THE EQUAL RIGHTS AMENDMENT: A CENTURY IN THE MAKING SYMPOSIUM FOREWORD

Melissa Murray[∝]

On August 24, 1920, the Tennessee legislature voted to enact the Nineteenth Amendment, making women's suffrage a constitutional right.[1] For some, the ratification of the Nineteenth Amendment was the end of a hard-won fight for women's suffrage.[2] For Crystal Eastman, however, the Nineteenth Amendment was not an ending, but rather a beginning. As she explained in her 1920 essay "Now We Can Begin," the amendment's ratification—and the expansion of the franchise—presented women with the opportunity to begin mobilizing for systemic reform.[3] "Now [women] can say what they are really after; and what they are after, in common with the rest of the struggling world, is freedom."[4]

The question of women's freedom, Eastman conceded, yielded no easy answers. "Freedom," she wryly observed, "is a large word."[5] Freedom, as Eastman imagined it, included a broad range of topics and concerns related to women's citizenship—women's economic position, their exclusion from the workplace, the liminal position of childcare and housework, voluntary motherhood, and stereotypes that delineated the home and its work as the province of women, and not men. If women were to truly achieve freedom, all of these concerns would have to be addressed.[6]

But how? The Constitution provided no safe harbor and no obvious answers. As originally drafted and ratified, the Constitution says nothing about gender, women, or the prospect of sex equality. And while the Reconstruction Amendments,

---

[∝] Melissa Murray, Professor of Law, NYU School of Law. This Foreword is drawn from remarks delivered at the Brennan Center's Fall 2018 symposium on the Equal Rights Amendment. I am grateful to the Brennan Center for convening such a stellar group of advocates, commentators, and scholars, as well as to all of the conference participants for their insightful contributions. The staff of the NYU Review of Law and Social Change—and Kathryn Evans, in particular—provided terrific editorial assistance. Jeremy Brinster, NYU class of 2020, furnished invaluable research assistance. All errors are my own.

[1] *Tennessee Ratification of the Nineteenth Amendment*, NAT'L ARCHIVES AND RECORDS ADMIN., (last updated July 11, 2017) https://www.archives.gov/education/lessons/woman-suffrage/ratification-tn [https://perma.cc/3XHE-UVBV].

[2] *See* Sandra Day O'Connor, *The History of the Women's Suffrage Movement*, 49 VAND. L. REV. 657, 666–68 (1996) (describing the culmination of the women's suffrage movement in the early 20th century).

[3] Crystal Eastman, *Now We Can Begin*, LIBERATOR (Dec. 1, 1920), *reprinted in* IOWA STATE UNIVERSITY ARCHIVES OF WOMEN'S POLITICAL COMMUNICATIONS, [hereinafter Eastman, *Now We Can Begin*] https://awpc.cattcenter.iastate.edu/2017/03/09/now-we-can-begin-1920/ [https://perma.cc/FC5L-Q3QV] (last visited Mar. 29, 2019).

[4] *Id*.

[5] *Id*.

[6] *Id*.

which were ratified in the wake of the Civil War, did much to advance liberty and equality, they were intended to bring formerly enslaved men into the body politic.[7] They did not explicitly contemplate women's equality or women's rights.[8]

In this regard, the ratification of the Nineteenth Amendment was an important step forward. It was the first time that constitutional text—or more specifically, the text of a constitutional amendment—explicitly contemplated the prospect of women's citizenship, albeit in the narrow context of the right to vote. But even as states ratified the amendment, giving women the right to vote, the terms of the debate were deeply contingent. For many, women's enfranchisement was not animated by an unalloyed commitment to women's equality, but rather by the view that women—the virtuous sex—were uniquely positioned to purify and uplift the tenor of American politics.[9]

Such a view of women's purifying potential was not limited to debates over the right to vote and the Nineteenth Amendment. The notion of women as passive and virtuous routinely had been deployed to justify laws that distinguished between men and women on the theory that women required the state's protection and solicitude while men did not. Students of constitutional law will recall that in 1905's *Lochner v. New York*,[10] the Supreme Court invalidated a maximum hours labor law on the ground that such laws violated freedom of contract.[11] Just three years later in *Muller v. Oregon*,[12] the Court upheld a law that, like the law struck down in *Lochner*, prescribed maximum hours for a particular class of workers.[13]

What accounted for the difference in *Muller*? As the Court explained, the difference between the two labor laws was their intended subjects.[14] The Bakeshop Act invalidated in *Lochner* sought to regulate the hours of *male* bakers. By contrast, the law challenged in *Muller* applied to *female* laundry workers. While legislation aimed at regulating the terms of men's labor was dismissed as infantilizing and

---

[7] Mario L. Barnes & Erwin Chemerinsky, *The Once and Future Equal Protection Doctrine?*, 43 CONN. L. REV. 1059, 1067–70 (2011).

[8] In fact, the Fourteenth Amendment added the Constitution's first reference to sex by providing that states would only be penalized for denying the franchise to their "male inhabitants." Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947, 964 & n.45 (2002) (citing U.S. CONST. amend. XIV, § 2). The inclusion of this gendered language angered and alarmed many advocates for women's suffrage who worried that the amendment would further imperil attempts to secure voting rights for women. *Id*. at 968–70 & n.58; *see also* Joellen Lind, *Dominance and Democracy: The Legacy of Woman Suffrage for the Voting Right*, 5 UCLA WOMEN'S L.J. 103, 155–64 (1994) (discussing the inclusion of sex-based language in the Fourteenth Amendment). These fears seemed justified when, just six years after the ratification of the Fourteenth Amendment, the Supreme Court concluded that although women were citizens, the franchise was not one of the privileges and immunities of citizenship and states could continue to deny women the right to vote. Minor v. Happersett, 88 U.S. 162, 174–79 (1874).

[9] *E.g.*, Vikram David Amar & Alan Brownstein, *The Hybrid Nature of Political Rights*, 50 STAN. L. REV. 915, 960–63 (1998).

[10] 198 U.S. 45 (1905).

[11] *Id*. at 64.

[12] 208 U.S. 412 (1908).

[13] *Id*. at 423.

[14] *Id*. at 418–19.

paternalistic,[15] the Court happily embraced the state's efforts to regulate the terms of women's employment. As the *Muller* Court observed, such protective labor legislation was warranted given that women's "physical structure, and a proper discharge of her maternal function—having in view not merely her own health, but the well-being of the race—justify legislation to protect her from the greed, as well as the passion of man."[16] On this account, paternalistic legislation was intended to protect women when they ventured from their proper place in the domestic sphere into the rough and tumble of public life and the marketplace.

Critically, protective labor legislation, and the state paternalism that underwrote it, drew support outside of the Supreme Court. Working-class women favored protective labor laws like the one at issue in *Muller*. For these women, such legislation was a practical—and necessary—response to the very real dangers of economic (and other forms of) exploitation that women faced when they left their homes to participate in the workplace.[17] Their more well-heeled and privileged sisters, including those who identified as first-wave feminists and suffragists, were less sanguine about protective labor legislation and the gendered rationales that undergirded them. For these economically privileged women, protective legislation, and the Court's defense of such laws, was rooted in gendered stereotypes that harmed women, even as they purported to help them.[18] These rationales, and the laws they produced, would have to be disrupted if women were to truly be free and equal as citizens.

Inspired by the suffrage movement's success but well aware that securing the franchise was only an initial step towards women's equal citizenship, a group of female activists, led by Alice Paul and Crystal Eastman, two prominent women's rights advocates, arranged to have the first Equal Rights Amendment (ERA) introduced in Congress in 1923.[19] The proposed amendment read as follows: "Men and women shall have equal rights throughout the United States and every place

---

[15] *Lochner*, 198 U.S. at 60 (dismissing the notion that "the legislature, in its paternal wisdom . . . [has] the right to legislate on the subject of and to limit the hours for" labor that jeopardizes worker health).
[16] *Muller*, 208 U.S. at 422.
[17] *See* Arianne Renan Barzilay, *Labor Regulation as Family Regulation: Decent Work and Decent Families*, 33 BERK. J. EMP. & LAB. L. 119, 135–36 (2012) (discussing the movement to limit women's work hours to preserve their reproductive health); Arianne Renan Barzilay, *Women at Work: Towards an Inclusive Narrative of the Rise of the Regulatory State*, 31 HARV. J.L. & GENDER 169, 181–82 (2008) (discussing competing rationales for women's workplace protections, preserving maternal health, and counteracting women's unequal bargaining power in employment).
[18] Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947 1014 (2002); CYNTHIA HARRISON, ON ACCOUNT OF SEX: THE POLITICS OF WOMEN'S ISSUES, 1945–1968 9–10 (1989).
[19] Tracey Jean Boisseau & Tracy A. Thomas, *After Suffrage Comes Equal Rights?*, *in* 100 YEARS OF THE NINETEENTH AMENDMENT: AN APPRAISAL OF WOMEN'S POLITICAL ACTIVISM (Holly J. McCammon & Lee Ann Banaszak eds., 2018); *see also* Bill Chappell, *One More To Go: Illinois Ratifies Equal Rights Amendment*, NPR (May 31, 2018 2:58 PM), https://www.npr.org/sections/thetwo-way/2018/05/31/615832255/one-more-to-go-illinois-ratifies-equal-rights-amendment [https://perma.cc/RW4P-CM4N] (noting that Alice Paul and Crystal Eastman drafted the original Equal Rights Amendment together).

subject to its jurisdiction. Congress shall have power to enforce this article by appropriate legislation."[20]

In its logic and structure, that original iteration of the ERA owed much to the Fourteenth Amendment. Not only did it aim to provide men and women with equal rights, it also vested Congress with the authority to enact legislation aimed at furthering the amendment's aims.[21]

The amendment's terms and its grant of enabling authority to Congress received mixed reviews, however. Middle-class and upper-class women cheered the ERA and welcomed the prospect of enabling legislation that would begin to dismantle the various legal and social impediments that subordinated women, while purporting to protect them.[22] Working-class women, however, were deeply skeptical of the ERA and the prospect of enabling legislation. In their view, an amendment that sought to treat men and women as equals ignored the biological, social, and cultural differences that women faced—in the marketplace and elsewhere.[23] Echoing the logic of decisions like *Muller v. Oregon*, working-class women argued that women employed outside of the home needed the law's special protection—especially with regard to workplace conditions and hours of employment.[24]

The Court agreed, in most respects,[25] doubling down on *Muller*'s logic. From the turn of the century until the 1970s, the Court continued to credit laws that distinguished on the basis of gender, largely because sex classifications could be

[20] S.J. Res. 21, 68th Cong., 1st Sess. (1923); *see also* 65 Cong. Rec. 150 (1923).

[21] *See* U.S. CONST. amend. XIV, §§ 1, 5.

[22] NANCY F. COTT, THE GROUNDING OF MODERN FEMINISM 125 (1987) (describing how the National Women's Party viewed "[s]ex-based protective legislation . . . as an anachronism, an artifact of women's long history of economic dependence . . .").

[23] *Id*. at 127 (noting that working class women opposed the ERA as class-biased legislation that ignored the constraints that women faced in the workplace and their interests in protective labor legislation); Nancy F. Cott, *Equal Rights and Economic Roles: The Conflict Over the Equal Rights Amendment in the 1920s*, *in* WOMEN'S AMERICA: REFOCUSING THE PAST 356–58 (Linda K. Kerber, Jane Sherron De Hart eds., 3d ed. 1991) (discussing conflict within the feminist movement over the ERA and the proposed abrogation of protective labor legislation).

[24] *Id*. at 128 ("Equality between the strong and the weak when they meet on competitive terms in the industrial struggle . . . too often would be to insure that the physically or strategically handicapped shall be driven to the wall.") (quoting Elizabeth Glendower Evans).

[25] It is difficult to square what the Court did in these decades with its opinion in *Adkins*, where it seemingly rejected *Muller*'s logic in striking down a women-only protective labor law. Adkins v. Children's Hospital, 261 U.S. 525, 553 (1923) ("In this aspect of the matter, while the physical differences must be recognized in appropriate cases, and legislation fixing hours or conditions of work may properly take them into account, we cannot accept the doctrine that women of mature age, *sui juris*, require or may be subjected to restrictions upon their liberty of contract which could not lawfully be imposed in the case of men under similar circumstances."). As some scholars have noted, *Adkins* and *Muller* are utterly consistent with each other—and the logic of the separate spheres—insofar as *Adkins* struck down a federal law establishing a minimum wage for women and children. In providing women with income protections that likely would have limited their need for a male breadwinner, the challenged law flew in the face of separate spheres ideology. Susan Lehrer, ORIGINS OF PROTECTIVE LABOR LEGISLATION FOR WOMEN, 1905–1925 230–32 (1987).

justified as necessary to protect women from various threats in the public sphere,[26] or to leave them free to fulfill their roles within the family as wives and mothers.[27]

Critically, the prospect of the ERA did little to mute the debate over its likely impact on women's lives. From 1923 forward, some version of the ERA was introduced in every session of Congress—and was never passed.[28] Indeed, it was not until 1972 that the ERA was passed by Congress in a modified form, and was subsequently ratified by thirty-five states.[29] At that time, the ERA enjoyed broad bipartisan support.[30]

But just as quickly, the political winds shifted. Self-described Missouri "housewife" Phyllis Schlafly[31] launched a "STOP ERA" campaign that echoed the objections that working class women had lodged against the ERA a generation earlier. Specifically, Schlafly argued that the ERA would take away gender-specific privileges that women currently enjoyed, including "dependent wife" benefits under Social Security, separate restrooms for males and females, exemption from the military draft, and legal presumptions in favor of alimony and maternal custody.[32] In this regard, Schlafly's claim that the ERA would strip women of the "right to be a housewife" and other material privileges associated with women's dependent status struck a chord.[33]

---

[26] *See, e.g.*, Dothard v. Rawlinson, 433 U.S. 321, 335–37 (1977) (holding that Alabama could deny women employment opportunities in a male prison in part because female guards might be assaulted by imprisoned men); Goesaert v. Cleary, 335 U.S. 464, 466 (1948) ("[B]artending by women may, in the allowable legislative judgment, give rise to moral and social problems against which it may devise preventive measures . . . ."), *abrogated by* Craig v. Boren, 429 U.S. 190, 210 n. 23 (1976); Radice v. New York, 264 U.S. 292, 295 (1924) (relying on *Muller* to uphold a women-protective labor law regulating the "hours or conditions of labor").

[27] *See, e.g.*, Hoyt v. Florida, 368 U.S. 57, 61–62 (1961) (upholding a Florida law which exempted women from jury duty because it may be inconsistent with women's "special responsibilities" as "the center of home and family life."); Breedlove v. Suttles, 302 U.S. 277, 282 (1937) ("In view of burdens necessarily borne by [women] for the preservation of the race, the state reasonably may exempt them from poll taxes."), *overruled on other grounds by* Harper v. Va. State Bd. of Elections, 383 U.S. 663, 668–69 (1966).

[28] The Learning Network, *March 22, 1972: Equal Rights Amendment for Women Passed by Congress*, N.Y. TIMES (Mar. 22, 2012), https://learning.blogs.nytimes.com/2012/03/22/march-22-1972-equal-right-amendment-for-women-passed-by-congress/ [https://perma.cc/RQ5N-6VUB].

[29] Martha F. Davis, *The Equal Rights Amendment: Then and Now*, 17 COLUM. J. GENDER & L. 419, 425–26 (2008). At the time Congress passed the Equal Rights Amendment, its operative text 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. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." Barbara A. Brown, Thomas I. Emerson, Gail Falk, & Ann E. Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 Yale L.J. 871, 872 (1971).

[30] Bruce Ackerman, *Interpreting the Women's Movement*, 94 CALIF. L. REV. 1421, 1429 (2006).

[31] Douglas Martin, *Phyllis Schlafly, 'First Lady' of a Political March to the Right, Dies at 92*, N.Y. TIMES (Sept. 5, 2016), https://www.nytimes.com/2016/09/06/obituaries/phyllis-schlafly-conservative-leader-and-foe-of-era-dies-at-92.html [https://perma.cc/RK67-6J3J].

[32] Phyllis Schlafly, *How ERA Would Change Federal Laws*, THE PHYLLIS SCHLAFLY REPORT (Nov. 1981) https://eagleforum.org/psr/psrnov81.pdf [https://perma.cc/YSE5-MFZM].

[33] Barbara Ehrenreich, *Defeating the Era: A Right-Wing Mobilization of Women*, 9 J. SOC. & SOC. WELFARE 391, 392 (1982).

But Schlafly's objections to the ERA were not limited to its dismantling of women's legal "privileges."[34] Indeed, Schlafly connected support for the ERA to support for abortion, gay rights, and civil rights more generally. Viewed in tandem with these other rights movements, the ERA began to take on a more sinister cast—one that seemed predicated on the complete transformation of society and the family.[35]

In the end, Schlafly's efforts were incredibly successful. In 1972, twenty-two out of the required thirty-eight states had ratified the ERA.[36] As Schlafly's STOP ERA campaign gained force, the ERA's momentum fatally slowed.[37] Although thirteen more states ratified the amendment over the next few years, five states rescinded their ratifications.[38] In the end, the ERA was narrowly defeated, having come three states short of the thirty-eight required for the amendment's ratification.[39]

In the 1970s, as Schlafly's STOP ERA campaign gained strength and interest in the ERA waxed and waned, the effort to enshrine women's equality shifted to the Supreme Court and a more expansive interpretation of the Fourteenth Amendment.[40] In a line of cases from *Reed v. Reed*[41] to *Craig v. Boren*,[42] the Court interpreted the Fourteenth Amendment to preclude discrimination based on sex and sex role stereotyping. As Professor William Eskridge notes, "Because the women's movement did shift public norms to a relatively anti-discrimination baseline, it was able to do through the Equal Protection Clause virtually everything the ERA would have accomplished had it been ratified and added to the Constitution."[43]

This account is correct—in part. Relying on its interpretive authority, the Court succeeded where the ERA and the Article V amendment process failed,[44] but

---

[34] The command of Schlafly's "STOP ERA" campaign was actually an acronym for "Stop Taking Our Privileges." Davis, *supra* note 29, at 426.

[35] *See* Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto ERA*, 94 CALIF. L. REV. 1323, 1390 (2006).

[36] *Id*. at 1378 n.144.

[37] *See id*.; Boisseau & Thomas, *supra* note 19 at 244.

[38] THOMAS H. NEALE, CONG. RESEARCH SERV., R42979, THE PROPOSED EQUAL RIGHTS AMENDMENT: CONTEMPORARY RATIFICATION ISSUES 14 (2018).

[39] *Id*. at 15.

[40] *See* Ruth Bader Ginsburg, *Sex Equality Under the Fourteenth and Equal Rights Amendments*, 1979 WASH. U. L. Q. 161 (describing efforts to expand sex equality jurisprudence under the Fourteenth Amendment).

[41] 404 U.S. 71, 71, 73 (1971) (invalidating an Idaho probate law that specified that specified that "males must be preferred to females" in the appointment of estate administrators).

[42] 429 U.S. 190, 190 (1976) (invalidating an Oklahoma statutory scheme prohibiting the sale of "nonintoxicating" 3.2% beer to males under the age of 21 and to females under the age of 18).

[43] William N. Eskridge, Jr., *Channeling: Identity-Based Social Movements and Public Law*, 150 U. PA L. REV. 419, 502 (2001).

[44] As a number of academics have noted, the Court's sex equality jurisprudence has produced a "de facto" ERA. Siegel, *supra* note 36, at 1334 ("[T]here seems to be an emergent understanding, in the legal academy at least, that the substance of the ERA has become constitutional law through Article III rather than Article V . . . ."); *see also* David A. Strauss, 114 HARV. L. REV. 1457, 1476–77 (2001) ("Today, it is difficult to identify any respect in which constitutional law is different from what it would have been if the ERA had been adopted."). Even Supreme Court Justice Ruth Bader Ginsburg has indicated her belief that "[t]here is no practical difference between what has evolved and the E.R.A." *See* Jeffrey Rosen, *The New Look of Liberalism on the Court*, N.Y. TIMES MAG. (Oct. 5, 1997),

this success was partial and contingent. As an initial matter, the Court eventually settled on intermediate scrutiny as the appropriate standard of review for sex-based classifications, permitting the government to employ sex-based classifications so long as the classification was "substantially related to an important government interest." Under this standard, the Court has upheld laws that make it easier for mothers to transmit citizenship to children born out of wedlock in foreign countries,[45] as well as laws that preclude women from the draft.[46] The Court has also concluded that unfavorable treatment of pregnant women is not unconstitutional sex discrimination.[47] Further, as many have observed, the work of courts can be cabined and undone over time, prompting an appetite for more sustained and durable legal change. These dynamics—in and outside of courts—have prompted renewed calls for the ERA's ratification.[48]

In the mid-1990s, ERA supporters launched another effort to secure the ratification of the ERA by those state legislatures that did not ratify by 1982, when the ERA's congressional deadline for ratification elapsed.[49] Under this "three-state strategy," all that is needed to successfully enact the ERA is ratification by three additional states. On this account, Congress's imposition of a ratification deadline is not constitutionally binding, and prior ratifications remain in force, while rescissions of prior ratifications are rendered invalid.[50] In 2017, the Nevada legislature approved the ERA, and in 2018, Illinois followed suit, buoying these efforts. With these recent developments, ERA proponents need only secure one additional state, and deal with the issue of the congressional deadline,[51] to successfully conclude the ratification campaign that began in 1972.[52]

---

https://www.nytimes.com/1997/10/05/magazine/the-new-look-of-liberalism-on-the-court.html [https://perma.cc/GAW2-P7LD].

[45] *See* Nguyen v. I.N.S., 533 U.S. 53 (2001).

[46] *See* Rostker v. Goldberg, 453 U.S. 57 (1981).

[47] *See* Geduldig v. Aiello, 417 U.S. 484 (1974). In response to the Court's decisions in *Geduldig* and *General Electric Co. v. Gilbert*, 429 U. S. 125 (1976), which held that pregnancy discrimination is not sex discrimination for purposes of Title VII, Congress passed the Pregnancy Discrimination Act of 1978, which amended Title VII to "prohibit sex discrimination on the basis of pregnancy." Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e (2012)).

[48] *See* Congresswoman Carolyn B. Maloney, *Why the United States Needs an Equal Rights Amendment*, N.Y. ST. B. ASS'N. J., May 2017, at 53.

[49] Kim I. Mills, *Feminist Coalition Tries to Revive Equal Rights Amendment – Again*, ASSOCIATED PRESS (Dec. 10, 1993); *Chronology of the Equal Rights Amendment, 1923-1996*, NATIONAL ORGANIZATION FOR WOMEN, https://now.org/resource/chronology-of-the-equal-rights-amendment-1923-1996/ [https://perma.cc/ZR6G-55AQ] (last visited Mar. 31, 2019).

[50] NEALE, *supra* note 39, at 17–18; *see also* Allison L. Held, Sheryl L. Herndon & Danielle M. Stager, *The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly Before the States*, 3 WM. & MARY J. WOMEN & L. 113, 131–32 (1997) (arguing that ERA ratification after the 1982 deadline is valid, while rescission of ERA ratification is not).

[51] Because Congress imposed 1983 as a deadline for ratification, some have argued that any ratifications that take place after 1983 are invalid. The Constitution, however, prescribes no deadline for ratification, and as proponents of the three-state strategy note, the Twenty-Seventh Amendment was finally ratified in 1992, more than two hundred years after it was originally introduced.

[52] NEALE, *supra* note 39, at 18. Others, however, argue that because of the legal impediments inherent in resuscitating the 1972 ERA campaign, a new campaign to enact the ERA afresh should be mounted. *See id*. at 2–3 (describing "fresh start" ERA proposals introduced in recent Congresses); Helen

Regardless of the obstacles to ratification that remain, the renewed push for ratification makes clear that interest in the ERA is not merely academic or historical, but rather an urgent and necessary response to the many threats to women's rights and women's equality that have emerged over the last decade.[53] In many ways, today's women find themselves in the same position that Crystal Eastman occupied a century ago. Over the course of our lives, and those of our mothers and grandmothers, we have seen significant change in our understanding of women's rights. But it is clear that these changes have not been exhaustive and have not resulted in a more robust—and durable—vision of women's equal citizenship. Indeed, the Court's efforts to read into the Constitution a "de facto ERA" seem especially precarious given the changing composition of the federal courts and the narrowing scope of individual rights. The impediments to women's citizenship that Crystal Eastman identified in 1920—equal pay, limited reproductive autonomy, the liminal status of housework and caregiving, limited employment opportunities[54]—are as pressing now as they were then.[55] Perhaps more so.

On this account, just as the ratification of the Nineteenth Amendment compelled Crystal Eastman and her fellow feminists to press for a more expansive understanding of women's rights, this current moment may inspire today's women to think more broadly about the conditions necessary to achieve true freedom for all women.

Now we can begin. Again.

Hershkoff & Elizabeth M. Schneider, *Sex, Trump, and Constitutional Change*, 34 CONST. COMMENT. 43, 118 & n.376 (2019) (noting the debate "about the ratification deadline for the existing version of the Equal Rights Amendment and whether a 'fresh start' is needed for the language of a proposed amendment").

[53] *See* Sarah M. Stephens, *At the End of Our Article III Rope: Why We Still Need the Equal Rights Amendment*, 80 BROOK. L. REV. 397, 400–01 (2015) ("The ERA remains the best option to overcome the inability of existing equal protection jurisprudence to achieve rigorous protection against sex discrimination").

[54] Eastman, *supra* note 3.

[55] Ariane de Vogue, *Anticipation Builds as Supreme Court Sits on Major Abortion Access Case*, CNN (Mar. 29, 2019 8:10 AM), https://www.cnn.com/2019/03/29/politics/supreme-court-abortion-indiana/index.html [https://perma.cc/79A5-JJE4]; Alexia Fernández Campbell, *Facebook Allowed Companies to Post Ads Only Men Could See. Now That's Changing.*, Vox (Mar. 21, 2019 4:20 PM), https://www.vox.com/2019/3/21/18275746/facebook-settles-ad-discrimination-lawsuits [https://perma.cc/PW6J-WLP9]; *Frequently Asked Questions About the Wage Gap*, NAT'L WOMEN'S L. CTR. (Sept. 2018), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/09/Wage-Gap-FAQ.pdf [https://perma.cc/NFA6-ALTU]; Paula Span, *Caregiving Is Hard Enough. Isolation Can Make It Unbearable*, N.Y. TIMES (Aug. 4, 2017), https://www.nytimes.com/2017/08/04/health/caregiving-alzheimers-isolation.html [https://perma.cc/HA7T-TT9L].