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DAVID MOSS
AMY SMEKAR
DEAN GRODZINS
RACHEL WILF
MARC CAMPASANO

Democracy and Women's Rights in America: The Fight over the ERA

On the afternoon of June 21, 1982, the Florida Senate prepared to vote on whether to ratify the proposed Equal Rights Amendment (ERA) to the U.S. Constitution, which stated that "Equality of Rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Supporters believed the ERA was essential to winning equal rights for women, who comprised a slim majority of the American population. Opponents claimed that the proposed amendment would dangerously expand federal power over the states, remove needed protections for women, and undermine the American family. (For the full text of the proposed amendment, see **Appendix I**.)

When Congress had sent the ERA to the states for ratification, in March 1972, it had done so through a joint resolution stipulating that for the amendment to be valid, state legislatures would have to ratify it within seven years. ERA supporters had expected the constitutionally requisite three-quarters of the states (38 of 50) to ratify well before March 1979. Opposition to the amendment mounted, however, and as the deadline neared only 35 states had ratified, four of which had later voted to rescind ratification, although ERA supporters denied these rescissions were constitutional. In October 1978, Congress extended the ratification deadline to June 30, 1982. ERA opponents denounced the extension as unconstitutional. Over the next few years, one more state voted to rescind, and no new states ratified.

In 1982, ERA supporters made a final push for ratification. That June, the governor of Florida, an ERA supporter, called the state legislature into special session to consider, among other issues, approval of the ERA. If Florida ratified, supporters hoped that Illinois and either Oklahoma or North Carolina would immediately follow. On June 21, thousands of demonstrators, both for and against the amendment, converged on the state capitol in Tallahassee. That morning, the Florida House voted in favor of the ERA, 60 to 58. Now it was up to the Florida Senate to decide whether to ratify the amendment, or to kill it.[1]

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Women's Rights in the American Revolution and Early Republic

The ERA debate of the 1970s and 1980s was the latest episode in a long struggle in America to define women's rights, and to determine how best to secure them, which began with the American Revolution.[a] In the colonial era, all Americans had been royal subjects, bound by common allegiance to the British King. In this hierarchical world, few questioned that slaves were subjects of their masters, or wives subjects of their husbands.[2] A husband had the legal right both to "chastise" (beat) his wife and to force her to have sex with him.[3] Moreover, under the British common law tradition of "coverture," as the British jurist William Blackstone explained in his influential *Commentaries on the Laws of England* (1766-70), "the very being and existence of the woman [once married] is suspended … or entirely merged and incorporated with that of her husband."[4] Ownership of any property that a woman possessed before marriage or any income she earned during marriage, as well as her ability to sign contracts or to sue or be sued in court, passed to her husband. Nor was a wife even a royal subject in and of herself, but only as a dependent of her husband, who was in turn a subject of the king. For this reason, if a woman married a foreign man, she became a foreigner, and if a wife willfully killed her husband, the crime was not classified as murder, but "*petit treason*"—killing her "lord," legally analogous to killing the king.[5] With the Revolution, however, Americans re-envisioned themselves as independent citizens with natural rights, who joined together freely to form a republic. They began to question many traditional forms of subjection, including that of slaves (with some states abolishing slavery at this time) and of women.

During the Revolution, American women had to decide whether or not to support the Patriot cause and so exposed as fiction the legal assumption that they could only choose a man, not a political allegiance. In fact, Patriot embargoes of imported British tea and cloth would have failed without active, public backing by women. Women hosted public teas at which only concoctions from local herbs were served and organized public spinning bees to make homespun cloth. As Americans championed the "rights of man," many began thinking about the "rights of woman."[6]

Abigail Adams was thinking about them when she wrote to her husband, future U.S. President John Adams, in March 1776. He was away in Philadelphia, Pennsylvania, trying to persuade his fellow delegates in the Continental Congress to break from Britain. She was at home in Quincy, Massachusetts, trying to maintain their farm, take care of their five young children (among them, future president John Quincy Adams), and manufacture gunpowder for Patriot militia. She expressed her strong desire to hear that Congress had "declared an independency" and added:

> 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 favourable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If perticuliar care and attention is not paid to the Laidies we are determined to foment a Rebelion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation.[7]

John Adams, in his reply, dismissed his wife's concerns: "As to your extraordinary Code of Laws, I cannot but laugh… We know better than to repeal our Masculine systems." He explained that "in practice you know we are the subjects. We have only the Name of Masters," and giving up that symbolic remnant "would subject Us to the Despotism of the Peticoat."[8] Yet Abigail's remarks had

[a] "Women's rights," like "women's suffrage" and the "women's movement," are modern terms. Until the early 20th century, people spoke of "woman's rights," "woman suffrage," and the "woman movement." Outside of quotations, we will use the modern terms throughout.

alerted him to a new issue. A month later, he wrote to a male correspondent that the case of men without property was like that of women. Neither, Adams believed, should be allowed to vote because their private cares left them "too little acquainted with public Affairs to form a Right Judgment" on political matters, and their situations left them too dependent on others—men in one case, or their employers in the other—to "have a Will of their own." He urged that no attempt be made to lower traditional property restrictions on suffrage: "Depend upon it, sir, it is dangerous to open … [such] a Source of Controversy and Altercation, as would be opened by attempting to alter the Qualifications of Voters. There will be no End of it. New Claims will arise. Women will demand a Vote."[9]

In July 1776, the same month that the Continental Congress passed the Declaration of Independence, which proclaimed that "all men are created equal," New Jersey gave some women the vote. It approved a new state constitution granting suffrage to adult "inhabitants" who possessed a certain small amount of property, in effect enfranchising unmarried women and widows. As Adams had predicted it might, the move resulted from a debate over lowering the property qualification for suffrage. The authors of the New Jersey constitution, having decided to exclude from suffrage only men without any property at all, evidently could think of no logical reason to exclude women with property. Women would vote in New Jersey for the next thirty years. In the close presidential election of 1800, Alexander Hamilton himself was reported to have campaigned among female voters there on behalf of the Federalist Party ticket (headed, as it happened, by President John Adams).[10]

Yet no other state followed New Jersey in giving women the vote, and even there, women were not permitted to hold office or serve on juries. Nor could married women vote in New Jersey, because the new republic maintained the old laws regarding coverture, meaning that wives still could not possess property of their own. American laws at this time did begin to recognize the *citizenship* of women: "Passports were issued to them. They could be naturalized; they could claim the protection of the courts. They were subject to the laws and obliged to pay taxes." In the new state legal codes, moreover, a wife who deliberately killed her husband was no longer classed as a traitor, but simply a murderer.[11] The recognition of female citizenship only went so far, however. When, in 1807, New Jersey legislators decided to expand suffrage to all taxpaying citizens, they simultaneously ended the only state experiment with women's suffrage.[12]

Over the next three decades, nearly all white men won the right to vote, and between 1820 and 1840, intense party rivalries would mobilize this all-male electorate, increasing voter turnout in state and national elections from around 40% to nearly 80%.[13] With these developments, most Americans came to see partisan politics as kind of male enclave: a site of boisterous, alcohol-fueled, sometimes violent, male rivalry and solidarity. Most commentators, including female ones, began to insist that women had no place in politics, and that their realm was the "domestic sphere," where they could quietly nurture morality and religion in their families.[14]

Despite these limits, women claimed a large, if nominally non-political, role in American civic life. Between 1790 and 1830, for example, women founded hundreds of benevolent associations and institutions, such as orphanages and asylums. Legislatures often granted these organizations charters of incorporation, allowing the women who ran them to "exercise collective rights that they did not possess individually, especially if they were married," such as the right to own and manage large amounts of property, retain earnings, and sue and be sued. In fact, these organizations often operated as self-contained political communities: the "members could vote, run for office, hammer out platforms, and make decisions that affected others directly."[15]

It was also widely believed, among men as well as women, that the American republic would not survive if its female citizens lacked virtue, and that virtue required education. Between 1780 and 1830, Americans established nearly 400 private girls' academies (the equivalent of high schools) as well as several girls' "seminaries" (the equivalent of colleges). Women were able to persuade legislatures to grant charters of incorporation to many of these schools, which typically had all-female staffs.[16] Meanwhile, in the small, rural communities where most Americans of the era lived, girls began to be educated alongside boys in the common schools, as the nascent public schools were called. According to two historians of coeducation, this change happened with so little public comment that it "seems to have been one of those major transitions in practice in which citizens moved gradually from *why* to *why not*." Women were increasingly hired to teach in the common schools as well, and by 1860, a majority of such teachers in New England were female. White female literacy rates, indicated by the ability to sign one's name, were only about half that of men in 1790, but drew equal to the male level by 1840, and by 1870 had surpassed it.[17]

The Petition Issue

The right of citizens to petition government officials for the redress of grievances was established in medieval England. By the 17th century, British reformers had discovered that the process of circulating petitions could be an effective tool for mobilizing public opinion.[18] In the Declaration of Independence, Americans justified breaking with England in part on the grounds that the King had refused to answer their petitions complaining of his abuses of power; and in the First Amendment to the U.S. Constitution (ratified 1791), they guaranteed the right "to petition the Government for redress of grievances." In England and colonial America, where relatively few men could vote, petitions had been couched in the language of deference, as "prayers" to the powerful. In the United States, as suffrage among white men became universal, voters began addressing petitions to legislators as equals, making forthright demands.[19]

At the same time, Americans limited the petitioning rights of slaves and women. During the Revolution, slaves in Massachusetts had joined together to petition for a state emancipation law, and North Carolina women petitioned in favor of a Patriot boycott. But in 1797, and again in 1837, Congress voted not to accept petitions from slaves, on the grounds that slaves had no right to petition. Although most Southern state legislatures continued to accept petitions from slaves until the Civil War, they seem to have done so only as an indulgence, granted only to individuals or small groups making personal requests, and nearly always only if a white person actually wrote the petition on the slave's behalf.[20] Free women retained their right to petition, but it was circumscribed by strict conventions. Between 1790 and 1830, Congress accepted "petitions without number" from widows of soldiers asking for pensions, while state legislatures accepted hundreds of petitions from wealthy women requesting charters of incorporation for charitable institutions or girls' schools. Yet women were expected to petition using the old, deferential language; only to petition as individuals or in small groups; and never to petition on controversial political questions.[21]

By 1818, however, women had started signing petitions to local governments in favor of laws restricting liquor sales. Temperance was a controversial political question, but the female petitioners claimed to be acting non-politically—as wives and mothers trying to protect their families from the rum sellers. Again, in 1830-31, more than 1500 women from several Northern states petitioned Congress, urging it not to expel the Cherokee Indians from their traditional lands in Georgia. The Cherokee removal issue proved to be among the most politically divisive of the era, but the female petitioners insisted that they acted purely out of Christian charity. To emphasize the non-political nature of their petitions, they made sure no men signed them.[22]

Female petitioning for temperance and for protecting the Cherokee aroused criticism, but female petitioning for the abolition of slavery provoked outrage. Abolitionism, which grew in part from older antislavery activism, particularly by Quakers and free blacks, emerged in the North as a distinct movement around 1830. At the time, most Northern whites admitted slavery was contrary to American ideals, but thought that it was a problem for the South to solve sometime in the future; also, many (perhaps most) considered America a "white man's country" and so wanted all free blacks "colonized" to Africa. By contrast, abolitionists insisted that the North was complicit, politically and economically, in the "sin" of slavery, and so was responsible for doing something about it. They also insisted that the Southern states should begin to emancipate their slaves "immediately," that colonization was a cruel hoax, and that free blacks deserved full civil equality with whites. Most white Americans considered such views fanatical and incendiary. Abolitionism was in effect outlawed in the South, while in the North, abolitionists faced popular scorn, social ostracism, and even mob violence. Nonetheless, by 1837, 100,000 Northerners had joined either the principal national abolitionist organization, the American Anti-Slavery Society (AASS), founded in 1833, or one of its state, regional, or local affiliates.[23] The original leaders of the AASS were white men, the most famous being the Boston newspaper editor William Lloyd Garrison. Northern free blacks, women as well as men, although few in number, gave abolitionism critical support, but the key to its initial spread is widely thought to have been its appeal to Northern white women, who comprised the core abolitionist constituency in many communities.[24]

Women embraced abolitionism in part for the same reasons as men, but also, in many cases, because they recognized that slavery produced horrific violations of the domestic ideals that they believed they had been tasked to uphold. Accounts of masters forcing their slave women to act as concubines, and of slave mothers and children weeping on the auction block as they were separated forever by sale, became staples of abolitionist literature.[25]

In 1831-32, Lucretia Mott, a Quaker preacher, persuaded 2000 fellow Pennsylvania women to sign petitions to Congress asking it to abolish slavery and the slave trade in the District of Columbia.[b] Garrison criticized Mott's action on the grounds that only men should petition Congress. In 1834, however, he visited London and saw a petition presented to Parliament that had been signed by nearly 200,000 women, asking for abolition of slavery in the British colonies. In England, where only a minority of men could vote, few apparently questioned the right of non-voting women to petition. Impressed, Garrison and others began calling on U.S. women to petition their lawmakers, and many responded. In 1835, Congress received 174 antislavery petitions, 84 of them signed only by women; of the 34,000 total signatures, approximately 15,000 were from female signatories.[26]

The antislavery petitions outraged Southern members of Congress. In February 1836, after months of debate, the House (followed later by the Senate) adopted a rule requiring that all petitions "relating in any way, or to any extent whatever, to the subject of slavery, or the abolition of slavery … be laid upon the table, and that no further action shall be had thereon." Former president John Quincy Adams, now a congressman from Massachusetts, objected that the rule was a "direct violation of the Constitution of the United States, of the rules of this House, and of the rights of my constituents." Abolitionists, meanwhile, denounced the rule as a "gag" on free speech. They recognized that

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[b] The reigning constitutional consensus in the early 19th century held that Congress had no constitutional authority to abolish slavery in the southern states. (See e.g. James Oakes, *Freedom National: The Destruction of Slavery in the United States, 1861-1865* [New York: W.W. Norton, 2013], pp. 2-4.) Abolitionist petitions to Congress therefore focused on secondary issues, such as ending slavery and the slave trade in D.C. (where the Constitution explicitly granted Congress authority); opposing the admission of new slave states; banning slavery in the western territories; outlawing the interstate slave trade; and overturning the gag rule. Abolitionists also extensively petitioned northern state legislatures, asking them to pass resolutions or laws against slavery, or civil rights laws on behalf of northern free blacks.

Congress had unintentionally put "a 'firebrand' in our hands to light anew the flame of human sympathy and public indignation."[27]

Perhaps no group was more indignant about the gag rule in Congress than Northern women, who saw petitioning as their principal tool to influence government decision-making. In 1837, female abolitionists from across the North, black and white, met in Philadelphia—the first national women's convention—where they decided to launch an antislavery petitioning campaign in defiance of the gag rule. Among the delegates most active in organizing the campaign were Lucretia Mott and Angelina Grimké. The latter came from a prominent slaveholding family in South Carolina but had, along with her older sister Sarah, converted to Quakerism and abolitionism. Shortly afterward, the Grimké sisters launched a lecture tour around Massachusetts to promote antislavery petitioning and the formation of antislavery societies. Massachusetts clergy produced a circular letter condemning them, claiming that decent women did not give public speeches, but people flocked to hear them nonetheless. In 1838, Angelina spoke to the Massachusetts legislature, the first address by a woman to any legislative body, to defend women's right to petition.[28]

By late 1838, antislavery petitions flooded Congress, signed by 414,000 Americans, more than half of them women. John Quincy Adams made a grand spectacle of attempting to present the petitions over the shouts and objections of Southern members. He would keep this political theater project going for years, as abolitionist petitions continued to pour in, until Congress finally rescinded the gag rule in 1844.[29]

Petition campaigns were often led by female canvassers, many in their teens or even younger. Although women and girls circulated only about a third of all antislavery petitions sent to Congress between 1833 and 1845, they typically collected scores more signatures per petition than their male counterparts (even when comparing males and females circulating petitions on the same issue, in the same townships, around the same time). Men seem to have passed their petitions around their workplaces, or posted them in shops, while women carried their petitions door-to-door—the only way they could reach other women, who typically spent the day at home. The method proved effective for reaching men as well (and minors, whose signatures they also collected). As canvassers, women learned how to articulate political arguments and build political networks, experience that one recent study has found turned many of them into life-long activists. A disproportionate number of women's rights leaders in 1870 turn out to have been former abolitionist canvassers.[30]

Over the course of the antebellum period—and particularly over the 1830s—the role of women in the petitioning process changed in a number of ways. Notably, men and women began signing petitions together (although for a time in separate columns), and the language that characterized female antislavery petitions moved closer to that of their male counterparts. Before 1836, women's petitions were written in the old deferential language. Whereas male antislavery petitioners used forms describing themselves as "citizens" who addressed "the Honorable Senate and House of Representatives," women used special forms, which described them as "ladies" addressing "the Fathers and Rulers of Our Country." By the late 1830s, women petitioners had abandoned the deferential pose and were using the same petition forms as men.[31]

At the same time, women's rights emerged as an issue within the abolition movement itself. Originally, female abolitionists had not been members of the AASS or its state or regional affiliates, but rather of women's auxiliary organizations. In 1839, however, female abolitionists, with Garrison's support, demanded that they be admitted as full AASS members and be allowed to serve as AASS officers. The issue provoked bitter controversy, with many abolitionists arguing that the push for women's rights was a distraction from the antislavery cause. The issue contributed to a rupture within the abolitionist movement in 1840; Garrison and his female allies took complete control of the AASS, while their opponents bolted.[32]

During the 1840s, the right of women to petition on the same terms as men had largely ceased to be contested, and agitation to end legal, economic, and social inequality between men and women was beginning to emerge in many places and forms. By 1850, when the first national women's rights convention was held in Worcester, Massachusetts, the agitation had finally coalesced into a movement.

Women's Rights in the 19th Century

The wide-ranging goals of the women's rights movement were well articulated at a small but historic gathering that took place in upstate New York, organized by Mott and Elizabeth Cady Stanton. The two women had met in 1840, shortly after the AASS split over women's rights, at an international antislavery convention in London. Mott had come with the AASS delegation, while Stanton was there on a honeymoon with her husband, a member of the group that had broken away. The convention, over Garrison's protests, had decided not to seat female delegates; as a result, Mott joined Stanton as an observer in the gallery, where the two became friends. In 1848, Mott visited Seneca Falls, New York, where Stanton was now living with her husband and children, and the two women decided to place a call for a women's rights convention in the local newspapers. It was held ten days later, on July 19-20, 1848, at the local Wesleyan Chapel.[33]

Nearly 300 local men and women voted on resolutions and approved the Declaration of Sentiments that Stanton had written. In language mirroring the Declaration of Independence (and the Declaration of Sentiments that inaugurated the AASS), Stanton's declaration proclaimed:

> We hold these truths to be self-evident: that all men and women are created equal… Now, in view of this entire disfranchisement of one-half the people of this country, their social and religious degradation … because women do feel themselves aggrieved, oppressed, and fraudulently deprived of their most sacred rights, we insist that they have immediate admission to all the rights and privileges which belong to them as citizens of the United States.[34]

The resolutions and Declaration asserted the right of women to be as well educated as men, enter all the same "profitable employments," and to write and speak publicly on public issues. The documents denounced every aspect of coverture and demanded that American women "secure to themselves their sacred right to the elective franchise." Sixty-eight women and 32 men signed the Declaration, the most famous being Frederick Douglass—escaped slave, celebrated antislavery lecturer and author, and editor of the abolitionist newspaper in nearby Rochester, New York.[35]

Although Kentucky (in 1838) and Michigan (1855) granted women "school suffrage," allowing women to vote for local school boards (children's education was seen as a matter of special female concern; see **Exhibit 1b**), and in the 1850s activists launched the first state campaigns for full female suffrage rights, the vote seemed a distant goal. Reformers achieved greater success chipping away at coverture. In 1848, shortly before Mott and Stanton called the Seneca Falls convention, New York State enacted a Married Women's Property Act, allowing wives to retain ownership of property they held at marriage; many other states followed. These laws had support beyond the women's rights movement: by protecting a wife's property from her husband's creditors, they helped keep families from poverty in an era of financial booms and busts, and they were seen as a matter of equity, extending to all women the privileges of brides with rich fathers, who had been protecting their daughters' property through family trusts. In 1860, New York enacted the first Earning Act, also widely imitated, which allowed married women to own any money they made during marriage. It was seen as more radical than the Property Act, because it challenged the presumption that the husband ought to be the sole breadwinner. (For property and earnings law by state, see **Exhibit 1a**.) The New York Earning Act came only after intense agitation led by, among others, Susan B. Anthony. Anthony, a temperance activist, had joined the women's rights movement in the early 1850s, becoming Stanton's close friend and collaborator. The effects of the property and earnings laws often were limited by state courts, however, which usually interpreted them narrowly.[36]

The multifaceted quality of the women's movement is well illustrated by the career of Lucy Stone. A former abolitionist canvasser, Stone was the first Massachusetts woman to graduate from Oberlin, at the time the only co-ed college in America. She was a leading women's rights lecturer and a champion of suffrage and "dress reform"—urging women to wear comfortable trousers instead of restrictive corsets. In 1855, she married Henry Blackwell, the brother of one of her Oberlin classmates, Elizabeth Blackwell, who was the first woman in the United States to earn a medical degree. (Another Blackwell brother married another of Elizabeth's Oberlin friends, Antoinette Brown, the first woman in the U.S. to be ordained as a minister.) When Stone and Blackwell wed, Stone refused to take the traditional vow to "obey" him, and both bride and groom read statements, which they immediately published in the newspapers, rejecting the "whole system by which the legal existence of the wife is suspended during marriage" and the powers it gave the husband over the wife. They urged that "marriage should be an equal and permanent partnership, and should be so recognized by law." Stone refused to use her husband's last name, apparently the first American woman to take this step.[37]

Among the rights Stone and Blackwell rejected were his legal rights to beat and rape her.[38] Over the course of the 19th century, courts slowly ceased to recognize these rights. Few men were prosecuted for beating their wives, however, and none for raping them.[39] Female activists supported laws that they thought would limit, if indirectly, sexual violence against women, such as those restricting liquor sales. Female activists also led a successful crusade to raise the legal age of sexual consent, which in most states as late as 1885 was only 10, to 16 or higher by 1900. The activists' preferred means of limiting male violence against women, however, was moral suasion—exhorting men to control their anger and lust. This preference left most women's rights leaders uninterested in promoting contraception, and few of them objected when states, in the late 19th century, began outlawing abortions, allegedly because the procedure was medically unsafe. Women's rights leaders always insisted, however, that motherhood should be "voluntary," and some objected that the new anti-abortion laws were unfair in that they penalized the mothers but not the fathers.[40]

During the Civil War (1861-65), antislavery women launched their largest petition campaign, successfully urging Congress to adopt the 13th Amendment to the U.S. Constitution, abolishing slavery.[41] Emancipation marked a turning point for the women's movement. During Reconstruction, Congress, and not just the states, became a focus of women's rights agitation, while suffrage became its keystone (although never its only) issue. Just months after the war ended, Stanton, Anthony, Stone, Mott, Douglass and others established the American Equal Rights Association (AERA), the first national organization dedicated to winning universal suffrage. Over the next few years the organization splintered, however, over whether the rights of black freedmen or women, particularly white women, should be given priority. (Black women, among them Sojourner Truth, although active in the women's rights movement since its inception, struggled to be heard in this controversy.)[42]

In 1866, Congress passed the 14th Amendment, which was ratified by the states in 1868. The first section of the amendment declared that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside," and that no state could deny their "privileges" as citizens without due process of law. Congress wrote this section with freedmen primarily in mind, but it seemed to strengthen the claim of women to full citizenship. The second section of the amendment, however, stipulated that if a state denied suffrage "to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States," then its representation in Congress would be reduced "in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State." AERA leaders lobbied and protested against this language for introducing the word "male" into the constitution, objecting that it implied not only that women had no right to vote, but that they were not citizens in the same way as men. (In 1880, the U.S. Supreme Court seemed to confirm this interpretation when it ruled that the 14th Amendment only forbade the legal exclusion of black men, but not women, from jury service.)[43]

AERA broke apart in 1869, when Congress passed the 15th Amendment, which was ratified by the states the following year. Whereas the 14th Amendment had offered states a political incentive not to deny votes to freedmen, the 15th banned outright any voter restriction based on "race, color, or previous condition of servitude"—wording that also promised to expand the suffrage rights of male immigrants. Stanton and Anthony opposed the amendment, however, because it did not grant votes to women. They argued that educated white women deserved the vote more than freedmen or immigrants and proposed an alternate amendment that granted the vote to all literate citizens. As Stanton declared in a speech to AERA, "Think of Patrick and Sambo and Hans and Yang Tung … who cannot read the Declaration of Independence or Webster's spelling book, making laws for Lucretia Mott … [or] Susan B. Anthony."[44] Douglass, by contrast, insisted that black men in the South urgently needed political power to protect their newly won rights in the face of violent intimidation by whites. Stone, after trying and failing to get Congress to consider a universal suffrage amendment, sided with Douglass, arguing that freedmen must not be denied the vote just because women did not get it as well, and that the amendment was still a major step toward suffrage for all. When an AERA convention refused to back Stanton and Anthony, they withdrew to found the National Woman Suffrage Association. Stone responded by founding the American Woman Suffrage Association, which Douglass joined.

The American Association, the larger of the two organizations, came to focus on suffrage campaigns at the state and local level—an approach that looked promising to many reformers. In 1869, the newly organized Territory of Wyoming granted its few women the right to vote. Later, women won the vote in other western territories: Utah in 1870, although women's suffrage there was revoked by an act of Congress in 1887, and Washington in 1883, although it was there revoked by territorial Supreme Court decisions in 1888. While state suffrage campaigns all failed, some states granted "municipal suffrage," allowing female taxpayers to vote on local tax and bond questions, on the grounds that "municipal governance was a form of 'housekeeping,'" and more granted women school suffrage (see **Exhibit 1b**).[45] Stone herself lived in Massachusetts, which granted school suffrage in 1879, but was not allowed to cast a ballot because she refused to register under her husband's name.[46]

The National Association focused on trying to win women's suffrage at the national level, preferably through a constitutional amendment. Realizing the difficulty in getting one though Congress, however, the National Association in 1871 tried another strategy, known as the "New Departure," first articulated by Virginia and Francis Minor, a married couple from Missouri. They argued that because the 14th Amendment made all native-born or naturalized "persons" citizens and prevented states from denying them the privileges of citizenship, and because voting was an essential privilege of citizenship, women already had the right to vote. Acting on this theory, many women, including Virginia Minor and Susan B. Anthony, attempted to vote in the 1872 presidential election. When Minor was turned away by her registrar, Reese Happersett, she sued him in state court, arguing that the Missouri constitution, which restricted suffrage to men, violated the 14th Amendment. When Missouri courts ruled against her, she appealed to the U.S. Supreme Court. Anthony, meanwhile, succeeded in casting a ballot in New York, only to be arrested a few weeks later for having voted illegally. Her widely publicized trial, in 1873, made her a national celebrity, but she lost, was denied appeal, and fined (she refused to pay).[47] Two years later, the U.S. Supreme Court ruled, in *Minor v. Happersett*, that suffrage was not an essential privilege of citizenship.[48]

With the failure of the New Departure strategy, the National Association again began agitating for a women's suffrage amendment to the U.S. Constitution, now in a version written by Stanton: "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."[49] This amendment was introduced to Congress repeatedly, starting in 1878. The National Association organized petition drives on its behalf, and Stanton herself testified to Congress in its favor. Congress did not vote on it, however, until 1887, when the Senate rejected it 34 to 16, with 25 abstentions.

After this defeat, the National Association decided to concentrate on state suffrage campaigns along with a national amendment. This shift of emphasis allowed the National and American Associations to end their two-decade feud and unite in 1890 as the National American Woman Suffrage Association (NAWSA), under the leadership of Anthony and her protégées. Between 1890 and 1896, four western states gave women the vote. But no state did so for years after that. In the meantime, Stone died in 1893, Douglass in 1896, Stanton in 1902, and Anthony in 1906. Subsequently, between 1910 and 1919, 23 states granted women full or partial suffrage rights (see **Exhibit 1b**). In the 1916 presidential election, both the Republican Party and the Democratic Party endorsed women's suffrage in their platforms, the first time either had done so, although neither endorsed a federal suffrage amendment.[50] That November, Jeanette Rankin, Republican of Montana, became the first woman elected to Congress (see **Exhibit 2**).

Votes for (White) Women

Women's suffrage gained momentum in America at about the same time that the male electorate was being narrowed in various ways. After 1890, in the North and West, laws were passed to discourage immigrants from voting by, for example, establishing actual or de facto literacy requirements to vote. These requirements, among other potential factors, such as voter registration laws and the rise of the secret ballot, helped produce a general fall in voter turnout between the 1880s and 1910s, from over 80% to below 60% (as a share of the voting-age male population). Meanwhile, Southern states instituted new voting requirements that had the effect of disenfranchising almost all black voters and enacted laws reinforcing the system of racial segregation that had emerged since Reconstruction, commonly known as "Jim Crow." Although black leaders protested that these laws violated the 14th and 15th Amendments, federal courts and Congress chose not to intervene.[51]

The NAWSA repudiated the notion of educated suffrage in 1909 and began reaching out to white immigrant voters and the labor movement with great success, allowing it to become a mass movement for the first time, with branches in every state and two million members.[52] Yet many Americans supported giving women the vote precisely to counterbalance the influence of immigrants. Immigrant voters, for example, were generally hostile to "prohibition" laws, banning the sale, manufacture, and importation of alcoholic beverages, while the women's rights movement had always been allied with the temperance cause.[53] Prohibition became national policy in 1919, with the ratification of the 18th Amendment to the U.S. Constitution (the 21st Amendment would repeal national prohibition in 1933). NAWSA leaders, moreover, failed to oppose black disenfranchisement in the South, fearing that doing so would doom the suffrage cause there. They also feared offending national leaders of the Democratic Party, most of whom were Southerners, including President Woodrow Wilson, a progressive New

Jersey Democrat who was a native of Virginia and supported segregation. In 1919, the NAWSA president reassured southern audiences that "white supremacy will be strengthened, not weakened, by women's suffrage."[54] No southern state, however, gave women full suffrage rights at this time.

After 1910, a new generation of suffragists took the political stage, led by Alice Paul, who thought the NAWSA was not nearly militant enough. In 1913, Paul helped found the Congressional Union, which became the National Woman's Party (NWP) in 1916. Its members adopted confrontational tactics, such as picketing the White House—because President Wilson insisted suffrage was a state issue—and engaging in dramatic acts of civil disobedience. After 1917, when the U.S. entered the First World War, NWP activists kept up this controversial campaign; the NAWSA, by contrast, worked to mobilize women for the war effort—winning Wilson's gratitude in the process—and repudiated NWP tactics.[55] Paul and her allies, meanwhile, were attacked in the streets, arrested, and imprisoned. They demanded recognition as political prisoners, and when denied, launched a hunger strike.

The NWP campaign embarrassed Wilson, who had declared as the principal American war goal to "make the world safe for democracy." In January 1918, he finally urged Congress to pass a women's suffrage amendment. The next day Jeanette Rankin introduced the amendment into the House, where it passed 274-136—the exact two-thirds majority it needed. In 1919, after continual agitation, and with Wilson's continued support, the Senate also approved the amendment by a two-thirds majority. On August 18, 1920, Tennessee, by a single vote in the legislature, became the required thirty-sixth state to ratify what was now the 19th Amendment. It had the same wording as the amendment drafted by Stanton, first introduced in Congress in 1878.[56]

That November, women across the country voted in the presidential election. To attract their support, both major parties pledged in their national platforms to repeal the nativist Expatriation Act of 1907, a federal law requiring American women who married foreigners to relinquish their citizenship (in 1915, the U.S. Supreme Court had ruled that the law did not violate women's 14th Amendment rights). In 1922, however, Congress enacted only a partial repeal: a woman who married a foreigner could retain her citizenship only if the man she married was himself *eligible* to be a U.S. citizen (at the time, men from China and Japan, among others, were not eligible).[57]

Feminism and the Equal Rights Amendment

Around 1913, just as the final push for women's suffrage began, a new term entered the American lexicon: "feminism." Although all feminists were suffragists—Paul, for example, identified herself as feminist—not all suffragists were feminists. Unlike many suffragists, feminists generally opposed Prohibition, championed legalizing contraception for women, and considered winning the vote not as an end but a beginning. They declared that they wanted "'a complete social revolution': freedom for all forms of women's active expression, elimination of all structural and psychological handicaps to women's economic independence, an end to the double standard of sexual morality, release from constraining sexual stereotypes, and opportunity to shine in every civic and professional capacity."[58]

After ratification of the 19th Amendment, feminists fought for this wider agenda. The NWP documented that discrimination against women, both legal and customary, remained widespread.[59] An obvious example was that as of the end of 1921, only 14 states allowed women to sit on juries, and those states that did usually made the service of women optional (see **Exhibit 1b**).[60] Women were also excluded by law and custom from many occupations and most professional schools, and were generally paid less than men for the same work. State laws varied widely, moreover, regarding the degree of control women were granted over their economic and family lives.

Paul decided that to achieve her objectives an Equal Rights Amendment (ERA) had to be added to the U.S. Constitution. A few western states already had one (see **Exhibit 1c**), although even these states had a checkered record of actually applying the principle of equal rights in legislation and court rulings. Paul argued that a national amendment would be "more inclusive," requiring "at one stroke" that "both federal and state governments … observe the principle of equal rights," and more permanent, as "equal rights measures passed by state legislatures … are subject to reversal by later legislatures." She also insisted that the amendment was a more "dignified" approach to equality than legislation: "The principle of Equal Rights for men and women is so important that it should be written into the National Constitution as one of the basic principles upon which our country is founded."[61]

In 1923, Paul and the NWP petitioned Congress to consider an ERA. The proposed text read: "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction. Congress shall have power to enforce this article by appropriate legislation."[62] A few months later, it was introduced into Congress by two Kansas Republicans. In 1924, a subcommittee of the Senate Judiciary Committee held a widely publicized hearing on the amendment, but in the end made no recommendation, and the proposal died.[63] Owing to the relentless agitation of Paul and the NWP, however, an ERA was introduced into the next Congress, and each Congress thereafter, for several decades.[64]

Opponents of an ERA charged that if the provision were ratified, courts would face a flood of litigation over what the phrase "men and women shall have equal rights" actually meant. Apparently conceding that the language was too vague, ERA supporters in the 1940s changed the first sentence of the proposed amendment to read, "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Opponents also argued that an ERA, by giving Congress the authority to enforce equal rights, would produce a dangerous expansion of federal power because it would allow federal legislation on domestic relations, which had always been a state concern. ERA supporters insisted that no such thing would happen, but nonetheless for a time agreed to amend the second sentence of the proposed amendment so that it read, "Congress *and the several States* shall have power, *within their respective jurisdictions*, to enforce this article by appropriate legislation" (emphases added). Although these alterations were eventually dropped, supporters also added a third sentence to the proposed amendment, preventing it from taking effect for a number of years, in order to allow state legislatures time to "review and revise" their own laws in their own way (see **Appendix I**).[65]

Many of the strongest objections made against the ERA in the mid-20th century, however, came from some of Paul's fellow feminists, who feared it would repeal "protective legislation" for working women. Until the early 20th century, protective labor laws—limiting working hours, setting minimum wages, regulating workplace conditions—were routinely struck down by state and federal courts on the grounds that they violated "freedom of contract," which was said to be guaranteed to workers and employers by the "due process" clauses of the 5th and 14th Amendments. Several state courts, however, had upheld protective labor laws for women between 1876 and 1902; and in 1908, in the case of *Muller v. Oregon*, the U.S. Supreme Court adopted the same stance, upholding an Oregon law limiting the hours of female factory workers. In *Muller*, a team of reformers led by future Supreme Court Justice Louis Brandeis successfully argued that the state had a compelling interest to interfere with women's freedom of contract because women were physically frailer than men and thus required special protection.[66] After *Muller*, "states enacted a raft of women-only protective legislation: maximum hours and minimum wage laws, health and safety regulations, laws barring women from night work, mandating break time for them, limiting the loads they could carry, and excluding them from certain occupations altogether."[67]

Paul believed that such laws, however well intentioned, both demeaned women and limited their economic opportunities. She found allies both among women who believed that protective legislation limited their ability to compete directly with men and among political constituencies that opposed organized labor, including many Republicans and most Southern Democrats. Among the staunchest early supporters of the ERA were professional and business women's clubs, whose members were mostly Republican. Partly owing to their influence, the Republican Party became the first national party to endorse an ERA in its national platform, in 1940.[68] The large majority of women workers in the early 20th century, however, labored in largely gender-segregated trades. Not having to compete directly with men, they found protective legislation worked to their benefit. Perhaps as a result, the unions that represented them, as well as the broader labor movement, largely opposed the ERA, as did most liberal Democrats and feminists allied with the labor movement. Pro-labor feminists preferred to keep women's protective laws in place until they could be extended to men, and they proposed challenging sex discrimination on a case-by-case basis—for example, with state campaigns to grant women the right to sit on juries (which Paul's NWP also supported).[69]

The ERA made only slow progress during the presidency of Democrat Franklin Roosevelt (1933-45). Roosevelt's political coalition, which included union workers as well as socially conservative Catholics and Southerners, generally opposed the ERA; and both the Secretary of Labor Frances Perkins, the highest-ranking female official in U.S. history to that point, and First Lady Eleanor Roosevelt opposed it as well (although Mrs. Roosevelt changed her mind in later life). President Roosevelt's New Deal Programs, meanwhile, concentrated on lowering the staggering levels of unemployment during the Great Depression, and focused particularly on male breadwinners. The New Dealers seemed to assume, as one historian has dryly noted, that "no housewife [had] lost her job." In reality, however, about a quarter of all women over 14 worked outside the home, and female unemployment similarly reached historic levels in the 1930s.[70]

By 1938, Congress approved the Fair Labor Standards Act (FLSA), establishing for the first time a federal minimum wage (25¢ an hour), an 8 hour day, and a 40 hour work week for many workers, both male and female, and the U.S. Supreme Court upheld the FLSA as constitutional in 1941. ERA supporters argued that because protective legislation could now be sustained without relying on the *Muller* doctrine of gender difference, the key labor objection to the ERA had been removed. Yet many labor groups continued support state-level protective legislation for female workers, at least in part because the FLSA failed to cover occupations in which many women worked, such as agriculture, or that were dominated by women, such as domestic service. Two of the largest labor organizations, the American Federation of Labor (AFL) and the Congress of Industrial Organizations (CIO), continued to oppose an ERA.[71]

The role of labor and the nature of labor markets in the United States would change dramatically after the nation entered the Second World War in 1941. Sixteen million men eventually served in the American armed forces, 10 million of whom were drafted (as compared to 260,000 women, all volunteer), resulting in a severe shortage of male workers needed to build everything from weapons to consumer products.[72] The U.S. government consequently called on women to work in heavy industry, and millions responded. Government propaganda celebrated the achievements of "Rosie the Riveter" during the war years, but as soon as victory was won, in 1945, women workers were quickly replaced by returning male veterans. Nonetheless, ERA supporters argued that this experience clearly disproved the notion that women should be treated differently from men and excluded from certain kinds of work because they were physically frail. This argument proved persuasive enough that in 1944, both Democrats and Republicans endorsed an ERA in their national party platforms.[73] In 1945, the U.S. signed the United Nations Charter, which in several places acknowledged the "equal rights of men and women," and in 1946, the American occupation force in Japan imposed a new constitution on that country that included an ERA provision, granting Japanese women equal political, economic, and social rights.[74] Also in 1946, an ERA for the first time was allowed before the full Senate for a vote. A majority of Senators favored it—38 to 35—but not the required two-thirds majority.[75]

With the war over, U.S. marriage rates soared (from 84.5 per 1000 women in 1945 to 120.7 in 1946), and the "baby boom" began. Notably, many married mothers soon returned to work: "Between 1950 and 1963, married women with husbands present and children between the ages of six and seventeen increased their labor force participation rate from 30.3 to 41.5 percent." Among all women in the U.S., 37% had jobs by 1960, and nearly a third of them now worked alongside—and competed directly with—men. The number of women going to college steadily increased: 103,000 received bachelor's degrees in 1950, as compared to 127,000 a decade later.[76] Also, graduate and professional schools increasingly admitted female students. At Harvard, for example, the Medical School began admitting women regularly in 1946, the Law School in 1950, the Divinity School in 1955, and the Business School in 1963 (although for years women remained small minorities at each of these institutions).[77]

Amidst these changes, the ERA push continued, now led in Congress by Sen. Margaret Chase Smith, Republican of Maine. The Senate approved the ERA by greater than two-thirds majorities in 1950 and 1953, but in both cases only with the addition of an amendment, or "rider," proposed by Sen. Carl Hayden, Democrat of Arizona. The rider, favored by labor unions and pro-labor feminists, read as follows: "The provisions of this article shall not be construed to impair any rights, benefits, or exemptions now or hereafter conferred by law upon persons of the female sex." The NWP refused to support this modified ERA, and opposition in the House of Representatives kept even this version from coming to a vote there.[78] Further progress on the ERA seemed stymied.

Indeed, by 1960, the main focus of American civil rights activists was not gender discrimination but rather racial segregation and racial disenfranchisement, especially in the South. Civil rights lawyers were persuading federal courts that Jim Crow laws violated the equal protection clause of the 14th Amendment, while public attention was increasingly riveted by boycotts, marches, and civil disobedience protests against Jim Crow, led most prominently by Rev. Martin Luther King, Jr. The civil rights movement ultimately inspired activism on the part of many other American groups facing discrimination as well, including, it turns out, a revived women's rights movement, which took shape in the early 1960s. In recognition of the achievements of the original suffrage movement, this next phase came to be called "second wave feminism."[79]

The "Second Wave"

John F. Kennedy, who became President in 1961, initially angered many feminists with his apparent lack of enthusiasm for the ERA and by making relatively few female appointments, including none at the cabinet level. Perhaps in part responding to feminist complaints, his administration backed the first federal Equal Pay law, enacted in 1963, which banned gender-based pay discrimination for wage workers doing "equal work on jobs the performance of which requires equal skill, effort and responsibility, and … performed under similar working conditions."[80] Kennedy also appointed a Commission on the Status of Women, which issued a lengthy report in 1963. According to the journalist Gail Collins, the biggest impact of the commission was that "the state commissions … it spawned … brought together smart, achieving women who might otherwise have never met. And it required them to talk about women's rights, a subject that seldom came up in their normal work in government or academia." As a result, the commission led many of these women to recognize more fully the degree of discrimination they had faced, and (in Collins's words) "to realize that inwardly," although they had always been polite about it, "they had been seething all along."[81]

The commission report did not endorse the ERA, but it did back a bold plan proposed by the African-American lawyer, civil rights activist, and feminist Pauli Murray. Murray noted that civil rights litigators were having great success in federal courts using the equal protection clause of the 14th Amendment against Jim Crow, and she argued that equal protection litigation might be just as effective against state laws that discriminated against women, which she called "Jane Crow." For example, the U.S. Supreme Court, in a series of rulings beginning in the 1930s, had held that exclusion of black men from juries violated their equal protection rights, yet in 1963 three states (Alabama, Mississippi, and South Carolina) continued to exclude women from juries altogether, and most states, while making male jury service mandatory, still made female jury service optional and therefore rare. The Court itself had ruled in 1961 that women were not constitutionally required to sit on juries, at least in part because jury duty might interfere with their obligations as homemakers. Murray argued that if the exclusion of women from juries could be framed as an equal protection issue, federal courts would be compelled to rule against it. She also hoped that equal protection litigation, unlike an ERA, might spare women's protective legislation and so allow feminists who disagreed about such laws to work together. Such an approach, moreover, by allowing feminists and civil rights activists to pursue a common strategy, might help bridge the rift between these two movements.[82]

Meanwhile, also in 1963, the journalist and labor activist Betty Friedan published *The Feminine Mystique*. Friedan had graduated from Smith College, an all-women's school, in 1942. In 1957, she had conducted a detailed survey of her former classmates to gauge their satisfaction with their lives. Most were full-time homemakers, which was widely seen as an ideal female role, yet most declared themselves feeling dissatisfied, unhappy, and unfulfilled. From this survey, Friedan developed a fierce and wide-ranging critique of the then-prevailing idea that women's place was in the home, arguing that it psychologically maimed women and weakened American society. Her book became a national bestseller, and countless American women said they became feminists after reading it.[83]

In 1964, Congress debated a sweeping Civil Rights Bill, which would largely ban racial segregation. The bill had the strong backing of the new Democratic President, Lyndon Johnson. Title VII of the bill would create an Equal Employment Opportunity Commission (EEOC) to enforce fair employment practices. Pro-segregationists in Congress did everything they could to block the legislation. Among them was the 80-year-old chair of the House Rules Committee, Howard Smith, Democrat of Virginia, who proposed an amendment to Title VII to give the EEOC authority to act on complaints of sexual as well as racial discrimination. Smith, a friend of Alice Paul and an ERA supporter, symbolized the long-held ties between segregationists and the NWP, which in a 1963 statement had cautioned that "the Civil Rights Bill would not … give protection against discrimination because of 'race, color, religion or national origins,' to a *White Woman*, a *Woman of the Christian Religion*, *or* a *Woman of United States Origin*."[84] Smith later admitted that he had hoped his amendment would kill the bill, presumably by making it look unreasonable and spurring opposition from labor groups. Yet although many male members of Congress did oppose and mock the provision, others did not, and a few female members, including the influential Margaret Chase Smith, rallied Congress behind it. The bill became the Civil Rights Act of 1964 with Howard Smith's amendment included.[85] After this, the ERA increasingly came to be associated with support for the civil rights movement rather than opposition to it.[86]

The members of the EEOC began work expecting to focus on complaints about racial discrimination in the workplace, but they were shocked to receive over 2500 complaints concerning sex discrimination in the first year alone—over a quarter of the total. The large number of complaints also made clear that many women no longer worked in sex-segregated industries, but in direct competition with men. Moreover, hundreds of these sex discrimination complaints were filed against labor unions. These developments, which one union report described as "a new problem in a rather unexpected vein," prompted some labor leaders, female as well as male, to begin to question their long opposition to the

ERA.[87] For its part, the EEOC seemed to lack commitment to the sexual discrimination ban and was slow to act on sexual discrimination suits, infuriating feminists.

In 1966, while attending a national meeting of state commissions on the status of women, Betty Friedan and others present shared their dissatisfaction with the EEOC and decided to form a new women's rights group. Friedan scribbled its name on the back of a napkin—the National Organization for Women (NOW). NOW soon held a national conference, organized protests at EEOC offices around the country, and came to be seen as the leading feminist organization. In 1967, it endorsed the ERA.[88]

Meanwhile, a "Women's Liberation" movement emerged that considered NOW too moderate. It was led by younger feminists already active in the protest movements for civil rights and against U.S. involvement in the Vietnam War. These liberation feminists popularized a new word, "sexism," to describe a sexual "caste system" as well as prejudice against women, and they engaged in an ever widening critique of gender norms, including in relationships and child rearing, politics, economics, religion, literature, art, and entertainment.[89] Many in the national media mocked "Women's Lib," which first gained prominence in 1968, when women picketed as sexist the Miss America beauty pageant in Atlantic City. The protestors had announced they would burn "implements of fashion-torture such as girdles and hair curlers," but the local fire department had not allowed them to do so. Although nothing was ultimately set on fire, the media sensationalized "bra-burning" as a symbol of "radical feminism."[90]

In 1969, in what is often seen as the symbolic start of the gay rights movement, gay men rioted against a police raid at the Stonewall Inn, a gay bar in New York City. Although there had been a "homophile" movement since the 1940s, it had concentrated on challenging the prevailing conception of "homosexuals," commonly defined at the time as people suffering from a dangerous sexual pathology. Activists had argued that psychologically healthy people could love others of the same sex, and that the differences between such people and others were so small that no rational basis existed for laws against them. Courts had, however, rejected this view. In the 1960s, a new gay rights movement emerged, inspired by the civil rights movement, which saw gays and lesbians as a persecuted minority fighting for equal protection of the laws. In the 1970s, the relationship of gay rights to the ERA would become increasingly controversial.[91]

The Era of the ERA

Between 1966 and 1970, many feminist factions were able to coalesce around a common program. This program included pursuing Murray's idea of litigating sexual discrimination as an equal protection issue and working to enact women's rights legislation at both the state and federal levels, but its centerpiece was the ERA.[92]

In 1970, members of Congress debated the ERA on the floor of the U.S. House of Representatives for the first time and passed it with more than a two-thirds majority. The ERA foundered in the Senate, however, when it became encumbered, as in the past, by amendments that feminists rejected, including one forbidding women from being drafted into the military.[93] Yet momentum for the ERA only increased in 1971, as three states, Illinois, Pennsylvania, and Virginia, added equal rights amendments to their own constitutions, the first states to do so in the twentieth century (see **Exhibit 1c**). On October 12, 1971, the House approved a joint resolution proposing the amendment, 354-23. The Senate then turned back all amendments and on March 22, 1972, approved the resolution, with its seven-year ratification deadline, by a vote of 84-8.[94]

By December 1972, 22 of the necessary 38 states had ratified, and Helen Reddy's feminist anthem, "I am Woman, Hear Me Roar," was the #1 song on the Billboard charts. The next year, eight more states ratified, and the American Federation of Labor and the Congress of Industrial Organizations (which had merged in 1955, forming the largest coalition of labor unions in the country, the AFL-CIO) endorsed the ERA, ending five decades of opposition by organized labor.[95] The year 1974 saw three more state ratifications, while the Gallup public opinion poll found that nearly three quarters of Americans backed the amendment (see **Exhibit 3**). Also, between 1972 and 1974, 11 more states added equal rights provisions to their constitutions (see **Exhibit 1c**). In the 1976 presidential election, both the Republican incumbent, Gerald Ford, and his victorious Democratic challenger, Jimmy Carter, supported ERA ratification.[96]

Meanwhile, the legal campaign to use the equal protection clause of the 14th Amendment to expand women's rights had won its first of many victories before the U.S. Supreme Court in 1971. At issue in *Reed v. Reed* was an Idaho statute that required "males be preferred to females" when two individuals in the same entitlement class (such as two parents) applied to become administrator of an estate.[97] Ruth Bader Ginsburg, later the second woman appointed to the U.S. Supreme Court, was principal author of the key brief. Ginsburg argued that sex-based classifications should be regarded by the courts in the same way that courts by this point regarded race-based classifications, as presumptively "suspect" under the equal protection clause, and so subject to the legal standard of "strict scrutiny."[98] While equal protection litigation on race had concentrated on access to voting, juries, and public facilities, Ginsburg was extending it to a new area, one of central concern to the women's rights movement, family law. The Court ruled unanimously that sexual classifications did deserve special scrutiny, although not at the "strict" level, and that the Idaho law was unconstitutional.[99]

On the legislative front, Congress passed the Equal Opportunity Employment Act in 1972, extending the anti-discrimination provisions of Title VII of the Civil Rights Act to cover schools, colleges, universities, state and local governments, and the federal government, and authorized the EEOC to go to court to enforce its rulings. Also in 1972, Congress approved the so-called Education Amendments, which included Title IX: "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 educational program or activity receiving federal financial assistance."[100] Title IX became famous for its effects on collegiate sports, producing a large expansion of women's programs, yet it also has been credited with greatly expanding women's enrollment in graduate and professional schools. State legislatures, meanwhile, were beginning to reevaluate family law. In 1976, Nebraska became the first state to criminalize marital rape, although there was no prosecution of marital rape under the new statute until 1982.[101] By 1981, nine states recognized rape within marriage as a crime, and campaigns to criminalize it were underway in six more.[102]

Despite these changes, momentum for the ERA slowed dramatically after 1974. By 1977, the year Alice Paul died at the age of 92, only two more states had ratified.[103] None did so over the remainder of the decade. In fact, between 1973 and 1978, the legislatures of four ratifying states—Nebraska, Tennessee, Idaho, and Kentucky—passed resolutions declaring that they had rescinded ratification (although the acting governor vetoed the Kentucky rescission). In addition, the legislature of nearly every ratifying state considered rescinding its own ratification. Whether a state could constitutionally rescind its prior approval of an amendment remained a matter of controversy (see **Appendix II**). At roughly the same time, voters in several states, including New York and New Jersey, which had both ratified the ERA, rejected equal rights amendments to their own state constitutions in referenda (see **Exhibit 1c**).[104] Nonetheless, national and state polls indicated that the ERA retained strong popular support, and several states had come close to ratification multiple times.

In October 1978, with the ERA ratification deadline of March 1979 fast approaching, but with at most 35 of the requisite 38 states having ratified (not counting rescissions), Congress took the unprecedented step of extending the deadline set by the original joint resolution in 1972. Congress approved the extension (as an amendment to the resolution) by a vote of 253 to 189 in the House and 60 to 36 in the Senate. Signed by President Carter, the provision reset the ERA ratification deadline to June 30, 1982.[105] The constitutionality of this extension, however, remained a matter of considerable controversy (see **Appendix II**).

Immediately after the extension vote, the president of NOW, Eleanor Smeal, told reporters that "the momentum is very, very strong right now" and that the remaining ratifications might occur even before the original 1979 deadline.[106] None did, although in December 1979 South Dakota voted to rescind its ratification on the grounds that the extension violated states' rights. Nor had new ratifications occurred by December 1981, when a federal district judge in Idaho, Marion Callister, handed down a controversial decision in *Idaho v. Freeman*, a suit brought by anti-extension legislators from three states. Callister ruled both that states had the constitutional authority to rescind an amendment before it was ratified and that the deadline extension had been unconstitutional, because any congressional exercise of the amendment power, including amending a joint resolution, must be passed by a two-thirds vote. ERA supporters rejected the ruling and the authority of the court to make it, arguing that this was a political matter that courts should not adjudicate. NOW appealed the ruling to the U.S. Supreme Court, which took the unusual step of issuing a stay (normally issued only on judicial orders, not interpretations of law). The Court held off hearing the case, however, until after the June 30 deadline.[107]

Debate over the ERA, 1972-1982

The ratification process for the ERA ultimately stalled, at least in part, because opposition to it had coalesced into a well-organized movement. Opponents included both Democrats, especially from the South, and Republicans, particularly self-described conservatives. Although some Catholic groups, and most Jewish and Mainline Protestant groups (as they were called), supported the ERA, major Fundamentalist Protestant denominations and the League of Catholic Women campaigned against it. One of the most active opposition groups was the Church of Latter-Day Saints (LDS, or Mormons). In 1976, the LDS First Presidency declared that the ERA, if ratified, would "stifle many God-given feminine instincts" and "strike at the family, humankind's basic institution."[108] Thereafter church leaders urged members to reject the ERA and donated substantial funds to anti-ERA activists in battleground states such as Florida. In 1978, the church excommunicated an ERA supporter, Sonia Johnson, because she had urged Mormons to repudiate their leaders (and non-Mormons to turn away Mormon missionaries) on the issue. Shortly afterward, when *Idaho v. Freeman* first came before Judge Callister, NOW lawyers argued he should not hear the case because he was a prominent Mormon, and so "the Court's ability to consider the action before it in an impartial manner may be, or appear to be, impaired." NOW's efforts to get Callister to recuse himself or to convince another court to remove him proved unsuccessful.[109]

Although the ERA had many opponents through the 1970s and early 1980s, the most visible one—and arguably the most effective as well—was Phyllis Schlafly, a prominent conservative activist. After earning a master's degree in government from Radcliffe College in 1945, Schlafly became involved in Illinois Republican politics. In 1952, she ran as the Republican nominee for a seat in Congress (with the slogan, "A Woman's Place is in the House"), but lost. In 1964, she published her first book, *A Choice not an Echo*, a campaign biography of presidential hopeful Senator Barry Goldwater of Arizona, the leading Republican opponent of the 1964 Civil Rights Act. Her book sold three million copies and may have helped Goldwater capture the Republican presidential nomination that year—celebrated by "grass-roots conservatives" as a victory over the "East Coast Establishment." Goldwater, however, suffered a landslide defeat to incumbent Lyndon Johnson in the presidential election that fall, the first in which women constituted a majority of voters. In 1967, Schlafly started the *Phyllis Schlafly Report*, a conservative newsletter that soon gained a national readership, and in 1970 again ran unsuccessfully as a Republican for Congress. In 1972, she founded STOP-ERA, which emerged as the leading national organization opposing the ERA. (Notably, she also earned a law degree at Washington University in 1978.)[110]

Schlafly argued that the ERA would not expand women's rights, which were now fully protected by federal law, but would "transfer into the hands of the federal government the last remaining aspects of our life that the feds haven't yet got their meddling fingers into." She noted that federal courts were now interpreting the 14th Amendment expansively to ban race discrimination, ruling for example that "you cannot discriminate on the basis of race even in private schools that take no public money whatsoever." Women's rights lawyers, she observed, were following "the same pattern of litigation and legal theories as civil rights lawyers," and so the ERA would lead federal courts to force "integration at every level." She added that while "I do not dispute in the slightest what we are doing on matters of race … we do not claim that sex should be treated in the same way." For example, she charged that the ERA would "deprive you of your choice to attend an all-girls' or all-boys' school." Other ERA opponents argued it would mandate "unisex" bathrooms.[111]

Further, Schlafly maintained that the ERA would "take away a young girl's exemption from the draft" and require women to serve in combat, from which they had hitherto been excluded—a prospect that many Americans opposed. For their part, most leading feminists opposed the Vietnam War, which ended in 1975, and many supported men who resisted the military draft, which was suspended the same year. Many feminists nonetheless thought U.S. women would never win full recognition as citizens unless they could serve on equal terms with men in the military, and they noted that female soldiers had often risked their lives in "non-combat" roles, yet had been denied the promotion opportunities and veterans' benefits of male "combatants." Responding to feminist arguments, President Jimmy Carter proposed in 1980 that young women as well as young men should register equally for military service, although in the end Congress approved male-only registration).[112]

Beyond the focus on combat, Schlafly alleged that the ERA would change the "legal definition of marriage," threatening the prevailing understanding of marriage as between "a man and a woman."[113] Most Americans opposed, and NOW did not endorse, gay marriage, yet some gay rights activists, among them Women's Liberation feminists, had started to demand it. In the 1970s, following the feminist lead, the gay rights movement began using civil rights precedents to sue for equal protection under the law. In 1967, the U.S Supreme Court had used equal protection reasoning to overturn state bans on interracial marriage. Gay rights activists began using this precedent to launch equal protection lawsuits, and many thought the ERA would help their cause. Advocates of gay marriage rights appeared in pro-ERA marches and rallies, and a gay rights lawsuit in Washington State in 1973 claimed that the state ERA, approved in 1970, had been intended to allow same-sex marriage (the state Supreme Court rejected this argument).[114]

Schlafly also objected that the ERA was "anti-children, and pro-abortion."[115] Many Americans, among them Catholics and a growing number of Protestant Fundamentalists, viewed abortion as murder. Feminists, by contrast, saw the issue in light of their demand that women have the right to decide whether to become mothers. They consequently pushed for states to liberalize their abortion laws and welcomed the U.S. Supreme Court decision in *Roe v. Wade* (1973), which held that women had a right to terminate pregnancy in its early stages. Some feminists filed suits in Hawaii and Massachusetts arguing that state ERAs gave women the right to tax-funded abortions.[116]

At the broadest level, Schlafly portrayed the ERA as part of an attack on traditional femininity: "Women's libbers view the home as a prison, and the wife and mother as a slave … [They] don't understand that most women want to be a wife, mother, and homemaker."[117] She insisted that she herself was first and foremost a "housewife," who deferred to the wishes of her husband. Women who opposed the ERA often self-identified in a similar way. At anti-ERA protests, for example, many women carried signs with slogans like "Adam's Ribbers not Women's Libbers." Some even emphasized their homemaking skills while lobbying male legislators, presenting them with gifts of homemade baked goods and jellies.[118]

In the 1980 presidential election, the Democratic Party platform endorsed registration of women for military service, abortion rights, and ratification of the ERA, while insisting that "past rescissions are invalid."[119] The party nominated for reelection President Carter, who had signed the ERA extension resolution in 1979, and whose administration had lobbied state legislatures to ratify the amendment. By contrast, the Republican platform took no position on women's selective service registration, and while conceding the party contained "differing views" on abortion, nonetheless endorsed "a constitutional amendment to restore protection of the right to life for unborn children." Having first endorsed the ERA in 1940, the Republican Party now declined to do so, saying: "We acknowledge the legitimate efforts of those who support or oppose ratification of the Equal Rights Amendment." The Republican platform also denounced the Carter Administration's attempts to "pressure" states into ratifying the ERA and supported the right of states to rescind ratification.[120] The Republican nominee, former California governor Ronald Reagan, had once supported the ERA but now opposed it. (Reagan had known Schlafly since they worked together for Goldwater in 1964, and she and STOP-ERA supported his 1980 bid for the Republican nomination.)[121]

In the fall campaign, Reagan responded to Democratic charges that he was hostile to women's rights by promising that as president he would appoint the first woman to the Supreme Court.[122] On Election Day, he defeated Carter, carrying all but three states, and Republicans won control of the U.S. Senate for the first time since 1955. Exit polls indicated that Reagan had won support from 54% of male voters but only 47% of female voters—a difference NOW leaders labelled "the gender gap."[123]

Shortly after taking office, President Reagan fulfilled his campaign pledge to appoint a woman to the Supreme Court, selecting Sandra Day O'Connor, a judge on the Arizona Court of Appeals, to be an Associate Justice. She had graduated near the top of her class at Stanford Law School in 1952, but had been "refused a job at every law firm to which she applied," presumably because she was a woman, and so took a position as a prosecutor (an assistant county attorney) in Arizona. She worked for Goldwater in 1964 and served as a Republican in the Arizona State Senate, where she became the first female senate majority leader in any state legislature before entering the state judiciary. At her confirmation hearings before the U.S. Senate, she professed a personal "abhorrence" of abortion, but refused to say whether she would vote to overturn *Roe v. Wade*, prompting anti-abortion groups to oppose her. The Senate nonetheless confirmed her nomination by a vote of 99 to 0. She was sworn in as an Associate Justice on September 25, 1981.[124]

If enough states ratified the ERA by the new deadline at the end of June, 1982, Justice O'Conner would have the opportunity to help decide NOW's appeal of *Idaho v. Freeman*. But the clock was ticking, and by this point—with less than 9 months to go—Florida was the key battle ground state. If Florida ratified, Illinois and Oklahoma seemed primed to follow, bringing the total number of ratifications, not counting rescissions, to the required 38. If Florida did not ratify, then the ERA would most likely be dead, and the questions raised in the *Idaho* case would effectively disappear.

The ERA Fight in Florida

In March 1972, two days after Congress sent the amendment to the states, the Florida House of Representatives voted to ratify it—with no hearings, little debate, and by a margin of 84-3.[125] It would likely have passed the Florida Senate as well, but never came to a vote because the Senate President, an ERA opponent, blocked it with a procedural ruling.[126] Between January and March 1973, a joint Florida legislative committee held hearings on the ERA around the state. Although most witnesses supported the amendment, many strongly opposed it. In April, when the Florida House debated the ratification resolution, the galleries were packed with women—supporters wearing green and opponents, red—a scene that would become a regular feature of legislative votes on the amendment in Florida. The ratification resolution failed, 54-64.[c] The following year, the ERA resolution did not get out of committee in the Florida House and went down in the Senate, 19-21; the year after that, the resolution passed the House, 61-58, but again failed in the Senate, 17-21.[127]

In January 1977, commissioners in Dade County, Florida, approved an ordinance banning discrimination against gays and lesbians in hiring, housing, and access to public services. Anita Bryant, the TV spokeswoman for Florida Orange Juice, denounced the commissioners for polluting "the moral atmosphere" for her children. "Homosexuals cannot reproduce—so they must recruit," she asserted. "And to freshen their ranks, they must recruit the youth of America."[128] Her "Save Our Children" coalition waged a six-week campaign to repeal the ordinance by referendum, and county voters ultimately overturned it by a margin of 69-31%. The president of the Florida STOP-ERA chapter backed Bryant's campaign, later claiming the Dade County fight "went a long way in shaking church people out of lethargy" about opposing the ERA. Shortly thereafter, the ERA again fell short in the Florida Senate, by a vote of 19-21. After the Senate defeat, supporters saw no point in holding a vote in the House, although 61 of 120 members had cosponsored an ERA resolution that session.[129]

In 1978, a state commission proposed adding the word "sex" to an existing constitutional declaration: "no person shall be deprived of any right because of race, religion, *sex*, or physical handicap." ERA opponents mobilized against this "little ERA." In November, just weeks after Congress extended the national ERA deadline, Florida voters rejected the "little ERA" by a 58-42% margin.[130] Nonetheless, public opinion polls continued to show most Floridians favored the federal ERA.[131] In 1979, the ERA passed the Florida House 64-52, only to be defeated in the Senate, once again by a vote of 19-21.[132]

NOW pressured the state to ratify. In 1977, it began urging national organizations not to hold their conventions in Florida until it ratified. Many organizations complied, including the AFL-CIO, costing the state millions of dollars. In 1980, NOW called for a boycott of the entire $12 billion Florida tourism industry. Picketers began congregating along Interstate 4, urging tourists to forego their Disney World plans.[133] Florida took no new legislative action on the ERA, however, until June 1982, when, with the new ratification deadline days away, the governor called a special session of the legislature.

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[c] In Florida, like every state except Illinois, a proposed federal constitutional amendment could be ratified by a simple majority vote in both chambers of the legislature; the Illinois state constitution required a 3/5 supermajority in both chambers. No state constitution explicitly required the governor to endorse a ratification resolution of a federal amendment, although governors typically did so, and the acting governor of Kentucky assumed the power to veto a resolution of the Kentucky legislature to rescind ratification of the ERA in 1978. See Nancy Elizabeth Baker, "Too Much to Lose, Too Little to Gain: The Role of Rescission Movements in the Equal Rights Amendment Battle" (Ph.D. dissertation, Harvard University, 2003), 24-25, n.24, 358-59.

In the weeks before the session, both sides mobilized, and on June 21, the day of the vote, thousands of demonstrators, mostly women, surrounded the state capitol and crowded its halls and galleries. ERA supporters were dressed in green and were trying their best to cheer and shout louder than their less-numerous, red-clad rivals. At 11:30am, the House voted for ratification. The Senate President ruled that a vote would be taken in his chamber by 2:30pm.[134] As the debate began, the nation watched.

Exhibit 1a Women's Property Acts and Earnings Acts, by State and Year, 1848-1973

State	Married Women Could Own and Control Their Separate Property	Married Women Could Own and Control Their Market Earnings
Alabama	NA	1887
Arizona	1871	1973
Arkansas	1873	1873
California	1872	1872
Colorado	1868	1861
Connecticut	1877	1877
Delaware	1873	1873
Florida	1943	1892
Georgia	1873	1861
Idaho	1903	1915
Illinois	1861	1869
Indiana	1879	1879
Iowa	1873	1873
Kansas	1858	1858
Kentucky	1894	1873
Louisiana	1916	1928
Maine	1855	1857
Maryland	1860	1842
Massachusetts	1855	1846
Michigan	1955	1911
Minnesota	1869	1869
Mississippi	1880	1873
Missouri	1875	1875
Montana	1887	1887
Nebraska	1871	1871
Nevada	1873	1873
New Hampshire	1860	1867
New Jersey	1852	1874
New Mexico	1884	NA
New York	1848	1860
North Carolina	1868	1913
North Dakota	1877	NA
Ohio	1861	1861
Oklahoma	1910	NA
Oregon	1878	1872
Pennsylvania	1848	1872
Rhode Island	1872	1872
South Carolina	1868	1887
South Dakota	1877	NA
Tennessee	1919	1919
Texas	1913	1913
Utah	1872	1897
Vermont	1881	1888
Virginia	1877	1888
Washington	1881	1881
West Virginia	1868	1893
Wisconsin	1850	1872
Wyoming	1869	1869

Source: Adapted from R. Richard Geddes and Sharon Tennyson, "Passage of the Married Women's Property Acts and Earning Acts in the United States: 1950 to 1920," *Research in Economic History* 29 (2013). 153.

Exhibit 1b Women's Suffrage and Jury Rights, by State and Year, 1838-1967

State	Women's Suffrage before the 19th Amendment, in 1920; ( ) = *Before Statehood*: School	Municipal	Presidential Primaries or Elections	Full Voting Rights	Women Allowed to Sit on Juries ( ) = *Before Statehood*
Alabama					1966
Alaska				(1913)	(1923)
Arizona	(1887)			1912	1945
Arkansas			1917		1921
California				1911	1917
Colorado	1876			1893	1945
Connecticut	1893				1937
Delaware	1898				1920
Florida		1915			1949
Georgia					1953
Hawaii					(1952)
Idaho	1889			1896	1943
Illinois	1891	1913	1913		1939
Indiana		1917	1917		1920
Iowa	1895	1894	1919		1920
Kansas	1861	1887		1912	1912
Kentucky	1838				1920
Louisiana		1898			1924
Maine			1919		1921
Maryland					1947
Massachusetts	1879				1949
Michigan	1855	1893	1917	1918	1918
Minnesota	1878		1919		1921
Mississippi	1878				1966
Missouri			1919		1945
Montana	1889	1889		1914	1939
Nebraska	1883	1917	1917		1943
Nevada				1914	1918
New Hampshire	1878				1947
New Jersey	1887				1921
New Mexico	1910				1951
New York	1880	1906		1917	1937
North Carolina					1947
North Dakota	(1883)	1917	1917		1921
Ohio	1894		1917		1920
Oklahoma	(1890)			1918	1952
Oregon	1882			1912	1912
Pennsylvania					1921
Rhode Island			1917		1927
South Carolina					1967
South Dakota	(1883)			1918	1947
Tennessee			1919		1951
Texas			1918		1954
Utah				1896	1893
Vermont	1880	1917			1942
Virginia					1950
Washington	1890			1910	1911
West Virginia					1956
Wisconsin	1886		1919		1921
Wyoming				(1869)	1949

Source: Adapted from Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (New York: Basic Books, 2009), 387-90, and Holly J. McCammon et al., "Movement Framing and Discursive Opportunity Structures: The Political Successes of the U.S. Women's Jury Movements," *American Sociological Review*, 72:5 (2007), 727.

Note: Partial suffrage was sometimes revoked, then restored. In Utah and Washington, women won full suffrage during the territorial period, lost it, and then regained it on the year indicated. In Wyoming, women won jury rights in 1869, lost them, and regained them in 1949.

Exhibit 1c Equal Rights Amendments (ERAs), by State and Year, 1893-1980

State	ERA Added to State Constitution	Legislature Ratifies National ERA	ERA, State (S) or National (N), Rejected by Referendum	Legislature Rescinds Ratification of National ERA
Alabama				
Alaska	1972	1972		
Arizona				
Arkansas				
California	1879	1972		
Colorado	1973	1972		
Connecticut	1974	1973		
Delaware		1972		
Florida			1978 (S)	
Georgia				
Hawaii	1972, 1978	1972		
Idaho		1972		1977
Illinois	1971			
Indiana		1977		
Iowa		1972	1980 (S)	
Kansas		1972		
Kentucky		1972		1978
Louisiana	1974			
Maine		1974		
Maryland	1972	1972		
Massachusetts	1976	1972		
Michigan		1972		
Minnesota		1973		
Mississippi				
Missouri				
Montana	1973	1974		
Nebraska		1972		1973
Nevada			1978 (N)*	
New Hampshire	1974	1972		
New Jersey		1972	1975 (S)	
New Mexico	1973	1973		
New York		1972	1975 (S)	
North Carolina				
North Dakota		1975		
Ohio		1974		
Oklahoma				
Oregon		1973	1978 (S)	
Pennsylvania	1971	1972		
Rhode Island		1972		
South Carolina				
South Dakota		1973		1979
Tennessee		1972		1974
Texas	1972	1972		
Utah	1896			
Vermont		1973		
Virginia	1971			
Washington	1972	1973		
West Virginia		1972		
Wisconsin		1972	1973 (S)	
Wyoming	1893	1973		

Sources: Adapted from Leslie Gladstone, "Equal Rights Amendments: State Provisions" (Congressional Research Service, 2004), 3-6; Sara A. Soule and Susan Olzak, "When Do Movements Matter? The Politics of Contingency and the Equal Rights Amendment," *American Sociological Review* 69:4 (2004), 476; Nancy Elizabeth Baker, "Too Much to Lose, Too Little to Gain: The Role of Rescission Movements in the Equal Rights Amendment Battle" (Ph.D. dissertation, Harvard University, 2003); Laura E. Brock, "Religion, Sex, & Politics: The Story of the Equal Rights Amendment in Florida" (Ph.D. dissertation, Florida State University, 2013); "Equal Rights Amendment" (Nevada Legislature, Background Paper, 79-7, 1979), 3.

* The referendum was merely advisory, as only the state legislature had the constitutional authority to ratify the national ERA.

Exhibit 2 Women in the U.S. Congress, 1917-1982

Congress	Number of Women in the House	Number of Women in the Senate
65th (1917-1919)	1	0
66th (1919-1921)	0	0
67th (1921-1923)	3	1
68th (1923-1925)	1	0
69th (1925-1927)	3	0
70th (1927-1929)	5	0
71st (1929-1931)	9	0
72nd (1931-1933)	7	1
73rd (1933-1935)	7	1
74th (1935-1937)	6	2
75th (1937-1939)	6	2
76th (1939-1941)	8	1
77th (1941-1943)	9	1
78th (1943-1945)	8	1
79th (1945-1947)	11	0
80th (1947-1949)	7	1
81st (1949-1951)	9	1
82nd (1951-1953)	10	1
83rd (1953-1955)	11	2
84th (1955-1957)	16	1
85th (1957-1959)	15	1
86th (1959-1961)	17	2
87th (1961-1963)	18	2
88th (1963-1965)	12	2
89th (1965-1967)	11	2
90th (1967-1969)	11	1
91st (1969-1971)	10	1
92nd (1971-1973)	13	2
93rd (1973-1975)	16	0
94th (1975-1977)	19	0
95th (1977-1979)	18	2
96th (1979-1981)	16	1
97th (1981-1983)	21	2

Source: Adapted from Center for American Women and Politics, Rutgers University, "Women in the U.S. Congress 2013," http://cawp.rutgers.edu/fast_facts/levels_of_office/documents/cong.pdf .

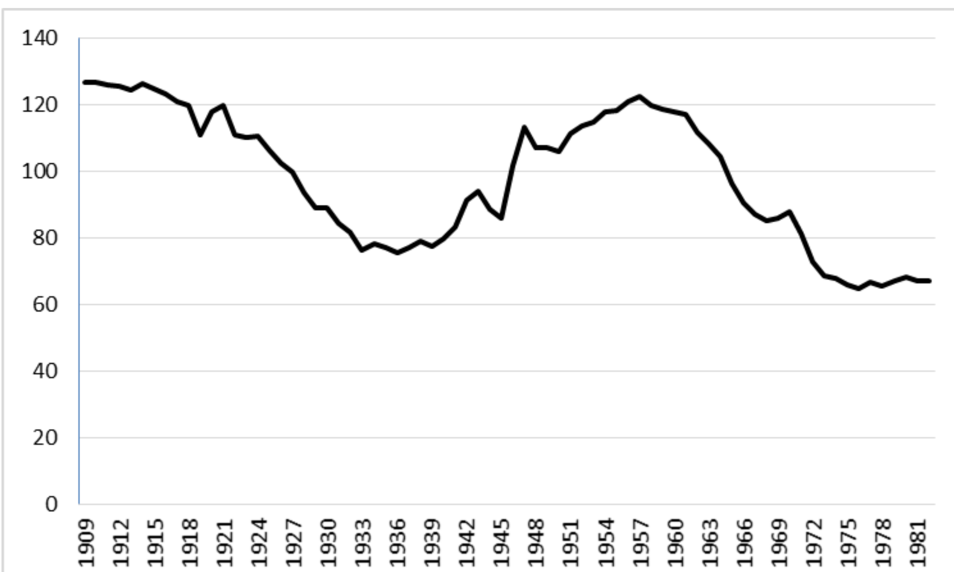
Exhibit 3 Public Opinion on the National ERA, in Polls by Gallup, Roper, and NBC (1974-77)

	1974 (Gallup)	1975 (Gallup)	1975 (Roper)	1976 (Gallup)	1977 (NBC)	1977 (Roper)
Favor	74%	58%	60%	57%	53%	48%
Oppose	21%	24%	21%	24%	37%	20%
Not Sure / Don't Know	5%	15%	4%	19%	10%	4%
Have Mixed Feelings	n.a.	n.a.	15%	n.a.	n.a.	27%

Source: Adapted from Carol Finn Meyer, "Attitudes towards the Equal Rights Amendment" (Ph.D. Dissertation, CUNY, 1979), 14-15, Tables 1 and 2.

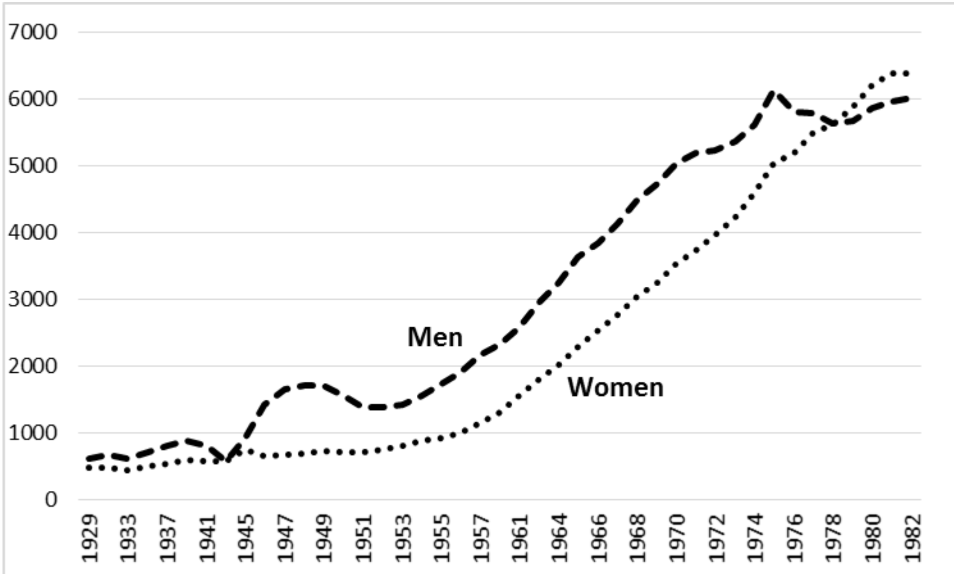
Note: For the 1974 poll, Gallup gave respondents a ballot that included the ERA question as well as 13 other questions, and asked the respondents which ballot questions they would vote to approve. The 1975 and 1976 Gallup polls were of respondents who had heard of or read about the ERA. The 1977 NBC poll prefaced the question, "Do you favor or oppose passage of the Equal Rights Amendment," with a statement that the recent National Women's Conference had passed a resolution calling for approval of the ERA. The Roper polls prefaced the question about favoring or opposing the ERA with a statement saying "there is a lot of controversy for and against the amendment." The Roper polls also gave respondents the option of saying that they had "mixed feelings" about the ERA. In identifying respondents who were uncertain about the ERA, Gallup and NBC gave the option "Not Sure," and Roper gave the option "Don't Know."

Exhibit 4 General Fertility Rate (births per 1000 women aged 15-44), 1909-1982



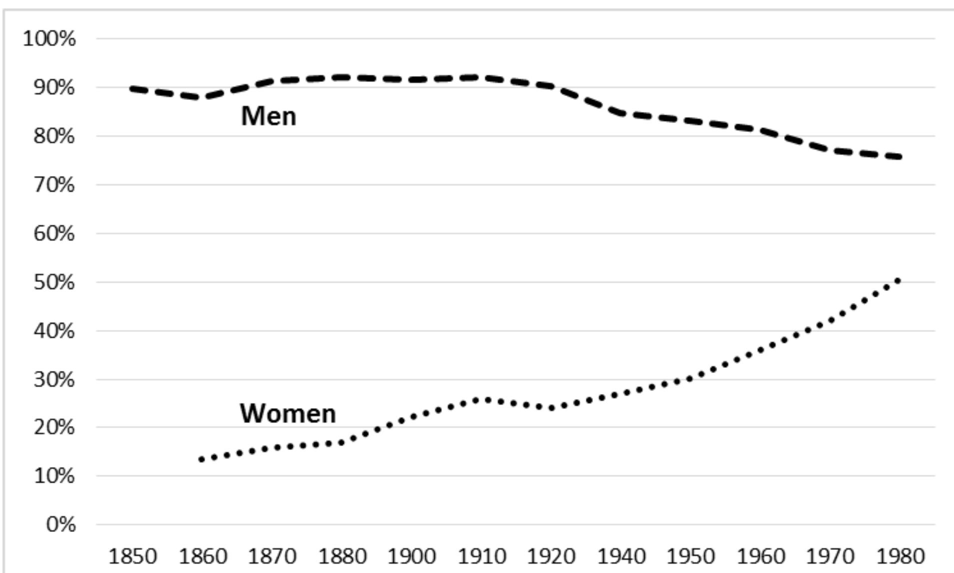
Source: Adapted from Michael R. Haines, "Crude Birth Rate and General Fertility Rate, by Race: 1800-1998," in Susan B. Carter et al., eds., *Historical Statistics of the United States* (New York: Cambridge University Press, 2006), Series Ab 46.

Exhibit 5 Enrollment in Institutions of Higher Education (thousands), by sex, 1929-1982



Source: Adapted from Claudia Goldin, "Enrollment in Institutions of Higher Education, by Sex, Enrollment Status, and Type of Institution: 1869-1995," in Susan B. Carter et al., eds., *Historical Statistics of the United States* (New York: Cambridge University Press, 2006), Series Bc 525-526.

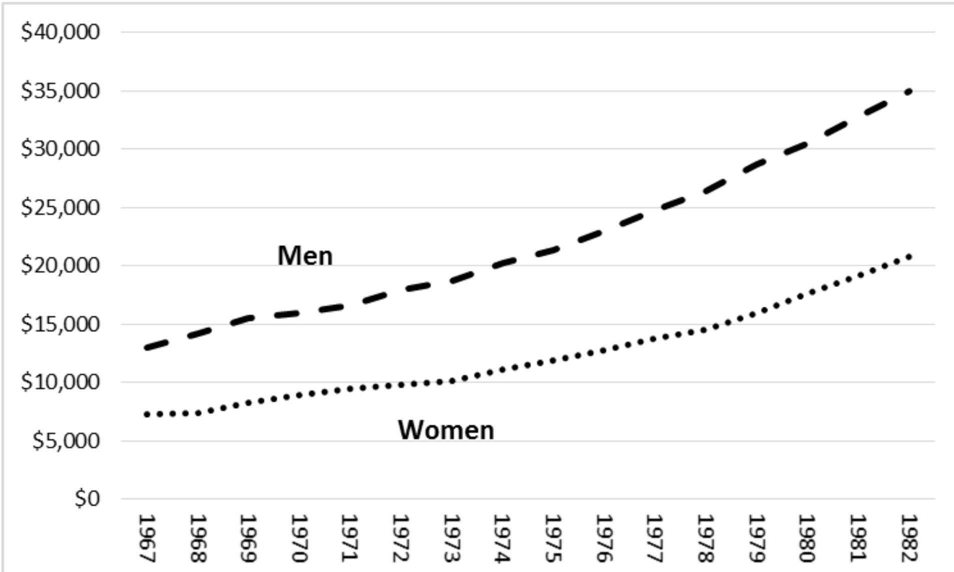
Exhibit 6 Labor Force Participation Rate (free labor only), by sex, 1850-1980



Source: Adapted from Matthew Sobek, "Labor Force Participation, by Sex and Race: 1850-1990," in Susan B. Carter et al., eds., *Historical Statistics of the United States* (New York: Cambridge University Press, 2006), Series Ba 417-424.

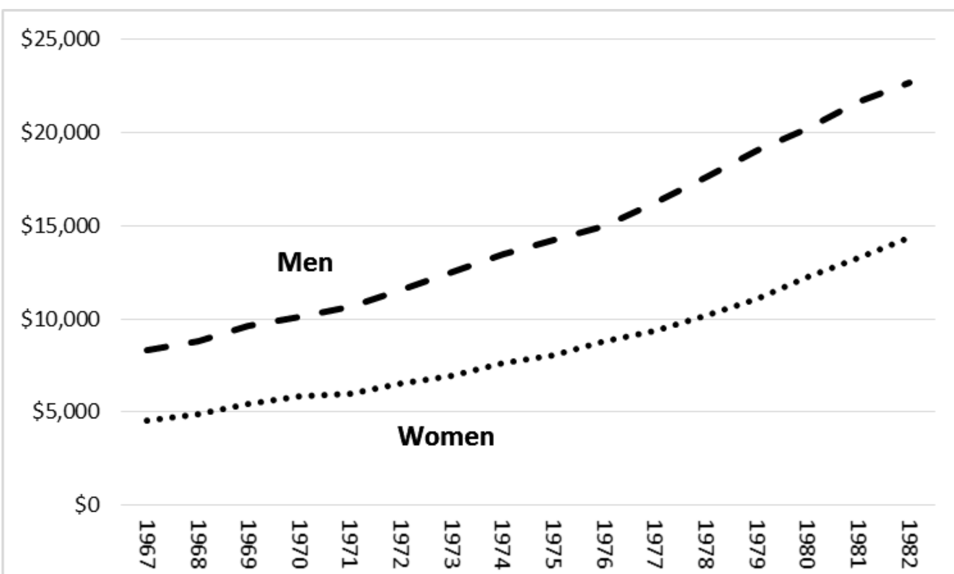
Note: Data points are by decade. Percentages are out of "Noninstitutionalized civilians aged 16 and older." *Historical Statistics* notes that "The wording of the 1910 Census occupation question elicited high participation rates for women."

Exhibit 7a Mean Annual Income, Full-time Workers with at least 4 Years of College, by sex, 1967-1982



Source: Adapted from in Susan B. Carter et al., eds., *Historical Statistics of the United States* (New York: Cambridge University Press, 2006), Series Bc 845 and 856.

Exhibit 7b Mean Annual Income, Full-time Workers with 4 Years of High School, by sex, 1967-1982



Source: Adapted from Richard Sutch, "Employees on Non-Agricultural Payrolls, by Industry: 1919-1999," in Susan B. Carter et al., eds., *Historical Statistics of the United States* (New York: Cambridge University Press, 2006), Series Bc 841 and 852.

Appendix I: Versions of the ERA

Equal Rights Amendment, as proposed to Congress in 1923:

Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction.

Congress shall have power to enforce this article by appropriate legislation.

Equal Rights Amendment, as proposed to Congress in 1948:

Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex.

Congress and the several States shall have power, within their respective jurisdictions, to enforce this article by appropriate legislation.

This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

This amendment shall take effect three years after the date of ratification.

Equal Rights Amendment, as passed by Congress in 1972:

Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

This amendment shall take effect two years after the date of ratification.

Source: Susan Louise Randall, "A Legislative History of the Equal Rights Amendment, 1923-1960" (Ph.D. dissertation, University of Utah), 19, 173; *United States Statutes at Large* 86 (Washington, DC: Government Printing Office, 1972), 1523.

Appendix II: Debates Over Rescissions and Deadlines in the Ratification of U.S. Constitutional Amendments

Supporters of the Equal Rights Amendment (ERA) in the 1970s and early 1980s denied that states had the constitutional authority to rescind ratification of a constitutional amendment. They noted that Article V of the U.S. Constitution, from which states derived the authority to act on proposed amendments, only mentions the power to "ratify," not to rescind. Precedent for states rescinding ratification of a constitutional amendment, however, dates to 1868, when the legislatures of Ohio and New Jersey voted to rescind their ratification of the 14th Amendment. In that case, enough states voted to ratify the amendment, even without counting the states that rescinded, and therefore Congress essentially ignored the rescissions (which is why Ohio and New Jersey still appear, without asterisks, on official lists of states that originally ratified the 14th Amendment). In 1937, the Supreme Court ruled in a case involving a proposed (never ratified) amendment banning child labor that a state could ratify an amendment after rejecting it, but whether it could do the opposite remained unclear.[135]

ERA advocates argued that Congress could extend the ratification deadline without a two-thirds vote because the deadline had been set in the joint resolution proposing the amendment, and only the actual text of the amendment fell under the two-thirds requirement. Notably, the constitutionality of ratification deadlines themselves had also been questioned. Congress set the first one, of seven years, in 1919, in the text of the 18th Amendment, which established Prohibition. The deadline may have been added to win support from members of Congress who wanted to vote for Prohibition without actually seeing it implemented: they could still hope to stop it before the deadline—which, however, they failed to do. Prohibition was ratified in 1920 (and subsequently repealed in 1933). The validity of the 18th Amendment was then challenged in the U.S. Supreme Court, on the grounds that the deadline violated Article V of the Constitution, which indicates no limit on when states can ratify. In 1921, the Court ruled that ratification deadlines were justified, because the will of the people in favor of an amendment could only be expressed contemporaneously with its proposal. Seven-year deadlines were later written into the final clauses of what became the 20th, 21st, and 22nd Amendments (ratified 1933, 1933, and 1951, respectively). Starting with what became the 23rd Amendment (1961), the deadline was removed from the text of the amendment and placed in the joint resolution proposing it. The same procedure was used for what became the 24th (1962), 25th (1965), and 26th (1971) Amendments, and for the ERA. Note that none of first 26 Amendments took more than four years to ratify.[136]

Endnotes

[1] Laura E. Brock, "Religion, Sex, & Politics: The Story of the Equal Rights Amendment in Florida" (Ph.D. dissertation, Florida State University, 2013), 209-25.

[2] Intellectuals had been discussing women's place or role in modern society since the 17th century. Rosemary Zagarri, *Revolutionary Backlash: Women and Politics in the Early American Republic* (Philadelphia: University of Pennsylvania Press, 2007), 12-19, 26-27.

[3] Jill Elaine Hasday, "Contest and Consent: A Legal History of Marital Rape," *California Law Review* 88 (2000): 1389-92. Legal codes explicitly defined rape as something that a man did to a woman "other than his wife."

[4] Quoted Richard Geddes and Sharon Tennyson, "Passage of the Married Women's Property Act and Earning Acts in the Untied States: 1850 to 1920," *Research in Economic History* 29 (2013), 146.

[5] Linda K. Kerber, No Constitutional Right to be Ladies: Women and the Obligation of Citizenship (New York: Hill and Wang, 1998), 11-14.

[6] The term "Woman's Rights" seems to have popularized by the English radical Mary Wollstonecraft when, inspired in part by Tom Paine's book *The Rights of Man* (1791), she published *A Vindication of the Rights of Woman* (1792).

[7] Abigail Adams to John Adams, March 31, 1776, in L. H. Butterfield, ed., *Adams Family Correspondence*, (Cambridge: Harvard University Press, 1963 ff.), 1:370.

[8] John Adams to Abigail Adams, April 14, 1776, in *Adams Family Correspondence*, 1:382.

[9] John Adams to James Sullivan, May 26, 1776, in Robert J. Taylor et al., *Papers of John Adams* (Cambridge: Harvard University Press, 1977 ff.), 4:208-12.

[10] Jan Ellen Lewis, "Rethinking Women's Suffrage in New Jersey, 1776-1807," *Rutgers Law Review* 63:3 (August 2011), 1022-30.

[11] Kerber, No Constitutional Right to Be Ladies, 11-14.

[12] Lewis, "Rethinking Women's Suffrage in New Jersey," 1032-35.

[13] Turnout figures come from Curtis Gans and Matthew Mullin, *Voter Turnout in the United States, 1788-2009* (Washington, DC: CQ Press, 2011).

[14] For a classic account of the concept and workings of the female "domestic sphere"—how it limited women's opportunities yet how women were able to exploit it in certain ways to empower themselves, see Nancy Cott, *The Bonds of Womanhood: The Domestic Sphere in New England, 1780-1835* (New Haven: Yale University Press, 1977; 2nd ed., 1997).

[15] Anne M. Boylan, "Women and Politics in the Era before Seneca Falls," *Journal of the Early Republic*, 10:3 (1990), 363-82.

[16] Lucia McMahon, "'Of the Utmost Importance to Our Country': Women, Education, and Society, 1780-1820," *Journal of the Early Republic* 29:3 (2009), 475-506; Mary Kelley, *Learning to Stand and Speak: Women, Education, and Public Life in America's Republic* (Chapel Hill, NC: University of North Carolina Press, 2006).

[17] David Tyak and Elizabeth Hasnot, Learning Together: A History of Coeducation in America (New York: Russell Sage Foundation, 1992), 46-47; Susan Zaeske, Signatures of Citizenship: Petitioning, Antislavery, & Women's Political Identity (Chapel Hill, NC: University of North Carolina Press, 2003), 106.

[18] Zaeske, Signatures of Citizenship, 18.

[19] Zaeske, Signatures of Citizenship, 12-21, 110.

[20] Zaeske, Signatures of Citizenship, 20, 78-81; Loren Schweninger, ed., The Southern Debate over Slavery, vol.1: Petitions to Southern Legislatures, 1778-1864 (Urbana, Ill.: University of Illinois Press, 2001).

[21] Kristin A. Collins, "Petitions without Number: Widow's Petitions and the Early Nineteenth-Century Origins of Public Marriage-Based Entitlements," *Law and History Review* 31:1 (2013), 1-60; Boylan, "Women and Politics."

[22] Alisse Theodore Portnoy, "'Female Petitioners Can Be Lawfully Heard': Negotiating Female Decorum, United States Politics, and Political Agency, 1829-1831," *Journal of the Early Republic* 23:4 (2004): 573-610; Katheryn Kish Sklar, ed., *How Did the Removal of the Cherokee Nation from Georgia Shape Women's Activism in the North, 1817-1838?* (Binghamton, NY: State University of New York at Binghamton, 2004).

[23] Julie Roy Jeffrey, *The Great Silent Army of Abolitionism: Ordinary Women in the Antislavery Movement* (Chapel Hill, NC: University of North Carolina Press, 1998), 53.

[24] Jeffrey, *Great Silent Army*, 1-3. The importance of female leadership to the creation and maintenance of organized abolitionism in Concord, Massachusetts, is stressed by Sandra Harbert Petrulionis, *To Set This World Right: The Antislavery Movement in Thoreau's Concord* (Ithica, NY: Cornell University Press, 2006).

[25] To cite just a few of countless examples, slave families being broken up by sale is a major theme of Harriet Beecher Stowe's *Uncle Tom's Cabin* (1852), while the sexual exploitation of slave women, repeatedly implied in that book, and discussed more directly in her *Key to Uncle Tom's Cabin; Presenting the Original Documents and Facts on which the Story is Founded* (1853), is a major theme of Harriet Jacobs' now-famous memoir, *Incidents in the Life of a Slave Girl* (1861).

[26] Zaeske, *Signatures of Citizenship*, 36-37, 42-44, 69.

[27] Zaeske, Signatures of Citizenship, 69-73.

[28] Zaeske, *Signatures of Citizenship*, 84-86, 112-13, 119-119, 120-21; see also Gerda Lerner, *The Grimké Sisters from South Carolina: Pioneers for Women's Rights and Abolition*, 2nd ed. (New York: Oxford University Press, 1998).

[29] For the politics of the repeal, see Zaeske, *Signatures of Citizenship,* 206 n27.

[30] Daniel Carpenter and Colin D. Moore, "When Canvassers became Activists: Antislavery Petitioning and the Political Mobilization of American Women," *American Political Science Review*, 108:3 (2014), 479-98. Carpenter and Moore compare all petitions circulating in the same townships during the same sessions of Congress and find that those canvassed by females had a mean of 85 more signatures on them.

[31] Zaeske, *Signatures of Citizenship*, 54-59, 97-99.

[32] Zaeske, Signatures of Citizenship, 149-51.

[33] Stanton, and her collaborator Susan B. Anthony, later claimed (with some exaggeration) that the Seneca Falls convention was the founding event of the women's rights movement, presumably in order to enhance their authority during intra-movement controversies after the Civil War. See Lisa Tetrault, *The Myth of Seneca Falls: Memory and the Women's Suffrage Movement, 1848-1898* (Chapel Hill, NC: University of North Carolina Press, 2014).

[34] Elizabeth Cady Stanton, "Call to the Woman's Rights Convention and a Declaration of Sentiments," in *The First Convention Ever Called to Discuss the Civil and Political Rights of Women, Seneca Falls, N.Y., July 19, 20, 1848*, by Elizabeth Cady Stanton, Lucretia Mott, Martha C. Wright, Mary Ann McClintock and Jane C. Hunt. (Seneca Falls, NY: 1848), 2-4.

[35] Stanton, *Elizabeth Cady Stanton As Revealed in Her Letters, Diary, and Reminiscences*, ed. Theodore Stanton and Harriet S. Blanche (New York: Harper & Row, 1922), 146.

[36] See Norma Basch, In the Eyes of the Law: Married Women's Property Rights in the Nineteenth Century New York (Ithaca, NY: Cornell University Press, 1982).

[37] Joelle Million, Woman's Place, Woman's Voice: Lucy Stone and the Birth of the Women's Rights Movement (Westport, CT: Praeger, 2003), 113-14, 194-96.

[38] Hasday, "Contest and Consent," 1424.

[39] Hasday, "Contest and Consent," 1464-82. Hasday has found two cases in which a husband was prosecuted for helping another man to rape his wife, but none for a man raping his own wife. Hasday did find, however, a gradual recognition by American courts that under very special circumstances, such as when a wife had been ordered by a physician not to have sex, a husband's forcing her to have sex with him anyway might constitute marital cruelty and possibly serve as justifiable grounds for divorce.

[40] Hasday, "Contest and Consent," 1437-38; Jane E. Larsen, "'Even a Worm Will Turn at Last': Rape Reform in Late Nineteenth Century America," *Yale Journal of Law & the Humanities* 9 (1997), 2-3; Tracy A. Thomas, "Misappropriating History in the Law and Politics of Abortion," *Seattle University Law Review* 36 (2012-13), 2-68.

[41] Zaeske, Signatures of Citizenship, 167-70.

[42] Tetrault, *Myth of Seneca Falls*, 19-22.

[43] Strauder v. West Virginia 100 US 303 (1880), 310. See Kerber, No Constitutional Right to Be Ladies, 133-34.

[44] Quoted in Tetrault, *Myth of Seneca Falls*, 28.

[45] Alexander Keyssar, The Right to Vote: The Contested History of Democracy in the United States (New York: Basic Books, 2009), 151.

[46] See Emmeline B. Wells, "Utah," in Elizabeth Cady Stanton, Susan B. Anthony, Ida Husted Harper, and Matilda Joslyn Gage, eds., *The History of Women's Suffrage: 1883-1900* (1902), 936-40; and Martha Pike, "Washington," in Stanton, et al., *History*, 967-68. On Blackwell's experience, see Randolph Hollingsworth, "Introduction," in Alice Stone Blackwell, *Lucy Stone: Pioneer of Women's Rights* (Charlottesville, VA: University Press of Virginia, 2001 [1930]), viii.

[47] Tetrault, *Myth of Seneca Falls*, 59, 66-68, 73-74.

[48] 88 US 162 (1875).

[49] Tetrault, Myth of Seneca Falls, 103.

[50] The party platforms can be found at http://www.presidency.ucsb.edu/platforms.php.

[51] On these issues, see David A. Moss, Marc Campasano, and Dean Grodzins, *An Australian Ballot for California?* (Draft Case Study, 2014), and Dean Grodzins and David A. Moss, *Martin Luther King and the Struggle for Voting Rights* (Draft Case Study, 2014). See also Dayna L. Cunningham, "Who Are to Be the Electors? A Reflection on the History of Voter Registration in the United States," *Yale Law & Policy Review* 9 (1991), 370-404; Jac. C. Heckelman, "The Effect of the Secret Ballot on Voter Turnout Rates," *Public Choice* 82, (1995), 107-124.

[52] Keyssar, *The Right to Vote*, 163-75.

[53] On the connections between suffrage, temperance, anti-immigrant and anti-black sentiment, see Brian Donovan, *White Slave Crusades: Race, Gender, and Anti-Vice Activism*, *1887-1917* (Champaign, Il: University of Illinois Press, 2005), 37-55.

[54] "Suffragette's Remark Haunts College," *New York Times*, May 5, 1998, and Stanton et. al., *History of Woman Suffrage: 1900-1920*, 59, 82-83.

[55] Susan D. Becker, The Origins of the Equal Rights Amendment: American Feminism between the Wars (Westport, CT: Greenwood Press, 1981), 4.

[56] See Keyssar, *Right to Vote*, 170-75; Karen Manners Smith, "New Paths to Power, 1890-1920," in Cott, ed., *No Small Courage*, 405-12.

[57] The platforms can be found at http://www.presidency.ucsb.edu/platforms.php. Ann Marie Nicolosi, "'We Do Not Want Our Girls to Marry Foreigners: Gender, Race, and American Citizenship," *NWSA Journal* 13:3 (2001), 1-21; Kerber, *No Constitutional Right to be Ladies*, 41-46.

[58] Nancy F. Cott, *The Grounding of Modern Feminism* (New Haven: Yale University Press, 1987), 13, 15.

[59] Ruth Bader Ginsburg, "The Need for the Equal Rights Amendment," *American Bar Association Journal* 59:9 (1973), 1013.

[60] Kerber, No Constitutional Right to be Ladies, 136-39, 41-43.

[61] Alice Paul, "Pro," *Congressional Digest* 3:6 (1924), 198, and "Pro," *Congressional Digest* 22:4 (1943), 107.

[62] Roberta W. Francis, *The Equal Rights Amendment: Frequently Asked Questions*, National Council of Women's Organizations ERA Task Force (March 2013).

[63] "The Legislative Journey of the Equal-Rights Amendment, 1923-1943," *Congressional Digest* 22:4 (1943), 105. The Republicans were Senator Charles Curtis, who would later become the Senate majority leader (1925-29) and the U.S. Vice President (1929-33), and Representative Daniel R. Anthony, a nephew of Susan B. Anthony

[64] "The Legislative Journey of the Equal-Rights Amendment," 105-6.

[65] Margaret Wells, "Con," *Congressional Digest* 22:4 (1943), 118; Mary Anderson, "Con," *Congressional Digest* 22:4 (1943), 119-20; Birch Bayh, "Pro," *Congressional Digest* 56:6/7 (1977), 172; Susan Louise Randall, "A Legislative History of the Equal Rights Amendment, 1923-1960" (Ph. Dissertation, University of Utah, 1979), 164, 173.

[66] *Muller v. Oregon*, 208 U.S. 412 (1908). Brandeis's brief, famous as one of the first to make use of sociological data, may be found at http://www.law.louisville.edu/library/collections/brandeis/node/235.

[67] Ruth Bader Ginsburg, "*Muller v. Oregon*: One Hundred Years Later," *Willamette Law Review* 45 (2008-2009), 366. Note, however, that in 1923 the Supreme Court ruled in the case of *Adkins v. Children's Hospital* that minimum wages laws for women (as opposed to maximum hour laws) were unconstitutional, although it reversed this ruling in 1937 in the case of *West Coast Hotel Co. v. Parrish.* Only after the latter ruling did Congress enact the first federal minimum wage. See Ginsburg, "*Muller v. Oregon*," 367-68. See also David A. Moss, *Socializing Security: Progressive-Era Economists and the Origins of American Social Policy* (Cambridge: Harvard University Press, 1996), esp. chapter 6 ("The Gendered Politics of Protection"), pp. 97-116.

[68] The platform called for "an amendment to the Constitution providing for equal rights for men and women." Quoted in Susan Louise Randall, "The Legislative History of the Equal Rights Amendment, 1927-1960" (Ph.D. dissertation, University of Utah, 1979).

[69] See Kathryn Kish Sklar, ed., *Who Won the Debate over the Equal Rights Amendment in the 1920s?* (Binghamton, NY: State University of New York at Binghamton, 2000). On the feminist jury rights movement, see Holly J. McCammon et. al., "Becoming Full Citizens: The U.S. Women's Jury Rights Campaigns, the Pace of Reform, and Strategic Adaptation," *American Journal of Sociology* 13:4 (2008), 1104-47. McCammon et al. show that the League of Women Voters, which until 1954 opposed the ERA, and did not endorse it until 1972, was central to the state jury campaign movement. On the League and the ERA, see The League of Women Voters, *Changed Forever: The League of Women Voters and the Equal Rights Amendment* (Washington, DC: League of Women Voters, 1988). On the conflict between the NWP and League and other feminist groups in the 1920s and 1930s, see Becker, *Origins of the Equal Rights Amendment*, 197-234.

[70] Susan Ware, "Women and the Great Depression," http://www.gilderlehrman.org/history-by-era/great-depression/essays/women-and-great-depression, accessed Oct. 12, 2013; "Frances Perkins," http://www.ssa.gov/history/fpbiossa.html, accessed Oct. 12, 2013; Cynthia Harrison, *On Account of Sex: The Politics of Women's Issues, 1945-1968* (Berkeley: U. of California, 1988), 277n-278n, 16.

[71] Suzanne B. Mettler, "Federalism, Gender, & the Fair Labor Standards Act of 1938," *Polity* 26:4 (1994), 635-54; Caroline Lexow Babcock, "Pro," *Congressional Digest* 22:4 (1943), 116-17; William Green, "Con," *Congressional Digest* 22:4 (1943), 120; Congress of Women's Auxiliaries, C.I.O., "Con," *Congressional Digest* 22:4 (1943), 125.

[72] Scott Sigmund Gartner, Table Ed1-5, "Military personnel and casualties, by war and branch of service: 1775-1991," Table Ed26-47. "Military personnel on active duty, by branch of service and sex: 1789–1995," "Historical Statistics of the United States"; http://www.sss.gov/induct.htm. See Kerber, *No Constitutional Right to be Ladies*, 248-49, on how the U.S. debated whether to follow the British example, and draft women for nursing or war work.

[73] Russell, "Legislative History," 148-50.

[74] On ERA advocates' use of the U.N. Charter, see Randall, "Legislative History," 202-5. The women's rights provisions in the Japanese constitution were largely the work of Beate Sirota Gordon, then a 22-year-old staffer in the American occupation government and recently-naturalized American citizen. See Christine Russell, "The American Woman who wrote Equal Rights into Japan's Constitution," *The Atlantic*, Jan. 5, 2013. For an account of this development from a post-colonial perspective, see Mire Koikari, "Exporting Democracy?: American Women, 'Feminist Reforms,' and Politics of Imperialism in the U.S. Occupation of Japan, 1945-1952," *Frontiers: A Journal of Women Studies*, 23:1 (2002), 23-45.

[75] Russell, "Legislative History," 170.

[76] Harrison, On Account of Sex, 25; Miriam Shneir, ed., Feminism in Our Time: The Essential Writings, World War II to the Present (New York: Vintage, 1994), 40; Kerber, No Constitutional Right to be Ladies, 70.

[77] See "Harvard Medical School Opened to Women: School Ends Exclusion Policy of 136 Years—War Need is Factor," *New York Times,* Sep. 26, 1944; Nora N. Nercessian, *Worthy of the Honor: A brief history of women at Harvard Medical School* (Boston: President and Fellows of Harvard College, c.1995); *A Compilation in Commemoration of Celebration 50,* in *Harvard Women's Law Journal* 27 (2004), 299-410; Ann Braude, "A Short Half-Century: Fifty Years of Women at Harvard Divinity School," *Harvard Theological Review* 99:4 (2006), 369-80; "50 Years of Women in the MBA Program," http://www.hbs.edu/women50/.

[78] Harrison, *On Account of Sex*, 30-32, 35.

[79] On the emergence of the Civil Rights Movement, see Dean Grodzins and David A. Moss, *Martin Luther King and the Struggle for Voting Rights* (Draft Case Study, 2014). The "waves" model for understanding feminist movements continues to dominate scholarship on the topic. For both an explanation and critique of this model, see Nancy A. Hewitt, "Introduction," in *No Permanent Waves: Recasting Histories of U.S. Feminism*, ed. Nancy A Hewitt (New Brunswick: Rutgers University Press, 2010), 1-10.

[80] Miriam Schneier, ed. Feminism in Our Time: The Essential Writings, World War II to the Present (New York: Vintage, 1994), 38-47; Harrison, On Account of Sex, 102, 116-19.

[81] Gail Collins, When Everything Changed: The Amazing Journey of American Women from 1960 to the Present (New York: Back Bay Books, 2009), 72.

[82] See Kerber, *No Constitutional Right to be Ladies*, 188-94; Serena Mayeri, "Constitutional Choices: Legal Feminism and the Historical Dynamics of Change," *California Law Review* 92:3 (2004), 762-69.

[83] Betty Friedan, *The Feminine Mystique* (New York: Norton Critical Edition, 2013 [1963]), Kirsten Fermaglich and Lisa M. Fine, eds.

[84] Quoted in Mayeri, "Constitutional Choices," 771, emphasis original.

[85] Cynthia Ellen Harrison, *On Account of Sex: The Politics of Women's Issues, 1945-1968* (Berkeley: University of California Press, 1989), 176-81; Collins, *When Everything Changed*, 75-81; Schneier, ed. *Feminism in Our Time*, 71-75; Mayeri, "Constitutional Choices," 770-73.

[86] Mayeri, "Constitutional Choices," 773-77.

[87] Dennis A. Deslippe, "Organized Labor, National Politics, and Second-Wave Feminism in the United States, 1965-1975," *International Labor and Working Class History* 49 (1996), 147.

[88] Harrison, *On Account of Sex*, 192-95; Collins, *When Everything Changed*, 84-86; Schneier, ed., *Feminism in Our Time*, 91-102; Mayeri, "Constitutional Choices," 790-92.

[89] William H. Chafe, "The Road to Equality, 1962-today," in Nancy F. Cott, ed., *No Small Courage: A History of Women in the United States* (New York: Oxford, 2000), 548-54. On the escalation of the Vietnam War, see http://www.sss.gov/induct.htm, visited Oct. 14, 2013. On the origin of the term "sexism," see Andrea Rubinstein ("tekanji"), "The Origin of the Word 'Sexism,'" http://finallyfeminism101.wordpress.com/2007/10/19/feminism-friday-the-origins-of-the-word-sexism/.

[90] Collins, When Everything Changed, 193-94.

[91] See Craig J. Konnoth, "Created in Its Image: The Race Analogy, Gay Identity, and Gay Litigation in the 1950s-1970s," *The Yale Law Journal* 119:2 (2009), 329-52.

[92] See Mayeri, "Constitutional Choices"; Ginsburg, "Need for an Equal Rights Amendment."

[93] Eileen Shanahan, "Equal Rights Bill Voted by House, 350-15; Amendment to Constitution, Introduced for 47 Years, Bars Discrimination; Foes are Led by [Rep. Emanuel] Celler [D-NY]; Senate Action this Year Is Uncertain, Though Votes in Past Favored It," *New York Times* (August 11, 1970); and Shanahan, "Senators Amend Equal Rights Bill; It May Die in '70; Provisions Allowing Prayers in Schools and Limiting Draft to Men; House Accord Unlikely; Measure May be Shelved or Sent to a Conference Composed of Its Foes," *New York Times* (Oct. 14, 1970). The prayer amendment added by the Senate to the ERA would have allowed public prayers in public schools, which had been ruled unconstitutional by the Supreme Court in 1963.

[94] See Shanahan, "Equal Rights Amendment Passed by House, 354-23," *New York Times* (Oct. 13, 1971); "Equal Rights Amendment is Approved by Congress," *New York Times* (March 23, 1972).

[95] Deslippe, "Organized Labor," 154-58; Donald T. Critchow and Cynthia L. Stachecki, "The Equal Rights Amendment Reconsidered: Politics, Policy, and Social Mobilization in a Democracy," in Bruce A. Schulman and Julian E. Zelizer, eds., *The Constitution and Public Policy in U.S. History* (University Park: Penn State University Press, 2009), 159.

[96] See "Carter Reaffirms Equal Rights Stand," *New York Times*, June 14, 1976; "Women's Equality Day Declared by President," *New York Times*, Aug. 27, 1976. Note, however, that President Ford faced a strong challenge for the 1976 Republican nomination from former Governor Ronald Reagan of California, whose supporters at the national party convention opposed including a pro-ERA plank in the party platform; the platform committee only endorsed the ERA by a vote of 51-47. See "Platform Panel Votes to Endorse Equal Rights Plan; Opponents in G.O.P. Group May Fight the Proposal on Convention Floor," *New York Times*, August 13, 1976.

[97] *Reed v. Reed*, 404 U.S. 71 (1971), 72-73.

[98] Kerber, *No Constitutional Right to be Ladies.* Ginsburg acknowledged her debt to Murray by listing her, honorifically, as a co-author of the brief.

[99] *Reed v. Reed*, 404 U.S. 71 (1971), 74. That civil rights litigation did not focus on family law has been attributed, by Pauli Murray and others, to male domination of the black civil rights movement. See Konnoth, "Created in its Image," 359.

100 Charlotte B. Hallam, "Legal Tools to Fight Sex Discrimination," *Labor Law Journal* 24:12 (1973), 803.

101 Lalenya Weintraub Siegel, "The Marital Rape Exemption: Evolution to Extinction," *Cleveland State Law Review* 43 (1995), 364. ,

102 See J.C. Barden, "Confronting the Moral and Legal Issue of Martial Rape," *New York Times* (June 1, 1981); "New Laws Recognizing Marital Rape as a Crime," *New York Times* (Dec. 29, 1984); Siegel, "The Marital Rape Exemption: Evolution to Extinction," 364.

103 On Paul in 1977, see Collins, *When Everything Changed*, 213.

104 Nancy Elizabeth Baker, "Too Much to Lose, Too Little to Gain: The Role of Rescission Movements in the Equal Rights Amendment Battle" (Ph.D. Dissertation, Harvard University, 2003), 300. The referenda took place in 1975; New Jersey voters rejected the proposed state ERA by 60,000 votes, New York voters by a 60-40% margin.

105 W. Dale Nelson, "ERA Backers Win Extension," *The Washington Post* (Oct. 7, 1978).

106 Nelson, "ERA Backers Win Extension."

107 *State of Idaho v. Freeman* 529 F. Supp 1107 (1981); Baker, "Too Much to Lose," 380-90.

108 Quoted in Boyd K. Packer, "The Equal Rights Amendment," *Ensign* (March 1977), https://www.lds.org/ensign/1977/03/the-equal-rights-amendment?lang=eng.

109 *State of Idaho v. Freeman*, 478 F. Supp. 33 (D. Idaho 1979); J.B. Hawes, *The Mormon Image in the American Mind: Fifty Years of Public Perception* (New York: Oxford University Press, 2013), 88-94.

110 See Carol Felsenthal, The Sweetheart of the Silent Majority: The Biography of Phyllis Schafly (New York: Doubleday & Co., 1981), and Donald T. Critchow, Phyllis Schlafly and Grassroots Conservatism: A Woman's Crusade (Princeton: Princeton University Press, 2005).

111 Phyllis Schlafly, "Con," *Congressional Digest* (1977), 191; Brock, "Religion, Sex, & Politics," 162, 73, 160.

112 Schlafly, "Con,"189; Kerber, *No Constitutional Right to be Ladies*, 267, 284-87.

113 Schlafly, "Con," 189, 191.

114 See Konnoth, "Created in Its Image," 363-64, 364n219. The case was *Singer v. Hara*, 522 P.2d 1187 (Washington Ct. App. 1974).

115 Quoted in Critchow, *Phyllis Schlafly*, 218.

116 Critchow and Stachecki, "The Equal Rights Amendment Reconsidered," 168-69. Feminists also argued that criminalizing abortion merely forced the practice underground, making it less safe.

117 Quoted in Critchow, *Phyllis Schlafly*, 218.

118 See Brock, "Religion, Sex, & Politics," 71.

119 "Democratic Party Platform of 1980," http://www.presidency.ucsb.edu/ws/?pid=29607. This transcription of the platform contains an obvious error: the text, as transcribed, declares that the party supports the "fabrication," rather than "ratification," of the ERA.

120 "Republican Party Platform of 1980," http://www.presidency.ucsb.edu/ws/?pid=25844.

121 Critchow, *Phyllis Schlafly*, 280, 124, 268.

122 Lou Cannon, *President Reagan: The Role of a Lifetime* (New York: Simon & Schuster, 1991), 722.

123 "Gender Gap: Voting Choices in Presidential Elections," available from the Rutgers Center for American Women and Politics, http://www.cawp.rutgers.edu/fast_facts/voters/gender_gap.php; Christina Wolbrecht, *The Politics of Women's Rights: Parties, Positions, and Change*, 48. The year 1980 was by no means the first time men and women voted differently. See *Sex as a Political Variable*, 3.

124 Edmund C. Burke, "Arizona Judge, a Woman, is High Court Contender," *New York Times,* July 2, 1981; Linda Greenhouse, "Justice O'Conner Seated on Nation's Highest Court," *New York Times*, September 26, 1981; Nancy McVeety, *Sandra Day O'Conner: Strategist on the Supreme Court*, 14-17.

125 The most complete account of the Florida ERA fight is Brock, "Religion, Sex, & Politics," but see also Joan S. Carver, "The Equal Rights Amendment and the Florida Legislature," *The Florida Historical Quarterly* 60:4 (April 1982), 455-81, and Kimberly Wilmont Voss, "The Florida Fight for Equality: The Equal Rights Amendment, Senator Lori Wilson, and Mediated Catfights in the 1970s," *The Florida Historical Quarterly* 88:2 (2009), 173-208. In reporting legislative tallies, we follow Brock in not counting courtesy votes. In Florida, legislators absent for a roll-call were allowed to record a vote later, so long as their doing so did not affect the outcome. Owing to these courtesy votes, the final tally in the 1972 Florida House ERA vote, cited by both Carver and Voss, was 91-4.

126 The Florida Senate president claimed no vote could take place because the state constitution forbade the legislature from ratifying any proposed amendment to the U.S. Constitution until after a general election. The Florida Attorney General, however, held that this provision was void: the U.S. Supreme Court had decades earlier ruled that states could not restrict the ratification process. After the failed 1972 Senate vote, ERA supporters in Florida challenged this provision of their state constitution in federal court. The U.S. Supreme Court overturned it in 1973. See Brock, "Religion, Sex, & Politics," 34-41.

127 Brock, "Religion, Sex, & Politics," 238.

128 Anita Bryant, *The Anita Bryant Story,* quoted in Gillian Frank, "'The Civil Rights of Parents': Race and Conservative Politics in Anita Bryant's Campaign against Gay Rights in 1970s Florida," *Journal of the History of Sexuality* 22:1 (2013), 127.

129 Brock, "Religion, Sex, & Politics,"140-43.

130 Brock, "Religion, Sex, & Politics," 180-82. Altogether, the commission proposed 8 amendments; all 8 were rejected in the same referendum as the "little ERA."

131 Brock, "Religion, Sex, and Politics," 211n, cites a news report from June 1982 regarding a Harris Poll, in which the pollsters asked respondents in Florida what they thought of specific arguments against the ERA, such as that it would expose women to military combat. Even when, in this way, the respondents were exposed to anti-ERA claims, they continued to favor the ERA by a margin of 57% to 37%.

132 The 1979 vote was unusual. The ERA was almost kept from a floor vote in Florida when the Senate Rules Committee voted against recommending a ratification resolution. A House supporter surprised opponents, however, by proposing ERA ratification as an amendment to a human rights bill that the state Senate had already approved. The amended law passed the Florida House (64-52), and instead of being referred, as was customary, to the Rules Committee, was immediately brought before the full Senate for a vote. The law with the ERA rider attached was defeated (19-21) in the Florida Senate. See Brock, "Religion, Sex & Politics," 187-97.

133 "AFL-CIO Moves its Convention out of Florida: ERA is cited," *Chicago Tribune*, Jan. 6, 1979; Mark Albright, "ERA Supporters to Expand Boycott," *The Evening Independent*, May 5, 1980; "Disney World Angers NOW," *Boca Raton News,* January 20, 1981.

134 Brock, "Religion, Sex, & Politics," 217-24.

135 See *State of Idaho v. Freeman* 529 F. Supp 1107 (1981); William S. Sininger, "Can States Rescind ERA Ratification Votes?" *Human Rights* 8:2 (1979), 46-47, 56; Baker, "Too Much to Lose."

136 See Mason Kalfus, "Why Time Limits on the Ratification of Constitutional Amendments Violate Article V," *The University of Chicago Law Review* 66:2 (1999), 437-67; "Ratification of Constitutional Amendments," http://www.usconstitution.net/constamrat.html.