

REMEMBER THE LADIES

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Women and the Vote

For much of American history, women did not have the right to vote or other basic rights. The colonies in 1769 adopted the English system of law decreeing that women cannot own property in their own name or keep their own earnings.

In a letter Abigail Adams wrote to her husband John Adams in 1776, she urged him and the other members of the Continental Congress to “remember the ladies” when fighting for America’s independence from Great Britain. The future First Lady wrote in part:

“I long to hear that you have declared an independency – and, by the way, in the new Code of Laws which I suppose it will be necessary for you to make, I desire you would Remember the Ladies, and be more generous and favorable to them than your ancestors. Do not put such unlimited power into the hands of the husbands. Remember all men would be tyrants if they could. If particular care and attention is not paid to the Ladies, we are determined to foment a rebellion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation.”

The ladies were not remembered. By 1777 all states had passed laws which took away women’s right to vote. Under the Articles of Confederation

(1777), states retained control over citizen voting rights. The U.S. Constitution, Article One, Section Two, continued the practice of leaving who could vote to the individual states. Except where restricted by Constitutional amendments or by federal law, states still enjoy this right. Gradually, some individual states did give, or restore, some rights to women. For example, Mississippi granted women the right to hold property in their own names – with permission from their husbands – in 1839. In 1869 Arabella Mansfield was granted admission to practice law in Iowa, making her the first woman lawyer. That same year Ada H. Kepley became the first woman in the U.S. to graduate from a law school.

The Supreme Court of Illinois in 1870 refused to grant Mrs. Myra Bradwell a license to practice law because, as a married woman, Mrs. Bradwell was neither bound by her express contracts or implied contracts. This meant that she could not create a contract, as between an attorney and a client. On appeal, the U.S. Supreme Court in *Bradwell v. Illinois*, 83 U.S. 130 (1873) found:

"That God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws..."

The concurring opinion by Justice Joseph Philo Bradley reads, in part:

"Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The Constitution of the family organization, which is founded in the divine ordinance as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood."

Gaining the power of the ballot box was a critical step towards women obtaining additional rights, such as the right to work in professions of their own choosing. As Susan B. Anthony stated "It was we, the people; not we, the white male citizens; nor yet we, the male citizens; but we, the whole people, who formed the Union... Men, their rights and nothing more; women, their rights and nothing less."

By the 1820s and 30s, most states had extended the voting franchise to all white men, regardless of how much money or property they had. However, women were still not permitted to vote. A group of abolitionist activists – mostly women, but some men – gathered in Seneca Falls, New York in 1848 and proclaimed in its Declaration of Sentiments that women should have the right to vote.

After the Civil War, the newly passed 14th amendment prohibited any state from making or enforcing “any law which shall abridge the privileges or immunities of citizens of the United States...” The 15th amendment declared that the “right of citizens of the United States to vote shall not be denied or abridged...on account of race, color, or previous condition of servitude.” A number of activists at the time unsuccessfully tried to convince Congress to include sex as an included class in the proposed 15th amendment. However, even some suffragettes felt that race and sex should be handled separately. They did not want the argument over women’s votes to impair progress over racial voting equality.

Attempts to shoehorn women’s voting rights into existing law failed. Susan B. Anthony tried to vote in 1872. She was prohibited from voting and fined \$100, which she refused to pay. Virginia Minor was not permitted to register to vote in St. Louis, MO. She sued the election registrar, Reese Happersett, arguing unsuccessfully that the 14th amendment made no reference to sex or gender, only “citizens” and “persons.” Women were not allowed to file lawsuits on their own behalf, so her husband Francis acted as the co-Plaintiff. He also represented her as her attorney. The Missouri courts ruled against Mrs. Minor. The U.S. Supreme Court unanimously affirmed, finding that the 14th amendment voting rights protection did not apply to women. Only legislatures could decide who should be entitled to vote. *Minor v. Happersett*, 88 U.S. 162 (1874).

While some states permitted women to vote, for example Wyoming in 1890, it was not until August 26, 1920 when the 19th Amendment was ratified that women could vote in all elections in all states. Mississippi did not ratify the 19th Amendment until 1984.

Jeanette Rankin organized and spoke for the Equal Franchise Society. In 1912 she became the field secretary of the National American Woman Suffrage Association. She was among the organizers of the 1913 suffrage march in Washington, DC before the inauguration of Woodrow Wilson. Rankin was also active in the suffrage movement in her home state of Montana and was the first woman to speak before the state legislature. Montana gave women the right to vote in 1914, and elected Rankin to the U.S. Congress in 1916, making her the first Congresswoman and the first woman elected to a national legislature in any western democracy. A second suffrage march, led by Alice Paul, took place in 1917 during Wilson’s second inaugural. President Wilson, after previously opposing women’s suffrage, later adopted the cause. During World War One, Wilson said in a speech “We have made partners of the women in this war. Shall

we admit them only to a partnership of suffering and sacrifice and toil and not to a partnership of right?"

2019 is the centennial year of the "Susan B. Anthony" amendment passing both houses of Congress. The Republican majority in the House mostly voted in favor, while most of the Democrats voted against it. Illinois, Wisconsin and Michigan were the first states to ratify the amendment. Georgia and Alabama rejected it. Thirty six states were necessary to ratify the amendment before it could become part of the US Constitution. The last state to pass the 19th amendment was Tennessee, which ratified the amendment in the state legislature by only one vote - that of 24 year old Harry Burn who changed his position on the issue and voted in favor as his mother had urged him to do. The Amendment became law on August 26, 1920, which meant that the electorate was doubled. Women voted in the 1920 Presidential election. Warren G. Harding won. To this day historians debate whether or not the women's vote was the deciding factor. Harding, who was a U.S. Senator from Ohio in 1919, was absent when the Senate considered the amendment.

A number of states have adopted their own versions of an Equal Rights Amendment in their state constitutions. The 1879 Constitution of California equal rights provision is narrowly written. It limited the equal rights conferred on women to "entering or pursuing a business, profession, vocation, or employment."

The Maryland constitution provides in its Declaration of Rights "Equality of rights under the law shall not be abridged or denied because of sex." This language is typical of the constitutional protections of many other states, including, for example, Alaska, Connecticut Delaware, Hawaii, Illinois, New Mexico, Oregon, Pennsylvania, Texas, and Washington.

Wyoming gave women the right to vote as a condition of transition from territory to statehood. Utah, which did not ratify the ERA, first granted women the right to vote in 1870. However, the Edmunds-Tucker Act (1887) disallowed enfranchisement of women in the Utah territory. The goal of the Act was to prohibit women who were in polygamous marriages from voting. Women's full legal rights, including the vote, was restored in 1896 by a change to the Utah Constitution, which provides "The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy all civil, political and religious rights and privileges."

Virginia's constitution reads "That the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination."

Voting rights for women was a hard fought battle. Anti-suffrage views were dominant among men and women through the early twentieth century. While pro-suffrage organizations existed as early as 1869, in 1911 anti-suffrage activists formed groups including the National Association Opposed to Woman Suffrage. Arguments against women having the vote resonated with many Americans. Anti-suffrage positions included the argument that because women took care of the home and children, they did not have time to vote or stay updated on politics. Some argued that women lacked the expertise or mental capacity to offer a useful opinion about political issues. Political cartoons of the day depicted wives who would vote as dominating their husbands. Some opponents asserted that adding more voters, women, would simply cost more money in conducting elections without adding any new value.

The passage of the 19th amendment finally gave women equality at the ballot box. It also provided consistency amongst the states in their treatment of women's voting rights. Voting matters. Peaceful change through the use of the ballot box is the essence of American democracy. The importance of the vote harkens back the phrase "No taxation without representation" generally, and to Abigail Adams' admonition that women would not be bound by laws in which they have no voice. As Susan B. Anthony said, "It is downright mockery to talk to women of their enjoyment of the blessings of liberty while they are denied the use of the only means of securing them provided by this democratic-republican government: the ballot."

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The MD Bar Journal reserves the right to edit this piece. The published version might be different.