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The 19th **Amendment** at 100

**Did Women Vote** Once they had the **Opportunity?** 

From 19th **Amendment to ERA** 

**Ensuring Access to** the Ballot Box

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# Did Women Vote Once they had the Opportunity

J. Kevin Corder & Christina Wolbrecht

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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 so

Nineteenth Amendment to the Constitution of the United Sta

The ratification of the 19th amendment in August of 1920 was a pivotal moment, the culmination a more than 70-year struggle to gain voting rights for women. But what happened after ratification In order to translate this new right into actual votes by women, local and state governments, politic parties, advocacy groups, and individual women needed to learn how to navigate a new legal orde For women, winning the vote gave way to a long-term effort to overcome social norms that discouraged participation and lack of experience with voting itself. Parties and interest groups with a long history reaching out to and mobilizing male voters had to learn what, if any, changes in strategies or appeals would be required to reach women. State and local governments had to add staff, resources, and equipment to accommodate the influx of new voters, in general and in time fc the November 1920 presidential election only three months removed from the ratification. The initial verdict and much of the early scholarship concluded that woman suffrage was a failure as turnout was low and the addition of women voters failed to shake up the two-party balance of power. While the observers were right in important ways—women's turnout was indeed lower tha men's—we now know that there were a host of legal and organizational factors that conspired to block or slow the mobilization of women. The incorporation of women as full equals in the elector process would take decades, and understanding why this is the case helps us better understand the challenges facing efforts to make voting rights a reality for traditionally marginalized groups.

# What is the government's role?

The ratification of said [Nineteenth) amendment placed additional burden upon this department ... The time outside registration in wards was extended by direction of the Mayor ... 3 evenings before the presidential election, and 2 additional registrars were added to each ward registration place. Te

additional registrars were employed in the central office ... [for] many days and evenings for this registration.

Annual Report of the Boston Election Department for the Year 1920

The U.S. Constitution itself is famously silent on the issue of voting rights; the framers did not expect most people to vote and left the practice of elections almost entirely to the states. More than 200 years later, the Supreme Court reaffirmed this in *Bush v. Gore* (2000): "The individual citizen has no federal constitutional right to vote for electors for the President of the United States." Whil modern state and local election departments engage in get-out-the-vote (GOTV) efforts and public relations campaigns in the U.S. today, no state actor (federal, state, or local) is charged with ensuring that each person can and does cast a ballot in every election.

Before the 1920 general election, some state and local governments chose to accommodate new women voters, although they may have (like the head of the Boston Election Department above) complained about the "additional burden." In Bridgeport, Connecticut, for example, the "veteran registrar of voters" claimed women's suffrage required "a great deal of extra work, but can be don nevertheless." In anticipation, Bridgeport ordered fourteen new voting machines, enough to handle doubling of the electorate, although the registrar doubted "it will go that high."

After ratification, the state of Connecticut called a special legislative session to "provide the state with sufficient legal basis for receiving women as voters," including increasing the number of registrars. Connecticut and other states also automatically rolled women registered for school elections (permitted by a number of states prior to 1920) over to general election lists. In another example of accommodation, the Quincy (MA) City Council voted in special session to hold primaries in the smaller precincts, rather than wards, to accommodate the expected influx of women voters in 1920.

Not all states chose to be so accommodating of new women voters. In the most extreme examples Arkansas, Georgia, Mississippi, and South Carolina—women were prohibited from voting in the 1920 presidential election because ratification in August took place after deadlines to register or papell taxes. To be clear, this was a *choice*; other states with similar provisions found a way to legislate accommodations for new women voters, such as temporary legal changes and registration days for women only.

More generally, state election laws contained a range of restrictions and requirements at the time c women's enfranchisement, and permitted considerable bureaucratic discretion in the enforcement

black and white women seeking to register to vote in advance of the 1920 presidential election overwhelmed registration offices. The city responded by appointing three additional deputies for white women, but multiple requests to make similar accommodations for black women were ignored. The result was a long line of black women outside registration offices, due to both the small number of registrars and the more frequent challenges to the black woman vote. Even states that accommodated women often had restrictive election laws that created barriers for women. Despite extending registration opportunities for women, both Connecticut and Massachusetts required a literacy test. Massachusetts added a poll tax, while Connecticut piled on a morals clause and a long residency requirement.

### If the state does not mobilize, who does?

Given states' lack of responsibility to get voters to the polls, the onus for voter mobilization falls t individuals themselves, as well as to political parties and civic, labor, religious, and other organizations. Not surprisingly, suffrage advocates were eager to meet this need. Suffragists reach out to the mayor of Bridgeport the day the Nineteenth Amendment was ratified. Their offer of assistance "was gladly accepted" and space in City Hall offered to them. The leading national suffrage organization, the National American Woman Suffrage Association (NAWSA), voted in 1919 to dissolve their organization when the fight was won, and to create a new organization, the League of Women Voters, to continue their work on behalf of a political voice for women. The LWV chapters engaged in a range of GOTV activities, including citizenship schools, regular radio broadcasts, and practical demonstrations of election machinery at fairs and other locations in the years following suffrage: The *St. Paul Dispatch* reported "Women Learn How to Vote at Fair" (September 6, 1920).

Anticipating suffrage success, both major parties created national women's committees to mobiliz women voters. For the most part, actual GOTV work was the province of state and local party organizations. Women's clubs established by both candidates and parties held teas, presented speakers, and made the case for the appeal of the candidate on the issues that they believed matter most to female voters. In Massachusetts, for example, "Women Taught How to Run An Election: Republicans of Fair Sex Open Headquarters," and, in Minnesota, "Coolidge Club Plans to Hold Precinct Teas; Women Voters to Hear Speakers at a Series of Meetings."

While these efforts were substantial and often effective, leaving voter mobilization to non-state actors has limits and bias. A state-led mobilization effort would ostensibly be required to mobilize *all* women, regardless of preferences or positions. Efforts led by parties and interested

# What happened?

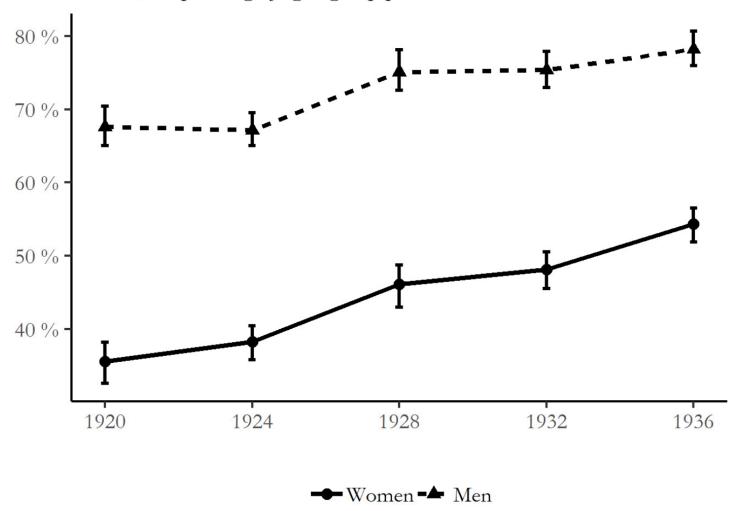
While states now maintain records of who votes in which elections, in the 1920s this type of information was either not recorded, not preserved, or did not include the sex of the voter. Today valso track who votes through exit polls and public opinion surveys, but those tools either did not exist or were not reliable in the 1920s. We figured out what proportion of women and men voted using a statistical tool known as ecological inference. Ecological inference lets us combine information from the U.S. census about the population (in this case, the number of voting-age women and men) with information from the voting record (such as the number of votes cast for eaparty) to estimate the percentage of women and men who voted and for which parties in a sample 10 states. (If you're interested, our 2016 book, *Counting Women's Ballots*, goes into details about the data, methods, and detailed findings).

Our estimates of women's turnout immediately after suffrage suggest that women's turnout initiall lagged men's by a wide margin, as Figure 1 shows. While the gap slowly closed, even by 1936, nearly 20 years after ratification, women's turnout was still about 20 percentage points behind men Dominant narratives after suffrage, in popular and academic conversation, put the blame for women's lower turnout squarely on the shoulders of women themselves. As early as 1924, headlin from *Good Housekeeping* (Is Woman's Suffrage a Failure?) to *Harper's* (Are Women a Failure in Politics?) and beyond declared women's suffrage a failure because women chose not to vote (and when they did, voted like their husbands). Lamenting women's failure, as women, to embrace their role as voters remained a theme for decades. A long story on women voters in the *Los Angeles Times* in June 1960 ("Femme Bloc Could Run U.S.") concludes:

"Today women of voting age outnumber men. Yet, offsetting this to some extent has been the fact that women have generally stayed in the kitchen in unhealthy numbers on Election Day."

Figure 1. Women's turnout in presidential elections lags men's by a considerable margin after suffrage (ecological inference estimates, 1920-36)

Turnout, as a percentage of age-eligible population



The effects of disenfranchisement were long-lasting, but not permanent. While it took decades for the gap between men and women to fully close, today women are more likely to vote than men. Data collected as part of a long-running survey of American voters reveals how the gap slowly closed after 1960 (Figure 2).

Figure 2. Today, women are as or more likely to vote than men (American National Election Studies, 1948-2016)

Self-reported turnout, as a percentage of age-eligible respondents

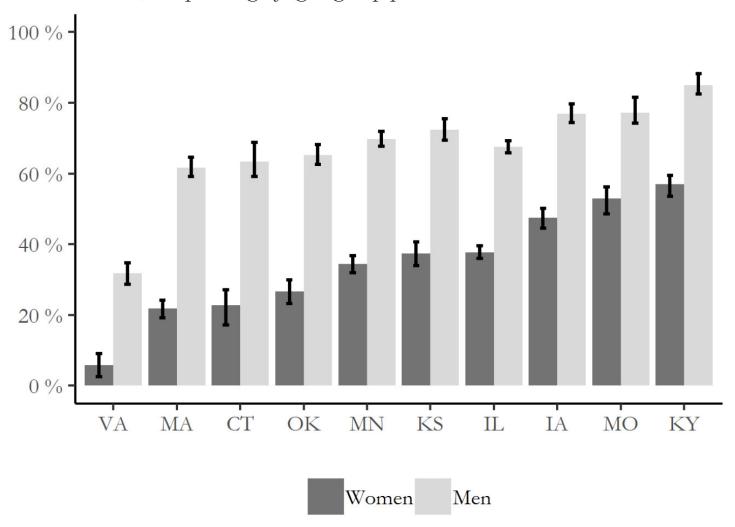


# Where did women vote and where did women stay home?

If women are not inherently or always less likely to turn out than men, why do we observe such a large gender gap in the first few elections after suffrage was extended? Whether women voted appears to be more a function of where they lived, and the electoral institutions within which they could exercise their right to vote (i.e., the legal structure of American voting rights), and less abou gender alone. What national averages obscure is that women's turnout varied considerably from state to state in the first presidential elections after suffrage. Figure 3 reports our estimates of 1920 turnout in ten US states.

Figure 3. Women's turnout highest in states with few ballot access restrictions and competitive elections (ecological inference estimates, 1920)

Turnout, as a percentage of age-eligible population



Why did fewer than 5% of women turn out in Virginia compared to more than 50% in Kentucky? States with more voting restrictions (especially Virginia, Massachusetts, and Connecticut) had considerably lower turnout overall, but especially among women. In states where political competition was high (Missouri and Kentucky), parties and other organizations had the incentive (and presumably the resources) to engage in more extensive voter mobilization. For this and other reasons (salience, excitement, stakes), turnout was higher in those states, and again, particularly among women. Because states do not have a responsibility to ensure that citizens vote, mobilizatic is a function of individual capacity to negotiate regulations and barriers as well as the incentives for non-state institutions to mobilize voters when they perceive the need and then among those from whom they expect support. A consequence is that women living in some states were far more likely to convert their right to ballots than were women in other states.

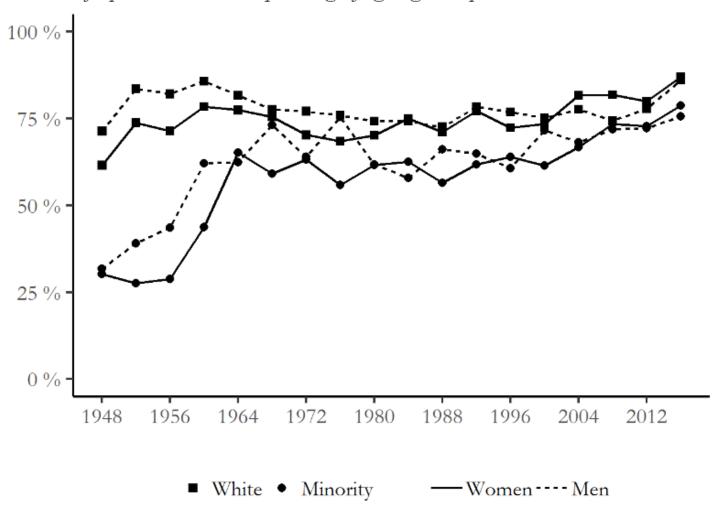
Women of color faced additional challenges

Well after the formal incorporation of women in the 1920s, the presence of state (and other) barrie to voting created particular burdens for women of color. State restrictions on voting in the South were designed explicitly to block black voters from the polls. When state action fails to affirmatively support a right to vote, parties and citizen organizations often step into the breach. In the South, however, the dominant Democratic political party viewed its interests as best served by engaging in extensive and violent efforts to block or slow black voter mobilization. The leading African-American newspaper of the twentieth century, *The Chicago Defender*, reports that those who sought to register and educate black women voters in 1920 alone experienced murder, kidnap and lynching, threats of arson against homes and businesses, and in one town, 500 warrants against black women charged with "registering illegally."

Civil rights activism and particularly the passage of the Voting Rights Act (1965) narrowed the ga between white and black electoral participation in the 1960s. Self-reported turnout of whites and minorities is very similar today, but entirely closing the gap took decades (see Figure 4). Unlike the Nineteenth Amendment, the Voting Rights Act put the onus on state governments to meet certain standards for electoral participation, with mechanisms for evaluation and enforcement. Yet even in the Voting Rights Act, provisions largely focused on stopping state action that created barriers to voting, rather than requiring states to take affirmative steps to facilitate voter registration or turnous

Figure 4. Minority turnout lags white considerably before 1964, but racial differences in turnout a very small by 2016 (ANES, 1948-2016)

Self-reported turnout, as a percentage of age-eligible respondents



# Mobilizing traditionally-excluded groups requires resources and time

That voter mobilization in the U.S. is largely left to parties and advocacy groups means that gende differences in organizational capacity had consequences for the representation of women's interest after suffrage. The newly-created League of Women Voters had virtually no experience with voter mobilization and their energies were divided between GOTV efforts and the work of studying, recommending, and advocating for policy proposals. In comparison, political parties, labor unions and other male-dominated organizations already had extensive experience with voter mobilization While men were mobilized by parties *and* by organizations representing their interests, women we sometimes mobilized by neither. This is particularly a problem in the states that made voting more difficult. When political, labor, and civic organizations and activists did devote energy to challeng state policies that discourage turnout and mobilizing their members in elections, this necessarily meant (and means!) fewer resources are available to understand and advocate for the interests of their constituencies in other ways. This dynamic remains important today as groups or individuals

respond to efforts by some states to ramp up ID requirements or resist efforts to permit mail-in or early in-person voting.

Newly-enfranchised and marginalized groups face a long-term struggle to convert voting rights in political equality in the absence of an affirmative right to vote and in the presence of additional burdens on potential voters—the poor were confronted with the poll tax, African-Americans in the South were met with state-sanctioned violence, and immigrants and people of color were required pass literacy tests. All of these burdens hampered women in particular. Families faced with a poll tax tended to prioritize male voting, physical risks dissuaded the most vulnerable, and immigrant women had fewer opportunities to learn English. Without the state (and often despite resistance from the state), newly-enfranchised groups must do the work—individually and collectively—of mobilizing resources to translate the "right" to vote into an actual ballot.

Voting may be an individual responsibility, but the actions of parties and other organizations make big difference in getting Americans to the polls. And that mobilization is most likely to happen in places where party competition is close—precisely the kinds of contests that are again increasingly scarce in U.S. politics. Further, laws that make it harder to vote weigh most heavily on those peop who are already marginalized. Rather than asking if potential voters—women in 1920 or other groups today—are failing to fulfill their civic responsibilities, we might do better to ask if the political system is failing its citizens.

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# From 19th Amendment to ERA

Constitutional Amendments for Women's Equality

Tracy A. Thomas

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The Nineteenth Amendment to the U.S. Constitution guaranteeing women's right to vote was passed by Congress one hundred years ago on June 4, 1919. Many[JD1] states quickly ratified the amendment, though it would be a close call when the final state, Tennessee, pushed the amendment into law in August 2020. When first proposed, the vote or "suffrage" was just one of many civil and social rights demanded by women. But it became the primary focus of the women's rights movement in the late nineteenth and early twentieth centuries, fueled by political allegiances with conservative temperance women and supported by focus on the vote as the primary right of citizenship as embodied in the new Fourteenth and Fifteenth Amendments.

One year after the passage of the Nineteenth Amendment, women's rights leaders resurrected the demands for gender equality in aspects of society by proposing the first Equal Rights Amendment (ERA) in 1921. The ERA would have guaranteed that civil and legal rights cannot be denied "on the basis of sex." From the beginning, however, the ERA was met with opposition including from women themselves, with conservative women concerned about impact on the family and progressive women concerned about impact on labor and union rights. It would take another fifty years before both national political parties would endorse the ERA, and Congress passed the ERA in 1972 guaranteeing 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." The necessary two-thirds of the states, however, failed to ratify the ERA, even after an extension of the deadline.

A modern movement has renewed efforts to pass the ERA, still believing in the necessity of a constitutional guarantee of the broad legal and social equality of women first advanced 171 years ago. This essay traces the history of the women's constitutional demands for equality,

from its origins in Seneca Falls, the adoption of the Nineteenth Amendment, the proposed ERA, and modern efforts for a new amendment to secure gender equality.

#### Seneca Falls: More than the Vote

Women's first demand for the right to vote is usually traced to the convention held in Seneca Falls, New York on July 19 and 20, 1848. There, in upstate New York in the Wesleyan Church, emerging leader Elizabeth Cady Stanton demanded the "elective franchise" to ensure women's political participation in the lawmaking process. Her anti-slavery colleagues, who made up a large part of the meeting, including mentor Lucretia Mott and her husband Henry Stanton, were suspicious of the demand for suffrage because these moralistic and religious reformers believed that politics was corrupt and that the way to obtain reform was outside the political arena. Women had previously held the right to vote in colonial New Jersey from 1787 to 1807, and six women from Jefferson County, New York, had petitioned the New York Constitutional Convention in 1846 for the right to vote, but Seneca Falls became the touchpoint for women's first demand for suffrage. The National Women's Rights Historical Park in Seneca Falls now commemorates this historic event, and Stanton's words in her "Declaration of Sentiments" are carved into the waterfall outside the visitor's center.

The Declaration of Sentiments, however, included eighteen demands for women's rights, much more than the sole demand for the vote typically remembered. Stanton demanded freedom from gender discrimination in four broad areas of society, including the state, the family, the workplace, and the church. These broad, specific demands reached all areas of women's lives in both the public and private spheres, and were intended to provide women with full and equal opportunity for happiness and success. The broad platform of women's civil and social rights including issues of equal marital property, mother's guardianship of children, and no-fault divorce continued until the Civil War.

Grassroots state women's rights groups proliferated after Seneca Falls, including meetings in Salem, Ohio in 1850, Akron, Ohio in 1851, and Worchester, Massachusetts. Women then began to meet each year in national conventions during which they organized, drafted petitions, wrote letters, and lobbied legislatures. Women would continue this laborious political activism for the next 72 years, as efforts to obtain the vote were slow and met with opposition.

### The Nineteenth Amendment

A constitutional amendment to protect women's right to vote was first proposed by Stanton and Susan B. Anthony in 1866. Their idea for a sixteenth amendment responded to the failure of the universal suffrage movement to advocate universally for voting rights for all, which had splintered into a separate movement focused on black male suffrage. Stanton and Anthony split from their former colleagues and formed their own National Woman Suffrage Association (NWSA) dedicated to advocating for women's suffrage. This dedication was zealous, and included sometimes racist opposition to the Fifteenth Amendment guaranteeing suffrage regardless of race, because that amendment excluded women. Other women's groups advocated for suffrage as well, with the American Woman Suffrage Organization led by Lucy Stone working first for black suffrage, then women's, and by the Women's Christian Temperance Union (WCTU) which advocated the vote for women's moral participation in making laws including prohibition of alcohol.

After passage of the Fourteen Amendment in 1868, women's suffrage leaders believed that the vote had been obtained. They argued that the privileges and immunities of the Fourteen Amendment guaranteed citizens the privilege of voting. In a strategy called "The New Departure," women began attempting to vote at the polls, and Susan B. Anthony was famously arrested for her attempt. The U.S. Supreme Court, however, struck down this interpretation of the Privileges and Immunities Clause in the 1875 case of *Minor v. Happersett*, holding that voting was a privilege of state law, not federal citizenship. Women then renewed efforts to pass a constitutional amendment.

Republican Representative George W. Julian introduced the first women's Federal Suffrage Amendment into Congress in March 1869 that would have guaranteed the right of suffrage "based on citizenship" and "without any distinction or discrimination whatever founded on sex." Little legislative action, however, was taken, with the amendment being introduced again in 1878, and debated once in 1887, and otherwise languished in committee where contingents of women annually appealed for action. Meanwhile, suffrage leaders increased efforts to pass suffrage state by state. Anti-suffrage opposition came from many fronts; women's suffrage was opposed by mainstream churches preaching women's place as subordinate and in the home, by male voters concerned their votes would be diluted, by women who feared the loss of their family role, and by the liquor industry who feared women would vote for prohibition of alcohol. By the turn of the century, suffrage leaders obtained some limited success, with a few states adopting suffrage in school board elections, municipal elections, or presidential

elections. Eleven states recognized full suffrage, mostly concentrated in the Western states of Wyoming, Utah, Colorado, Arizona, and California.

The final political push came from Alice Paul, a new leader of the younger generation of suffrage women. Paul adopted the militant activism of English suffrage women, and began to publicize women's demand for suffrage through media displays like suffrage parades and pickets of the White House. She and her colleagues were arrested for picketing President Woodrow Wilson at the White House. Their subsequent mistreatment in the D.C. prisons from solitary confinement and brutal forced feedings, depicted in the movie Iron Jawed Angels, finally captured public sympathy and shifted the political tide. President Wilson reluctantly gave his support, joining both Republican and Progressive leaders in favor of what was renamed the "Susan B. Anthony Amendment" (even though Anthony was not present at Seneca Falls, but rather joined the movement three years later and went on to decades of national leadership). The first congressional vote for the Nineteenth Amendment was taken in February 1920, and it passed upon its second deliberation in the House of Representatives in May 21, 1919, and in the Senate on June 4, 1919, both by the necessary two-thirds majorities. A few states quickly ratified the Nineteenth Amendment within a week of passage. The final ratification battle came in August 2020, in Tennessee, where votes seemed tied between the supporters of women's suffrage wearing white roses and opponents of women's suffrage wearing red roses was broken by a bachelor legislator, Harry Burn, when he received a letter from his mother encouraging him to vote for the women.

After the Nineteenth Amendment's passage, a few legal challenges tried to stop its implementation. One argument was that granting women the right to vote diluted the male vote, a position the Supreme Court summarily rejected in *Leser v. Garnett*. Another argument was that ratification of any constitutional amendment, like the vote or Prohibition, had to be approved by the public citizenry, rather than the state legislatures, an argument the Court also rejected in *Hawk v. Smith*. Yet, implementation of the Nineteenth Amendment was uneven. In some states, the right to vote did not extend to correlative rights to hold public office or serve on juries. The right to vote also did not extend to women who were black, Asian, or Native American, who were prohibited by other race-based laws from voting. The Voting Rights Act of 1965 removed many of these barriers, as did the 1952 McCarran-Walter Act of 1952 applicable to women of Asian descent, and the 1924 Indian Citizenship Act and subsequent state court cases in the late 1940s applicable to Native American women.

# An Equal Rights Amendment

One year after passage of the Nineteenth Amendment, Alice Paul returned to the broad gender equality agenda that animated the original women's rights movement at Seneca Falls. Women lawyers in Paul's National Women's Party (NWP) had identified over three hundred laws that denied women equality based on their sex, including rights of employment, property, jury duty, and child custody. To address each of these at once, Paul proposed an Equal Rights Amendment that would amend the federal Constitution to guarantee equality in all areas of legal rights without regard to sex. The first ERA said simply that "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction." The objective, Paul said, "is to take sex out of law—to give women the equality in law they have won at the polls."

The ERA, however, was met by instant opposition among women's rights advocates as well as the public. The suffrage leaders had disbanded into several groups, Paul's NWP, the National League of Women Voters dedicated to encouraging women to vote and supporting women for public office, and progressive labor activists seeking protective laws like minimum wages and occupational safety. The more conservative League women did not agree with the platform of employment and workplace equality favored by the professional and business women of the NWP. The social feminists of the labor and union movements were concerned that an ERA would curtail advances made in the area of worker protection, often premised on the need to protect women workers who were weaker than men.

This battle between equality and labor activists was emphasized in the 1923 decision of the U.S. Supreme Court in *Adkins v. Children's Hospital*. In *Adkins*, a new Justice, George Sutherland, one of the "Four Horsemen" who voted to strike down many of the New Deal-era laws, held that the Nineteenth Amendment represented a command of gender equality beyond the vote, and thus invalidated a minimum wage law premised on women's different and inferior status. Sutherland had advised Alice Paul, and he seemed influenced by an amicus brief submitted by Paul. The *Adkins* majority held that the Nineteenth Amendment giving women the right to vote altered the historical structure of coverture, the English common law system which "covered" the legal existence of married women due to their need for protection, and denied them most legal and civil rights. The constitutional amendment, *Adkins* held, was "revolutionary" in its dismantling of the entire system of women's contractual, political, and civil rights. Thus, a constitutional amendment about voting changed

the entire system of gendered legal rights, and demanded gender equality in all places including the workplace. It was an amazing win for gender equality, but demonstrated that labor rights seemed to be in direct opposition to gender equality. The *Adkins* case, however, would not stand long, as the Supreme Court would reverse itself over a decade later in favor of laws protecting women. This battle between labor and equality activists continued until the passage of the federal Fair Labor Standards Act of 1938 which granted labor protections like minimum wage and maximum hours to all workers, both men and women.

The way was finally cleared for Congress to seriously consider an Equal Rights Amendment, but it would take thirty more years until support was obtained. Class-based divisions continued to dominate debate over the ERA, with working class and union advocates, including the American Civil Liberties Union (ACLU) opposed to it, and businesses and professional workers supporting the amendment. It was not until the civil rights era of the 1960s realigned political groups towards a civil rights focus that consensus finally built for an equal rights amendment.

Congress passed the ERA in 1972 in what seemed to be an unobjectionable law endorsed by both parties. However, opposition soon emerged from conservative and religious advocates challenging the ERA for its shift in gender roles in society. Zealous opponents raised concerns about gay marriage, women in combat, single-sex bathrooms, and abortion on demand, all stemming from a bigger concern: the challenge to women's traditional domestic role in the family. The National Women's Conference in Houston in 1978, sponsored by the federal government to create a broad agenda for women's rights and harkening back to the first such conference at Seneca Falls, worked counterproductively to incite this backlash against ERA and the perception that it threatened women and the family.

The ERA failed to receive the necessary ratification by two-thirds of the states, coming in three states short. President Jimmy Carter had extended the seven-year deadline once, but no further states ratified during this time. Growing social conservatism altered the longstanding political support from Republicans, and the ERA did not become law. Many states, however, passed their own mini-ERAs, embodying gender equality into state law and providing some additional legal guarantees of equality.

## The Modern Movement for an ERA

Two states recently ratified the ERA: Nevada in 2018, and Illinois in 2019. Several others are actively working toward passage. In May, 2019, the House of Representatives held the first congressional debate on the ERA in thirty-six years. This renewed legislative action was a response to the national politics featuring Women's Marches following the 2018 presidential election and the emerging #MeToo movement raising awareness of the intrinsic problem of workplace sexual harassment. Supporters of the ERA argue that the constitutional amendment remains viable, and that a "three state strategy" of securing three states, one in addition to Nevada and Illinois, will ratify the ERA into law. They argue that the Equal Rights Amendment remains viable for ratification because the timeline was not mandatory, as it was not included in the text of the amendment but only the preamble, and thus the deadline was merely advisory. Alternatively, they argue that Congress can waive or extend the deadline, requiring some further political consensus on reviving the ERA. This argument also revives a prior debate over whether states could rescind their ratifications of ERA, which one court so held, even though the argument for amendment rescission was rejected in the context of the Fourteenth Amendment.

The question remains as to whether we still need an ERA. During the intervening years, the U.S. Supreme Court adopted a line of jurisprudence under the Equal Protection Clause of the Fourteenth Amendment protecting gender equality. This judicial doctrine effectively provides much of the legal benefit that would be provided by an ERA by scrutinizing laws that attempt to discriminate on the basis of sex. Other federal laws like Title VII for employment and Title IX for education similarly prohibit discrimination on the basis of sex, further codifying legal guarantees of gender equality.

The importance of an ERA, however, remains. At one level, a federal ERA protects against changes in the judge-made law possible with the appointment of new Supreme Court justices. A constitutional amendment would arguably strengthen the judicial standards for scrutinizing gendered laws, mandating that such laws survive strict rather than intermediate scrutiny by the courts. Perhaps more significantly, a federal ERA provides a symbolic level of constitutional promise of women's equality in our society, an equality supported by the 171 years of women's rights advocacy since Seneca Falls. For this reason, leading thinkers like Justice Ruth Bader Ginsburg and feminist scholar Catharine MacKinnon actively endorse the ERA. The American Bar Association, as well, issued a resolution in 2016 officially endorsing the ERA, stating that it supported "constitutional equality for women," and that it would work toward the goal of ratification of the ERA and called on state bar associations to do the same.

An Equal Rights Amendment would accomplish the broad scale structural shift identified by the Court in *Adkins*, and envisioned by the first women activists at Seneca Falls. No longer could people say that gender equality is not something important enough to be included in the U.S. Constitution.

#### **ABA** American Bar Association

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# Ensuring Access to the Ballot Box

Elizabeth Yang

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# History of Voting in the United States

The ability to vote is the trademark of any healthy and vibrant democracy, and in fact the United States of America was founded on this very important premise. But, as often is the case, the reality was very different from the perceived belief that most hold—that in 1787 the Constitution granted the right to vote to all citizens. The truth is that Article I, Section 2 of the Constitution refers to "the People of the several States" having the right to vote for members of the House of Representatives. Practically speaking, at that time "the People" were not all citizens; instead they were white males who either owned property, met certain religious requirements, or paid poll taxes, and at that time represented approximately 6 percent of the adult population. From this well-known, or perhaps not so well-known, fact of history we can begin to see that the struggle to expand the right to vote started with its very inception.

By 1850, all states had abolished property and religious requirements, and thus the number of adult white males who were entitled to vote grew, but poll taxes and literacy tests remained. In 1868, the 14<sup>th</sup>[JD1] Amendment granted citizenship to all people born or naturalized in the United States. In 1870, following the Civil War, the 15<sup>th</sup> Amendment was adopted, which stated, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." As in the case of the adoption of the original Constitution, the practical effect of the 15<sup>th</sup> Amendment still left many African American males disenfranchised due to the use of poll taxes, literacy or "good character" tests, and grandfather clauses, which allowed anyone who had voted before 1866 or was a descendant of someone who had voted before then, to be exempt from restrictions to voting. In 1920, as a result of the women's suffrage movement and the increased role of women in World War I efforts, the 19th Amendment extended the right to vote to women. In 1964, poll taxes were abolished through the adoption of the 24th Amendment.

Finally, in 1971, in the midst of heavy student protests against the Vietnam War, the 26<sup>th</sup> Amendment lowered the age of voting from 21 to 18 years of age.

The voting-related amendments to the Constitution can be seen through important stages of our history and provide a framework for extensions of suffrage in the United States. The Revolutionary War brought the birth of the United States of America and the right to vote; the Civil War led to the recognition of African Americans as citizens, and thus entitled to vote; World War I and the women's suffrage movement extended the right to women; and finally the Vietnam War lowered the voting age to 18. But, the most pivotal and meaningful expansion of the right to vote was realized through the civil rights movement of the 1960s. The Voting Rights Act of 1965, considered by many to be the crown jewel of the civil rights movement, serves as the basis of current and future efforts to ensure equal access to the ballot box for all Americans. The Voting Rights Act was created to provide a more current foundation and procedure, almost like a floor without a ceiling, to rectify a history of racial discrimination in voting and to provide a vehicle for protecting the right of eligible citizens to participate in our electoral process going forward.

# History of the Voting Rights Act (1965–2019)

In 1965, the Voting Rights Act was enacted, with the purpose of increasing voter registration and participation by all citizens. The act repealed literacy tests and other devices that had been used as a means of suppressing the right to vote in jurisdictions with a history of discrimination. The key prongs of the act were Section 2, which prohibited the denial of voting rights on account of race or color, and Section 5, which required that covered jurisdictions (defined as jurisdictions with a history of discrimination, that used a test to deny the right to vote, and had registered less than 50 percent of the voting age population by November 1, 1964) to seek approval from the federal government before making certain changes to their election laws or electoral processes. Thus, Section 5 jurisdictions, generally located in the South, could not make any changes to election laws or voter registration and voting procedures without the preclearance of the U.S. attorney general, who would be responsible for determining whether or not such changes would have a discriminatory effect. As an example, proposed changes in those covered jurisdictions, to such details as polling hours, voter registration requirements, and voting machinery, would have to be precleared by the U.S. Department of Justice. The act also provided for federal examiners for voter registration

and federal election observers. Following the enactment of this act, nearly one million new African American voters were registered to vote.

In 1970, the act was extended for another five years and all literacy tests were banned in all states and jurisdictions.

In 1975, the Voting Rights Act was extended for another five years and amended to require that oral assistance or bilingual ballots (in the minority languages of American Indians, Asian Americans, Alaskan Natives, and Spanish-heritage citizens) be offered in political subdivisions where at least 5 percent of the population or more than 10,000 voting-age citizens belong to a single language minority group and have limited English language proficiency. Today, as an example of this, Los Angeles County, the largest electoral jurisdiction in the nation, with 4.7 million registered voters, is required to provide bilingual assistance to native speakers of Armenian, Chinese, Cambodian/Khmer, Farsi, Korean, Spanish, Tagalog/Filipino, and Vietnamese.

In 1982 and 1992, the Voting Rights Act was extended again, with additional extensions to bilingual voting assistance.

The most recent renewal of the Voting Rights Act was signed into law on July 27, 2006, as The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act. The act was renewed for another 25 years and serves as a testament to the importance of the civil rights movement in its original enactment in 1965, as each of the named individuals played a prominent role in the civil rights movement.

On June 25, 2013, the Supreme Court ruled in *Shelby County v. Holder*, a case which sought to have Section 4b, which mandated the coverage formula that defined covered jurisdictions, and Section 5, which mandated preclearance of covered jurisdictions, of the Voting Rights Act declared unconstitutional. The Court invalidated Section 4b, ruling that it was unconstitutional and accepting the argument that the coverage formula was based on 40-year-old data and thus dated. The Court did not rule on Section 5, so in theory pre-clearance still exists. Unfortunately, reality is again far from theory in voting rights, as *Shelby* removed the ability to define which jurisdictions should be covered by Section 5. Simply put, without Section 4b there can be no Section 5, the end result being that a key protective element of the Voting Rights Act has been rendered toothless. Congress could develop a legislative remedy

by creating a new coverage formula; however, given the current state of partisanship in Washington, DC, such action does not seem likely in the near future.

### Current Challenges to Ballot Access

Elections in the United States are administered at the state and local levels, as delegated in the U.S. Constitution. Thus, the current state of voting rights can be best seen through a comparison of legislation and trends in the various states. There are many issues to consider, but these selected below are intended to help inform a discussion of recent U.S. Supreme Court decisions, policy debates, and very real ideological differences, and how these matters impact the right to cast a vote.

### Voter Identification Laws

Voter identification continues to be a subject of much scrutiny. In fact, the Help America Vote Act of 2002, a concerted national election reform package enacted after Bush v. Gore, mandates that first-time voters who register by mail must show identification, either photo or paper, in order to vote for the first time. The issue also landed on the steps of the Supreme Court over a decade ago, in 2008, with Crawford v. Marion County Election Board. The Court ruled that Indiana's law requiring identification to vote did not violate the Constitution. Even with this recent history, in many ways voter identification is the embodiment of the struggle for a fundamental consensus in this area of state policy. Some believe that voter identification is necessary to ensure that the correct individual is voting, and thus identification serves as a deterrent to voter fraud; others believe that voter fraud is nonexistent and is simply another way to effectively disenfranchise certain parts of the population. For some, the prospect of presenting voter identification at the polls is easy: just open your wallet and show your driver's license and you're done—identity confirmed. But, for some, they just don't have any government-issued identification. These people tend to be elderly, members of minority populations, homeless, and impoverished individuals. Currently, 34 states require some form of identification to vote. Statistics would suggest that Shelby has had an impact on the ability of states to enact stricter voter identification laws, as they are no longer required to seek preclearance before enacting changes. The challenge in voter identification is not in its existence; rather it is ensuring that if identification is required that the burden of having such a document is not a meaningful barrier to voting.

# Felon Disenfranchisement

Felon disenfranchisement is the practice of prohibiting felons from voting, either permanently or for the period of incarceration or probation or parole. There is no standard view on this practice among states. The Supreme Court ruled it constitutional in 1974, with Richardson v. Ramirez. Currently two states, Vermont and Maine, allow felons to vote while incarcerated. Fourteen states and the District of Columbia prohibit felons from voting while incarcerated, but automatically reinstate voting rights upon release. Twenty-two states prohibit felons from voting while incarcerated and during parole or probation, and their rights are automatically reinstated following those proscribed periods, though fines and penalties may have to be paid. And finally, 12 states: Alabama, Arizona, Delaware, Iowa, Kentucky, Mississippi, Nebraska, Nevada, Tennessee, Virginia, Wisconsin, and Wyoming, are amongst the strictest in the nation with no automatic reinstatement of rights after completion of sentence and parole or probation; some even require a pardon from the governor. In 2016, it is estimated that over 6 million otherwise eligible voters were unable to vote due to their status as felons or due to prior felony convictions. Studies have shown that this practice has been shown to disproportionately affect communities of color. Recent trends tend toward automatic reinstatement or loosening barriers for reinstatement, with Florida as the most recent example. This seems logical as studies have shown that successful reentry into society by former felons is affected by their ability to become a part of the community: by that logic reinstatement of voting rights should lead to lower recidivism (relapse into criminal behavior) rates.

# Voter Roll Purges

Purging the voter roll is the practice of removing registered voters from the official voter registration list due to inactivity, death, or relocation out of the jurisdiction. This is another situation where there exists a tension in the administration of elections between the desire to have accurate voter rolls versus disenfranchising people by inappropriately removing them from the rolls. The problem is that once a voter has been removed from the rolls, they may not have an immediate remedy that will allow them to vote easily in the next scheduled election. The Supreme Court ruled on this matter very recently in 2018, in *Husted v. A. Philip Randolph Institute*, when it determined that Ohio's controversial practice of purging voters if they failed to vote in consecutive elections was constitutional. Statistics show that *Shelby* has had a direct effect on increasing the volume of voter purges. The Brennan Center estimates that 17 million

voters were purged from the rolls between 2016 and 2018; and of those purged, the rate was 40% higher in jurisdictions that were previously covered by preclearance under the original Section 5 of the Voting Rights Act. A possible solution to inaccurate voter purging may lie with technology, but as is often the case, technology in the election administration arena is often constrained by the need to keep the process as secure as possible. The practical effect of such constraints is that often different state-wide databases are not able to share information nor is there a national voter registration database. In the meantime, states should focus on providing meaningful and adequate notice and hearing to those whose rights to vote will be removed by voter roll purging.

### Individuals Must Be Vigilant

The road to voting and electoral participation is, unfortunately, often a long and bumpy road, as we see from the need for so many constitutional amendments to create our basic framework to vote. The Voting Rights Act was created to ensure that the franchise of voting is open and accessible by as many eligible citizens as possible. Current events, politics, and society, of course, can influence trends in election law. Also, political ideology can be very rigid and cause a certain amount of intransigence or unwillingness to reach consensus. All of these factors, from both good and bad actors, remind us that, as individuals, we must always be vigilant about protecting our cherished right to vote, upon which this nation was founded.

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# Right to Petition

Tiffany Middleton

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"Let's start a petition!" "Will you sign this petition?" "The petition's gone viral." Petitions certainly are common in our contemporary world. They provide a trusted outlet to express opinions as individuals and as part of a group, but what are they, *really*? Who starts them? Who signs them? Does anyone read them? Teaching Legal Docs will unpack petitions—what they are, why we use them, how they work, and their legal requirements.

### A Long Tradition of Asserting Rights

A petition is a request to do something, typically to a government agency or public official. The request is made on behalf of a group, with individuals of the group recording their assent in some way, such as signing their name to the request. The concept and practice go far back into human history, with records of ancient Egyptian workers petitioning for improved working conditions.

From the 18<sup>th</sup> century beginnings of the United States, it was regarded as a basic practice—the act of adding your name, with others, to an official appeal asserted, not only identity, but also rights. Petitioning was open to everyone, including people not eligible to vote, so it became an important means for expressing opinions, persuading legislators, and, ultimately, influencing the political landscape of the new nation. In fact, scholars have determined that petitioning led to more legislative action in early America than any other source. Typically, a state legislature would receive a petition from constituents, refer it to committee, then act on the committee's recommendations, which could include enacting policy.

Petitioning was so common, and the right to do so was so cherished in eighteenth century America, that the framers included a right to petition among those rights protected by the First Amendment to the U.S. Constitution:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.

With all of this in the background, law professor Gregory Mark has explained, "The history of the right to petition is at once a social, political, and intellectual story … of a constitutional and legal institution. Understood properly, it tells us about popular participation in politics, especially by disenfranchised groups," including women, African-Americans, Native Americans, and others. Historical records show that more enfranchised groups—men—submitted petitions than disenfranchised groups, but nonetheless, absent the opportunity to vote, petitioning was a way to engage elected officials.

# Types and Format of Petitions

We can classify petitions generally into four types:

Political petitions—have a specific form, address a specific rule set by the state or federal government. Typical examples include nominating petitions filed by political candidates to get on a ballot, petitions to recall elected officials, and petitions for ballot initiatives. They are shared publicly to solicit signers, and typically signers must be U.S. citizens, registered voters, and live in the election district addressed by the petition wording.

Legal petitions—ask a court to issue a specific order in a pending case or lawsuit, typically filed by attorneys according to court rules using specific forms. These are not shared beyond court and involved parties.

Public Purpose petitions—ask officials to take or not take a specific action. They might be addressed to policymakers, government bodies, or administrative agencies. These are shared publicly to acquire signers. Requirements are minimal or absent.

**Internet petitions**—are conducted entirely online. They are not always specific as to what actions to take and do not follow established civic or political processes. They are effective at raising public awareness about an issue.

There are no legal requirements for public purpose and internet petitions. They're often simply raising awareness about an issue. All successful petitions, regardless of whether they have legal requirements, tend to follow a basic format. They include a clear statement of purpose, any supporting facts, and request signatures. Political petitions, which do have legal requirements, provide excellent examples of a typical petition format. These forms will typically ask for a signatory's printed name after their signature, as well as an address and whether they are a registered voter. There are also usually questions for the petition circulator, or the person collecting signatures. The examples provided illustrate these characteristics.

### Women's Petitions to Congress in U.S. History

Women's use of petitions is especially significant in American history. Their petitions were major parts of important national social movements, including the abolition of slavery, but especially, the campaign for woman's suffrage.

The first recognized nationally organized petitioning drive in the United States was a protest against the federal government's removal of the Cherokee Indians from their native lands in the eastern United States in 1830. Leaders included Harriet Beecher Stowe and Angela Grimke, who both would later become leaders in the movement to abolish slavery. The petitions were ignored by Congress, and the Cherokees were forcibly removed from their land, the historical moment now known as the Trail of Tears. But the petition effort has been recognized by historian Mary Hershberger as "the first time American women became active on a political scale." Martin van Buren, who was vice president and then president during the Cherokee removal, wrote that "a more persevering opposition to a public measure had scarcely been made." It wasn't long after this that abolitionist groups, many organized by women, began petitioning Congress to end slavery in the United States.

On May 26, 1836, the U.S. House of Representatives adopted a gag rule, declaring that all petitions regarding slavery would be tabled without being read, referred, or printed. The rule emboldened and energized petitioners, who pointed to the suppression of the debate as an infringement of the rights of all Americans. Former President John Quincy Adams, now returned to Congress, led the cause for repeal of the rule. The House voted to repeal the gag rule on December 3, 1844.

Women submitted more petitions to Congress in the decades that followed, for both an end to slavery and in favor of women's suffrage. A major petition in support of women's suffrage emerged from the first major meeting of suffrage movement leaders at Seneca Falls, New York in 1848. By 1878, Congress had received petitions for suffrage from 30,000 women across the United States. Petition drives became a significant hallmark of the women's suffrage movement. Drives extended as late as 1919-1920 as individual states ratified the 19<sup>th</sup> Amendment, one by one, until the constitutionally required 36 had ratified.

Much petitioning today is conducted online, or by paid professionals hired by a campaign or political action group. But the goals of petitioners today are the same as the goals of petitioners past: effectively asserting strength in civic numbers in an effort to compel policymakers to listen and act. So, when we sign a petition, we can be sure that we're following a long tradition of pursuing civic and political action individually to achieve a much larger political social goal.

**ABA** American Bar Association

/content/aba-cms-dotorg/en/groups/public\_education/publications/insights-on-law-and-society/volume-20/issue-1/learning-gateways-right-to-petition

# Conversation with Elaine Weiss, author of The Woman's Hour

ELAINE WEISS: Hello.

HOWARD KAPLAN: Yes hi, is this Elaine Weiss? This is Howard Kaplan.

ELAINE WEISS: Yes, hi Howard.

HOWARD KAPLAN: So my first question is what was really the genesis of the book and the subject matter? How did it really come about for you to write *The Woman's Hour*?

ELAINE WEISS: Well, the genesis of the book and the whole idea of writing about the suffrage movement really came about because I had written a book about women in World War I. That was my previous book. And the suffragists figured in that book because they were trying to prove their citizenship and patriotism during World War I, and so they pop up a lot in that first book.

But it was mostly the fact that I am a voter. I was raised to be a voter in every election. I have taug my children that. I think it's extremely important. And at some point in thinking about the suffragists from my first book, I realized that I did not know how I as an American woman had the right to vote. When, at one point in our national history I didn't have that right, and at another I did In my lifetime I did. But in fact, in my grandmother's lifetime, she did not until she was really an adult. So I began to think about this, that I didn't know the story. And I asked some of my friends who are very well-educated, well-read, people, and I said, well, do you know how American wom got the vote? And they didn't know either, and they didn't know the dates and they didn't know ho it happened.

I looked at a few survey history books. It usually is one line. In 1848 women gathered for a women's rights convention in Seneca Falls and then in the 1920s they were granted the vote. And there's not much in between. And it's not to say there isn't superb and a great volume of academic work on this, scholarship, excellent, excellent scholarship that's been going on for decades. But it hasn't, I don't believe, filtered into the public realm. When I realized that my friends and I did not know this story, such an important story, I realized that there was a gap and there was something I wanted to explore personally but also I thought needed to be told to the general public. And that w what propelled me to think about writing about suffrage, but I didn't want to write a comprehensiv history or a story, a survey of the entire movement.

And I came across in a report in the Library of Congress, a report on how a bequest to the suffrage movement was spent. And it was a very detailed 100-page report, and towards the end it talked about the ratification effort and I hadn't even thought about that. Somehow, again, lack of knowledge of the constitutional process, I thought well, once Congress passes it, it must be done. And then realizing the fight that ensued for another year and a half to get it ratified. And in this report, it explained the intensity of the fight for the last state to ratify, and that happened to be Tennessee. And it's a wild story and when I read that, I just said, wow, that is quite a story.

And what my job then was to try to see how could I take that one very dramatic moment and expa it and deepen it into the story of the movement. And so what's what I tried to do. I tried to tell this dramatic story and take the reader along, and in the process, because the characters who are there, the scenes that arise from this fight, I can tell the whole story of the movement and what it took ov seven decades to change the Constitution.

HOWARD KAPLAN: Thank you. All right, so let me ask you about the title of the book and wha its source's significance is? And maybe you can answer that not just about the main title, "The Woman's Hour," but also about the subtitle, "The Great Fight to Win the Vote"?

ELAINE WEISS: Sure. The title, "The Women's Hour", comes from historical reference, and it comes from two points in history. The first is the women's suffrage movement actually arises out of the abolition movement. And the women we know, the four mothers of the movement shall we say Stanton, and Anthony and Lucretia Mott, are all abolition workers before they become suffrage workers. And it comes out of the same philosophy of all people being inherently equal, and that would mean the end of slavery and would also mean enfranchisement of black citizens and white women citizens, all of whom had been previously left out of voting rights. So they believed, the suffrages/abolitionists truly believed that, after the Civil War, universal suffrage will be the law of the land, and they are bitterly disappointed when they are told that, no, politically that is not possible. That, in fact, the nation can't handle two big reforms at once. And one of them will have wait, and it's going to be the woman's vote. And again, we see this throughout our history where political realities come to blows with what we might think of as democratic ideals. So the women are again, angry, feel betrayed, and Frederick Douglass, who is the great, great universal suffragist he is there at Seneca Falls, advocating for, demanding the vote. He works with Elizabeth Stanton and Susan Anthony for most of his life, as an advocate for civil rights.

So they are told, the women suffragists, abolitionists, are told that in fact Congress is not going to

Lloyd Garrison, the abolitionist leader, and Frederick Douglass, try to explain this to the women who are very, very angry. And say, "The woman's hour has not come. This is the Negro's Hour." And because black men need the vote for their very lives, because there is terrible violence in Reconstruction era against black men, and they need it for their lives, and so the woman's hour wi have to wait. It will come, we promise, but it has to wait. And that becomes what they have to accept as a political reality.

Some decades later, in 1916, when the federal amendment, which has been stalled in Congress for almost 40 years at that point, finally begins to get some traction and it begins the last push to get the constitutional amendment through Congress, Carrie Chapman Catt who is the leader of the mainstream suffragists stands up and declares that the woman's hour has struck. The woman's hou is now arrived. And she rallies the tired and dispirited suffragists to make one last incredible push get it through Congress and then to get it ratified by the states, by saying, yes, indeed, this is the woman's hour.

And so, I use her call to imagine the woman's hour and to work for the woman's hour as the epigram of the book. So that is the origin of the title. It has great historical resonance in two pivota moments of the history of the movement, and the history of the nation. "The great fight to win the vote" [the subtitle] tries to evoke just what it took. It was not easy, it was not simple, it was not quick, against the movement. From the time of Seneca Falls in 1848, and again, there'd been talk women voting for decades and decades before that. So that is just used as a marker. It's probably r the most accurate marker, but it gives the first official public call for the vote at that meeting. And by the way, the people of Seneca Falls, those who participated, were very nervous about that. The thought they were going too far to ask for women's enfranchisement. So this idea that it took seve decades, that it took three generations of activists, that it took 900 campaigns at the state, local, an national level to finally secure what one would think would be an inherent right in a democracy. S I wanted to get that sense of a great fight. This was a great fight. It was not the last fight. Because a we know it would take decades more for black men and women who legally under the Constitutio had the right to vote but those rights had been subverted by Jim Crow laws. So it was not implemented correctly or faithfully, but it was again, a great fight, if not the last fight.

HOWARD KAPLAN: So you open the book with three women on trains heading for Nashville: Carrie Chapman Catt, Josephine Pearson and Sue Shelton White. Why those three? Why are they important to your story?

ELAINE WEISS: Well, it was a great gift to any writer to find that these three women were there and in fact, they arrived on the same night. So, I could have that scene of them on the trains, becau that is all documented. My three main characters, Carrie Chapman Catt, leader of the mainstream suffragists, the National American Women's Suffrage Association; Sue Shelton White, a young activist from Tennessee who had belonged to the mainstream organization but had left it to join th more radical National Women's Party, Alice Paul's wing of the suffrage movement. And she is set home [to Tennessee] by Alice Paul to run the ratification campaign for the Women's Party. And th same night, arriving at Union Station Nashville is Josephine Anderson Pearson, who is the leader the Tennessee Anti-Suffragists, the women opposed to giving the vote to American women. And they represent and they are the leaders of three different factions of women who will be working f the next six weeks to either advance ratification, fight for ratification, lobby for ratification, or on t other side, try to thwart ratification. And the reasons that each of them are there and the reasons ea of them are working on their own tracks, is part of the underpinning of the book—that these are women with very different ideas of how to achieve equality.

The anti-suffragists are not as concerned about equality. They are concerned about maintaining women's status quo in society. So this whole book, this whole movement, this whole fight, is not only a constitutional change, a legal change, although that is the crux and the heart of the book, bu it's also a debate about women's role in society. And so that is what makes it so passionate and so complicated. And those three women represent those different aspects of that fight. Josephine Pearson fighting very passionately to make sure that women are not thrust into the muck of politic that Southern chivalry, men taking care of their women, is preserved, and also that white supremacis preserved.

The racial aspects of this story are very strong. So I was very fortunate this time that these three women were all there and I could tell not only what was happening in that Nashville during those six weeks, and it is quite a suspenseful and dramatic story, but because of who these women are, I can reach back and tell the broader story. Carrie Chapman Catt is the protégé of Susan Anthony at that allows me to tell the story from decades before. And Josephine Pearson is part of a very interesting—in fact I think many readers find the most surprising parts of the book, which is why there were women who opposed women's suffrage. And then of course you have Sue White, who represents that third generation, that impatient, disruptive generation who are tired of waiting, is going to demand the vote, and takes different tactics—much more confrontation in your face tactic—to win it. Again, we see this in today's politics. So, I was very lucky to find these three women.

HOWARD KAPLAN: That's terrific. I think one of the notable things about your book is that you really give voice to both the suffs and the antis in the story, in terms of their activism, as well as their sensibilities and values. If you agree with that, why do you think that was important to do?

ELAINE WEISS: That's an excellent question. Giving voice to the anti-suffragists as well as the suffragists, the women who opposed enfranchisement of women as well as those who advocated fit, was I think a very important conflict historically, as well as a modern dilemma that we find ourselves in. I wanted to give full voice to the anti-suffragists, partly because I needed to show that they weren't pushovers. It wasn't easy for the suffragists to refute some of their arguments. It was easy to wage this fight between women. And I wanted to give it its full due and not make it cartoonish. It's easy to make the anti-suffrage women into almost comical characters because their arguments in some ways sound outdated and sexist and in other ways still have resonance today because we hear versions of it in our public discourse right now. So I wanted to make them worthy competitors, I wanted to make them fully intelligent opponents of suffrage and explain what was a stake for them.

On the other hand, of course, I knew where my sympathies would be. I would not subscribe to wh the anti-suffragists were espousing, but I wanted to give them their full historical due. And I think again, what readers tell me is they are very surprised by this whole aspect of the fight. They had no considered or knew or even imagined there would be organized opposition by women to women's suffrage. So that became, again, an important aspect to portray the complexity and texture of what was going on. It was a fight on many, many levels with many different participants. And again, it has resonance for right now.

HOWARD KAPLAN: Great. Well anther thing that I think that your book obviously gets to is wh you alluded to as the racial dimensions of the story, or in the language at the time, what was referr to as "The Negro Question." Do you want to comment a little bit on that and why you thought that was an important part of the story, including the heart of the story, about the ratification struggle?.

ELAINE WEISS: Yes, the racial aspect of the story again for those who are not historians of the period, which includes most of us, it comes as a bit of a shock that race is part of this voting rights story from the very beginning. Maybe it shouldn't surprise us because certainly race and voting rights have been an unfortunate pairing in most of our history, and to this present day. But the idea that race was so entwined with women's suffrage at the first moment, as they are sibling causes in the antebellum period. They are again, the founders of the women's suffrage movement come out

the abolition movement. Frederick Douglass is at Seneca Falls and is a very, very passionate advocate for women's suffrage and continues to be until the end of his life in 1895.

But the idea that women saw their oppression not equal to, but mirrored in the oppression of black citizens, was I think a central motivator of why these two themes in American history come together. And it continues throughout, not only the debates in Congress and the federal amendmen is stuck in Congress, it's stalled there purposely for 40 years. And that stalling in Congress is the result of many pressures, political, corporate, there is a lot of corporate money fighting the idea of women going to the polls, but also racial. And basically, it comes down to states, many of them in the former Confederacy, but also this comes up in northern states, do not want black women to vo And this would give the right, the 19<sup>th</sup> Amendment does give the right to vote to all women in eve election, in every state. And this would be an enormous change, and it was being fought tooth and nail, for all through the fights of congressional passage. And even at the very end. We just celebrated the anniversary of congressional passage in May and early June of 1919.

Even on that last day of the date in the Senate before it squeaks through, really with the two-thirds majority that it needs to be passed, there are senators trying to put amendments in that it will just affect white women, and there is bloviation about how this is going to bring the downfall of American moral sensibility because women will be abandoning their families to go out to vote. The racial aspect is just rife throughout the whole movement, and then as it goes into the states for ratification, especially in the Southern states, that is one of the prime movers of the anti-suffragists saying don't do this, don't ratify this federal amendment, this would allow the federal government oversee our elections and tell us who can go into the voting booth.

And of course in those states, Jim Crow laws had subverted the 15<sup>th</sup> Amendment giving black ment the right to vote and they didn't want to have a 19<sup>th</sup> Amendment, which would put them in jeoparc of violating another constitutional amendment. Now what we know happens is that Congress abandons its responsibility for enforcement and does not enforce the 15th Amendment and does not enforce the 19<sup>th</sup> Amendment when black women are subsequently denied the right to vote.

But in Tennessee, where my book takes place in the summer of 1920, that last state to have to ratif race is a predominant issue. And there circulates anti-suffrage broadsides that talk about how this going to upset the racial order, and if black women can vote, they might feel a social equality that not acceptable in those states. And you see broadsides again that talk about the Negro Problem and say, this is going to bring back the horrors of Reconstruction, which in their mind, means there

even in Congress. So this is what they're afraid of. They're afraid this is going to topple white supremacy. And so I did not expect that to be one of the prime themes of what the ratification battle was about in Tennessee, but it turns out to be.

HOWARD KAPLAN: My next question then, I think, really you addressed in your first response, which is how *The Woman's Hour* fosters public understanding of law and legal process, including the constitutional amendment process. Would you like to add anything to that?

ELAINE WEISS: Yes, I would, because, as I was researching and writing the book, I realized how much this was a book about how change is made in a democracy, how our Constitution is a living document, and it is meant to be amended. It was amended at the very moment after creation, with the first ten amendments, what we call the Bill of Rights, of course. And it continues to have to become a modern document. And so how does our democratic society, how does our American society, address issues and laws that are no longer applicable or no longer healthy for us to live by And of course we've done that with racial, civil rights laws. We've done that in many different aspects.

But this to me was a fascinating process of how do you change the law, how do you change the law of the land, which is the Constitution? And to see the process – and I hope my readers see the process, it begins with conversations around tea tables of grassroots, ordinary citizens, saying something is wrong. And then they have to go out. It radiates into discussions and meetings and rallies saying, we need to change this, we need to change hearts and minds.

They had to change women's views of themselves, and they had to convince women they needed to vote to protect themselves, and to be equal in the eyes of the law. Because when you think about it in the 19<sup>th</sup> century, when this movement begins, women don't have property rights, women can't focivil suit, they can't testify in the court of law, they cannot sit on a jury, they don't have custody of their own children. So there are fundamental laws that need to be changed and addressed, and the suffragists look at all of these.

The Declaration of Sentiments at Seneca Falls is a remarkable document and very modern. It calls for equal pay for equal work. This was 1848. It calls for knocking down the barriers to education and to the professions. It advocates for equal financial and property rights. All these things we're still talking about. But they had to convince women first that they needed this, and then they had to convince men, because men made all the decisions. Men—there were state referenda, again, the

And so there were dozens and dozens of campaigns in many states. And some states did vote to gi women the franchise. But of course only men could vote for these. Only men were eligible to mak these decisions, and then of course in the legislatures and in Congress, there's now one woman, Jeannette Rankin, who was in Congress in 1917, but before that, there was no woman, and in the legislatures, there are virtually no women. And so suffragists have to lay the groundwork and then they have to apply the law. And so they become experts in how state law works, and then federal law. And many of them train in the law in order to be more expert. You see a lot of them either reading law or actually becoming lawyers. They become lobbyists. They learn to not only protest, which they do and they take to the streets, but they also learn how to the legal process works, and how to use the process for advancing a better and more inclusive democracy.

And so I think that this I hope the book explains or gives inspiration to how do we in a democracy change the law, make our Constitution more responsive, make federal and state law more responsive to what each generation needs, while keeping the spirit. I mean, it's not making frivolo changes, but it is a process and we should be very honored and proud of that process. And this boc chronicling the woman's suffrage movement, the largest reform movement in our nation's history, shows how that can be done and it can be done by ordinary citizens. It's never done by fiat. It has be done by the people.

ELAINE WEISS: Well this was an excellent interview. Thank you. I had a lot of fun.

HOWARD KAPLAN: Thank you.