⁰

There are a number of diseases that are not unique to women, but disproportionately impact them, including infectious diseases such as HIV/AIDS, and autoimmune diseases.³¹¹ To address clinical research inequities in health research funding, Congress enacted the National Institutes of Health Revitalization

³⁰⁷ *See id.*

³⁰⁸ *See id.* "It should be noted that, because the registry cannot practically be self-supporting, reestablishing and operating the registry will require a state subsidy. The Legislature may thus wish to reconsider the efficacy of this approach for fostering diversity on corporate boards and whether other approaches should be explored." *Id.* at 2 (statement by Rep. Kevin De Leon, Chair, Assemb. Comm. on Appropriations).

³⁰⁹ *See* Assemb. B. 931, 2019–2020 Reg. Sess. (Cal. 2019), codified at CAL. GOV'T CODE § 54977 (West, Westlaw through ch. 1 of 2020 Reg. Sess.).

³¹⁰ There are different statutory definitions of women's health. CAL. HEALTH & SAFETY CODE § 439.901(h) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) defines "women's health issues" as "diseases or conditions that are unique to women, are more prevalent or more serious in women, or for which specific risk factors or interventions differ for women." Under the provisions of the National Institutes of Health Revitalization Act of 1993, "women's health conditions" is defined as "all diseases, disorders, and conditions (including with respect to mental health)" that are

(A) unique to, more serious, or more prevalent in women; (B) for which the factors of medical risk or types of medical intervention are different for women, or for which it is unknown whether such factors or types are different for women; or (C) with respect to which there has been insufficient clinical research involving women as subjects or insufficient clinical data on women.

42 U.S.C. § 287d(f)(1) (2012).

³¹¹ *See Sex and Gender-Specific Health Challenges Facing Women*, NAT'L INST. OF ALLERGY & INFECTIOUS DISEASES (July 14, 2016), <http://www.niaid.nih.gov/research/sex-specific-womens-health-challenges> [<http://perma.cc/8GLA-2SPF>].

Act of 1993.³¹² The act amended the Public Health Service Act to ensure that women and minority groups are included in all clinical research studies.³¹³ It also established the Office of Research on Women's Health to identify, promote, and encourage research on women's health.³¹⁴ Research grants funded by the National Institutes of Health ("NIH") must comply with specific NIH Policy and Guidelines to "determine whether the intervention or therapy being studied affects women or men or members of minority groups and their subpopulations differently."³¹⁵

One disease in particular that has received increased legislative attention—and government funding—is cancer. The rise of research funding for cancers is attributed to women "transform[ing] the congressional agenda" by advocating for increased appropriations and earmarking of research funds for specific diseases.³¹⁶ Recent statistics reveal that there are more than 3.8 million women living in the United States with a history of breast cancer.³¹⁷ While the disease does not discriminate by gender, women are overwhelmingly its victims. More than 41,000 women, and 500 men, will likely have their lives cut short in 2019 from this disease.³¹⁸

An early law included the passage of the Breast and Cervical Cancer Mortality Prevention Act of 1990,³¹⁹ introduced by Representative Henry Waxman from California. The Act amended the Public Health Service Act³²⁰ and its purpose was to

³¹² See Pub. L. No. 103-43, 107 Stat. 122 (1993) (codified as amended at 42 U.S.C. § 287d (2012)).

³¹³ See *NIH Policy and Guidelines on The Inclusion of Women and Minorities as Subjects in Clinical Research*, NIH GRANTS & FUNDING, <http://grants.nih.gov/policy/inclusion/women-and-minorities/guidelines.htm> [<http://perma.cc/V835-U2PQ>] (last updated Dec. 6, 2017).

³¹⁴ See 42 U.S.C. § 287d.

³¹⁵ *NIH Policy and Guidelines on The Inclusion of Women and Minorities as Subjects in Clinical Research*, *supra* note 313.

³¹⁶ Karen M. Kedrowski & Marilyn Stine Sarow, *The Gendering of Cancer Policy*, in *WOMEN TRANSFORMING CONGRESS* 240, 241 (Ronald M. Peters, Jr. ed., 2002).

³¹⁷ Carol E. DeSantis et al., *Breast Cancer Statistics, 2019*, 69 *CAL. CANCER J. CLINICIANS* 438, 440 (2019).

³¹⁸ See AM. CANCER SOC'Y, *BREAST CANCER FACTS & FIGURES 2019–2020* 3 (2019), <http://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/breast-cancer-facts-and-figures/breast-cancer-facts-and-figures-2019-2020.pdf> [<http://perma.cc/63J6-BNSV>].

³¹⁹ See Pub. L. No. 101-354, 104 Stat. 409 (1990) (codified as amended at 42 U.S.C. §§ 201 note, 300k–300n-5 (2012)).

³²⁰ See Pub. L. No. 101-354, 104 Stat. 409. Other important laws on this topic have amended this Act, including the EARLY Act (Young Women's Breast Health Education and Awareness Requires Learning Young Act of 2009) and its Reauthorization in 2014. See Pub. L. No. 111-148, 124 Stat. 990 (2010) (codified as amended at 42 U.S.C. § 280m (2012)) (authorizing appropriations for education campaigns, prevention research, and grant support to organizations and institutions dealing specifically for young women fifteen through forty-four years of age diagnosed with breast cancer). A bill to reauthorize the EARLY Act was introduced in 2019. See S.B. 2424, 116th Cong. (2019).

establish state program grants for cancer screening and referral, particularly for low-income, uninsured, and underinsured women.³²¹ The grants are administered by the Centers for Disease Control and Prevention through the National Breast and Cervical Cancer Early Detection Program. Nationwide, there are now seventy grantees.³²² Millions of women have been screened through the program since its inception.³²³ Through 2013, an estimated 64,000 breast cancers and 3,500 cervical cancers were diagnosed through the program.³²⁴

Over the last two decades, \$90.6 million³²⁵ have been raised in support of breast cancer research through an innovative federal law: the Stamp Out Breast Cancer Act.³²⁶ The idea for a charitable stamp program originated with California breast cancer surgeon Dr. Ernie Bodai.³²⁷

There were five original sponsors of the bill, including Representatives Susan Molinari and Vic Fazio, and Senators Alfonse D'Amato, Lauch Faircloth, and Dianne Feinstein.³²⁸ As passed in 1997, the law allows postal consumers to purchase, voluntarily, a semipostal stamp.³²⁹ The Breast Cancer Research Stamp was the first charitable stamp in the history of the United States.³³⁰ The charitable amount is the difference between the

³²¹ See Pub. L. No. 101-354, 104 Stat. 409 (1990); see also NAT'L BREAST & CERVICAL CANCER EARLY DETECTION PROGRAM, SUMMARIZING THE SECOND DECADE OF PROGRESS TOWARDS BREAST AND CERVICAL CANCER CONTROL 6 (2019), <http://www.cdc.gov/cancer/nbceddp/pdf/nbceddp-national-report-2003-2014-508.pdf> [<http://perma.cc/4JLN-46YJ>].

³²² See *About the Program*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/cancer/nbceddp/about.htm> [<http://perma.cc/UHW4-HPNF>] (last reviewed Oct. 18, 2019) (including all states, the District of Columbia, six U.S. territories, and thirteen tribes or tribal organizations).

³²³ *Id.*

³²⁴ See Paula Lantz & Jewel Mullen, *The National Breast and Cervical Cancer Early Detection Program: 25 Years of Public Health Service to Low-Income Women*, 26 CANCER CAUSES CONTROL 653, 654 (2015).

³²⁵ See *Semipostal Stamp Program*, U.S. POSTAL SERV., <http://about.usps.com/corporate-social-responsibility/semipostals.htm> [<http://perma.cc/WY8Q-LFQ6>] (last visited Feb. 11, 2020).

³²⁶ See Pub. L. No. 105-41, 111 Stat. 1119 (1997) (codified as amended at 39 U.S.C. § 414 (2012)).

³²⁷ See Ernie Bodai, *Stamp Act: The Story Behind the Breast Cancer Research Stamp*, 20 ONCOLOGY Jan./Feb. 2005, at 44; see also H.R. 1925, 114th Cong. (2015) (proposing a Congressional Medal Bill for Dr. Bodai).

³²⁸ See 143 CONG. REC. 15576 (1997) (statement of Sen. Dianne Feinstein).

³²⁹ See *id.* Semipostal stamps are defined as "stamps that are sold for a price that exceeds the postage value of the stamp." 39 C.F.R. § 551.2 (2019).

³³⁰ The Stamp Out Cancer Act was the first time Congress approved a semipostal stamp. See 143 CONG. REC. 15576 (statement of Sen. Dianne Feinstein). Thereafter, Congress approved the Semipostal Authorization Act, Pub. L. No. 106-253, which authorizes the Postal Service to issue and sell additional semipostal postage stamps. See Mark Saunders, *U.S. Postal Service to Issue Semipostal Stamps*, U.S. POSTAL SERV. (Oct. 2, 2017), http://about.usps.com/news/national-releases/2017/pr17_057.pdf [<http://perma.cc/6L92-FXJW>].

cost of the semipostal stamp (currently sixty-five cents for the Breast Cancer Research Stamp) and the cost of the first-class mail rate, less postal service costs.³³¹ Of the amounts available for breast cancer research, seventy percent are distributed to the NIH, and thirty percent to the Department of Defense's Medical Research Program.³³²

The program has been highly successful, with more than one billion Breast Cancer Research Stamps sold to date.³³³ Among the many bills sponsored by Senator Feinstein that have become law, four have amended the Act, extending its duration through December 31, 2019.³³⁴ California's members continue to be its strongest advocates, with Senator Feinstein and Representative Jackie Speier introducing the Breast Cancer Stamp Reauthorization Act of 2019 to extend the semipostal stamp through 2027.³³⁵

Representative Speier has advocated for women's issues, including breast cancer research funding, throughout her legislative career.³³⁶ In 1991, Speier was the lead author of California A.B. 2005,³³⁷ enacted as the Health Research Fairness Act.³³⁸ The Act mandates that the Regents of the University of California adopt a policy of health research inclusion of women and minorities consistent with NIH policy (which at the time was the "NIH/ADHMA Policy Concerning Inclusion of Women in Study Populations"), "so that women and members of minority groups are appropriately included as subjects of health research projects carried out by state agencies or University of California researchers."³³⁹

Thus far, the Postal Service issued the Alzheimer's Semipostal Stamp in 2017 and is expected to release the Post Traumatic Stress Disorder Stamp next. *See id.*

331 *See* 143 CONG. REC. 15576 (statement of Sen. Dianne Feinstein).

332 *See* 39 U.S.C. § 414 (2012).

333 *See Semipostal Stamp Program*, *supra* note 325.

334 Senator Feinstein's sponsorship efforts included the Breast Cancer Stamp Program Extension, which extended the Act for two years, through 2007. *See* Pub. L. No. 109-100, 119 Stat. 2170. Additional extensions included Pub. L. No. 110-150, 121 Stat. 1820 (extending through 2011) and Pub. L. No. 112-80, 125 Stat. 1297 (extending through 2015). The Breast Cancer Research Stamp Reauthorization Act of 2015 extended the Act for four years, through 2019. *See* Pub. L. No. 114-99, 129 Stat. 2201 (codified as amended at 39 U.S.C. § 414 (2012)).

335 *See* S. 1438, 116th Cong. (2019); H.R. 2689, 116th Cong. (2019).

336 Prior to Speier's election to Congress, Speier served as a California Assembly member during the 1987–1996 sessions, and as a California State Senator from 1999–2006. *See Record of Members of the Assembly 1849–2019*, *supra* note 127; *Record of State Senators 1849–2019*, *supra* note 304.

337 *See* ASSEMB. FINAL HISTORY, 1991–1992 Sess., at 1388 (Cal. 1991). There were eighteen co-authors (fourteen Assembly members and four Senators).

338 *See* Health Research Fairness Act, ch. 792, 1991 Cal. Stat. 3528 (codified at CAL. HEALTH & SAFETY CODE §§ 439.900–439.906) (West, Westlaw through ch. 1 of 2020 Reg. Sess.).

339 CAL. HEALTH & SAFETY CODE § 439.902.

In 1992, Speier was the lead Assembly author of California A.B. 2652,³⁴⁰ which created a voluntary check-off for taxpayers wishing to designate excess tax funds to a breast cancer research fund on the state tax return form.³⁴¹ The fund appeared as a check-off beginning with 1992 tax returns, and was the fourth fund to receive a check-off designation.³⁴² More recent legislation by Assembly member Hertzberg (S.B. 440) renamed the fund the California Breast Cancer Research Voluntary Tax Contribution Fund and extended its operation through 2025.³⁴³ In 2019, California taxpayers contributed \$421,355 to the fund.³⁴⁴

2. Mental Health

There are at least eighteen highly pivotal laws that served as turning points for women in the United States Military.³⁴⁵ With more than two million women veterans,³⁴⁶ greater attention and resources must be allocated to their physical and mental health. Research within the last ten years has revealed an alarming number of women veterans taking their own lives. In 2012, the suicide rate was reported at six times the rate of non-veteran women;³⁴⁷ recent data estimates the number at 2.2 times the rate of non-veteran women.³⁴⁸

As an amendment to the Clay Hunt Suicide Prevention for American Veterans Act,³⁴⁹ Representative Julia Brownley and Senator Barbara Boxer sponsored the passage of the Female Veteran Suicide Prevention Act.³⁵⁰ First introduced by Brownley

³⁴⁰ See ASSEMB. FINAL HISTORY, 1991–1992 Sess., at 1803.

³⁴¹ See Act of Sept. 20, 1992, ch. 780, 1992 Cal. Stat. 3753, 3754 (codified as amended at CAL. REV. & TAX. CODE §§ 18791–18796) (West, Westlaw through ch. 1 of 2020 Reg. Sess.).

³⁴² The first California tax form check-offs were for Rare and Endangered Species (1983), Alzheimer's (1987), and Seniors (1990). See *Voluntary contribution funds*, STATE CAL. FRANCHISE TAX BOARD, <http://www.ftb.ca.gov/file/personal/voluntary-contribution-funds/current-vcf.html> [<http://perma.cc/TQY3-SVWZ>] (last visited Jan. 28, 2020).

³⁴³ See CAL. REV. & TAX. § 18796 (West, Westlaw through ch. 1 of 2020 Reg. Sess.).

³⁴⁴ See STATE OF CAL. FRANCHISE TAX BD., STATUS REPORT—VOLUNTARY CONTRIBUTIONS FUNDS 2 (2020), <http://www.ftb.ca.gov/file/personal/voluntary-contribution-funds/reports/breast-cancer-006.pdf> [<http://perma.cc/7WH5-6VFB>] (presenting contribution totals for 2014–19).

³⁴⁵ See KRISTY N. KAMARCK, CONG. RESEARCH SERV., R42075, WOMEN IN COMBAT: ISSUES FOR CONGRESS 35–36 (2016) (providing a timeline of major legislative and policy actions from 1901 through 2015).

³⁴⁶ See U.S. DEP'T OF VETERANS AFFAIRS, WOMEN VETERANS REPORT: THE PAST, PRESENT AND FUTURE OF WOMEN VETERANS 10 (Feb. 2017), http://www.va.gov/vetdata/docs/SpecialReports/Women_Veterans_2015_Final.pdf [<http://perma.cc/7L2M-MJLF>].

³⁴⁷ See H.R. REP. NO. 114-365, at 3 (2015).

³⁴⁸ See U.S. DEP'T OF VETERANS AFFAIRS, OFFICE OF MENTAL HEALTH & SUICIDE PREVENTION, 2019 NATIONAL VETERAN SUICIDE PREVENTION ANNUAL REPORT 16 (2019), http://www.mentalhealth.va.gov/docs/data-sheets/2019/2019_National_Veteran_Suicide_Prevention_Annual_Report_508.pdf [<http://perma.cc/W9UM-FGUD>].

³⁴⁹ See Pub. L. No. 114-2, 129 Stat. 30 (codified as amended at 38 U.S.C. § 1709B (2012)).

³⁵⁰ See Pub. L. No. 114-188, 130 Stat. 611 (codified as amended at 38 U.S.C. § 1709B).

in 2015, the urgency and necessity for the measure was apparent. In her remarks, Brownley highlighted research findings that suicide among women veterans followed a “different pattern[]” as compared to men, requiring more accurate metrics and information, and that “[w]e don’t know whether the reasons are related to the high rate of military sexual assault, gender-specific experiences on the battlefield, or factors that distinguish differing personal backgrounds, which is exactly the point. Without looking more closely at the root causes, we cannot hope to find better solutions.”³⁵¹

This important piece of legislation mandates the Secretary of Veterans Affairs to identify mental health and suicide prevention programs and metrics that are most effective, and that have the highest satisfaction rates among women veterans.³⁵² Currently serving as chair of the Women’s Veterans Take Force, Brownley continues to take an active role in advocating for women veterans. In remarks to the House this year, she acknowledged California’s Women Veterans Day and recognized the state’s 145,000 women veterans.³⁵³

IV. CONCLUSION

Once the first four women successfully made it through the doors of the California Assembly Chamber on January 6, 1919, they solidified a place in state and federal legislative chambers for generations to follow. At both the state and federal level, women’s collective contributions to statutory authority are vast and have touched upon every conceivable policy area. And women have endured a lot in the process. Although there were many times over the last century when women occupied only one seat at the table, hopefully those times are well behind us.

As we think about laws by women, we also have to think about supporting the women who are willing to pursue elected office, and as a society that values diversity and inclusion, work to maintain and increase these numbers to ensure both participation and representation.³⁵⁴ As we think about laws for

³⁵¹ 162 CONG. REC. H630–631 (daily edition Feb. 9, 2016) (statement of Rep. Julia Brownley).

³⁵² See 38 U.S.C. § 1709B(a).

³⁵³ See 165 CONG. REC. H4632 (June 13, 2019) (statement of Rep. Julia Brownley).

³⁵⁴ To date, there have been forty-four women from California (three U.S. Senators and forty-one U.S. Representatives) representing California constituents in Congress. See *State Fact Sheet—California*, CTR. FOR AM. WOMEN & POL., http://cawp.rutgers.edu/state_fact_sheets/ca [<http://perma.cc/7XE6-ZVH8>] (last visited Feb. 9, 2020). One reason to increase numbers at the state level is to build a “political pipeline” to help ensure that there are “politically experienced women with the visibility and contacts necessary” for

women, we also can imagine how the powerful language of statutory authority can reflect a greater level of progress, diversity, and inclusion. Over time, the inclusion of words of gender in statutory language has been fluid and constantly evolving,³⁵⁵ yet we can be much more responsive and sensitive to changing societal and cultural norms going forward. In contemporary times, the influence of technology will surely require further thinking and legislative evolution when drafting laws about, or intended for, women.³⁵⁶

If we asked now the question with which we started—if women came to Congress, what would be the result?—we would answer with a definitive: we are just getting started.

* * *

congressional and gubernatorial seats. Susan J. Carroll, *Women in State Government: Still Too Few*, in *THE BOOK OF THE STATES* 448, 453–54 (2016).

³⁵⁵ One example is California statutory authority addressing the social sciences curriculum. Under section 51204.5 of the Education Code, current authority requires that such instruction “shall include the early history of California and a study of the role and contributions of both men and women.” CAL. EDUC. CODE § 51204.5 (Westlaw, Westlaw through ch 1. of 2020 Reg. Sess.). Tracing the history of the language reveals that the inclusion of women was added with a 1973 amendment. *See* Act of Sept. 25, 1973, ch. 764, 1973 Cal. Stat. 1374 (relating to courses of study). “Men” was added five years later, with a 1978 amendment. Act of Sept. 19, 1978, ch. 964, 1978 Cal. Stat. 2967 (relating to curriculum).

³⁵⁶ With the current technological revolution, legislatures may need to consider that words such as “women,” “men,” and “gender,” will need to be further modified or defined with the word “human.” Indeed, products such as “Siri” and “Alexa” have raised issues that the first legislators did not have to consider. *See* Kimberly A. Houser, *Can AI Solve the Diversity Problem in the Tech Industry? Mitigating Noise and Bias in Employment Decision-Making*, 22 *STAN. TECH. L. REV.* 290, 297–98 (2019) (“An especially discouraging fact is that a recent LivePerson survey of 1,000 people showed that while half of the respondents could name a famous male tech leader, only 4% could name a female tech leader and one-quarter of them named Siri and Alexa—who are virtual assistants, not actual people.”).

Appendix A³⁵⁷

Women Legislators (Cal. Assemb., Senate, & U.S. Rep.) and California Bar Members

Legislator (School of Law) Cal. Legis. Chamber: Session(s) / U.S. Congress	California Bar Admission
Broughton, Esto Bates (Berkeley) Assembly: 1919, 1921–25	1916
Sankary, Wanda Young (USC) Assembly: 1955–56	1951
Burke, Yvonne Brathwaite (USC) Assembly: 1967–72/U.S. Rep. 1973–79	1956
Bornstein, Julie I. (USC) Assembly: 1993–94	1974
Jackson, Hannah-Beth (Boston Univ.) Assembly: 1999–2004. Senate: 2013–19	1976
Speier, Karen Jacqueline (Jackie) (Hastings) Assembly: 1987–96. Senate: 1999–2006/U.S. Rep. 2008–Present	1976
Ducheny, Denise Moreno (Southwestern) Assembly: 1994–2000. Senate: 2003–10	1979
Kuehl, Sheila James (Harvard) Assembly: 1995–2000. Senate: 2001–04; 2005–08	1979
Caballero, Anna M. (UCLA) Assembly: 2007–10; 2017–18. Senate: 2019–Present	1980
Evans, Noreen (McGeorge) Assembly: 2005–10. Senate: 2011–14	1982
Gómez Reyes, Eloise (Loyola L.A.) Assembly: 2017–19	1982
Bowen, Debra (Univ. of Virginia) Assembly: 1993–98	1983
Corbett, Ellen M. (McGeorge) Assembly: 1999–2004. Senate: 2007–14	1987
Escutia, Martha (Georgetown)	1987

³⁵⁷ Compiled from Benemann, *supra* note 55; *State Fact Sheet—California*, *supra* note 354; Interview by Malca Chall with Wanda Sankary, at xvi (1977), <http://digitalassets.lib.berkeley.edu/rohoia/ucb/text/sodhousetostate00sankrich.pdf> [<http://perma.cc/FA7D-RVC9>] (last visited Feb. 24, 2020); *Record of Members of the Assembly 1849–2019*, *supra* note 127; *Record of Members of United States House of Representatives from California 1850–2020*, S. ARCHIVE, http://secretary.senate.ca.gov/sites/secretary.senate.ca.gov/files/US%20House%20of%20Representatives%201850_2020.pdf [<http://perma.cc/RY8W-788Q>] (last visited Apr. 7, 2020); *Record of State Senators 1849–2019*, *supra* note 304; *Look Up a Lawyer*, STATE B. CAL., <http://calbar.ca.gov/> [<http://perma.cc/R4VB-4LK7>].

Assembly: 1993–98. Senate: 1999–2006	
Gonzalez Fletcher, Lorena Sofia (UCLA) Assembly: 2013–19	1999
Huber, Alyson (Hastings) Assembly: 2009–12	1999
Baker, Catharine A. Bailey (Berkeley) Assembly: 2015–18	2000
Bauer-Kahan, Rebecca (Georgetown) Assembly: 2019	2004

Appendix B

Assembly Bills Introduced and Chaptered, 43rd–46th Legislative Sessions

Assembly Bills, 43rd Reg. Sess. (1919) ³⁵⁸			
Legislator	Bills Introduced	Bills Chaptered	Bills Passage Rate
Broughton	18	5	28 percent
Dorris	21	4	19 percent
Hughes	12	7	58 percent
Saylor	21	10	48 percent
Totals	72	26	36 percent
Assembly Bills, 44th Reg. Sess. (1921) ³⁵⁹			
Legislator	Bills Introduced	Bills Chaptered	Bills Passage Rate
Broughton	31	9	29 percent
Hughes	23	10	43 percent
Saylor	20	12	60 percent
Totals	74	31	42 percent
Assembly Bills, 45th Reg. Sess. (1923) ³⁶⁰			
Legislator	Bills Introduced	Bills Chaptered	Bills Passage Rate
Broughton	23	6	26 percent
Dorris	16 2 (with Woodbridge)	2	11 percent
Miller	16	2	12.5 percent
Saylor	21	4	19 percent
Woodbridge	17 2 (with Dorris)	6	35 percent
Totals	97 (includes two co-authored bills)	20	21 percent

³⁵⁸ ASSEMB. FINAL HISTORY, 43rd Sess. (Cal. 1919); THE STATUTES OF CALIFORNIA AND AMENDMENTS TO THE CODES PASSED AT THE FORTY-THIRD SESSION OF THE LEGISLATURE (1919).

³⁵⁹ ASSEMB. FINAL HISTORY, 44th Sess. (Cal. 1921); THE STATUTES OF CALIFORNIA PASSED AT THE REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE (1921).

³⁶⁰ ASSEMB. FINAL HISTORY, 45th Sess. (Cal. 1923); THE STATUTES OF CALIFORNIA PASSED AT THE REGULAR SESSION OF THE FORTY-FIFTH LEGISLATURE (1923).

Assembly Bills, 46th Reg. Sess. (1925) ³⁶¹			
Legislator	Bills Introduced	Bills Chaptered	Bills Passage Rate
Broughton	11 1 (with Woodbridge and others)	1 1	17 percent
Dorris	15 1 (with Miller)	1	6 percent
Miller	9 1 (with Dorris)	2	20 percent
Saylor	18	2	11 percent
Woodbridge	8 1 (with Broughton and others)	1 1	9 percent
Totals	65 (includes two co-authored bills)	9 (includes one co-authored bill)	14 percent

³⁶¹ ASSEMB. FINAL HISTORY, 46th Sess. (Cal. 1925); THE STATUTES OF CALIFORNIA PASSED AT THE REGULAR SESSION OF THE FORTY-SIXTH LEGISLATURE (1925).

Maintaining Power Over the Ballot Box and Our Bodies: The Nineteenth Amendment’s Impact on Women’s Rights and Access to Reproductive Healthcare

*Brittany L. Raposa**

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I. INTRODUCTION

Over the last 100 years, women have fought for equality on numerous fronts and have broken many barriers. Passed by Congress in 1919, the Nineteenth Amendment reads, “The right of citizens of the United States to vote shall not be denied or

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abridged by the United States or by any State on account of sex.”¹ The recognition of a woman’s right to vote is frequently credited for the increased presence of women in education, in the work force, or in male-dominated positions. However, little is discussed about how “[t]he 19th Amendment played a pivotal role in promoting reproductive rights for women, ushering in a new voting population with a political agenda that would ultimately legalize contraception and abortion.”² Thanks to the Nineteenth Amendment, “[w]omen also experienced economic progress . . . with the increased availability of family-planning services and supplies allowing more women to enroll in higher education and enter professional occupations.”³ With the continued development of women entering schools and businesses, there became a need for leadership in certain areas—most notably, in reproductive health and family planning.⁴

The passage of the Nineteenth Amendment shifted a woman’s role from caretaker to college graduate and career starter. This was evidenced fairly quickly because “[w]ithin 20 years of the [Nineteenth] [A]mendment’s passage, federal courts had undermined the contraception provision of the Comstock Law of 1873 . . . and the American Medical Association adopted birth control as a normal medical option.”⁵ Many more advancements were made, such as when “[t]he FDA approved the pill in 1960, and governmental policies such as Title X made it affordable for more women.”⁶ Further, “the *Roe v. Wade* decision in 1973 legalized abortion.”⁷ As women started to feel more comfortable in their new roles, they began to make decisions that changed the trajectory of their lives. Ultimately, “[t]he increasing availability of family-planning services and supplies resulted in more women delaying marriage, graduating from higher education at higher rates, and entering into more professional [and male-dominated] occupations.”⁸ Women gained a sense of

1 U.S. CONST. amend. XIX.

2 Heidi Williamson, *Women’s Equality Day: Celebrating the 19th Amendment’s Impact on Reproductive Health and Rights*, CTR. FOR AM. PROGRESS (Aug. 26, 2013, 4:41 PM), <http://www.americanprogress.org/issues/women/news/2013/08/26/72988/womens-equality-day-celebrating-the-Nineteenth-amendments-impact-on-reproductive-health-and-rights/> [<http://perma.cc/3VT9-SLY7>].

3 *Id.*

4 Jacqueline Pelella, *The Vote & the Right to Access Contraception*, POWER TO DECIDE (Mar. 25, 2019), <http://powertodecide.org/news/vote-right-access-contraception> [<http://perma.cc/6XHS-SZAC>] (“Reproductive health and family planning became the top policy issue for advocates to take on in the second wave as more women went to college and entered the work force full-time.”).

5 Williamson, *supra* note 2.

6 *Id.*

7 *Id.*

8 *Id.*

power over the ballot box, and consequently, over their futures. One question, however, always remains: do women retain control over their bodies?

The advancements that came with the Nineteenth Amendment did not come without difficulty—particularly for women of color. “For African American women, suffrage was a way to empower themselves and lift up the African American community.”⁹ “The concerns of African American women differed from those of white women because only African American women had to worry about discrimination based on both gender and race.”¹⁰ As a result, “African American women did not enjoy the reproductive access and economic mobility that white women did after 1920.”¹¹ Many activists at the time believed that birth control could assist the African American community in the fight for racial and economic equality, and reduce the tremendous maternal and infant mortality rates.¹² The fight for equality and control over reproductive health care for women of color was (and still is) a difficult journey, which ultimately gave rise to the Reproductive Justice Movement in 1994.

The Nineteenth Amendment reads parallel with the definition of “reproductive justice,” which is, “the human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities.”¹³ The ability for a woman to maintain personal bodily autonomy, to have or not have children, and to parent children in safe and sustainable communities, depends largely on a woman’s right to vote.¹⁴ The Nineteenth Amendment not only birthed a new movement for women, but it also created a shift from a woman’s *right* to reproductive health care to a woman’s *access* to reproductive health care. As discussed in this Article, the Nineteenth Amendment indirectly created a right to reproductive healthcare. Now, women are able to fight for access to “contraception, comprehensive sex education, STI prevention and care, alternative birth options, adequate prenatal and pregnancy care, domestic violence assistance, adequate wages to support [] families, safe homes, and so much more.”¹⁵

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Reproductive Justice*, SISTERSONG, <http://www.sistersong.net/reproductive-justice> [<http://perma.cc/6D2Z-9FVE>] (last visited Feb. 26, 2020).

¹⁴ *Id.*

¹⁵ *Id.*

Currently, reproductive rights face a large threat from nearly all levels of government. Therefore, the power of the Nineteenth Amendment in giving women the right to vote effectively gives women the ability to help decide whether they will retain power over their bodies. Now, more than ever, it is imperative to analyze how the Nineteenth Amendment and a woman's right to vote impact a woman's reproductive rights, and how the Nineteenth Amendment birthed the current reproductive justice movement.

This Article will retrospectively analyze how the Nineteenth Amendment allowed women to help elect progressive policymakers, who in turn enacted policies to benefit women. Further, this Article argues that the Nineteenth Amendment should be recognized as a predominant factor in today's reproductive justice movement.

First, this Article will discuss the state of women's reproductive rights and healthcare prior to the passage of the Nineteenth Amendment. Second, this Article will retrospectively analyze the Nineteenth Amendment's impact on women's rights and access to reproductive healthcare. Next, this Article will analyze how the Nineteenth Amendment impacted the case law surrounding women's reproductive health, giving rise to women's reproductive rights. Finally, this Article will analyze how the Nineteenth Amendment gave birth to the current reproductive justice movement, allowing women to no longer focus on reproduction as a right, but instead on proper access to quality and equal care.

II. WOMEN'S REPRODUCTIVE HEALTHCARE PRIOR TO THE NINETEENTH AMENDMENT

A. Women and Family Planning

Prior to the passage of the Nineteenth Amendment, women did not have the right to vote because it was ultimately seen as unnecessary—the choices of women were held by the male heads of households. In the early nineteenth century, men dominated the commercial, political, and professional realms, while women were confined solely to domestic duties. The law supported this gender divide: “Women generally could not serve on a jury, as a justice of the peace, or as a notary public,” and in many jurisdictions, women were not permitted to practice law.¹⁶ Prior to 1920, and perhaps throughout most of the twentieth century,

¹⁶ Sandra Day O'Connor, *The History of the Women's Suffrage Movement*, 49 VAND. L. REV. 657, 658 (1996).

women had two primary roles—housewife and mother.¹⁷ A woman’s husband assumed all legal rights for her upon marriage, including the right to make personal decisions.¹⁸ Women had a lack of choice, especially when it came to having children, as women were expected to have as many children as their bodies allowed.¹⁹ The traditional notion of family with the woman as a childrearer was heavily rooted in policy and politics, as “President Theodore Roosevelt succinctly expressed . . . that a white Protestant woman who avoided pregnancy was ‘a criminal against the race.’”²⁰

Women began the fight for their right to choose in the nineteenth century, as exemplified by the first birth control movement in the latter part of that century.²¹ Women suffragists endorsed this movement, and suggested that women should not only have a right to choose whether to become pregnant, but also a right to choose to decline having sexual intercourse with their husbands.²²

When the United States was founded, abortion was not regulated.²³ An increase in abortion access was attributed to the importance of females experiencing “their own bodies.”²⁴ In the 1820s and 1830s, states began passing legislation regulating the sale and consumption of abortifacients, drugs “which often killed the women who took them.”²⁵ During the mid-nineteenth century, women utilized birth control and abortion, but these practices were not socially acceptable and oftentimes had to be obtained illegally.²⁶ In addition, “[t]he Comstock Law, passed by Congress in 1873, made it a crime to send through the mails any contraceptives, any information about contraceptives, or any

¹⁷ See Herma Hill Kay, *From the Second Sex to the Joint Venture: An Overview of Women’s Rights and Family Law in the United States During the Twentieth Century*, 88 CAL. L. REV. 2017, 2019 (2000).

¹⁸ See *id.* at 2021.

¹⁹ A *History of Birth Control Methods*, PLANNED PARENTHOOD 14 (2012), http://www.plannedparenthood.org/files/2613/9611/6275/History_of_BC_Methods.pdf [<http://perma.cc/3BJD-JDJR>].

²⁰ *Id.*

²¹ See *id.* at 2.

²² See Reva B. Siegel, *Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression*, 56 EMORY L.J. 815, 819 (2007).

²³ See LESLIE J. REAGAN, *WHEN ABORTION WAS A CRIME: WOMEN, MEDICINE, AND LAW IN THE UNITED STATES, 1867–1973* 8 (1997).

²⁴ *Id.*

²⁵ *Id.* at 10.

²⁶ See Erin Blakemore, *The Criminalization of Abortion Began as a Business Tactic*, HISTORY (May 15, 2019), <http://www.history.com/news/the-criminalization-of-abortion-began-as-a-business-tactic> [<http://perma.cc/4XE2-HJ8H>]; see also Meryl Davids Landau, *Birth Control in America: A Brief History of Contraception*, EVERYDAYHEALTH (July 6, 2018), <http://www.everydayhealth.com/birth-control/contraception-birth-control-women-america/> [<http://perma.cc/H559-QUVC>].

information about how to find out about contraceptives,” making it impossible for individuals to control their family size.²⁷ Violators of the Comstock Laws faced one to ten years of hard labor, potentially in combination with a fine.²⁸

The Comstock Laws created an anti-birth control and anti-abortion climate, and as a result, women were not educated nor provided information on sexual and reproductive healthcare.²⁹ “A 1916 study . . . in New York by the Metropolitan Health and Life Insurance Company . . . revealed that one fourth of its claims were puerperal related.”³⁰ In addition, a 1917 survey “of immigrants on New York’s Lower East Side . . . determine[d] that about a third knew of no birth control methods at all, other than abortion”³¹ Even women who sought proper medical treatment were not adequately advised of their reproductive healthcare needs, as nurses and healthcare providers were restricted in their ability to discuss contraception.³²

Individual states began to strictly limit abortions. “In 1821, Connecticut became the first state to criminalize abortion, followed by New York seven years later.”³³ And by the end of the nineteenth century, most states banned abortion, with the only exception being those abortions medically necessary to save the mother’s life.³⁴ Though these statutes restricted women’s access to abortions, the regulations originally “targeted those who performed abortions rather than the pregnant women who sought to have them” and were designed to protect women and their fetuses.³⁵ However, one of the most prominent issues was that this newly enacted legislation did not eliminate women’s needs or desires to have an abortion.

Most alarming is the reproductive health and harm that was done prior to women gaining a fundamental right over their

²⁷ Mary L. Dudziak, *Just Say No: Birth Control in the Connecticut Supreme Court Before Griswold v. Connecticut*, 75 IOWA L. REV. 915, 918 (1990). A Connecticut law, which followed the Comstock Law, banned any type of birth control or related information because it was deemed “obscene” in nature. *See id.* at 920 n.41.

²⁸ *Id.* at 918.

²⁹ *See id.*

³⁰ ELLEN CHESLER, *WOMAN OF VALOR: MARGARET SANGER AND THE BIRTH CONTROL MOVEMENT IN AMERICA* 64 (1992).

³¹ *Id.*

³² *See id.* at 63.

³³ *From Roe to Stenberg: A History of Key Abortion Rulings by the Supreme Court*, PEW RES. CTR. (Jan. 17, 2008), <http://www.pewforum.org/2008/01/17/from-roe-to-stenberg-a-history-of-key-abortion-rulings-by-the-supreme-court/> [<http://perma.cc/ZWD9-LEJD>].

³⁴ *See History of Abortion in the U.S.*, OUR BODIES OURSELVES, <http://www.ourbodiesourselves.org/health-info/u-s-abortion-history> [<http://perma.cc/N5GB-HECC>] (last updated May 18, 2018).

³⁵ *From Roe to Stenberg: A History of Key Abortion Rulings by the Supreme Court*, *supra* note 33.

reproductive choices. “The vast majority of women who found themselves facing the dilemma of an unwanted pregnancy could not afford either to leave the country [to obtain an abortion] or to pay a physician to perform an illegal abortion in the United States.”³⁶ Therefore, women engaged in self-induced or “back-alley” abortions.³⁷ After receiving such abortions, many women died, and those who survived suffered permanent damage to their bodies.³⁸ Women took control of their bodies, but at a tremendously high price while fighting for equality:

Women who resorted to self-induced abortions typically relied on such methods as throwing themselves down a flight of stairs or ingesting . . . or inserting into themselves a chilling variety of chemicals and toxins. . . . Knitting needles, crochet hooks, scissors, and coat hangers were among the tools commonly used by women who attempted to self-abort. Approximately 30 percent of all illegal abortions . . . were self-induced. . . . Women who sought “back-alley” abortions were often blindfolded, driven to remote areas, and passed off to people they did not know and could not even see. . . . Such abortions were performed not only in secret offices and hotel rooms, but also in bathrooms, in the backseats of cars, and literally in back alleys. . . . [T]hese abortions were performed either by persons with only limited medical training, such as physiotherapists and chiropractors, or by . . . elevator operators, prostitutes, barbers, and unskilled laborers. In the 1960s, an average of more than 200 women died each year as a result of botched illegal abortions. The mortality rate for black and Hispanic women was twelve times higher than the mortality rate for white women.³⁹

Before the Nineteenth Amendment, this was the unfortunate reality for many women who wished to establish power over their own bodies or have any role in family planning.

B. The Birth of the Birth Control Movement

The women’s fight for reproductive healthcare began before the passage of the Nineteenth Amendment and was ultimately fought alongside the movement for women’s right to vote. In 1914, a newspaper, *The Woman Rebel*, used the phrase “birth control” for the first time and sparked the existence of a birth

³⁶ GEOFFREY R. STONE, *SEX AND THE CONSTITUTION: SEX, RELIGION, AND LAW FROM AMERICA’S ORIGINS TO THE TWENTY-FIRST CENTURY* 358 (1st ed. 2017).

³⁷ REAGAN, *supra* note 23, at 210–11 (“Physicians and nurses at Cook County Hospital saw nearly one hundred women come in every week for emergency treatment following their abortions. Some barely survived the bleeding, injuries, and burns; others did not.”).

³⁸ See WHEN ABORTION WAS ILLEGAL: UNTOLD STORIES (Concentric Media 1992), http://concentric.org/films/when_abortion_was_illegal.html [<http://perma.cc/VVP6-BPQQ>].

³⁹ Sarah Rogers, *What Life Was Like for American Women in America Before ‘Roe v. Wade,’* DAILY BEAST (July 10, 2018, 5:06 AM), <http://www.thedailybeast.com/heres-what-life-was-like-for-american-women-in-america-before-ro-e-v-wade> [<http://perma.cc/3QKE-PDVA>].

control movement, and thus a reproductive rights movement.⁴⁰ The term was coined by Margaret Sanger and other radical advocates behind *The Woman Rebel*.⁴¹ “Birth control” was a revolutionary term and challenged societal notions of what it means to be a woman.

Not only did Sanger lead the birth control movement, but she and other free-thinkers banded together to shed light on the class injustice that resulted from a restriction on birth control information.⁴² In her work, she noted that “lower income women lack[ed] preventative health care options . . . [and] also could not afford abortions and [therefore] were more likely to engage in riskier at-home procedures.”⁴³ Openly discussing these issues in *The Woman Rebel*, Sanger “was arrested in 1914 for mailing obscenity under the Comstock definition, and faced a forty-five year jail sentence.”⁴⁴ She then “wrote a book on birth control entitled ‘*Family Limitation*,’” and subsequently fled to England to avoid prosecution under the Comstock Laws.⁴⁵

When Sanger returned to the United States after the charges against her were dropped in 1916, she opened the first contraceptive clinic, which dispensed contraceptives to immigrant women from a storefront in Brooklyn.⁴⁶ Although it was only open for ten days due to a shut down after a sting operation, the clinic assisted 464 women in its short time.⁴⁷ In 1918, the New York Court of Appeals upheld a subsequent prosecution of Sanger for her work in the clinic, despite reading into the statute a narrow exception which allowed doctors to prescribe contraceptives to married persons to prevent disease.⁴⁸ Notwithstanding this exception, doctors were the only individuals who were protected, and any other person providing information about contraception could still be prosecuted under the law.⁴⁹ As almost all doctors were male, the law was still being applied in a gendered context that was not for the benefit of women.⁵⁰

⁴⁰ PETER C. ENGELMAN, A HISTORY OF THE BIRTH CONTROL MOVEMENT IN AMERICA 23–24 (2011).

⁴¹ *Id.*

⁴² *See id.*

⁴³ Sarah Primrose, *The Attack on Planned Parenthood: A Historical Analysis*, 19 UCLA WOMEN’S L.J. 165, 178 (2012).

⁴⁴ *Id.* at 179.

⁴⁵ *Id.* at 179–80.

⁴⁶ CHESLER, *supra* note 30, at 149–50.

⁴⁷ *See id.* at 150–51.

⁴⁸ Dudziak, *supra* note 27, at 919.

⁴⁹ *See id.*

⁵⁰ Marjorie Heins, *A Birth-Control Crusader: “The Sex Side of Life”—Mary Ware Dennett’s Pioneering Battle for Birth Control and Sex Education*, ATLANTIC (Oct. 1996),

III. THE NINETEENTH AMENDMENT'S IMPACT ON WOMEN'S REPRODUCTIVE RIGHTS

A. Changing the Societal Landscape

Following the passage of women's suffrage, many politicians and policy makers wished to pursue the reproductive goals of women in a variety of ways.⁵¹ Many developments raised fundamental questions about the interactions between sex, citizenship, and race. First, immigration policies were enacted in order to exert some type of control over reproduction. For example, "[t]he Immigration Act of 1924, also called the National Origins Act, . . . aimed to radically reduce non-Nordic immigrants and thereby curtail the number of 'inferior' children born in the United States as American citizens."⁵² The law imposed serious implications on citizens, which included requiring "visas and photographs for all immigrants . . . [and] Congress mandat[ing] a 'scientific' study of the origins of the population as of 1920 to use as a guide for future allowable quotas by nationality and ethnicity."⁵³ This law and subsequent regulations similar to it had a severe impact.

Second, the Great Depression of the 1930s sparked an agenda to curb fertility.⁵⁴ "Women were extraordinarily resourceful, getting information and supplies from a variety of new sources" out of sheer necessity and desire.⁵⁵ Despite the efforts of women for bodily autonomy, the political climate still focused on population control and attempted to give men control over women's bodies.⁵⁶ Although "the American Medical Association endorsed birth control as a 'proper sexual practice,' the organization insisted that doctors retain authority over

<http://www.theatlantic.com/magazine/archive/1996/10/a-birth-control-crusader/376695/>
[<http://perma.cc/BJ9K-T86H>].

⁵¹ LORETTA J. ROSS & RICKIE SOLINGER, REPRODUCTIVE JUSTICE: AN INTRODUCTION 31 (2017).

⁵² *Id.*

⁵³ *Id.* at 31–32.

⁵⁴ *Id.* at 33.

⁵⁵ *Id.*

[Women] gathered in labor union settings and in maternity and infant centers for African Americans in the South. In Oklahoma, a coalition of fourteen Black women's clubs underwrote a clinic. In San Francisco, school-teacher Jane Kwong Lee took Chinese women to the Planned Parenthood clinic, she said, so they could get birth control before they got pregnant. Women opened their homes to door-to-door contraceptive salesmen. Many purchased preparations at five-and-dime stores, ordered "preventatives" from the Sears and Roebuck catalog, and responded to magazine advertisements.

Id.

⁵⁶ *Id.*

women's access" to such contraceptives.⁵⁷ Further, as public health officials and eugenicists wanted to make the population more white, they "developed birth control clinics for poor African American[]" women in an attempt to control the quality of the population.⁵⁸ Indeed, Congress in 1930 allowed the distribution of condoms, but only to men in uniform to protect against venereal diseases.⁵⁹ Although winning the right to vote gave women some more power, their reproductive choices were still being controlled by the hands of men.

Third, the development of federal programs to aid poor mothers and their children were the final policy implementations that impacted women during this time. "The Sheppard-Towner Act of 1921, which established the first federally funded social welfare program in the United States," was created to care for children in an "era of massive immigration."⁶⁰ It is not surprising that "[w]hite feminist activists fervently supported this legislation . . . because it provided services such as infant and maternity care for the poor and pre- and postpartum education for pregnant women."⁶¹ Women of color, however, were given inferior services under this program.⁶² Therefore, the trend continued—special value was given to white mothers and their families, while devaluing the maternity and children of women of color and different ethnic backgrounds.

"[I]n 1935 . . . the government initiated Aid to Dependent Children (ADC) as part of the Social Security Act, [but] the program excluded children of 'immoral' unmarried mothers and most women of color."⁶³ Under the ADC, "[w]hite mothers received help if they promised they would stay home and take care of their children, even during . . . World War II."⁶⁴ However, "women of color were forced to go to work no matter their maternal responsibilities."⁶⁵ Thus, contraceptives were available and aid was given to some mothers, but still at the control of white men.

Shortly after, "[i]n 1942, . . . the American Birth Control League changed its name to Planned Parenthood," making a significant change within the mission of the organization.⁶⁶

⁵⁷ *Id.*

⁵⁸ *See id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 36.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 37.

⁶⁵ *Id.*

⁶⁶ Dudziak, *supra* note 27, at 919.

Rather than characterizing birth control as a way to liberate women, the organization moved towards a focus on “family planning.”⁶⁷ It became clear that the birth control movement was shifting from a woman’s right to choose to an emphasis on family decisions. Even after the women’s suffrage movement, women were still faced with laws and regulations forcing them to continue to live within the confines of traditional notions of what it meant to be a woman.

B. The Reproductive Rights Wave After Suffrage

Beginning in the 1950s, female sexuality and fertility were the two issues at the forefront of United States politics. In the late 1960s, it was “reproductive rights” at the forefront.⁶⁸ “In 1960, the Federal Drug Administration approved the first birth control pill for contraceptive use.”⁶⁹ The Supreme Court’s decision in *Griswold v. Connecticut* dismantled the old Comstock Laws, decriminalizing contraception and declaring birth control as a matter of marital “privacy.”⁷⁰ Later in 1971, the first case about abortion in the Supreme Court arose in *United States v. Vuitch*.⁷¹ In *Vuitch*, a doctor challenged the constitutionality of a District of Columbia law permitting abortion only in situations necessary to preserve a woman’s life or health.⁷² The Court rejected the claim that the statute was unconstitutionally vague, concluding that “health” should be understood to include considerations of psychological health and physical well-being.⁷³ Just one year later in *Eisenstadt v. Baird*,⁷⁴ “the Supreme Court struck down a Massachusetts law limiting the distribution of contraceptives to married couples whose physicians had prescribed them.”⁷⁵

The cases decided between 1960 and 1972 were small victories for women, as they gained more access to contraceptives and obtained slightly more control over their right to choose. The biggest victory came in 1973 when the Supreme Court decided *Roe v. Wade*.⁷⁶ In *Roe*, “a Texas law prohibiting all but lifesaving

⁶⁷ See *id.*

⁶⁸ See generally Francine H. Nichols, *History of the Women’s Health Movement in the 20th Century*, 29 J. OBSTETRIC, GYNECOLOGIC & NEONATAL NURSING 56 (2000).

⁶⁹ Kay, *supra* note 17, at 2048.

⁷⁰ See *Griswold v. Connecticut*, 381 U.S. 479, 485–86 (1965).

⁷¹ See *United States v. Vuitch*, 402 U.S. 62, 66 (1971).

⁷² See *id.* at 63, 67–68.

⁷³ See *id.* at 71–72.

⁷⁴ 405 U.S. 438 (1972).

⁷⁵ *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, ACLU, <http://www.aclu.org/other/timeline-important-reproductive-freedom-cases-decided-supreme-court> [<http://perma.cc/97AN-8439>] (last visited Mar. 8, 2020).

⁷⁶ 410 U.S. 113 (1973).

abortions” was challenged.⁷⁷ “The Supreme Court invalidated the law on the ground that the constitutional right to privacy encompasses a woman’s decision whether or not to terminate her pregnancy.”⁷⁸ The case was monumental, as it represented the Court finally “[c]haracterizing this right as ‘fundamental’ to a woman’s ‘life and future,’” in holding “that the state could not interfere with the abortion decision unless it had a compelling reason for regulation.”⁷⁹ What were the parameters of a compelling reason or interest? The Court stated that “[a] compelling interest in protecting the potential life of the fetus could be asserted only once it became ‘viable,’” which typically happened “at the beginning of the last trimester of pregnancy.”⁸⁰ Even when a state did have a compelling interest in protecting the potential life of the fetus at this later stage in pregnancy, “a woman had to have access to an abortion if it were necessary to preserve her life or health.”⁸¹

In the same year, the Supreme Court decided “*Roe*’s companion case, *Doe v. Bolton*,⁸² in which the Supreme Court overturned a Georgia law regulating abortion.”⁸³ It was a crucial decision, as “[t]he law prohibited abortions except when necessary to preserve a woman’s life or health or in cases of fetal abnormality or rape.”⁸⁴ Not only did the Georgia law limit the instances in which an abortion would be permitted, but it also limited where an abortion could be carried out by requiring “that all abortions be performed in accredited hospitals and that a hospital committee and two doctors in addition to the woman’s own doctor give their approval” for the abortion.⁸⁵ The Court ultimately ruled “the Georgia law unconstitutional because it imposed too many restrictions” on a woman’s fundamental right to an abortion “and interfered with a woman’s right to decide, in consultation with her physician, to terminate her pregnancy.”⁸⁶

The case law in support of abortion, and specifically a woman’s right to choose, continued in the years after *Roe*. In 1975, the Supreme Court decided *Bigelow v. Virginia*,⁸⁷ where it “ruled that states could not ban advertising by abortion clinics

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² 410 U.S. 179 (1973).

⁸³ *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ 421 U.S. 809 (1975).

[as s]uch bans violate the First Amendment’s guarantees of freedom of speech and freedom of the press.”⁸⁸ Four years later, the Supreme Court heard *Bellotti v. Baird*,⁸⁹ where “[t]he ACLU represented plaintiffs challenging a Massachusetts statute requiring women under 18 to obtain parental or judicial consent prior to having an abortion.”⁹⁰ In that case, “[t]he Court found the statute unconstitutional because . . . it gave either a parent or a judge absolute veto power over a minor’s abortion decision, no matter how mature she was and notwithstanding that an abortion might be in her best interests.”⁹¹ Taking into consideration a woman’s right to choose, the Court in “*Baird* established that all minors must have the opportunity to approach a court for authorization to have an abortion, without first seeking the consent of their parents, and that these alternative proceedings must be confidential and expeditious.”⁹² While the decision still prompted a woman to seek permission, it was nonetheless a step forward in the fight for justice.

The 1980s also saw a rise in female reproductive rights case law. The Supreme Court, in *Harris v. McRae*,⁹³ “rejected a challenge to the Hyde Amendment, which banned the use of federal Medicaid funds for abortion except when the life of the woman would be endangered by carrying the pregnancy to term.”⁹⁴ This case proved to be critical because “[a]lthough the lawsuit . . . was unsuccessful, the ACLU and its allies” began the fight against “many state funding bans.”⁹⁵ In 1983, the ACLU had two major victories for the campaign promoting a women’s right to choose. In *City of Akron v. Akron Center for Reproductive Health*,⁹⁶ “the Supreme Court struck down all of the [sic] challenged provisions of an Akron, Ohio, ordinance restricting abortion.”⁹⁷ In addition, in *Bolger v. Youngs Drug Products Corporation*,⁹⁸ “[t]he ACLU . . . challenge[d] . . . a federal law that made it a crime to send unsolicited advertisements for

⁸⁸ *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

⁸⁹ 443 U.S. 622 (1979).

⁹⁰ *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

⁹¹ *Id.*

⁹² *Id.*

⁹³ 448 U.S. 297 (1980).

⁹⁴ *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

⁹⁵ *Id.*

⁹⁶ 462 U.S. 416 (1983).

⁹⁷ *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

⁹⁸ 463 U.S. 60 (1983).

contraceptives through the mail.”⁹⁹ The *Bolger* decision implicated another essential right in the fight for a woman’s right to choose—the right to free speech. In *Bolger*, “[t]he Supreme Court held the law to be unconstitutional because it violated the First Amendment’s protection of ‘commercial speech’ and impeded the transmission of information relevant to the ‘important social issues’ of family planning and the prevention of venereal disease.”¹⁰⁰ This case shed light on the Supreme Court’s recognition that abortion affects many facets of a woman’s life, both present and future.

The 1990s sparked some of the most notable reproductive rights case law. In *Rust v. Sullivan*,¹⁰¹ “[t]he ACLU represented Dr. Irving Rust and other family planning providers who challenged the Reagan Administration’s ‘gag rule’ barring abortion counseling and referral by family planning programs funded under Title X of the federal Public Health Service Act.”¹⁰² This gag rule was especially detrimental to women because “[u]nder the new rule, clinic staff could no longer discuss all of the options available to women facing unintended pregnancies, but could only refer them for prenatal care.”¹⁰³ Even in light of the fact that this rule would “reverse[] . . . years of policies that had allowed non-directive, comprehensive options counseling, the Court upheld” the law.¹⁰⁴ Although “President Clinton rescinded the ‘gag rule’ by executive order shortly after his inauguration in 1993,”¹⁰⁵ the Court’s decision to uphold the law set the forward movement of women’s reproductive rights slightly back.

In 1992, the Supreme Court decided *Planned Parenthood of Southeastern Pennsylvania v. Casey*,¹⁰⁶ where “the Court preserved constitutional protection for the right to choose” from the *Roe* case.¹⁰⁷ However, the Court “adopted a new and weaker test for evaluating restrictive abortion laws. Under the ‘undue burden test,’ state regulations can survive constitutional review so long as they do not place a ‘substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.’”¹⁰⁸

⁹⁹ *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

¹⁰⁰ *Id.*

¹⁰¹ 500 U.S. 173 (1991).

¹⁰² *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ 505 U.S. 833 (1992).

¹⁰⁷ *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

¹⁰⁸ *Id.*

In 2000, the Supreme Court decided *Stenberg v. Carhart*,¹⁰⁹ where “the ACLU filed a . . . brief calling on the Court to invalidate Nebraska’s . . . ‘partial-birth abortion’ ban.”¹¹⁰ The Supreme Court sent a strong message and invalidated “Nebraska’s law on two independent grounds: the ban’s failure to include a health exception threatened women’s health, and the ban’s language encompassed the most common method of second-trimester abortion, placing a substantial obstacle in the path of women seeking abortions and thereby imposing an ‘undue burden.’”¹¹¹

In 2007, in *Gonzales v. Carhart*¹¹² and *Gonzales v. Planned Parenthood Federation of America, Inc.*,¹¹³ “the [Supreme] Court upheld the federal ban” against partial-birth abortions.¹¹⁴ This ruling “undermin[ed] a core principle of *Roe v. Wade*: that women’s health must remain paramount. In so doing, the Court essentially overturned its decision in *Stenberg v. Carhart* [where] . . . the majority . . . evoked antiquated notions of women’s place in society and called in to question their decision-making ability.”¹¹⁵ Most notable in the decision, Justice Kennedy wrote “that in the face of ‘medical uncertainty’ lawmakers could overrule a doctor’s medical judgment and that the ‘State’s interest in promoting respect for human life at all stages in the pregnancy’ could outweigh a woman’s interest in protecting her health.”¹¹⁶

While the Supreme Court did not always rule in favor of women’s choice, the cases evidenced a strong and continuous fight for women’s reproductive rights, which in turn created a foundation for the women’s movements of today.

IV. A SHIFT FROM REPRODUCTIVE RIGHTS TO REPRODUCTIVE JUSTICE: THE RIGHT TO VOTE IS A REPRODUCTIVE JUSTICE ISSUE

The current political climate and happenings in women’s reproductive health have made a woman’s right to vote more powerful than ever. Today, the topic of abortion is at the center of women’s reproductive health. The availability of abortion in the

¹⁰⁹ 530 U.S. 914 (2000).

¹¹⁰ *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

¹¹¹ *Id.*

¹¹² 550 U.S. 124 (2007).

¹¹³ *Id.*

¹¹⁴ *Timeline of Important Reproductive Freedom Cases Decided by the Supreme Court*, *supra* note 75.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

United States varies tremendously between states.¹¹⁷ In certain states, abortion is freely available—even in later stages of pregnancy.¹¹⁸ In other states, laws regulating abortion can be so restrictive as to violate the Supreme Court’s prohibition on undue burdens established in *Casey*—which is particularly notable given the 2019–2020 political climate.¹¹⁹ This section analyzes the connection between the right to vote and a woman’s reproductive rights, and argues that the right to vote is ultimately a reproductive justice issue.

A. Connecting Reproductive Justice and the Right to Vote

Our country’s history has been told through narratives and experiences, as various groups within later generations align themselves with the moral victories of earlier generations. Both pro-life and pro-abortion activists, for example, align themselves with the suffragists who helped ratify the Nineteenth Amendment.¹²⁰ “[M]any early anti-abortion activists in the 1960s and ‘70s saw themselves as advocates for women’s rights, too.”¹²¹ This may be attributed to an earlier moment in the women’s suffrage movement. Prominent figures in this movement were “Elizabeth Cady Stanton, the 19th-century architect of the suffrage movement, and Susan B. Anthony, her co-reformer,” who both belonged to an anti-abortion advocacy group.¹²² In their newspaper, *The Revolution*, they “published unsigned articles describing abortion as ‘child murder’ and ‘infanticide.’”¹²³ However, pro-abortion activists claim that “Stanton supported ‘voluntary motherhood,’ an idea that shares intellectual roots with the movement for abortion rights.”¹²⁴ Pro-abortion activists also argue that the abortion debate was not at the forefront during the women’s suffrage movement, as the focus was access to the polls and not access to abortion.¹²⁵ Despite the debated differences between the women suffragists and the progressive

¹¹⁷ See Timothy Stoltzfus Jost, *Rights of Embryo and Foetus in Private Law*, 50 AM. J. COMP. L. 633, 633–34 (2002).

¹¹⁸ See, e.g., *An Overview of Abortion Laws*, GUTTMACHER INST. (Mar. 1, 2020), <http://guttmacher.org/state-policy/explore/overview-abortion-laws> [<http://perma.cc/J6S4-K6J4>].

¹¹⁹ *Id.*

¹²⁰ Emma Green, *The Epic Political Battle Over the Legacy of the Suffragettes*, ATLANTIC (June 4, 2019), <http://www.theatlantic.com/politics/archive/2019/06/abortion-debate-and-legacy-womens-suffrage/590422/> [<http://perma.cc/J574-5MAK>].

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

women of today, there exists one strong link between the two: “[A] long-standing, universal notion of *justice*.”¹²⁶

What is reproductive justice? “Reproductive justice is a contemporary framework for activism and for thinking about the [entire] experience of reproduction.”¹²⁷ However, reproductive justice is more than just a framework—“[i]t is also a political movement that splices *reproductive rights* with *social justice* to achieve *reproductive justice*.”¹²⁸ The reproductive justice movement is premised on “three primary principles: (1) the right *not* to have a child; (2) the right to *have* a child; and (3) the right to *parent* children in safe and healthy environments.”¹²⁹ The goal, therefore, of reproductive justice is to give all people “a safe and dignified context for these most fundamental human experiences.”¹³⁰ However, “[a]chieving this goal depends on access to specific, community-based resources including high-quality health care, housing and education, a living wage, a healthy environment, and a safety net for times when these resources fail.”¹³¹ Reproductive justice built upon what prominent figures of the women’s suffrage movement had been advocating for, simply with a new focus.

The reproductive justice movement does not solely focus on reproduction as a woman’s right. It instead looks at reproductive health from every experience, taking multiple factors into account such as class, race, gender, sexuality, health status, and access to healthcare. According to reproductive justice leaders, “Reproductive Justice is achieved when women, girls, and individuals have the social, economic, and political power and resources to make healthy decisions about our bodies, sexuality and reproduction for ourselves, our families, and our communities.”¹³² Reproductive justice, then, depends on the political power to vote.

For women suffragists, the vote was their primary mission, and they “hoped to use the vote to transform the family by changing the unjust laws governing the conditions in which women conceived, bore and raised children.”¹³³ No matter what

¹²⁶ *Id.* (emphasis added).

¹²⁷ ROSS & SOLINGER, *supra* note 51, at 9.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 70.

¹³³ Reva Siegel & Stacie Taranto, *What antiabortion advocates get wrong about the women who secured the right to vote*, WASH. POST (Jan. 22, 2020, 3:00 AM), <http://www.washingtonpost.com/outlook/2020/01/22/what-antiabortion-advocates-get-wrong-about-women-who-secured-right-vote/> [http://perma.cc/HC6P-EY44].

their opinion on abortion was, justice for women to have control over their lives was at the forefront for suffragists. Reproductive justice was created to place important societal issues at the forefront of conversations about women's health.¹³⁴ As a movement, and as a concept, it recognizes that not all women and individuals have the same access to reproductive health care.

Lack of access to reproductive health care fuels the reproductive justice movement, and lack of access is also apparent in the right to vote. In the 2013 *Shelby County v. Holder* decision, the Supreme Court invalidated parts of the 1965 Voting Rights Act.¹³⁵ Specifically, “the Supreme Court invalidated a decades-old ‘coverage formula’ naming jurisdictions that had to pass federal scrutiny under the Voting Rights Act, referred to as ‘preclearance,’ in order to pass any new elections or voting laws.”¹³⁶ The jurisdictions that had coverage “were selected based on their having a history of discrimination in voting.”¹³⁷ While the ruling repealed the old coverage formula, the Court did not create a new test for coverage and “left it to Congress to come up with new criteria for coverage, which hasn’t happened”¹³⁸ As a result, “communities facing new discriminatory voting laws have had to file suits themselves or rely on Justice Department suits or challenges from outside advocates—sometimes after the discriminatory laws have already taken effect.”¹³⁹ Not surprisingly, “[v]oter-identification laws . . . make voting harder especially for poor people, people of color, and elderly people”¹⁴⁰

Reproductive rights and the right to vote are not only synonymous with liberty, but with equality as well.¹⁴¹ Voting, in turn, comments on public policy, where “*groups* of citizens who share common political preferences” come together and share their voice on a particular matter.¹⁴² However, there have been longstanding issues with the right to vote because “when some groups [of citizens] have more opportunity than other groups to

¹³⁴ See generally Loretta Ross, *Understanding Reproductive Justice: Transforming the Pro-Choice Movement*, 36 OFF OUR BACKS 14 (2006) (explaining the voids that reproductive justice helps to address).

¹³⁵ 570 U.S. 529, 557 (2013).

¹³⁶ Vann R. Newkirk II, *How Shelby County v. Holder Broke America*, ATLANTIC (July 10, 2018), <http://www.theatlantic.com/politics/archive/2018/07/how-shelby-county-broke-america/564707/> [http://perma.cc/66ZH-ACGM].

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ See Pamela S. Karlan, *Undue Burdens and Potential Opportunities in Voting Rights and Abortion Law*, 93 IND. L.J. 139, 143 (2018) (“[T]he right to vote is a fundamental public expression of equal citizenship and dignity.”).

¹⁴² *Id.*

affect election outcomes, this becomes a question of equality”¹⁴³ Similarly, equality is at the heart of reproductive rights: “Women can attain full equality in the public sphere only if they can control their fertility” and reproductive healthcare.¹⁴⁴

In addition, both the right to reproduce and the right to vote are measured by an undue burden standard.¹⁴⁵ In *Burdick v. Takushi*,¹⁴⁶ “the Supreme Court upheld Hawaii’s refusal to permit write-in voting.”¹⁴⁷ In that case, “[t]he Court rejected the idea that ‘a law that imposes any burden upon the right to vote must be subject to strict scrutiny.’”¹⁴⁸ The Court declared that imposing a strict scrutiny requirement would be too restrictive on states “because every election law ‘will invariably impose some burden upon individual voters.’”¹⁴⁹ Therefore, the Court created a new standard:

A reviewing court must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments” against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.”¹⁵⁰

After the Court’s decision in *Burdick*, the United States saw a rise in voting restrictions that created inequality in voting.¹⁵¹ For example, in *Crawford v. Marion County Election Board*,¹⁵² the Court upheld “Indiana’s voter ID law, which required voters to present currently valid, government-issued photo identification in order to cast a ballot that would be counted.”¹⁵³ The Court applied the *Burdick* balancing test, “concluding that the photo I.D. requirement was closely related to Indiana’s legitimate state interests in preventing voter fraud.”¹⁵⁴ The Court further reasoned that “[t]he slight burden the law imposed on voters’ rights did not outweigh these interests, which the Court characterized as ‘neutral and nondiscriminatory.’”¹⁵⁵ The Court,

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 144.

¹⁴⁵ *Id.* at 140.

¹⁴⁶ 504 U.S. 428 (1992).

¹⁴⁷ Karlan, *supra* note 141, at 145.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 145–46.

¹⁵⁰ *Id.* at 146.

¹⁵¹ *Id.*

¹⁵² 553 U.S. 181 (2008).

¹⁵³ Karlan, *supra* note 141, at 146.

¹⁵⁴ *Crawford v. Marion County Election Board*, OYEZ, <http://www.oyez.org/cases/2007/07-21> [<http://perma.cc/DU5Z-UDN6>] (last visited Feb. 22, 2020).

¹⁵⁵ *Id.*

in turn, moved away from strict scrutiny and moved toward a balancing test that burdened only certain individuals.¹⁵⁶

The Court took a similar route in the area of abortion. Under its “undue burden” test, state regulations can survive constitutional scrutiny so long as they do not place a “substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.”¹⁵⁷ In *Gonzalez v. Carhart*,¹⁵⁸ the “Court held that the plaintiffs had not ‘demonstrated that the Act would be unconstitutional in a large fraction of relevant cases.’”¹⁵⁹ The Court reasoned that the ban on partial-birth abortion did not impose an undue burden because it applies only to a specific method of abortion and not to abortion itself.¹⁶⁰ The Court stated that “in cases where the prohibited procedure was not necessary to preserve the health of the woman, the absence of a health exception would place no health-related burden on the woman” to obtain that abortion procedure.¹⁶¹ The Court has made decisions based on these fundamental rights—decisions that acknowledge that some populations, by design, will be burdened.

As we celebrate the anniversary of the Nineteenth Amendment, it becomes more apparent that the right to vote is a reproductive justice issue. However, these issues do not impact everyone the same way, as “the people most impacted by restrictions on voting rights are the very same people most affected by anti-abortion laws—people of color, low-income individuals, the LGBTQ community, young people and immigrants.”¹⁶² The affected class are bogged by both “voter suppression and lack of abortion access [which] intertwine to undermine the dignity and power of a large portion of the population.”¹⁶³

According to Liz Chen, writing for the Center for American Progress, disenfranchisement has two effects: “it removes people from the political process, and then it denies them a voice on matters that directly affect their lives, including their ability to access reproductive

¹⁵⁶ *Id.*

¹⁵⁷ *Planned Parenthood v. Casey*, 505 U.S. 833, 877 (1992).

¹⁵⁸ 550 U.S. 124 (2007).

¹⁵⁹ Karlan, *supra* note 141, at 149 (quoting *Gonzales*, 550 U.S. at 167–68).

¹⁶⁰ *See id.*

¹⁶¹ *Id.*

¹⁶² Nikita Mhatre, *Why the Right to Vote Is a Reproductive Justice Issue*, NAT'L PARTNERSHIP (Nov. 5, 2018), <http://www.nationalpartnership.org/our-impact/blog/general/why-the-right-to-vote-is-a-reproductive-justice-issue.html> [<http://perma.cc/GT7D-MEM7>].

¹⁶³ *Id.*

health care, make decisions about whether, when and how to parent, and ultimately shape the course of their lives.”¹⁶⁴

The right to vote is more important now than ever, in order for individuals to retain bodily autonomy.¹⁶⁵ As we see that reproductive rights are directly tied to political climate over the years, voting is crucial to keep reproduction as a fundamental right. Further, reproductive justice and voting are tied together, as they are both interwoven with issues of social injustice.

V. CONCLUSION

Women’s history is still being written. The right to vote for women is critical in an era where reproductive rights are under attack. Although women have come far since the Nineteenth Amendment was ratified in terms of power and autonomy, the power to vote can be the means to achieving reproductive justice. One person is one vote, but one vote can help create equal access to quality reproductive healthcare.

¹⁶⁴ *Id.* (quoting Elizabeth Chen, *A Dual Disenfranchisement*, CTR. FOR AM. PROGRESS (Oct. 24, 2012), <http://www.americanprogress.org/wp-content/uploads/2012/10/DualDisenfranchisement1.pdf> [<http://perma.cc/P3UJ-MRHV>]).

¹⁶⁵ *See id.*