FOREWORD

In celebration of the centennial of the Nineteenth Amendment, it is my pleasure to introduce a special issue of *The Georgetown Law Journal*. This issue brings together a series of articles that examines the legacy of the Nineteenth Amendment and the ongoing push for equality.

The American Bar Association formed the Commission on the Nineteenth Amendment in anticipation of this historic anniversary. The Commission seeks to educate the public about the Nineteenth Amendment, as well as to honor those who fought for women's suffrage and those who continue to fight for equality. In collaborating with *The Georgetown Law Journal* and the talented scholars who authored the essays for this issue, we hope to achieve both goals.

Ratified in 1920, the Nineteenth Amendment promised—and still promises—that:

> *The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.*

The passage of the Nineteenth Amendment was a historic moment that paved the way for the largest expansion of democracy in the history of our nation. But the fruits of the suffragists' labor were bittersweet. The movement faced many challenges in the following years, including low voter turnout by women, barriers to black women's voting rights, and protracted legal battles.

The Amendment is the legacy of a broader awakening of the need for equality. Although much of the later publicity focused on the importance of the movement on the East Coast, including the famous Seneca Falls Convention, women in the American West enjoyed the right to vote as early as 1869, predating the ratification of the Nineteenth Amendment by fifty years.[1] As a native of Wyoming, I am proud to note that the Wyoming Territory, and later the state of Wyoming, was the first to grant women the right to vote.

The Amendment's ratification marked the beginning of a longer struggle for women's equality. The language of the Nineteenth Amendment is narrow; it protects abridgement of the right to vote "on account of sex," but, at least initially, did little else to balance the scales of equality. Long before the Nineteenth Amendment, the Supreme Court rejected the idea that women had a constitutional right to serve on juries.[2] The Court also concluded women had no constitutional right to go to the bar—either as a lawyer[3] or as a bartender.[4]

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1. Sandra Day O'Connor, The History of the Women's Suffrage Movement, 49 VAND. L. REV. 657, 662–63 (1996).
2. Strauder v. West Virginia, 100 U.S. 303 (1880).
3. Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1873).
4. Goesaert v. Cleary, 335 U.S. 464 (1948).

Years after ratification of the Amendment, discrimination "on account of sex" remained a battleground. Women were excluded from the "equal" in the Equal Protection Clause. Even in the face of some legislative successes, court challenges continued to address sex discrimination on a piecemeal and case-by-case basis. The ratification of the Equal Rights Amendment failed in the 1980s, leaving a gaping hole in protection for both men and women. Today, the United States is the only high-income, developed country without a national, paid maternity-leave law. It is also one of only seven countries that has not ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, which commits to ending gender-based discrimination. The World Economic Forum ranks the United States fifty-third in wage equality.[5] The list goes on—women still have a long way to go.

It is this shortfall, and women's persistence to rectify it, that is a common thread of this special issue. There is no better way to open the discussion than with a conversation with Supreme Court Justice Ruth Bader Ginsburg, which I was fortunate to facilitate at Georgetown University Law Center earlier this year. Our conversation followed Justice Ginsburg from childhood, when she was raised by a mother who marched for the Nineteenth Amendment; to her advocacy as a legal trailblazer, when she tirelessly fought against sex-based discrimination; to her current role as Supreme Court Justice, where she has authored landmark opinions (and keeps up with a formidable workout routine!). Justice Ginsburg's career serves as an inspiration and a reminder that we all have the responsibility and power to help realize a more equitable future.

The articles, authored by scholars at the top of their field, explore voting rights, women's rights as they intersect with race, LGTBQ+ rights, and the history of the Nineteenth Amendment. And while the authors explore the contours of the Nineteenth Amendment through a unique lens, they are united in adopting approaches and proposing solutions that envision a more robust understanding of the Nineteenth Amendment.

The issue begins by exploring the scope of the Nineteenth Amendment's protection. In *Thin and Thick Conceptions of the Nineteenth Amendment Right to Vote and Congress's Power to Enforce It*, Richard Hasen and Leah Litman rebuke the idea that the Amendment "merely prohibits states from enacting laws that prohibit women from voting once the state decides to hold an election" provides thin protection. Rather, they argue a "thick" understanding of the Nineteenth Amendment, which would allow plaintiffs to attack restrictive voting laws burdening women, aligns better with its text and history, as well as with a synthetic interpretation of the Constitution and its expanding guarantees of voting rights. This more expansive understanding of the Nineteenth Amendment, Hasen and Litman contend, redeems the Amendment from its racist origins and sexist limitations.

In *Reconstructing Liberty, Equality, and Marriage: The Missing Nineteenth Amendment Argument*, Nan Hunter looks to the genesis of the Nineteenth Amendment, the Declaration of Sentiments, to suggest that "there is yet another

5. WORLD ECON. FORUM, GLOBAL GENDER GAP REPORT 2020, at 9 (2020), http://www3.weforum.org/docs/WEF_GGGR_2020.pdf [https://perma.cc/5E2F-BBF8].

unmined and underappreciated dimension of the Nineteenth Amendment, one that focuses on its consequences for an institution—marriage—rather than on its ramifications for women." After tracing the evolving relationship between women's suffrage and marriage, Hunter argues that modern-day calls for marriage equality implicate the right to redefine marriage in ways derivative of the goals sought by the framers of the Nineteenth Amendment. In doing so, she envisions a model for marriage equality bound in the Nineteenth Amendment that is stronger than the "more generic hybrid liberty–equality principle" adopted by the Supreme Court in *Obergefell v. Hodges*.[6]

Recognizing that 2020 is both the 100th anniversary of the Nineteenth Amendment and the 150th anniversary of the Fifteenth Amendment, Catherine Powell and Camille Gear Rich examine the intersection between race and gender in *The "Welfare Queen" Goes to the Polls: Race-Based Fractures in Gender Politics and Opportunities for Intersectional Coalitions*. Powell and Rich reflect on "the ways that race has been used to fracture women's efforts at coalition politics." In particular, they look to how the "toxic racial construct" of the welfare queen has been used in the election context to weaken the perceived strength of American democracy; distract from large-scale, institutionalized voting fraud; undermine the voting-right claims of immigrants, parolees, and others; and normalize the idea that a large swath of the population should only have claim to liminal voting rights. They then deploy critical-race and feminist-theory tools to conceptualize and critique current cross-racial coalitions, with the ultimate goal of deepening possibilities of cross-racial coalition politics and legal reform.

In Reva Siegel's *The Pregnant Citizen, from Suffrage to the Present*, she explains that "[j]udgments about pregnancy—like judgments about race—rest on understandings about social roles," and that such understandings "continued to shape the law even after women's enfranchisement, despite women's efforts to democratize family structure in order to secure equal citizenship." Recognizing the historic power of the law in enforcing family roles, Siegel explores how the Supreme Court has integrated pregnancy into the framework of its equal protection sex-discrimination cases and suggests ways Congress can remedy decades of sex-role stereotyping of mothers and potential mothers-to-be by using its legislative power to enforce the Fourteenth and Nineteenth Amendments.

My hope is that these articles not only evoke a deep respect for the efforts of our mothers, grandmothers, and great-grandmothers, along with the men who supported the cause and voted for ratification of the Nineteenth Amendment, but also inspire us to persist in our work toward a better, more equitable future.

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6. 135 S. Ct. 2584 (2015).