

Sex, Suffrage, and State Constitutional Law: Women's Legal Right to Hold Public Office

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ABSTRACT: On January 20, 2021, Kamala Harris was sworn in by Justice Sonia Sotomayor as the nation's first woman Vice President. This occasion, marked by women of color holding two of the most crucial roles in the federal government, would have been unthinkable to many for most of United States history. While the political efforts necessary to reach this moment have been studied in great depth, the legal challenges to women's officeholding have been overlooked and even denied.

Relying on extensive historical research, this Article is the first to examine how women advocated for more than a century for the legal right to hold public office through state-level litigation, constitutional amendments, legislative lobbying, and public commentary. From the 1840s through the 1940s, women in many states were excluded from holding even minor public offices because of state constitutional language and judicial holdings. Opponents of women's officeholding feared that permitting women to assume posts would deprive men of their rightful opportunities, radically alter gender norms, and fuel the fire of the women's suffrage movement. The nation's first women lawyers were particularly active in challenging officeholding restrictions, with results varying by region and reflecting distinct legal, political, and social cultures. In some states disenfranchised women could assume only a narrow range of offices related to education, children, and charity, while in other locations they could hold a wide array of appointed posts and even elected positions for which they could not vote. After women were enfranchised through either state

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constitutional provisions or the Nineteenth Amendment, their officeholding eligibility remained contested in jurisdictions that did not expressly authorize it.

Recovering the history of women’s legal right to hold public office challenges three major conventional wisdoms. First, it undermines the commonplace claim in scholarship on women’s legal and political history that officeholding was not a meaningful part of women’s advocacy or experiences until after ratification of the Nineteenth Amendment in 1920. This Article’s account instead shows that proponents of women’s rights have long demanded women’s access to public posts, and women held positions for more than a half century prior to the federal suffrage amendment. Second, this Article challenges prominent scholarship—mostly focused on interpreting the Reconstruction Amendments—that treats officeholding and suffrage as inevitably paired. Foregrounding women’s history and state-level advocacy emphasizes the legal possibility and practical reality of severing these rights. Third, and relatedly, the Article calls for more attention to state constitutional law and regional variation. The women’s officeholding story clearly demonstrates how focusing on one geographical area, providing a single national account, or limiting analysis to the federal level obscures essential developments in securing rights.

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INTRODUCTION

The striking moment when Supreme Court Justice Sonia Sotomayor swore in Vice President Kamala Harris, on January 20, 2021, was generations in the making. Scholars and public commenters have rightly devoted significant attention to the political and social changes that were necessary prerequisites for two women of color to reach high posts in the nation's leadership.¹ Yet these accounts tell only part of the story. For more than a century, women faced more than political and social obstacles to assuming public offices. The law itself foreclosed their ambitions.

This Article provides the first comprehensive account of women's efforts to secure the legal right to hold public office, which spanned the 1840s through the 1940s.² In court cases, attorneys general opinions, legislative debates, constitutional conventions, and the popular press, discussants debated women's eligibility to hold appointed and elected positions ranging from school superintendent and notary public to mayor and legislator.

States' approaches to women's officeholding varied tremendously and changed over time. In some jurisdictions, women were excluded from even the lowest public offices by constitutional language that limited officeholding to men.³ But in others, the pertinent constitutional provision was silent or ambiguous on women's officeholding rights.⁴ Conservative judges cited history and common law understandings to bar women from officeholding, while their more liberal brethren construed malleable law in women's favor.⁵ Sometimes statutory text listing officer qualifications was also relevant.⁶ Because of these variations, some states excluded women from nearly all public offices prior to suffrage, while others permitted women to hold even elective offices for which they could not vote, and still others barred fully enfranchised women from select offices.⁷ Commenters at the time sought to reconcile the disparate approaches with great difficulty. In the words of a 1910 *Harvard Law Review* author, women's officeholding opinions were "in hopeless conflict."⁸

1. See, e.g., Martha S. Jones, *Black Women in Politics Are No Longer a "First." They Are a Force*, WASH. POST (Aug. 13, 2020), <https://www.washingtonpost.com/opinions/2020/08/13/black-women-politics-are-no-longer-first-they-are-force/> [<https://perma.cc/FR8F-8W3H>].

2. The term "office" does not have a consistent, uniform definition. For purposes of this Article, "office" refers to positions that required election by voters or legislators or appointment by designated officials, in contrast to more routine methods of hiring for government positions. More detail is provided when the result of a case or legislative debate turned on a particular definition.

3. *Infra* Part I.A.

4. Note, *Eligibility of Women for Public Office*, 24 HARV. L. REV. 139, 140-41 (1910).

5. *Id.*

6. Note, *Eligibility of Women for Public Office*, 33 HARV. L. REV. 295, 296-97 (1919).

7. *Infra* Parts II & IV.B.

8. *Eligibility of Women for Public Office (1910)*, *supra* note 4, at 139. Although the author identified a few patterns (such as administrative versus legislative positions, and appointed versus elected posts), he concluded that cases mostly turned on how courts viewed male pronouns, connections to the franchise, textual omissions, and the lasting power of the common law. *Id.* See also Leonhard

Rather than being legally reconcilable from a national vantage, stances on women's officeholding followed geographic patterns.⁹ In the West, women held office relatively early because of links to suffrage and the progressiveness of governors and legislators.¹⁰ Western Territories enfranchised women beginning in 1869, and most Western states had fully enfranchised women citizens by the mid-1910s.¹¹ As historians have detailed, an array of factors caused women's suffrage to spread from West to East through state-level constitutional amendments.¹² These factors included demographics, partisan politics, women's activism, the presence of educated and professional women, tactics turning on race, class dynamics, literacy rates, religious ideology, the policies of neighboring states, and attitudes toward other reform efforts such as temperance.¹³ Because some suffrage amendments expressly included the right to hold office and others were understood to encompass or require it as a next step, the spread of suffrage across the nation directly influenced the scope of women's officeholding.¹⁴

Yet while officeholding tracked suffrage to some extent, it did not proceed on the same unidirectional march. Ambitious women (frequently pathbreaking lawyers) could prompt change by running for office or seeking appointment, with the governor, attorney general, or judges determining their eligibility. In the Midwest, lawmakers routinely permitted women to hold office before enfranchisement, pointing to women's competence and to men's right to choose whichever candidates they preferred.¹⁵ In New England, traditionalist judges interpreted constitutional silences to block women's officeholding progress, sometimes undermining their legislatures' clear efforts to expand women's domain. Women in these states secured officeholding rights in a piecemeal fashion that prioritized positions deemed gender appropriate—those focused on education, charity, women, and children.¹⁶ States in the Mid-Atlantic reached the question of women's officeholding eligibility later, rendering the possibility less

Felix Fuld, *The Law of Officers*, 14 LAW. STUD. HELPER 329 (1906) (describing “conflicting decisions” on women's eligibility for office).

9. Regional labels and borders have varied over time. For discussion of the regional categories used in this Article, see the introduction to Part II.

10. *Infra* Part II.A. & III.A.

11. *Id.*

12. Between 1867 and 1918, there were fifty-six state campaigns on women's suffrage referenda. ELEANOR FLEXNER & ELLEN FITZPATRICK, *CENTURY OF STRUGGLE: THE WOMAN'S RIGHTS MOVEMENT IN THE UNITED STATES* 141 (1996).

13. See ALEXANDER KEYSER, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 150, 158, 167-80, Appendix Table A.20 (2009); REBECCA J. MEAD, *HOW THE VOTE WAS WON: WOMAN SUFFRAGE IN THE WESTERN UNITED STATES, 1868-1914*, at 1-16 (2004); JO FREEMAN, *A ROOM AT A TIME: HOW WOMEN ENTERED PARTY POLITICS* 49-52 (2000); CORINNE M. MCCONNAUGHY, *THE WOMAN SUFFRAGE MOVEMENT IN AMERICA: A REASSESSMENT* 249-50 (2013); Holly J. McCammon et al., *How Movements Win: Gendered Opportunity Structures and U.S. Women's Suffrage Movements, 1866 to 1919*, 66 AM. SOC. REV. 49, 61, 66 (2001).

14. *Infra* Parts II.A. & III.

15. *Infra* Part II.B.

16. *Infra* Part II.C. & D.

novel and therefore less threatening. Still, advancements there were gradual and limited. Finally, in the South, where gender norms were most staunchly guarded, lawmakers delayed and restricted women's officeholding opportunities to a select few prior to enfranchisement.¹⁷ In sum, each region's distinct legal, political, and social culture mattered enormously.

The 1920 ratification of the Nineteenth Amendment, which proclaimed that the right to vote cannot be denied or abridged on account of sex,¹⁸ did not end the debate over women's officeholding rights. Because decades of state practices disentangled women's suffrage and officeholding, it was unclear to politicians, lawyers, and other influential stakeholders whether a federal *suffrage* amendment altered state *officeholding* rules. Thus, the amendment prompted a new wave of legal advocacy to secure or clarify women's eligibility, extending into the 1940s.¹⁹

Race played a complex role in these developments.²⁰ In the first half of the nineteenth century, state constitutions often connected race and sex in provisions that limited suffrage and officeholding to "white male citizens."²¹ After the Fifteenth Amendment and state constitutional amendments technically eliminated restrictions based on race, arguments regarding black men's and white women's political rights diverged. Most judges and other officials who denied women's officeholding understood the disability as springing from the history of coverture (which held that husband and wife were one legal person), common law traditions, and separate spheres ideology.²² That black men's rights had been expanded was irrelevant to their analysis. Only a few judges over the course of many decades employed analogies between race and sex to argue for women's rights. These judges opined that the original intent of their state constitution's framers should not limit women's officeholding, just as it had not limited black men's.²³

On the political stage, race was a powerful tool in discourse about women's rights. Some white suffrage leaders employed racist arguments to demand the ballot, maintaining that it was unacceptable that recently freed black men (and immigrants) could vote when educated American white women could not.²⁴

17. *Infra* Part II.E.

18. U.S. CONST. amend. XIX. Importantly, though the amendment is often described as guaranteeing women the right to vote, many women (especially women of color) remained disenfranchised through legal and extralegal methods. See ROSALYN TERBORG-PENN, *AFRICAN AMERICAN WOMEN IN THE STRUGGLE FOR THE VOTE, 1850-1920*, at 1-2 (1998); Serena Mayeri, *After Suffrage: The Unfinished Business of Feminist Legal Advocacy*, 129 *YALE L.J.F.* 512, 512-13 (2020).

19. *Infra* Part IV.B.

20. For the sake of brevity, the adjective "white" is omitted throughout this Article when race is not directly at issue.

21. *Infra* Part I.A.

22. See especially *infra* Part II.C.

23. The strongest example is the dissent in *Opinions of the Justices of the Supreme Judicial Court*, 62 Me. 596 (1874), discussed *infra* Part II.C.

24. TERBORG-PENN, *supra* note 18, at 10.

Commentary on offices occasionally echoed this racialized reasoning.²⁵ A more striking use of race, though rarely employed, centered on the possibility of black women officeholders. For example, when Congress debated women's political rights in 1890, one supportive congressman charged that opponents were motivated by the fear that they might "some day see sitting in the Presidential chair of the nation a woman with a black skin."²⁶

But, in reality, few black women held office in the studied years.²⁷ One reason for their exclusion is the geographic patterns detailed in this Article. As of 1870, 92 percent of the black population lived in the South, and 85 percent remained there when the Nineteenth Amendment was ratified fifty years later.²⁸ This means that the vast majority of black women lived in the states that most restricted women's political opportunities.²⁹ In a region where few women held any offices, racism and disenfranchisement of black voters meant that the limited range of posts open to women went to white women.³⁰ In later years and in places with broader officeholding opportunities, black women's intersectional identities resulted in greater political and social hurdles.³¹

This Article's analysis of women's officeholding rights challenges conventional wisdoms and approaches in three major respects. Within the domain of women's history, this Article is the first scholarship to recognize and analyze decades of women's officeholding efforts prior to the Nineteenth Amendment.³² That analysis, in turn, undercuts a broader body of scholarship

25. For example, see discussion of women's officeholding in Utah Territory, *infra* Part II.A.

26. The debate occurred as Congress considered the admission of Wyoming as a state. 21 CONG. REC. 2694 (1890).

27. A small number of black women held public offices by the turn of the twentieth century. See, e.g., *Little Locals*, GALVESTON DAILY NEWS, Apr. 11, 1891 (reporting on Chicago notary appointee); *Negro Woman Notary*, WASH. REG. (Kan.), June 18, 1897, at 5 (reporting on Kentucky appointee).

28. U.S. CENSUS BUREAU, POPULATION OF THE UNITED STATES (1870), <https://www2.census.gov/library/publications/decennial/1870/population/1870a-04.pdf> [<https://perma.cc/52QV-X8B8>]; U.S. CENSUS BUREAU, NUMBER AND DISTRIBUTION OF INHABITANTS (1920), <https://www2.census.gov/library/publications/decennial/1920/volume-1/41084484v1ch1.pdf> [<https://perma.cc/ZV8Q-N5VB>].

29. The author's review of thousands of primary sources indicates that all the women who litigated officeholding cases or were prominent lobbyists on the issue were white.

30. On the South, see *infra* Part II.E.

31. Though the political obstacles that hindered black women's officeholding after the Nineteenth Amendment are beyond the scope of this Article, it is worth noting that the first successes in high profile offices came outside the South. The first black woman state legislator was elected in 1938 in Pennsylvania. John Thomas McGuire, *Working within the Labyrinth of Race: Crystal Bird Faucet, Urban African American Women, and the National Democratic Party, 1934-1944*, 39 J. URB. HIST. 172, 179 (2012). And the first black woman judge, Jane Bolin, was appointed to the New York City family court in 1939. For discussion of the context for her appointment, see Elizabeth D. Katz, "Racial and Religious Democracy": *Identity and Equality in Midcentury Courts*, 72 STAN. L. REV. 1467, 1505-08 (2020).

32. This aspect connects the Article to a recent outpouring of astute scholarship marking the centennial of the Nineteenth Amendment. For a helpful discussion of the literature, see generally *Interchange: Women's Suffrage, the Nineteenth Amendment, and the Right to Vote*, 106 J. AM. HIST. 662 (2019); Cathleen Cahill, Crystal Feimster, & Kimberly Hamlin, *Expanding the Suffrage Archive: Chronology, Region, Ideology, Biography, and Memory*, 19 J. GILDED AGE & PROGRESSIVE ERA 533 (2020). Some recent contributions center on the significance of the Nineteenth Amendment for the right

that maintains that law plainly links officeholding and suffrage. Third, this account demonstrates the importance of studying state-level developments—in contrast to treatments that obscure regional variation or that focus solely on the federal level. Indeed, attentiveness to state law is the basis for the first two findings.

The Article's first contribution is to directly contest a commonplace understanding in the history of women's rights by recovering women's robust and sustained pursuit of offices. Mostly through omissions, but also in direct claims, leading scholars have maintained that women's officeholding was a nonissue until women secured suffrage.³³ Only a few scholars have noted that there were questions about women's legal eligibility to hold offices prior to ratification of the federal suffrage amendment.³⁴ The most prominent scholarship that acknowledges legal conflict over women's officeholding allots only a few paragraphs and covers the early 1920s.³⁵ Other contributions suggest that officeholding eligibility flowed inevitably from the Nineteenth Amendment.³⁶

to vote. See, e.g., Richard L. Hasen & Leah M. Litman, *Thin and Thick Conceptions of the Nineteenth Amendment Right to Vote and Congress's Power to Enforce It*, 108 GEO. L.J. 27 (2020). Others consider women's broader campaigns for legal, social, and economic reforms in furtherance of sex equality and to challenge racial discrimination. E.g., Reva Siegel, *The Nineteenth Amendment and the Democratization of the Family*, 129 YALE L.J.F. 450 (2020); Tracy A. Thomas, *More than the Vote: The Nineteenth Amendment as Proxy for Gender Equality*, 15 STAN. J. C.R. & C.L. 349 (2020); MARTHA JONES, VANGUARD: HOW BLACK WOMEN BROKE BARRIERS, WON THE VOTE, AND INSISTED ON EQUALITY FOR ALL (2020); Catherine Powell & Camille Gear Rich, *The "Welfare Queen" Goes to the Polls: Race-Based Fractures in Gender Politics and Opportunities for Intersectional Coalitions*, 108 GEO. L.J. 105 (2020).

33. According to one of the most distinguished historians in the field, "[i]n part to insulate their demand for the vote from any hint of selfish desire for office, women repeatedly disavowed any interest in the ugly business of gaining political place or power." ELLEN CAROL DUBOIS, *SUFFRAGE: WOMEN'S LONG BATTLE FOR THE VOTE* 61 (2020).

34. Virginia Drachman devotes three paragraphs to summarizing how women lawyers sued for the right to become justices of the peace, notaries public, school officers, and prosecuting attorneys, from the 1870s through the 1890s. VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* 25-26 (1998); see also Deborah M. Thaw, *The Feminization of the Office of Notary Public: From Feme Covert to Notaire Covert*, 31 J. MARSHALL L. REV. 703, 710-27 (1998) (discussing women's eligibility to serve as notaries public); Kathryn A. Lee, *Law in the Crucible of Change: Women's Rights and State Supreme Court Policymaking, 1865-1920*, at 174-212 (1988) (unpublished dissertation) (providing a chapter on women's officeholding disputes).

35. Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947, 1019 (2002) [hereinafter Siegel, *She the People*]; J. STANLEY LEMONS, *THE WOMAN CITIZEN: SOCIAL FEMINISM IN THE 1920S*, at 68-69 (1973). Other relevant contributions include SANDRA F. VANBURKLEO, "BELONGING TO THE WORLD": WOMEN'S RIGHTS AND AMERICAN CONSTITUTIONAL CULTURE 206 (2001) (providing two paragraphs on the right to hold office before and after the Nineteenth Amendment) and Reva Siegel, *Collective Memory and the Nineteenth Amendment*, in *HISTORY, MEMORY, AND THE LAW* 161-63 (Austin Sarat & Thomas Kearns, eds., 1999) (discussing inconsistencies in state courts' treatment of women's political rights after the Nineteenth Amendment). Recent scholarship devotes greater attention to the post-1920 officeholding disputes. E.g., PAULA MONOPOLI, *CONSTITUTIONAL ORPHAN: GENDER EQUALITY AND THE NINETEENTH AMENDMENT* 115-26 (2020).

36. Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L.J. 1131, 1202-03 (1991) ("[C]ould any law making women ineligible to hold office be reconciled with the Nineteenth Amendment? I think the answer is no, even though the Amendment does not explicitly speak of holding

Rather than analyzing longstanding legal obstacles, most scholarship on women's officeholding considers post-suffrage political impediments.³⁷

Though scholars have not examined women's legal right to hold office, they have devoted considerable attention to other political and professional rights related to the vote, such as women's ability to become lawyers and serve on juries.³⁸ In accounts centered on the history of women lawyers, scholars emphasize the confluence of legal and social impediments to women's entry into the profession.³⁹ The U.S. Supreme Court case *Bradwell v. Illinois* provides a touchstone, demonstrating how gender norms could infuse legal analysis to exclude women from the bar.⁴⁰ Yet what nearly all accounts of early women lawyers overlook is that the first legal opinions excluding women turned on analysis of whether lawyers were *public officers*.⁴¹ Similarly, sophisticated scholarship on women's jury rights probes connections between jury service,

office.”). For a more recent example, see Neil S. Siegel, *Why the Nineteenth Amendment Matters Today: A Guide for the Centennial*, 27 DUKE J. GENDER L. & POL’Y 235, 256 (2020).

37. For recent contributions focused post-1920, see THE RIGHT TO BE ELECTED: 100 YEARS SINCE WOMEN’S SUFFRAGE (Jennifer M. Piscopo & Shauna L. Shames eds., 2020) and SUFFRAGE AT 100: WOMEN IN AMERICAN POLITICS SINCE 1920 (Stacie Taranto & Leandra Zarnow eds., 2020). Several works provide helpful albeit brief discussions of women’s officeholding gains in states that enfranchised women prior to 1920. *E.g.*, MELANIE GUSTAFSON, WOMEN AND THE REPUBLICAN PARTY, 1854-1924, at 43-45 (2001); Sherry J. Katz, *Redefining “the Political”*: Socialist Women and Party Politics in California, 1900-1920, in WE HAVE COME TO STAY: AMERICAN WOMEN AND POLITICAL PARTIES, 1880-1960, at 23-32 (1999) [hereinafter Katz, *Redefining “the Political”*]; Robyn Muncy, “Women Demand Recognition”: Women Candidates in Colorado’s Election of 1912, in WE HAVE COME TO STAY: AMERICAN WOMEN AND POLITICAL PARTIES, *supra*, at 45-54. Kristi Anderson focuses on elected positions after 1920, but she acknowledges that in earlier years “women ran for and won office in both suffrage and non-suffrage states, though these offices were almost uniformly related to the governance of school systems.” KRISTI ANDERSEN, AFTER SUFFRAGE: WOMEN IN PARTISAN AND ELECTORAL POLITICS BEFORE THE NEW DEAL 112-113 (1996). One paragraph addresses the question of legal eligibility prior to 1920. *Id.* at 122.

38. For an excellent treatment of the relationship between women’s suffrage, the right to join the bar, and jury service (but that omits officeholding), see Barbara Allen Babcock, *Feminist Lawyers*, 50 STAN. L. REV. 1689, 1695-97 (1998) (“Opponents... warned that allowing women to practice law would lead to suffrage and vice versa, adding as a last blow, that voting and lawyering would inevitably result in jury service.”).

39. On early women lawyers, see DRACHMAN, *supra* note 34, at 15-36.

40. *Id.* at 6 (discussing 83 U.S. 130 (1872)).

41. Drachman quotes “office” discussion from a few cases in which women challenged their exclusion from the bar but does not connect this analysis to disputes over women’s officeholding rights more generally. DRACHMAN, *supra* note 34, at 18, 22, 27, 32, 33-35. See also Cristina Rodriguez, *Clearing the Smoke-Filled Room: Women Jurors and the Disruption of an Old-Boys’ Network in Nineteenth-Century America*, 108 YALE L.J. 1805, 1832 (1999) (briefly describing courts’ analysis of women lawyers as officers).

suffrage, and citizenship⁴² but offers minimal analysis of connections between jury service and officeholding.⁴³

Second, this Article debunks the common expectation that suffrage plainly encompasses officeholding. In their studies of the Reconstruction Amendments and the Nineteenth Amendment, respected constitutional law scholars have grouped voting and officeholding (as well as jury service) under the umbrella of “political rights,” based on a contested reading of congressional debates.⁴⁴ While this scholarship is illuminating in many respects, it leaves considerable space for further analysis of the right to hold office.⁴⁵ Turning to state law is especially helpful for elucidating this area, including to clarify federal lawmakers’ likely understandings of the relationship between voting and officeholding.

State law developments suggest that while politicians commonly treated suffrage and officeholding as a neat package for white men,⁴⁶ these rights were theoretically severable for black men and were routinely separated for women. Provocatively, those who supported black men’s and (white) women’s political rights perceived the relationship between suffrage and officeholding in an inverted manner. For black men, suffrage would hopefully secure officeholding,⁴⁷ whereas for white women, competent officeholding could prove worthiness for the ballot.⁴⁸ Recognizing this complexity enhances

42. See, e.g., HOLLY J. MCCAMMON, *THE U.S. WOMEN’S JURY MOVEMENTS AND STRATEGIC ADAPTATION: A MORE JUST VERDICT* (2014); LINDA KERBER, *NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP* 124-220 (1998); Gretchen Ritter, *Jury Service and Women’s Citizenship before and after the Nineteenth Amendment*, 20 *LAW & HIST. REV.* 479 (2002); Vikram David Amar, *Jury Service as Political Participation Akin to Voting*, 80 *CORNELL L. REV.* 203, 228-35 (1995) [hereinafter Amar, *Jury Service*]; Joanna L. Grossman, *Women’s Jury Service: Right of Citizenship or Privilege of Difference?*, 46 *STAN. L. REV.* 1115 (1994); Jennifer K. Brown, *The Nineteenth Amendment and Women’s Equality*, 102 *YALE L.J.* 2715 (1993).

43. Cf. Rodriguez, *supra* note 41, at 1806 (arguing that scholarship treating “women voters and jurors as functions of each other obscures the jury’s precise role... and oversimplifies the narrative of the history of women’s rights”).

44. The most comprehensive law review treatment claiming that officeholding was subsumed within voting is Amar, *Jury Service*, *supra* note 42, at 228-35. Other articles have relied on *Jury Service* to support this claim with minimal additional evidence. See, e.g., Akhil Reed Amar, *Women and the Constitution*, 18 *HARV. J.L. & PUB. POL’Y* 465, 467, 470 (1995); Steven G. Calabresi & Julia T. Rickert, *Originalism and Sex Discrimination*, 90 *TEX. L. REV.* 1, 77 (2011). On the competing interpretation that has received less attention from legal scholars, see *infra* Part I.B.2. Rather than relitigating the meaning of congressional debates, this Article maintains that state law provides strong evidence that Congressmen understood suffrage and officeholding as severable.

45. Some of the most cited articles on how rights were understood during Reconstruction do not address officeholding. E.g., Mark Tushnet, *Civil Rights and Social Rights: The Future of the Reconstruction Amendments*, 25 *LOY. L.A.L. REV.* 1207 (1992) (distinguishing civil, political, and social rights without reference to officeholding); John Harrison, *Reconstructing the Privileges and Immunities Clause*, 101 *YALE L.J.* 1385, 1417 (1992) (describing political rights as including voting and jury service).

46. Even for white men, there were sometimes distinctions between suffrage and officeholding in state constitutions. See *infra* Part I.A.

47. For examples of this thinking, see Alfred Avins, *The Right to Hold Public Office and the Fourteenth and Fifteenth Amendments: The Original Understanding*, 15 *U. KANSAS L. REV.* 287, 297-98 (1967).

48. See examples throughout Part II.

understandings of the relationship between gender, race, and citizenship, as well as complicating analysis of political rights.

Third, this Article calls for greater attention to state-level and regional legal reform for several reasons. Historically, state constitutions were more significant targets than the U.S. Constitution for securing rights, and they warrant independent analysis on that basis.⁴⁹ Furthermore, even for scholars focused on the U.S. Constitution, state laws, court opinions, politics, and advocacy surely are relevant to contextualize congressional debates and U.S. Supreme Court decisions.⁵⁰ This Article gives pride of place to state law and decenters federal law, reflecting how state-level claims were the dominant approach for people in the studied period.

This account also demonstrates that attentiveness to location can elucidate the spread and reception of legal change. While women's suffrage scholarship has long emphasized the impact of geography,⁵¹ the same nuance is rare in legal histories and modern legal scholarship.⁵² This Article finds that variation and cross-state actions were essential contributors to the development of women's officeholding rights. For instance, lawmakers and advocates looked to other states for examples to emulate or avoid, and women moved to regions that offered the best opportunities.⁵³ Together, these factors built momentum toward rights expansion over time.

Modern scholars, activists, and commenters increasingly recognize that state law can serve as a robust source for legal rights and protections.⁵⁴ They find that state constitutions contain positive rights,⁵⁵ embody special democratic principles,⁵⁶ offer more opportunity for experimentation and expansion with less

49. JEFFREY S. SUTTON, 51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW 12-13 (2018).

50. Cf. Melissa Saunders, *Equal Protection, Class Legislation, and Colorblindness*, 96 MICH. L. REV. 245, 247 (1997) (arguing that state court decisions are an essential context for understanding the meaning of the Equal Protection Clause of the Fourteenth Amendment).

51. For example, see sources in note 13; see also SARA EGGE, *WOMAN SUFFRAGE AND CITIZENSHIP IN THE MIDWEST, 1870-1920* (2018); Christina Dando, "The Map Proves It": *Map Use by the American Woman Suffrage Movement*, 45 CARTOGRAPHICA 221 (2010).

52. For a recent contribution showing the promise of regional attention, see Emily Prifogle, *Cows, Cars, and Criminals: The Legal Landscape of the Rural Midwest, 1920-1975* (2019) (unpublished dissertation) (on file with author).

53. See examples throughout Part III.

54. E.g., SUTTON, *supra* note 49, at 1-2; Allie Boldt, Miriam Seifter, and Robert Yablon, *Foreword: Special Issue on Public Law in the States*, 2021 WISC. L. REV. i, vi (2021) (describing collection of essays that "underscore the richness of state public law as a field of study and the centrality of state-level institutions to our lived experience with American democracy"). The classic article on state constitutional law is William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489 (1977).

55. EMILY ZACKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA'S POSITIVE RIGHTS* 2-3 (2013).

56. Jessica Bulman-Pozen & Miriam Seifter, *The Democracy Principle in State Constitutions*, 119 MICH. L. REV. 859, 864 (2021).

risk,⁵⁷ supplement and balance federal approaches,⁵⁸ and may ultimately enhance federal law as well.⁵⁹ Scholars offer similar arguments regarding state statutes and regulations.⁶⁰ This Article contributes to this discourse by providing an extensive case study of a right pursued almost exclusively through state laws—supporting scholars’ contention that there can be strategic advantages to this approach, as well as tradeoffs as some states lag behind.⁶¹

The Article proceeds in four parts, each of which unfolds chronologically. Part I turns to the earliest activism for women’s officeholding rights, documenting and exploring the rationales that advocates found persuasive beginning in the 1840s. Continuing into the years following the Civil War, it finds that heightened attention to political rights included calls for women’s officeholding under state and federal constitutions. Part II turns to developments in the Western territories and the states starting in 1869, examining the spread of women’s officeholding rights before any states fully enfranchised women. This Part’s sections cover individual regions, identifying trends in women’s eligibility that reflect diverse legal, political, and social cultures. Part III turns to women’s officeholding expansion in states where women won full suffrage, a period spanning 1890 to 1919. It was in these jurisdictions, concentrated in the West, that women first won high elective offices. Part IV turns to the drafting and application of the Nineteenth Amendment, showing that despite congressional awareness of women’s officeholding demands and experiences, Congress failed to pass a women’s suffrage amendment that clearly encompassed officeholding. That failure punted women’s pursuit of officeholding eligibility back to the states for another round of advocacy.

57. SUTTON, *supra* note 49, at 17-18.

58. Alexander Reinert, Joanna C. Schwartz, & James E. Pfander, *New Federalism and Civil Rights Enforcement*, 116 NW. L. REV. 737, 745-48 (2021).

59. SUTTON, *supra* note 49, at 20; Joseph Blocher, *Reverse Incorporation of State Constitutional Law*, 84 S. CAL. L. REV. 323, 327 (2011) (proposing “that state constitutional doctrine should more often be used as persuasive authority in federal constitutional cases”).

60. E.g., Marie-Amelie George, *Bureaucratic Agency: Administrating the Transformation of LGBT Rights*, 36 YALE L. & POL’Y REV. 83, 86 (2017); Olatunde C.A. Johnson, *The Local Turn; Innovation and Diffusion in Civil Rights Law*, 79 LAW & CONTEMP. PROBLEMS 115, 115-117 (2016); Robin A. Lenhardt, *Localities as Equality Innovators*, 7 STAN. J. C.R. & C.L. 265, 281-85 (2011).

61. SUTTON, *supra* note 49, at 173; Joanna C. Schwartz, *Civil Rights Ecosystems*, 118 MICH. L. REV. 1539, 1596-97 (2020) (recognizing that local civil rights “ecosystems” can empower minorities and advance certain interests, while leaving some rights unprotected). For more skeptical views of state constitutional law, see Erwin Chemerinsky, *Two Cheers for State Constitutional Law*, 62 STAN. L. REV. 1695, 1696 (2010) (“[S]tate constitutional law is a necessary, but inadequate second best to advancing individual liberties when that cannot be accomplished under the United States Constitution.”); Neal Devins, *State Constitutionalism in the Age of Party Polarization*, 71 RUTGERS L. REV. 1129, 1132-33 (2019) (doubting state supreme courts will construe state constitutions more broadly than the U.S. Supreme Court does the federal); and James Gardner, *The Failed Discourse of State Constitutionalism*, 90 MICH. L. REV. 761, 804 (1992) (arguing that state constitutional discourse is underdeveloped, causing state law to be largely redundant with federal).

I. EARLY ADVOCACY FOR WOMEN'S POLITICAL RIGHTS (1840-1874)

Women's movement leaders began demanding the right to hold public office as part of a wide array of state-level reforms during their earliest organizing in the 1840s. By the 1850s, discussants recognized suffrage and officeholding as the key political rights women needed to improve their status. Though few women held public offices in these years, those who secured posts or were excluded on the basis of sex drew significant publicity, which helped spark discussion about the promise and perils of women's officeholding.

After the Civil War, Reconstruction Era politics prompted a narrowed focus on political rights. In state constitutional campaigns and at the federal level, women's movement leaders demanded the ballot and access to offices. Though proponents failed to secure state or federal amendments that clearly granted women political rights, women nevertheless pressed forward. Based on an interpretation of the Reconstruction Amendments called the "New Departure," some women successfully registered to vote and cast ballots. Leading suffragists ran for office, drawing attention to women's demands—even while demonstrating the understanding that voting and officeholding could come separately. During this period, neither their individual political campaigns nor their legal arguments about women's enfranchisement prevailed.

A. *Officeholding in the Nascent Women's Movement*

Women's movement leaders began advocating for a wide array of legal, social, and political reforms pertinent to women's status in the 1840s.⁶² In the surrounding decades, Americans typically believed in separate spheres of activity for the sexes, with the political arena marked as a male domain.⁶³ Many also believed that suffrage should be tied to economic independence, which effectively excluded women because nearly all were dependent on men.⁶⁴ Consequently, political rights were initially the most controversial of women's demands. As one sign of this dynamic, women's suffrage was the only resolution that did not pass unanimously—and indeed almost did not pass—at the famous Seneca Falls Convention held in 1848.⁶⁵ But over the course of the next decade,

62. For the classic account of the early years, see ELLEN CAROL DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA, 1848-1869*, at 22 (1999) (originally published in 1978) [hereinafter DUBOIS, *FEMINISM AND SUFFRAGE*].

63. *Id.* at 16.

64. *Id.* at 40-45. Single women who owned sufficient property could vote in New Jersey from 1776 to 1807. Judith Apter Klinghoffer & Louis Elkis, "The Petticoat Electors": *Women's Suffrage in New Jersey, 1776-1807*, 12 *J. EARLY REPUBLIC* 159, 160 (1992).

65. DUBOIS, *FEMINISM AND SUFFRAGE*, *supra* note 62, at 40-41.

the call for women's political rights gained traction.⁶⁶ While most attention centered on suffrage, officeholding also routinely featured.⁶⁷

From the colonial period through the mid-nineteenth century, states had full discretion to determine the qualifications for voters and officeholders, so securing women's political rights typically required amending state constitutions. In the first years of the United States, constitutional text frequently tied suffrage to property ownership.⁶⁸ Between 1800 and 1850, as states amended their constitutions to eliminate property requirements and new states joined the Union, constitution drafters incorporated the words "male" and "white" to avoid enfranchising women and black men.⁶⁹ According to historian Laura E. Free, "[i]n 1790, only three of the fourteen states had identified their voters explicitly by race, only seven by gender. By 1855, twenty-five of the thirty-one states defined voters explicitly as white, and twenty-seven defined them explicitly as male."⁷⁰

State constitutional provisions also dictated or implied that at least some offices were restricted to white men, though there could be distinctions and ambiguities. One common approach was to restrict some offices to "electors," which meant the "white male" franchise requirement carried into the officeholding context.⁷¹ In other constitutions, sex-based restrictions were incorporated in some but not all officeholding provisions.⁷² In still others (as well as in the U.S. Constitution), there were no textual restrictions based on sex other than, arguably, the use of male pronouns.⁷³ Because of these differences both within and between constitutions, there was varying space for argument about women's legal eligibility to hold offices.

The first time women's rights proponents petitioned a state constitutional convention for women's suffrage, in New York in 1846,⁷⁴ they also recognized

66. *Id.* at 41.

67. One of the earliest examples of a women's movement leader discussing officeholding comes in a letter Lucy Stone wrote to her brother in 1840: "It was decided in our Literary Society the other day that ladies ought to mingle in politics, go to Congress, etc. etc. What do you think of that?" Quoted in FLEXNER & FITZPATRICK, *supra* note 12, at 38.

68. LAURA E. FREE, *SUFFRAGE RECONSIDERED: GENDER, RACE, AND VOTING RIGHTS IN THE CIVIL WAR ERA* 15-16 (2015).

69. *Id.*

70. *Id.* at 10.

71. For example, the 1851 Virginia Constitution specified that eligibility for state legislators was limited to people meeting age and residency requirements who were "qualified to vote for members of the General Assembly," and voters were limited to "white male citizens." VA. CONST. OF 1851, art. III § 1; *id.* art. IV, § 7. But it did not limit the position of governor or circuit court judge to men or to voters. *Id.* art. V, § 3; *id.* art. VI, § 6. *See also* discussion of Ohio, *infra*.

72. For example, Missouri's 1820 Constitution stated that "free white male citizens" were eligible to be members of the state legislature. MO. CONST. OF 1820, art. III, §§ 3, 5. But it did not include this limitation for governor, *id.* art. IV, § 2, or for judges, *id.* art. V.

73. Pennsylvania's 1857 constitution limited voters to "white freemen," PA. CONST. OF 1857, art. I, § 3, but its provisions on officeholders included only residency and age requirements, *id.* art. III, § 1.

74. LISA TETRAULT, *THE MYTH OF SENECA FALLS: MEMORY AND THE WOMEN'S SUFFRAGE MOVEMENT, 1848-1898*, at 5 (2014).

the importance of officeholding. A convention delegate read a petition submitted by citizens of Albany that “complain[ed]” of “the disenfranchisement of the ladies.”⁷⁵ They insisted that “God in creating two sexes, created no difference of rights” and that “the U.S. Constitution allows the ladies to vote and hold office.”⁷⁶ As evidence of the “high moral and intellectual qualities of woman,” the petitioners referenced “Queens Esther, Catherine, and Isabella of Spain.”⁷⁷

In the women’s rights conventions held in the following years, women’s officeholding figured in the list of demands.⁷⁸ Organizers of the first national convention, held in 1850,⁷⁹ shared a letter by Elizabeth Cady Stanton, entitled: “Should woman hold office.”⁸⁰ The letter answered emphatically that women “[m]ost certainly” should, in line with God’s intent that women and men always act together, as “companions for each other.”⁸¹ Stanton observed that some women had no “domestic encumbrances” and might “grace a senate chamber,” and that women might have a “purifying, elevating, softening influence” on the “political experiment of our Republic.”⁸² She also recognized links between officeholding and women’s other objectives. For example, in 1854 she argued that the married women’s acts that state legislatures were gradually enacting to grant women greater control over property would lead to suffrage “and then naturally follows the right to hold office.”⁸³

Popular press printed favorable articles about women’s officeholding. In 1856, the *New England Farmer* queried: “Would it be such a dreadful thing as some suppose, to have women vote and hold office?” Historically, the writer continued, other countries made excellent progress under queens. “Any way, *this* continent, discovered primarily through female foresight and liberality,” the writer continued, referring to Queen Isabella, “is not exactly the fittest place wherein to deny the propriety of females taking part in government.”⁸⁴

The demand for women’s officeholding also attracted opposition. In September 1852, an editorial in the *New York Herald* harshly condemned how

75. *New York Constitutional Convention*, N.Y. TRIB., July 13, 1846, at 2.

76. *Id.*

77. *Id.*

78. *E.g.*, Henry C. Wright, *Women’s Convention in Indiana*, LIBERATOR (Boston), Nov. 7, 1851, at 4; *Woman’s Rights Convention in Pennsylvania*, N.Y. DAILY HERALD, June 3, 1852, at 1. Calls for women’s officeholding also reverberated in speeches and publications by male abolitionist allies. *E.g.*, Henry C. Wright, *Letter from Henry C. Wright*, LIBERATOR (Boston), Nov. 5, 1847, at 2; *From the Pittsburgh Saturday Visitor*, ANTI-SLAVERY BUGLE (Lisbon, Ohio), July 14, 1848, at 4.

79. TETRAULT, *supra* note 74, at 5.

80. The letter was widely reprinted. For examples, see *Should Women Hold Office*, PORTAGE SENTINEL (Ravenna, Ohio), Nov. 25, 1850, at 1; *Women’s Rights Convention at Worcester, Mass.*, N.Y. TRIB., Oct. 26, 1850, at 5-6.

81. *Id.*

82. *Id.*

83. Elizabeth Cady Stanton, *Woman Before the Law: From an Address of Elizabeth Cady Stanton before the Legislature of the State of New York, 1854*, in *YELLOW RIBBON SPEAKER: READINGS AND RECITATIONS* (Anna Howard et al. eds., 1891).

84. *Women in Politics*, NEW ENGLAND FARMER (Boston), Feb. 2, 1856, at 4.

attendees at a women's rights convention wanted to vote and "to be members of Congress," among other goals. Calling on the reader to imagine the ridiculousness of women giving birth while litigating in court and other like scenarios, the writer concluded: "A similar event might happen on the floor of Congress . . . and then what is to become of the woman legislator?"⁸⁵

That women might hold office became a more concrete possibility in 1853, when a woman was elected to a public position for the first time in the United States.⁸⁶ Two-thirds of the all-male electorate in Lincoln County, Maine, elected Olive Rose as their register of deeds.⁸⁷ Though Rose's right to the office was not formally challenged, newspapers published in several states pondered her eligibility. One representative article, published in Virginia, suggested that her election raised the question of "whether she can hold the office—that is, whether the voice of the people shall be obeyed."⁸⁸ A Pennsylvania newspaper retorted, "The Woman's Rights Convention insists that she is."⁸⁹ A couple of weeks later, an Ohio paper that cast Rose's election as a bright day for women's rights went a step further, threatening the judiciary: "And let the unmannerly clodhopper judges of the Eastern District of Maine pronounce Miss Rose ineligible if they dare! They will rue the unlucky day as long as they live."⁹⁰

In the years after Rose's election, a handful of other women were elected to positions by male voters. While few in number, these women attracted considerable attention. In 1854, a newspaper cast the election of a woman as the constable in Perry, Indiana, as a "practical assertion of woman's rights."⁹¹ In 1855, several women were elected as members of the Ashfield, Massachusetts school committee.⁹² News of the committee election spread under the headline "Woman's Rights Recognized."⁹³ Over the following decades, school posts were the category of office that women obtained most easily.⁹⁴

Yet in other locations, women were deemed ineligible to hold office. In 1854, suffragist and abolitionist Adeline Swift received the most votes for the

85. *The Woman's Rights Convention—The Last Act of the Drama*, N.Y. HERALD, Sept. 12, 1852, in UP FROM THE PEDESTAL: SELECTED WRITINGS IN THE HISTORY OF AMERICAN FEMINISM 189-91 (Aileen S. Kraditor, ed., 1968). On the convention, see also FREE, *supra* note 68, at 44-45.

86. *Olive Rose*, HER HAT WAS IN THE RING, <https://herhat.historyit.com/items/view/project/3716/search?resultsMode=search&searchInterfaceId=9> [<https://perma.cc/APX4-2FWC>] ("She was almost certainly the first woman elected in the state of Maine, and perhaps in the United States.")

87. *A Maine Woman Elected to Office*, JACKSON STANDARD (Ohio), June 16, 1853, at 2.

88. (No title), RICHMOND DISPATCH, June 10, 1853, at 1. See also, e.g., *Election of Woman to Public Office*, LEBANON COURIER & SEMI-WEEKLY REP. (Pa.), June 10, 1853, at 3 ("Whether a female is eligible to such an office under our laws, is the question to be settled.")

89. *Election of Woman to Public Office*, SUNBURY GAZETTE (Pa.), June 11, 1853, at 2.

90. *Not 'the Last Rose of Summer.'* WYANDOT PIONEER (Upper Sandusky, Ohio), June 23, 1853, at 1.

91. *Practical Assertion of Woman's Rights*, LOUISVILLE DAILY J., Oct. 19, 1854, at 2.

92. Kathryn A. Nicholas, *Reexamining Women's Nineteenth-Century Political Agency: School Suffrage and Office-Holding*, 30 J. POL'Y HIST. 452, 474 (2018).

93. *Woman's Rights Recognized*, WEEKLY WIS. (Milwaukee), Apr. 25, 1855, at 1.

94. *Infra* Part II.

position of Supervisor of Penfield, Ohio, but the state's constitution prohibited her from holding the post.⁹⁵ It read: "No person shall be elected or appointed to any office in this State, unless he possess the qualifications of an elector," and electors were limited to white men.⁹⁶ The *Lily*, the women's newspaper published by Amelia Bloomer, printed a response by Swift. Swift wrote that it gave her "great pleasure to see the men so ready to acknowledge the justice of enlarging woman's sphere of action." She therefore deeply regretted that the state's constitution would not permit her to serve and pledged to continue fighting for equality.⁹⁷

Leaders of the early women's movement pursued a wide array of reforms, with the legal right to hold public office a meaningful component—albeit not one of the highest profile demands. Though a few women obtained posts by the 1850s, proponents of women's rights recognized that a serious obstacle to women's officeholding ambitions came from state constitutional provisions that contained "male" or were ambiguous on women's eligibility.

B. Pursuit of Political Rights in the Aftermath of the Civil War

The Civil War interrupted the momentum of the women's movement,⁹⁸ but demands for women's political rights received even greater attention after the Union's victory. In advocacy at the state and federal levels, many discussants deemed suffrage essential to black men's and all women's equality.⁹⁹ Consequently, women's movement leaders somewhat narrowed the demands of prior decades to foreground suffrage. Some began to refer to themselves as "suffragists" and participants in "the woman suffrage movement," replacing the earlier language of the "woman's rights movement."¹⁰⁰ They hoped the postwar context would provide a ripe opportunity for women's enfranchisement.¹⁰¹ Though suffrage was the priority, advocates routinely pressed for the right to hold office as well.

Suffragists pursued their political rights in three major venues during the postbellum years. First, they sought state-level constitutional provisions, with the most notable campaigns occurring in New York and Kansas in 1867.¹⁰² Second, they petitioned Congress, demanding women's inclusion in the Reconstruction Amendments, as well as in laws governing the District of

95. (No title), MUSCATINE J. (Iowa), July 1, 1854, at 2.

96. OHIO CONST. art. XV, § 4 (amended in 1912). It is unclear whether someone prevented Swift from claiming the position or she preemptively recognized she was unable to do so.

97. Adeline T. Swift, *Address of Mrs. A.T. Swift, of Penfield, Who Was Elected Supervisor in the Last Election*, LILY, June 15, 1854, at 88.

98. FLEXNER & FITZPATRICK, *supra* note 12, at 102.

99. DUBOIS, FEMINISM AND SUFFRAGE, *supra* note 62, at 54.

100. *Id.*

101. *Id.*

102. *Id.* at 63-64.

Columbia and the U.S. territories.¹⁰³ In debating political rights for women and black men, Congressmen voiced differing views on the legal necessity and political viability of expressly guaranteeing the right to hold office alongside suffrage. While it seemed to many that suffrage and officeholding should come together as a theoretical matter, there was recognition that it was feasible as a legal matter—and possibly desirable as a political matter—to separate these rights. Third, after failing to secure clear language from Congress granting women political rights, suffragists turned back to the states to implement a legal theory, the New Departure, that construed the Reconstruction Amendments as entitling women to the ballot. Women brought attention to this interpretation by running for office and petitioning Congress, yet it was state and federal courts that decisively rejected the theory in the early 1870s.¹⁰⁴

1. *Women's Suffrage Campaigns in New York and Kansas in 1867*

In the years immediately following the Civil War, leading suffragists participated in numerous state-level campaigns to obtain equal suffrage for women and black men.¹⁰⁵ The most prominent of these contests, in New York and Kansas, drew nationwide attention to women's demands for political equality,¹⁰⁶ with officeholding understood as linked to suffrage. Crucially, these efforts occurred while states weighed ratification of the Fourteenth Amendment and just prior to congressional drafting of the Fifteenth Amendment,¹⁰⁷ influencing understandings and treatments of political rights at the federal level.¹⁰⁸

In June 1867, the country's attention turned to New York's Constitutional Convention, where women's suffrage was a focal point.¹⁰⁹ Longtime women's rights proponent George William Curtis delivered one of the most prominent speeches, which included a call for women's officeholding.¹¹⁰ Curtis recognized that opponents of women's suffrage queried whether the ballot would also mean officeholding, which they intended as a further argument against suffrage.¹¹¹ To

103. On D.C., see discussion *infra* note 150-155; on the territories, see Part II.A.

104. *Infra* Part I.B.3.

105. DUBOIS, FEMINISM AND SUFFRAGE, *supra* note 62, at 65-66. The women's suffrage issue reached constitutional conventions in more than a dozen states between 1867 and 1879, and a "dizzying array of state legislatures" considered offering the issue to voters by referenda in these same years. TETRAULT, *supra* note 74, at 77, 81-82.

106. DUBOIS, FEMINISM AND SUFFRAGE, *supra* note 62, at 66. Black men in New York could vote but faced a discriminatory property qualification. *Id.* at 87.

107. On the Reconstruction Amendments, see *infra* Part I.B.2.

108. For discussion demonstrating the blending of state and federal politics on these issues, see discussion of Kansas, *infra*. See also, e.g., DUBOIS, FEMINISM AND SUFFRAGE, *supra* note 62, at 79; TETRAULT, *supra* note 74, at 22-23, 34.

109. FREE, *supra* note 68, at 139.

110. *Id.*

111. George William Curtis, *Equal Rights for Women*, in YELLOW RIBBON SPEAKER: READINGS AND RECITATIONS 141 (Anna Howard ed., 1891).

this Curtis retorted, why not have women hold office “[i]f they are capable and desirous”?¹¹² “They hold office now most acceptably,” Curtis argued, referring specifically to the “postmistress” in his neighborhood.¹¹³ Casting his glance further, Curtis pointed to Queen Victoria, inquiring why, if Victoria could deliberate with advisers, American women could not act similarly in Congress.¹¹⁴ Women’s officeholding was not only a matter of equality but more broadly of respecting American democracy. “Why should I or any person be forbidden to select the agent whom we think most competent and truly representative of our will?” he queried.¹¹⁵ Permitting women’s involvement would not “draw women down into the mire of politics,” as some charged, but rather would “lift us out of it.”¹¹⁶ But Curtis was not in the majority, and his proposal was defeated by a huge margin in July 1867.¹¹⁷

The failure of women’s suffrage in New York added fire to an ongoing effort to enfranchise women in Kansas,¹¹⁸ with officeholding again featuring in the discussion. In March 1867, the Kansas legislature drafted two constitutional referenda to modify the suffrage eligibility rules: one to remove “white” and the other to remove “male.”¹¹⁹ This left ample time for speeches and other advocacy before the issues went to voters in November.¹²⁰ The Kansas referendum would be the first time there was a popular vote on women’s suffrage in the country, rendering it a powerful sign of public opinion and a possible test for the nation.¹²¹ As a Kansas newspaper editor observed, “If Kansas will give the plan a fair trial, the whole country will soon be ready to follow if the experiment proves a success.”¹²² The proposed changes would have direct and implied consequences for constitutional restraints on women’s officeholding, depending on the position.¹²³

The prospects for both women’s suffrage and black suffrage seemed promising at first.¹²⁴ Kansas had one of the strongest records on women’s rights and antislavery advocacy, and there were experienced local campaigners on both issues.¹²⁵ According to an article republished from a St. Louis paper, the proposal

112. *Id.*

113. *Id.*

114. *Id.* at 141-42.

115. *Id.* at 142.

116. *Id.*

117. FREE, *supra* note 68, at 146.

118. DUBOIS, FEMINISM AND SUFFRAGE, *supra* note 62, at 88.

119. *Id.* at 66.

120. *Id.* at 79.

121. *Id.*; TETRAULT, *supra* note 74, at 22.

122. *Suffrage in New York*, ATCHISON DAILY FREE PRESS (Kan.), July 25, 1867, at 1.

123. Kansas’s constitution limited service in the legislature to voters, thereby excluding women, but provisions on other offices were ambiguous. KAN. CONST. art I, § 1 (amended 1912); *id.* art. II, § 4 (amended 1912); *id.* art. XV, § 1 (amended 1912).

124. For a detailed account, see FAYE E. DUDDEN, FIGHTING CHANCE: THE STRUGGLE OVER WOMAN SUFFRAGE AND BLACK SUFFRAGE IN RECONSTRUCTION AMERICA 108-32 (2011).

125. DUBOIS, FEMINISM AND SUFFRAGE, *supra* note 62, at 80, 84.

of each amendment “materially strengthens the other. The same logic sustains both.”¹²⁶ Pointing to a growing openness to women’s suffrage in order to “purify the body politic,” the writer named Kansas as the ideal location to “adopt womanhood suffrage and give it a trial.”¹²⁷ Since women in Kansas had been able to vote in school elections since 1861,¹²⁸ “the people of Kansas are perhaps better prepared than those of other States to consider without prejudice the question of an extension of the suffrage.”¹²⁹

Influential politicians also endorsed the idea that Kansas might serve as the nation’s testing ground for women’s suffrage. The month before the vote, newspapers reprinted an “appeal” signed by thirty-one men, including U.S. Congressmen and the governor of Kansas, “urging” Kansans to pioneer women’s suffrage for the sake of the state’s women and for the country.¹³⁰ “In this hour of National Reconstruction, we appeal to good men of all parties, to Conventions for amending State Constitutions, to the Legislature of every State, and to the Congress of the United States, to apply the principles of the Declaration of Independence to Women,” they insisted. “Suffrage is the right of every adult Citizen, irrespective of Sex or Color.”¹³¹

Though suffrage was the central question, supporters and detractors saw women’s officeholding as relevant. “Give woman the right of franchise and she will soon qualify herself to fill one half the offices of government, from a Consulship down to a clerk of a school district, with honor to herself and credit to her country,” argued an outspoken Kansas man who had been a committed abolitionist and participated in the Underground Railroad.¹³² He continued: “I claim for woman the right to vote, hold office, or anything else which she wants to do and can do.”¹³³

Other commentators remained staunchly opposed to women’s suffrage and used the specter of women officers to their advantage. According to one:

It is not simply in depositing a ballot that the great harm lies. But if you make a woman an elector, you must also permit her to hold office and do all other things connected therewith that man now does; and this would lead to serious results to some women. They would endeavor to

126. *Female Suffrage in Kansas*, BURLINGTON PATRIOT (Kan.), June 29, 1867, at 1 (reprinting column from *St. Louis Democrat*).

127. *Id.*

128. KEYSSAR, *supra* note 13, at Appendix Table A.17.

129. *Female Suffrage in Kansas*, *supra* note 126.

130. *Kansas—Woman as a Voter*, BORDER SENTINEL (Mound City, Kan.), Oct. 11, 1867, at 2 (reprinting appeal published in *New-York Tribune*).

131. *Id.*

132. Henry Hiatt, *Another Letter from Mr. Hiatt*, W. HOME J. (Ottawa, Kan.), June 13, 1867, at 2. On Hiatt’s biography, see *Hiatt, Henry*, in *THE UNDERGROUND RAILROAD: AN ENCYCLOPEDIA OF PEOPLE, PLACES, AND OPERATIONS* (ed. Mary Ellen Snodgrass, 2015).

133. Hiatt, *supra* note 132, at 2.

do what nature had not done for them,—unsex themselves. . . . And no true woman desires to make a man of herself.¹³⁴

In the most widely circulated admonition against permitting women officeholders, Mark Twain warned that if women were allowed to hold office, “there would be no more peace on earth. They would swamp the country with debt.” Twain recognized that women “like to hold office too well,” pointing to his wife’s leadership roles in “nineteen different infernal female associations,” for which he claimed he had “to do all the clerking.”¹³⁵

That November, Kansas’s white men did not pass either suffrage amendment.¹³⁶ According to one commentator, the defeat of women’s suffrage in Kansas was “especially remarkable” because of the enormous effort invested by prominent suffragists. “If they have failed, as our returns indicate, these lady politicians and all their school of bloomers and woman’s rights women would do well to retire from the dirty arena of politics to the shades of private life,” the writer continued. “It is useless to try to run ahead of the engine of public opinion.”¹³⁷

As states weighed the possibility of enfranchising women in the immediate postbellum years, the connection to officeholding eligibility was a consistent consideration. Discussants on both sides of the suffrage issue cast women’s officeholding as an additional reason for their support or disapproval, with opponents winning the key battles in Kansas and New York in 1867.

2. Political Rights and the Drafting of the Reconstruction Amendments

While proponents of women’s and black men’s political rights continued their state-level advocacy, they simultaneously sought to influence Congress’s drafting of the federal Reconstruction Amendments as well as laws governing the District of Columbia and the U.S. territories. Though the focus was again on suffrage, campaigners and politicians routinely recognized connections to officeholding.

Women’s movement leaders were almost immediately disappointed in their congressional advocacy. One of the first major developments in the drafting of the Fourteenth Amendment was Congressmen’s proposed inclusion of “male,” which would introduce the term into the U.S. Constitution for the first time.¹³⁸ Fearing the symbolic and practical implications of this language, suffragists

134. S.R. Caniff, *The Pernicious Proposition*, OSAGE CNTY. CHRONICLE (Burlingame, Kan.), Oct. 12, 1867, at 1.

135. Kansas politics may not have prompted this column, but the timing may have led some readers to consider it in that context. Mark Twain, *Female Suffrage—Views of Mark Twain*, WILMINGTON DAILY DISPATCH, Mar. 28, 1867, at 1.

136. FREE, *supra* note 68, at 150.

137. *The Kansas Election—Woman Suffrage and Negro Suffrage Both Gone Under*, DAILY OHIO STATESMAN (Columbus), Nov. 11, 1867, at 1.

138. U.S. CONST. amend. XIV.

campaigning heavily against it.¹³⁹ In December 1865, Elizabeth Cady Stanton and Susan B. Anthony submitted the first petition directed to Congress for women's suffrage, challenging the use of "male" and pressing for equal political rights.¹⁴⁰ Despite their efforts, Congress retained "male" in the version of the amendment submitted to the states.¹⁴¹

While states considered whether to ratify the Fourteenth Amendment, Stanton made a symbolic countermove. In October 1866, she announced her candidacy as the first woman to run for Congress.¹⁴² Because the U.S. Constitution did not explicitly limit congressional seats to men or link the right to hold this office to the right to vote, she presumably was eligible.¹⁴³ Newspapers across the country republished Stanton's appeal to represent the Eighth New York District, which began: "Although, by the constitution of the state of New York, woman is denied the elective franchise, yet she is eligible to hold office; therefore I present myself to you as a candidate for Representative to Congress."¹⁴⁴ The reason she gave for choosing to run as an independent candidate was "as a rebuke to the dominant party for its retrogressive legislation, in so amending the Constitution as to make invidious distinctions on the ground of sex."¹⁴⁵ She decried that "[o]ne word [male] should not be added to that great Charter of Rights to the insult or injury of the humblest of our citizens," and she pledged that if elected she would demand "universal suffrage" to secure a "republican form of government" for every state in the Union.¹⁴⁶ Though Stanton secured only twenty-four votes,¹⁴⁷ discussion indicates her congressional run drew attention to women's officeholding.¹⁴⁸

That women sought public office was not lost on the legislative body that Stanton wished to join. The month after her defeat, the Senate discussed the possibility of women's officeholding in the District of Columbia.¹⁴⁹ During a

139. FREE, *supra* note 68, at 57-62; DUDDEN, *supra* note 124, at 67, 78.

140. DUDDEN, *supra* note 124, at 68; FREE, *supra* note 68, at 104.

141. DUBOIS, FEMINISM AND SUFFRAGE, *supra* note 62, at 60-61.

142. DUDDEN, *supra* note 124, at 88. Stanton's congressional run has received minimal attention, even from her biographers. See, e.g., LORI D. GINZBERG, ELIZABETH CADY STANTON: AN AMERICAN LIFE 120-21 (2009) (describing the run in a paragraph); SUE DAVIS, THE POLITICAL THOUGHT OF ELIZABETH CADY STANTON: WOMEN'S RIGHTS AND THE AMERICAN POLITICAL TRADITIONS 144 (2008) (same).

143. GINZBERG, *supra* note 142, at 120, quotes a letter from Stanton on this point reading: "My sons... said [my run] was the theme yesterday with the lawyers, all looking at the constitution to see if it were possible that the Fathers left such a loop hole through which Eve's daughters could leap into power."

144. *The Female Ticket: Mrs. Elizabeth Cady Stanton for Congress*, CHI. TRIB., Oct. 14, 1866, at 1 (reprinting Stanton's appeal dated Oct. 10, 1866).

145. *Id.*

146. *Id.*

147. GINZBERG, *supra* note 142, at 120-21.

148. E.g., (No title), COURIER-JOURNAL (Louisville), Oct. 25, 1866, at 2.

149. DUDDEN, *supra* note 124, at 90 (describing how Congress debated women's suffrage for three days in December 1866).

debate focused on a bill to enfranchise black men in D.C.,¹⁵⁰ one senator spoke in favor of extending suffrage to D.C.'s women as well.¹⁵¹ Though he said he knew the discussion of women's suffrage would have "no effect," he nevertheless desired to declare that he would vote in favor "because I think it is right."¹⁵² Since a single D.C. law defined electors and officeholders, enfranchisement would bring the right to hold office absent other statutory changes.¹⁵³ Perhaps for this reason, the senator next claimed that women were capable officeholders. "The exercise of political power by women is by no means an experiment," he proclaimed. "There is hardly a country in Europe—I do not think there is one—that has not at some time of history been governed by a woman, and many of them very well governed, too." Listing the accomplishments of several queens, he emphasized that one had been responsible for funding Columbus's voyage to discover this country.¹⁵⁴ Newspaper commentary echoed these themes.¹⁵⁵ Yet as the senator anticipated, Congress did not modify D.C. law to authorize women's suffrage and officeholding.¹⁵⁶

Congress's most explicit consideration of the connections between suffrage and officeholding came during discussion of black men's rights in the development of the Fifteenth Amendment.¹⁵⁷ Some Congressmen believed suffrage for black men would necessarily imply the right to hold office as a legal matter or would secure the right as a practical matter, but others were not so certain.¹⁵⁸ For evidence, skeptics pointed to developments in the states, including the fact that Georgia had recently expelled black men from its legislature.¹⁵⁹ Notably, both chambers of Congress initially adopted versions of the Fifteenth Amendment that included language guaranteeing black men the right to hold office.¹⁶⁰ It was only after the Amendment went to a committee to resolve other

150. On efforts to enfranchise black men in the District, beginning in December 1865 and culminating in January 1867, see FREE, *supra* note 68, at 61; WILLIAM GILLETTE, THE RIGHT TO VOTE: POLITICS AND THE PASSAGE OF THE FIFTEENTH AMENDMENT 26, 29-30 (1965). Final passage required overturning President Andrew Johnson's veto, which was partly prompted by the president's opposition to black men holding office. GILLETTE, *supra*, at 30; Avins, *supra* note 47, at 291-93.

151. CONG. GLOBE, 39th Cong., 55-56 (1866).

152. *Id.*

153. See Spencer v. Board of Registration, 8 D.C. 169, 175 (1871) (quoting statute).

154. CONG. GLOBE, 39th Cong., 56 (1866).

155. *E.g.*, *Random Thoughts No. 8: By the Editor*, JACKSON STANDARD (Ohio), Feb. 21, 1867, at 2.

156. When the Senate revisited enfranchising women in D.C. a few years later, Kansas Senator Samuel Pomeroy's supportive remarks also emphasized women's capacity as officeholders. *Woman Suffrage*, EVENING STAR (D.C.), Jan. 19, 1870, at 4.

157. GILLETTE, *supra* note 150, at 32-45. It was not originally clear whether black men's suffrage would be enshrined in a constitutional amendment, a statute, or both. For illuminating discussion, see Travis Crum, *The Superfluous Fifteenth Amendment?*, 114 NW. L. REV. 1549, 1552 (2020).

158. Avins, *supra* note 47, at 293-94, 296-99; ALAN P. GRIMES, DEMOCRACY AND THE AMENDMENTS TO THE CONSTITUTION 57 (1978). For more detail, see Nicole A. Gordon, *The Constitutional Right to Candidacy*, 25 U. KAN. L. REV. 545, 548-49 (1977).

159. Avins, *supra* note 47, at 294, 296 n. 81, 298.

160. *Id.* at 300; GILLETTE, *supra* note 150, at 55, 71.

differences between the House and Senate versions that the officeholding language was dropped in seeming violation of the committee's authority.¹⁶¹ Congressmen including Kansas Senator Samuel Pomeroy condemned the change but felt pressured to let the revision move ahead as the term was drawing to a close.¹⁶²

The omission of "officeholding" from the Fifteenth Amendment seemed consequential. In debates over ratification, commenters argued that the amendment did not encompass officeholding.¹⁶³ And in crafting readmission requirements for some Southern states, Congress mandated constitutional protections for black men's officeholding—likewise indicating Congressmen did not perceive the Fifteenth Amendment as guaranteeing the right to hold office.¹⁶⁴ Further evidence of Congressmen's understanding comes from proposals regarding women's rights in the territories; at least one proposal in each the House and Senate included language to allow women to vote *and hold office*.¹⁶⁵

During debate over the Fifteenth Amendment, women continued pressing Congress for their own rights.¹⁶⁶ For example, at a national women's suffrage convention held in D.C., in January 1869, participants passed resolutions that linked officeholding to the ballot and demanded both.¹⁶⁷ One resolution read:

That in demanding the ballot for the disfranchised classes we do not overlook the logical fact of [the] right to be voted for; and we know no reason why the colored man should be excluded from a seat in Congress—or any woman either—who possesses the suitable capabilities and has been duly elected.¹⁶⁸

An article covering the convention further noted: "Several women who spoke said that after they become voters they would not broil over a stove

161. Avins, *supra* note 47, at 299. Scholars disagree about the reason for this change. Compare GILLETTE, *supra* note 150, at 71 ("The conference committee had jettisoned Negro officeholding, because it feared that the country was not yet ready for so radical a measure and that its inclusion might jeopardize ratification."), and ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877, at 446 (1988) ("The failure to guarantee blacks' right to hold office arose from fear that such a provision would jeopardize the prospects of ratification in the North."), with Amar, *Jury Service*, *supra* note 42, at 228-30 ("Although the Conference Committee did not explain its deletion of the office-holding provision, a plausible explanation is... [that] many persons thought that the right to be free from discrimination in voting implied the right to be free from discrimination in office holding."). For further discussion indicating the deletion of officeholding was understood as meaningful, see MICHAEL LES BENEDICT, A COMPROMISE OF PRINCIPLE: CONGRESSIONAL REPUBLICANS AND RECONSTRUCTION, 1863-1869, at 333-35 (1974).

162. Avins, *supra* note 47, at 300-01.

163. GILLETTE, *supra* note 150, at 101.

164. Avins, *supra* note 47, at 303-04.

165. *By Telegraph: Latest News from All Points*, NEW ORLEANS REPUBLICAN, Jan. 19, 1872, at 1; *Washington*, KANSAS CITY TIMES (Mo.), Jan. 30, 1872, at 1. Notably, the Territorial Suffrage Act of 1867, which enfranchised black men in the territories, did not mention officeholding. This may indicate that debate over the Fifteenth Amendment raised awareness that clarity on this point was important.

166. FREE, *supra* note 68, at 164; Siegel, *She the People*, *supra* note 35, at 970 n.59.

167. *National Woman's Rights Convention*, N.Y. DAILY HERALD, Jan. 22, 1869, at 3.

168. *Id.*

and wear themselves out in kitchens, and they were going to sit in Congress.”¹⁶⁹

Some Congressmen were receptive to these demands and offered versions of the Fifteenth Amendment that included women. Senator Pomeroy proposed the broadest language, which forbade denying or abridging the right to vote or hold office “for any reasons not equally applicable to all citizens of the United States.”¹⁷⁰ Other drafts of the Fifteenth Amendment covered women’s suffrage but did not mention officeholding.¹⁷¹

The final version of the Fifteenth Amendment barred discrimination in voting “on account of race, color, or previous condition of servitude”—but not sex.¹⁷² This omission contributed to the fracturing of the women’s movement and the creation of dueling national organizations. Susan B. Anthony, Elizabeth Cady Stanton, and likeminded suffragists refused to support the Fifteenth Amendment, while other activists, such as Julia Ward Howe, viewed black men’s suffrage as the priority.¹⁷³

The period in which Congress drafted the Reconstruction Amendments began with promise and concluded with disappointment for proponents of women’s rights. Based on the text alone, women seemed to have lost ground; the Fourteenth Amendment introduced “male” into the Constitution for the first time, and the Fifteenth Amendment omitted women from its protection of voting rights. Still, women had seized the opportunity to publicize their demands, bringing attention to issues including their interest in holding public offices.

3. *Construing the Reconstruction Amendments in Congress and the Courts*

Although the language of the Reconstruction Amendments was not what women’s movement leaders had hoped, they tried to make the best of the situation through a novel legal interpretation. Under the New Departure theory, the Fourteenth Amendment (possibly in conjunction with the Fifteenth) enfranchised women citizens.¹⁷⁴ Suffragists brought this argument to local registrars’ offices and the halls of Congress, and they drew further attention to it by launching campaigns for elective offices. Despite their efforts, the New Departure met defeat, first in state courts and finally the U.S. Supreme Court.

169. *Id.*

170. Siegel, *She the People*, *supra* note 35, 970 n.59 (quoting proposal).

171. *Id.*

172. U.S. CONST. amend. XV.

173. See especially DUBOIS, FEMINISM AND SUFFRAGE, *supra* note 62, at 187-89, 197.

174. Ellen DuBois, *Taking the Law into Our Own Hands: Bradwell, Minor, and Suffrage Militance in the 1870s*, in WOMAN SUFFRAGE AND WOMEN’S RIGHTS 119-21 (1998) [hereinafter DuBois, *Taking the Law*].

The New Departure strategy first played out on the local level. Women across the country attempted to register and to vote, sometimes succeeding.¹⁷⁵ One of the earliest instances was in 1868, when nearly two hundred women came to the polls in Vineland, New Jersey.¹⁷⁶ As this approach unfolded, Missourian couple Francis Minor and Virginia Minor added legal sophistication to the theory by arguing that the right to vote was protected by the privileges and immunities clause of the Fourteenth Amendment.¹⁷⁷ In 1871 and 1872, more than one hundred women cast ballots.¹⁷⁸

Several prominent women presented the New Departure argument to Congress for formal approval. The first to do so was Victoria Woodhull, who became the first woman to run for president upon announcing her campaign in April 1870.¹⁷⁹ She and her sister Tennessee “Tennie” Claflin had previously gained notoriety as the first women stockbrokers on Wall Street.¹⁸⁰ In December 1870, Woodhull submitted a memorial in support of the New Departure and read it to the House Judiciary Committee to no avail.¹⁸¹

Though Woodhull failed to persuade the House Committee, she and her sister brought further attention to women’s suffrage by campaigning for federal offices.¹⁸² Claflin declared a run for Congress in the summer of 1871.¹⁸³ In explaining her candidacy in the district where Anthony had run a few years earlier, Claflin offered that “a contest for a seat in Congress, by a woman, would bring up the female suffrage question in such a shape that politicians could no longer dodge it.”¹⁸⁴ In a speech, she further maintained “that woman was as much entitled to hold a public office as she was to fulfill any other of the functions pertaining to citizenship.”¹⁸⁵ That November, the sisters attempted to vote but were turned away.¹⁸⁶ The following year, Victoria Woodhull was nominated by the Equal Rights party as their candidate for President.¹⁸⁷ Press indicated her campaign inspired at least one additional woman to run for Congress.¹⁸⁸

On December 12, 1871, leading suffragists including Stanton and Anthony submitted their own New Departure “Memorial” to Congress and were invited

175. *Id.* at 121-22.

176. *Id.* at 119.

177. *Id.* at 117.

178. Nina Morais, *Sex Discrimination and the Fourteenth Amendment: Lost History*, 97 *YALE L.J.* 1153, 1164 n.46 (1988).

179. TETRAULT, *supra* note 74, at 56-59.

180. JILL NORGREN, BELVA LOCKWOOD: THE WOMAN WHO WOULD BE PRESIDENT 55 (2007).

181. *Id.* at 56; DuBois, *Taking the Law*, *supra* note 174, at 122.

182. They also increasingly drew scandalous headlines because of their free love lifestyle and religious beliefs. FLEXNER & FITZPATRICK, *supra* note 12, at 147.

183. *A Female Candidate for Congress*, *INTELLIGENCER J.*, Aug. 2, 1871, at 2.

184. *Id.*

185. *Tennie C. Claflin*, *LAWRENCE DAILY J.*, Aug. 13, 1871, at 2.

186. *Woodhull and Claflin at the Polls*, *HARRISBURG TELEGRAPH*, Nov. 14, 1871, at 2.

187. FLEXNER & FITZPATRICK, *supra* note 12, at 147.

188. (No title), *OSAGE MISSION TRANSCRIPT (Ohio)*, Aug. 30, 1872, at 2 (describing Miss N.C. Stewart’s run for Congress on the Woodhull ticket in Alabama).

to present to the Senate Judiciary Committee.¹⁸⁹ Though the suffragists did not mention officeholding in their presentation,¹⁹⁰ the Committee's refutation routinely referred to the "right to vote and hold office."¹⁹¹ Congressmen surely knew women did not merely want the vote, as the New Departure's advocates included the first woman to run for the presidency and the first to run for Congress.

Congressmen were also surely aware that courts, including the Supreme Court of the District of Columbia, had begun rejecting the New Departure argument.¹⁹² The D.C. case, brought by more than seventy women, was one of the first to reach an appellate court.¹⁹³ Others soon followed.¹⁹⁴ In rejecting the New Departure, the Supreme Court of California maintained that states had the authority to deny women both the rights of suffrage and officeholding.¹⁹⁵ The opinion may have been partly in response to one woman's run for the California senate the previous year. She claimed that she was eligible to vote under the Fourteenth and Fifteenth Amendments and, with regard to officeholding, pointed to the California constitutional provision assigning each house the role of evaluating its members' qualifications.¹⁹⁶

Ultimately, it was a case from Missouri that extinguished the New Departure. In October 1872, Virginia Minor sought to register in St. Louis. When the registrar rejected her, she and her husband sued on the basis that Missouri's constitution conflicted with the federal.¹⁹⁷ They may have expected Missouri courts to be particularly liberal, as the state already permitted women to hold some offices.¹⁹⁸ But in March 1873, they lost.¹⁹⁹ Two years later, the U.S. Supreme Court concurred with the state court, holding that suffrage was not a right of federal citizenship.²⁰⁰ Women would need additional state or federal constitutional amendments to secure their political rights.

Proponents of women's political rights sought to construe the Reconstruction Amendments to their advantage, bringing their claims of enfranchisement to local registrars, Congress, and courts—eventually losing in

189. *Memorial of Elizabeth Cady Stanton, Isabella Beecher Hooker, Elizabeth L. Bladen, Olympia Brown, Susan B. Anthony, and Josephine L. Griffing, to the Congress of the United States, and the arguments thereon before the Judiciary committee of the U.S. Senate* (Jan. 12, 1872) (reprinting Memorial dated December 12, 1871).

190. *Id.*

191. S.R. No. 21, U.S. CONG. SERIAL SET (Jan. 25, 1872): 1-7.

192. *Spencer v. Board of Registration*, 8 D.C. 169 (1871). The case received significant newspaper coverage. *E.g., Woman Suffrage: An Important Decision*, EVENING STAR (D.C.), Nov. 11, 1871, at 8.

193. DuBois, *Taking the Law*, *supra* note 174, at 126.

194. For more discussion, see Adam Winkler, *A Revolution Too Soon: Woman Suffragists and the "Living Constitution"*, 76 N.Y.U. L. REV. 1456, 1494-96 (2001).

195. *Valkenburg v. Brown*, 43 Cal. 43, 51 (1872).

196. *Local Items*, DAILY EVENING HERALD (Stockton, Cal.), Sept. 6, 1871, at 3.

197. *Minor v. Happersett*, 53 Mo. 58, 62 (1873).

198. *See infra* Part II.B.

199. *Minor*, 53 Mo. at 63.

200. *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 178 (1874).

each venue. Prominent suffragists became the first women to launch campaigns for Congress and the presidency, seeking to rally support for their cause. Their pioneering and symbolic runs drew attention to women's demands for political rights, while demonstrating the understanding that suffrage and officeholding were not necessarily conjoined.

Though women's early political advocacy prioritized suffrage, movement leaders also believed that officeholding eligibility was crucial for women's equal citizenship. While campaigning for both rights in the states and at the federal level, their actions demonstrated contemporary understandings that voting and officeholding could come separately. The legal and political possibility of securing offices before enfranchisement proved increasingly important as suffragists redirected their energy to the states over the following decades.

II. WOMEN'S OFFICEHOLDING RIGHTS BEFORE FULL STATE SUFFRAGE (1869-1919)

From 1869 into the 1910s, women across the nation advocated for the legal right to hold public office under territorial and state laws, making notable gains but also sustaining powerful losses. Sometimes women sought and secured officeholding rights in tandem with suffrage, but often the strategies, timing, and outcomes diverged for each of these goals.²⁰¹ Where women could not vote, or obtained only partial suffrage, states allowed women to hold a widely varying range of appointive and elective offices.

Rather than being legally consistent on a national scale, the patterns in women's officeholding rights reflected distinct regional cultures and considerations. Women first obtained officeholding rights in the Western Territories, where the combination of less entrenched rules, sparse populations, and political calculations aided women in obtaining both suffrage and officeholding rights. Though the Midwest showed less openness to women's suffrage, lawmakers permitted women's officeholding based on recognition of women's valuable contributions and respect for men's right to choose preferred candidates. New England's judges proved to be far more conservative, with state supreme courts overturning the limited efforts of legislatures to expand women's officeholding opportunities. Women in these states were largely restricted to roles deemed gender appropriate, such as school posts and charity board positions. The Mid-Atlantic was slow to consider women's officeholding, which

201. On women's suffrage campaigns (which included efforts to secure school, municipal, and presidential suffrage in addition to full suffrage), see FLEXNER & FITZPATRICK, *supra* note 12, at 168, 213-15; TETRAULT, *supra* note 74, at 77, 80-86.

somewhat facilitated a limited grant of officeholding options—permitting women to take on roles that had proven nonthreatening in other states’ experiences. The South was especially reluctant to allow women officeholders, staunchly guarding gender norms and recognizing that officeholding could fuel women’s suffrage, a possibility that Southerners particularly opposed for reasons turning on race.

This Part is organized into regional stories with overlapping chronologies.²⁰² After opening with the Western Territories, it proceeds through clusters of states in the years before women’s full enfranchisement in those jurisdictions. The sections flow from the earliest regions to seriously consider women’s officeholding to the latest, as the first movers influenced debates and legal reasoning elsewhere. This organization is not intended to suggest there were hard, clear lines between regions. Indeed, as noted at various points, states on the outside edges of some regions were influenced by neighboring states assigned to other groupings. Despite this blurriness and occasional exceptions, regional trends provide the best explanation for women’s varied officeholding gains.

A. *Experimenting in the Western Territories*

The Western Territories were on the cutting edge of granting women political rights.²⁰³ Historians have observed that it may have been easier to persuade legislators in what was then the country’s western frontier to support women’s rights because conservative practices had not yet become entrenched,²⁰⁴ and lawmakers sought to attract women to move to the region.²⁰⁵ Early innovations may have encouraged reform-minded women to settle there, prompting further change.²⁰⁶ On the other hand, territorial lawmakers sought to avoid radical moves that might jeopardize their efforts to obtain statehood.²⁰⁷ This balancing resulted in a range of approaches to women’s political rights in the region. Examining the early debates and laws in the territories of Wyoming,

202. Regional labels and borders have evolved over time. This account uses groupings that capture distinctions meaningful at relevant points. So, for example, Dakota Territory is in the “West” for purposes of this Article because that was how it was understood when women’s officeholding became an issue there. For historical context on regions, see U.S. CENSUS BUREAU, GEOGRAPHIC AREAS REFERENCE MANUAL: STATISTICAL GROUPINGS OF STATES AND COUNTIES (1994), <https://www2.census.gov/geo/pdfs/reference/GARM/Ch6GARM.pdf> [<https://perma.cc/Y3H2-R27Y>].

203. The first jurisdictions to fully enfranchise women were the territories of Wyoming (1869), Utah (1870), Washington (1883), and Montana (1887). KEYSSAR, *supra* note 13, at Appendix Table A.20.

204. SANDRA L. MYRES, WESTERING WOMEN AND THE FRONTIER EXPERIENCE, 1800-1915, at 233 (1982).

205. MARCIA A. ZUG, BUYING A BRIDE: AN ENGAGING HISTORY OF MAIL-ORDER MATCHES 78 (2016).

206. *Id.* at 93; see also T.A. LARSON, HISTORY OF WYOMING 80 (1965) (discussing how Wyoming legislators believed women’s suffrage would attract newcomers).

207. MEAD, *supra* note 13, at 42.

Utah, and Dakota illustrates how local politics and individual politicians could influence the outcome.²⁰⁸

In December 1869, Wyoming Territory became the first jurisdiction to fully enfranchise women in “An Act to Grant to the Women of Wyoming Territory the Right of Suffrage, and to Hold Office.” As indicated by the title, the act guaranteed women “her rights to the elective franchise *and to hold office*.”²⁰⁹ This language mirrored the federal law that created the territory the previous year, which had banned racial discrimination in voting and holding office.²¹⁰ Though it is unclear to what extent women’s activism contributed to the passage of the law,²¹¹ women’s suffrage proponents celebrated this milestone. At the national suffrage meeting held the following month in D.C., Susan B. Anthony facetiously encouraged “all the women to emigrate to Wyoming, and make a model State of it by sending a woman Senator to the National Capital.”²¹²

The next year, newspapers across the country publicized that Wyoming’s governor had appointed three women to serve as justices of the peace and several others as notaries public.²¹³ Women also ran for county clerk and school superintendent but did not win.²¹⁴ Justices of the peace were low-level judicial officers with jurisdiction typically encompassing civil litigation involving small sums and criminal cases for minor offenses.²¹⁵ Notaries public performed a range of clerical legal tasks.²¹⁶ Holding a notarial commission served as a convenience and a networking opportunity for legal professionals, including stenographers and court clerks.²¹⁷

208. For a summary of Western suffrage activity in other jurisdictions, see *id.* at 45-52.

209. For more detail, see Marcy Lynn Karin, *Esther Morris and Her Equality State: From Council Bill 70 to Life on the Bench*, 46 AM. J. LEGAL HIST. 300, 310 (2004).

210. GILLETTE, *supra* note 150, at 30 n.13. The fact that these laws explicitly included “hold office” is further evidence that many understood that suffrage did not necessarily encompass officeholding.

211. Historians have credited the following influences: the activism of a few local women, including the governor’s wife; political party tactics; seeking publicity for the sparsely populated area to attract women and families; and countering the growing black male vote. See MEAD, *supra* note 13, at 42-43; BEVERLY BEETON, WOMEN VOTE IN THE WEST: THE WOMAN SUFFRAGE MOVEMENT, 1869-1896, at 1-7 (1986); MYRES, *supra* note 204, at 220-21. It is likely relevant that men outnumbered women roughly six to one, so enfranchising women would not undermine men’s power. MYRES, *supra* note 204, at 220-21.

212. *Woman Suffrage*, EVENING STAR (D.C.), Jan. 19, 1870, at 4.

213. For representative coverage, see *Personalities*, WIS. STATE J., Apr. 29, 1870, at 1 (“Wyoming now has four women Notaries Public”); *Women Judges in Wyoming*, MANCHESTER WEEKLY TIMES & EXAMINER (England), Apr. 9, 1870, at 6. Karin finds that three women were selected as justices but one never served. Karin, *supra* note 209, at 320-21.

214. *Will Women Vote*, PUBLIC WEEKLY OPINION (Chambersburg, Pa.), Oct. 25, 1870, at 2.

215. MICHAEL WILLRICH, CITY OF COURTS: SOCIALIZING JUSTICE IN PROGRESSIVE ERA CHICAGO 3, 12 (2003).

216. Notaries oversaw acceptance and payment of commercial paper, acknowledged deeds and similar instruments, administered oaths, and took depositions, affidavits, and marine protests. EDWARD MILLS JOHN, THE AMERICAN NOTARY AND COMMISSIONER OF DEEDS MANUAL I (1898).

217. For representative discussion emphasizing why women wished to become notaries, see *An Army of Notaries*, 1 CURRENT COMMENT & LEGAL MISC. 305 (1889); *Laws for Women*, ST. LOUIS POST-DISPATCH, Apr. 23, 1893, at 12.

Most attention focused on the appointment of Esther Morris as a justice, to fill a position vacated by a man who resigned to protest the idea that a woman could hold such an office.²¹⁸ Though Morris's eligibility was challenged, she prevailed.²¹⁹ Mainstream newspaper coverage suggested that the appointment demonstrated "that women suffrage reigns in all its glory" in the Territory,²²⁰ and women's suffrage publications were similarly enthusiastic.²²¹ Tempering the seeming advancement, Morris did not receive a second term, and few women pursued offices in the following decades.²²² Not knowing the future impact of Morris's appointment, opponents viewed it as dangerous. According to one column printed in multiple newspapers, Morris's selection reflected a troubling effort by some women, "not content to be either male or female," to take on roles properly reserved for men and to thereby become a "third sex."²²³ The writer suggested that this unsettling of gender expectations "might be laughed out of Court, literally, if it did not seriously interfere with the administration of justice."²²⁴

Shortly after Wyoming granted full suffrage to its female citizens, the Mormon-controlled legislature in Utah did the same.²²⁵ Congressmen had considered enfranchising Utah's women to combat polygamy but did not move forward with the plan.²²⁶ Instead, it was the male leaders of the Mormon Church who chose to do so, as they recognized granting women the ballot would strengthen rather than undermine their religious practices.²²⁷ Moreover, Mormon lawmakers may have expected that enfranchising Utah's women would challenge the common portrayal of polygamy as akin to slavery.²²⁸

In 1870, coverage in Utah newspapers described the legislature's "lively" discussion and general support of both women's suffrage and a measure "in favor of women holding office."²²⁹ Anticipating that the laws would pass, a Salt Lake writer queried: "What will those folks east and west, who are so worried about the women of Utah being enslaved, say to this step, which places Utah a long way ahead of the most radical New England State in extending to woman equal

218. Karin, *supra* note 209, at 320.

219. *Id.* at 321.

220. *The Women Judges of Wyoming*, SUN (Balt.), Mar. 19, 1870, at 4.

221. *Practical Results of Woman Suffrage*, 48 WOMAN'S J. 380 (1871).

222. LARSON, *supra* note 206, at 87-88. Gustafson observes that suffragists seized on Wyoming as a success story, but she also emphasizes that the small number of women officeholders soothed concerns about the potentially wide ramifications of women's suffrage. GUSTAFSON, *supra* note 37, at 44-45.

223. *An Amusing Illustration of Woman's Rights*, HOLMES COUNTY REPUBLICAN (Milersburg, Ohio), Feb. 22, 1872, at 1 (reprinting column from *N.Y. Commercial Advertiser*).

224. *Id.*

225. Women voted in Utah before Wyoming. FLEXNER & FITZPATRICK, *supra* note 12, at 154.

226. MEAD, *supra* note 13, at 43; MYRES, *supra* note 204, at 222.

227. Sarah Barringer Gordon, "The Liberty of Self-Degradation": Polygamy, Woman Suffrage, and Consent in Nineteenth-Century America, 83 J. AM. HIST. 815, 823, 826 (1996).

228. *Id.*

229. *Our Salt Lake Letter*, OGDEN JUNCTION (Utah), Feb. 2, 1870, at 3.

political rights with man?"²³⁰ The legislature soon unanimously approved the bill to enfranchise women,²³¹ a development understood as more consequential than in Wyoming because Utah was home to nearly forty times as many women.²³²

Yet for reasons that are not revealed in the historical record, the legislature did not pass the provision permitting women to hold office. This meant a law dating from 1859 remained in place. It read: "No person shall be elected or appointed to any Territorial, district, county or precinct office, unless he" met residency requirements; "neither shall any person be entitled to hold any office of trust or profit in the Territory . . . unless he is a male citizen of the United States, over twenty-one years of age" and met residency requirements.²³³ (A revision in 1868 had deleted "free, white" from the requirements.²³⁴)

The preexistence of the officeholding restriction led to some ambiguity as to whether the women's suffrage law meant women could hold at least some offices. Susan B. Anthony apparently believed officeholding was included. She wrote to one of Utah's new women voters to advise that women should "'not so much try to get women elected to the offices as to get the best persons, whether men or women . . . I do hope your women therefore will set a good example of proving it is not the spoils of office they are after.'"²³⁵ In the following years, some women held office without apparent challenge, despite uncertain legal authority. A woman was elected as a constable in 1873,²³⁶ and the legislature elected two women as notaries public in 1874.²³⁷

For more than a decade after enfranchising women, the Utah legislature frequently considered passing an additional law to authorize women's officeholding.²³⁸ For instance, the issue attracted public comment in 1878, after the nomination of a woman to be a county treasurer had to be withdrawn on the basis of her ineligibility.²³⁹ In the previous term, the legislature had passed a law to permit women officeholders, but the governor had failed to sign it.²⁴⁰ According to one commenter who supported the change, there would be "no

230. *Id.* Similarly, the *Woman's Exponent* cast the fact that women were admitted to the Utah bar in 1872 as proof that women there enjoyed more rights than "in any State in the Federal Union." *Lady Lawyers*, WOMAN'S EXPONENT (Salt Lake City), Oct. 1, 1872, at 4.

231. MYRES, *supra* note 204, at 222.

232. BEETON, *supra* note 211, at 23.

233. COMPILED LAWS OF THE TERRITORY OF UTAH, CONTAINING ALL THE GENERAL STATUTES NOW IN FORCE 88 (1876).

234. ACTS, RESOLUTIONS, AND MEMORIALS PASSED AND ADOPTED DURING THE SEVENTEENTH ANNUAL SESSION OF THE LEGISLATIVE ASSEMBLY OF THE TERRITORY OF UTAH 4 (1868).

235. GUSTAFSON, *supra* note 37, at 43-44 (quoting Anthony).

236. (No title), DESERET NEWS, Nov. 19, 1873, at 10.

237. *Utah News: Two Women Elected Notaries*, S.F. CHRONICLE, Feb. 22, 1874, at 1. *See also Lady Justices*, DESERET NEWS, Mar. 11, 1874, at 6 (noting Utah women as notaries public and legislative clerks).

238. *E.g.*, *Legislative*, DAILY OGDEN J. (Utah), Feb. 16, 1876, at 2 (noting bill was tabled).

239. "The Downtrodden Women of Utah," DESERET EVENING NEWS, July 28, 1878, at 2.

240. *Id.*

danger” in eliminating “male” from the officeholding law.²⁴¹ Though “[t]here are offices for which no woman is adapted[, t]he good sense of the people would prevent the election of women to places of that character.”²⁴² Furthermore, “[i]f ‘white’ could be cast out, why cannot ‘male’ be eliminated?”²⁴³ A likeminded writer in another column agreed that some offices were not suitable for a woman, yet it seemed a “poor rule” to conclude that she therefore “must not vote nor hold any official position at all.”²⁴⁴ It also seemed inconsistent to let a woman vote but not hold office.²⁴⁵ The writer was confident a woman could fill “the positions of post-mistress, enrolling clerk, [and] superintendent of schools,” among others.²⁴⁶ A brief entry in the Mormon women’s paper, the *Woman’s Exponent*,²⁴⁷ emphasized a similarly limited range of roles women wanted in order to counter what the writer perceived as “the greatest fear of some men . . . that women might obtain some office that is now held by a man.”²⁴⁸

The issue heated up in 1880, when Charles W. Penrose, a territorial legislator and editor of the *Deseret News* (the Mormon Church’s official publication), proposed yet another officeholding bill.²⁴⁹ Supporters emphasized that the right to hold office “generally” ran “parallel” with the vote, that women already held the offices of engrossing clerk and enrolling clerk in the Utah House for several sessions, that women held offices honorably within the Mormon Church, and that the people could and should be trusted to place women in offices that were appropriate.²⁵⁰ Even a writer who did not necessarily want women officeholders thought the arguments in opposition were “almost ludicrous.”²⁵¹ He insisted it was a matter of liberty to allow voters to elect the candidates they preferred.²⁵²

Despite seemingly significant support, the bill did not pass,²⁵³ prompting further condemnation. One critique was that there was no reason women’s officeholding rights should be inferior to black men’s.²⁵⁴ Others sounded more directly in women’s rights. A contributor to the *Woman’s Exponent* acknowledged that few women were likely to pursue public office, yet explained “we wish to feel that we have the right to hold positions of public trust, where we are mentally and morally capable and when we represent the will of a

241. *Id.*

242. *Id.*

243. *Id.*

244. *Woman in Politics*, DESERET NEWS, July 31, 1878, at 8.

245. *Id.*

246. *Id.*

247. On the paper, see BEETON, *supra* note 211, at 29.

248. Mrs. E.C. Lewis, *Woman for Office*, WOMAN’S EXPONENT (Salt Lake City), Oct. 15, 1877, at 79.

249. BEETON, *supra* note 211, at 63.

250. *Explanatory*, DESERET EVENING NEWS, Jan. 21, 1880, at 2; *The Political Rights of Women*, DESERET NEWS, Jan. 21, 1880, at 808.

251. Ben Lomond, *The Woman Question*, SALT LAKE HERALD, Jan. 25, 1880, at 2.

252. *Id.*

253. *The Legislature*, SALT LAKE HERALD, Feb. 4, 1880, at 3.

254. H.D.J., *Our Solons*, DAILY OGDEN JUNCTION, Feb. 7, 1880, at 4.

majority of our fellow citizens.”²⁵⁵ After expressly adopting arguments offered by Elizabeth Cady Stanton, the writer continued: “It is true we have the right of suffrage but is this all, this shadow without the substance, that our brethren can afford to give us, the women of Utah, co-workers with them in the redemption of Zion, and the upbuilding of the kingdom of the Latter days.”²⁵⁶

While Utahans continued debating laws to permit women’s officeholding,²⁵⁷ Congress considered bills to eliminate the political rights of all Mormons in order to combat polygamy. In 1874, a Senator proposed a bill to disenfranchise Utah’s women.²⁵⁸ Though that law did not pass, Congress disenfranchised polygamist Mormons through the Edmunds Anti-Polygamy Act of 1882 and the Edmunds-Tucker Act of 1886.²⁵⁹ Bowing to political pressure, the Mormon Church abandoned polygamy, and Congress re-enfranchised Mormon men in 1893.²⁶⁰ Women were re-enfranchised when Utah was admitted as a state in 1896.²⁶¹ The state’s constitution provided that the right “to vote *and hold office* shall not be denied or abridged on account of sex.”²⁶²

Unlike Wyoming Territory’s full and Utah Territory’s partial granting of women’s political rights, Dakota Territory provides an example of how territorial politics—and specifically concern about women’s officeholding—could result in women’s exclusion. Dakota Territory’s House considered a law to authorize women to vote and hold office in 1868, but it did not pass.²⁶³ In 1875, legislation to enfranchise women lost by one vote.²⁶⁴ In 1879, the legislature permitted women to vote at school meetings, but they revoked that limited grant in 1883, though exempting some counties.²⁶⁵ When a woman’s suffrage bill finally passed the legislature in 1885,²⁶⁶ the governor vetoed it, in part because he was concerned the law “will delay our claims to statehood.”²⁶⁷ The governor further identified numerous undesirable features in the bill. After describing several, he continued that “[a] still more objectionable feature, and one deliberately inserted,

255. “Equal Rights,” *Another Woman’s Opinion*, WOMAN’S EXPONENT (Salt Lake City), Mar. 1, 1880, at 146.

256. *Id.*

257. The issue continued to draw discussion. *E.g.*, *Woman’s Political Freedom*, DESERET EVENING NEWS, July 8, 1881, at 2.

258. *How it Works*, DESERET NEWS, Feb. 11, 1874, at 6.

259. MEAD, *supra* note 13, at 43.

260. *Id.* at 44.

261. *Id.*

262. UTAH CONST. art. IV, § 1.

263. *From Dacotah* [sic], DAILY EVENING EXPRESS (Lancaster, PA), Dec. 31, 1868, at 3; (No title), DAILY OHIO STATESMAN (Columbus, Ohio), Jan. 1, 1869, at 2.

264. *North Dakota and the 19th Amendment*, NAT’L PARK SERV., <https://www.nps.gov/articles/north-dakota-and-the-19th-amendment.htm> [<https://perma.cc/MT6Y-FQNU>].

265. ELIZABETH CADY STANTON, SUSAN B. ANTHONY, AND MATILDA GAGE, HISTORY OF WOMAN SUFFRAGE, Vol. III, at 663 (1886).

266. *Id.* at 667.

267. *Woman Suffrage Vetoed*, JAMESTOWN ALERT, Mar. 19, 1885, at 2.

is the clause debarring women from the right to hold office.”²⁶⁸ If the legislature had simply stricken “male” from the qualifications for electors, women would have been eligible for office, he continued, “and I believe there is a wide feeling that many offices, particularly those connected with penal and benevolent institutions, could be most appropriately filled with women.”²⁶⁹ Though he would not necessarily have signed a differently worded law, he maintained: “If women are good enough to vote, they are good enough to be voted for.”²⁷⁰ The territory and later states of Dakota did not enfranchise women beyond school elections until the late 1910s.²⁷¹

Dakota lawmakers had valid reasons for their concern that permitting women to vote and hold office might hamper their bid for statehood; Congressmen’s treatment of women’s rights in the territories showed deep divisions in the surrounding decades. In 1874, as Congress considered whether to carve a Territory of Pembina from Dakota Territory, California Senator Aaron Sargent offered an amendment providing that the territory’s legislature could “not, at any time, abridge the right of suffrage, or to hold office, on account of sex, race, color, or previous condition of servitude.”²⁷² In explaining his proposal, Sargent pointed “with some pride to the experiment which has been made in Wyoming where women hold office, where they vote, where they have the most orderly society of any of the Territories.”²⁷³ Sargent, who was also a key proponent of a federal women’s suffrage amendment, continued, “I hope the time is not far distant when some of the older States of the Union like New York or Massachusetts or Ohio may give this experiment a fuller chance.”²⁷⁴ Some colleagues agreed. One reasoned that it was savvy to experiment in a sparsely populated location where Congress could repeal the law at any time if it proved problematic.²⁷⁵ Opponents questioned whether women wanted political rights, warned that granting women these powers would harm society, doubted that Pembina was an appropriate location, and suggested that the local people should be the ones to make this choice.²⁷⁶ Though the amendment was not adopted and Pembina was never created,²⁷⁷ the Congressmen’s discussion seemed to energize discourse on women’s rights²⁷⁸ and served as a warning to territorial leaders seeking statehood.

268. *Id.*

269. *Id.*

270. *Id.*

271. KEYSSAR, *supra* note 13, at Appendix Tables A.18, A.19, and A.20.

272. 2 CONG. REC. 4331 (1874).

273. *Id.* at 4332.

274. *Id.*

275. *Id.* at 4332-33.

276. *Id.* at 4333-43.

277. *Id.* at 4344-45.

278. *E.g.*, *Female Suffrage as a Federal Question*, NEW ORLEANS REPUBLICAN, June 5, 1874, at 2.

A blend of unique local politics and the hope of becoming a state influenced developments in the Western territories. While these elements yielded varied results, one constant across jurisdictions was the perceived salience of women's officeholding alongside suffrage rights.

B. *Midwestern Leadership*

Meanwhile, in the neighboring region of the Midwest, women charted a different course of obtaining officeholding rights without suffrage.²⁷⁹ In some states, women encountered almost no opposition. For instance, many of the first states to authorize women lawyers (sometimes understood as "officers") were in the Midwest and required no litigation: Iowa (1869), Missouri (1870), Michigan (1871), and Ohio (1873).²⁸⁰ Iowa, Missouri, and Michigan were also among the earliest states to permit women to hold the office of notary public, all by 1870.²⁸¹ Nearly all of the first states to appoint women as the state librarian were in the Midwest.²⁸² These were Minnesota (1865),²⁸³ Michigan (1869),²⁸⁴ Iowa (1871),²⁸⁵ and Indiana (1873).²⁸⁶ Though sometimes litigation or legislation was needed to clarify or permit women to hold office, Midwestern lawmakers were willing to authorize this move sooner and more broadly than their counterparts in other regions.

One crucial reason for Midwestern advances in women's officeholding was women's early acceptance into higher education. Midwestern colleges admitted

279. Midwestern women were among the most active suffragists in the late 1860s and early 1870s. TETRAULT, *supra* note 74, at 48.

280. DRACHMAN, *supra* note 34, at 251.

281. On Iowa, see discussion below. See also *Woman's Rights*, BOSSIER BANNER (Benton, La.), Apr. 24, 1869, at 2 (Mo.); *What Women are Doing*, 42 WOMAN'S J. 336 (1870) (Mich.).

282. The exception was Tennessee, discussed below. The state librarian was typically appointed by the legislature or governor to oversee retention of the state's laws and other important documents. See *Historic Role of the Library of Michigan*, LIBRARY OF MICHIGAN, https://www.michigan.gov/libraryofmichigan/0,9327,7-381-88857_89599-58705--,00.html [<https://perma.cc/HEM6-T8U3>].

283. Curt Brown, *Two Civil War Widows Became Pioneering Librarians*, STAR TRIB. (Minn.), at <https://www.startribune.com/two-civil-war-widows-became-pioneering-librarians/507885871/> [<https://perma.cc/N3T7-5SRN>].

284. See *Historic Role of the Library of Michigan*, *supra* note 282 (noting appointment of first woman in the role, who was the wife of the former state librarian).

285. *Commissioned*, DES MOINES REG., Sept. 16, 1871, at 4.

286. *State Items*, BOONVILLE WEEKLY ENQUIRER (Ind.), Jan. 25, 1873, at 1. After the legislature appointed her, there was a "rumor" that a man was planning to contest her eligibility. (No title), CAMBRIDGE CITY TRIBUNE (Ind.), Jan. 16, 1873, at 2. A few months later, the legislature enacted a law declaring that women were "eligible to any office" elected by the general assembly or appointed by the governor. THE STATUTES OF THE STATE OF INDIANA, VOL. 1, at 638 (1876) (printing law enacted March 10, 1873).

women in the mid-1850s,²⁸⁷ with law schools following in the late 1860s.²⁸⁸ The region's forwardness in this respect prepared local women to pursue professional and political goals²⁸⁹ and motivated Northeastern women to move to Midwestern cities.²⁹⁰ Many stayed after graduation and—armed with their education and especially their legal training—pressed for women's rights.²⁹¹ Indeed, some sought law degrees with that purpose in mind.²⁹² These women's successes, in turn, likely encouraged others to follow.

Iowa led Midwestern states in permitting women's officeholding. In 1866, Iowa's governor appointed the country's first woman notary public, Emily Calkins Stebbins.²⁹³ Stebbins had gained her professional footing during the Civil War, replacing an enlisted man as the deputy recorder and treasurer of her county.²⁹⁴ Additional women notary appointees followed, garnering nationwide publicity.²⁹⁵ In 1871, newspapers incorrectly claimed that Laura Berry had become the state's first woman notary,²⁹⁶ with some including the joke that although Berry was “the first woman Notary Public who ‘swore’ a man in Iowa . . . she is not the first woman who made a man swear.”²⁹⁷

Iowan women were also among the earliest to obtain other positions. In June 1869, Iowan Belle Mansfield became the first woman officially admitted to a state bar in the United States,²⁹⁸ even though the statute limited admission to “white male citizens.”²⁹⁹ The same year, Julia Addington was the first woman elected as a county superintendent of schools in the state.³⁰⁰ Because women

287. FLEXNER & FITZPATRICK, *supra* note 12, at 116-18. Midwestern colleges became coed earlier because they were less tied to classical education, sought to attract people to the region, and were located in communities where men and women worked together in other contexts. THE AMERICAN MIDWEST: AN INTERPRETIVE ENCYCLOPEDIA 805 (2007); Doris Malkmus, *Origins of Coeducation in Antebellum Iowa*, 58 ANNALS OF IOWA 162, 168 (1999).

288. DRACHMAN, *supra* note 34, at 37, 46-47, 53, 55-56 (also noting a few exceptions to the regional pattern, such as Boston University and Howard University in D.C.).

289. Kristin Mapel Bloomberg, “Let Us Not Look Regretfully on the Past”: Clara Bewick Colby and Midwestern Women's Early Coeducation at the University of Wisconsin, 8 MIDDLE W. REV. 1, 11 (2021).

290. Women who moved to the Midwest from other regions “may have contributed toward a more socially and politically progressive spirit that insisted on political inclusion.” YVONNE JOHNSON, FEMINIST FRONTIERS: WOMEN WHO SHAPED THE MIDWEST xi (2010).

291. *Infra* notes 299-308.

292. DRACHMAN, *supra* note 34, at 37, 51. For a more detailed treatment, see Karen Tokarz, *A Tribute to the Nation's First Women Law Students*, 68 WASH. U. L. REV. 89, 91-97, 100-01 (1990).

293. LOUISE R. NOUN, STRONG-MINDED WOMEN: THE EMERGENCE OF THE WOMAN-SUFFRAGE MOVEMENT IN IOWA 23-24 (1969).

294. *Id.*

295. *E.g.*, (No title), JUNIATA SENTINEL (Mifflintown, Pa.), Jan. 3, 1872, at 2.

296. *State Items*, CENTERVILLE CITIZEN (Iowa), Dec. 8, 1871, at 2.

297. *Swearing*, COURIER (Waterloo, Iowa), Apr. 11, 1872, at 3.

298. At least one woman was already practicing law in Iowa in 1869. KAREN BERGER MORELLO, THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA, 1638 TO THE PRESENT 11 (1986).

299. Nancy T. Gilliam, *A Professional Pioneer: Myra Bradwell's Fight to Practice Law*, 5 LAW & HIST. REV. 105, 108 (1987).

300. *Woman's Eligibility to Office in Iowa*, BUCHANAN CNTY. BULL. (Independence, Iowa), Dec. 17, 1869, at 2.

could not vote, Addington was uncertain about her eligibility for an elected position. She sought an opinion from the state superintendent who, in turn, posed the question to the attorney general.³⁰¹ The attorney general reasoned that there was no law in Iowa that forbade women from holding school offices, and he refused to infer such a limit from male pronouns.³⁰²

Newspapers across the country recognized Iowa's lead and may have inspired women in other states to follow. In 1872, a Minneapolis paper trumpeted that several Iowa women held office as notaries public, county superintendents, and the state librarian.³⁰³ "Though not allowed to vote," the news item explained, "the Iowa women can be voted for, and can be legal competitors with the other sex for any elective office."³⁰⁴ Similarly, a suffrage newspaper pointed to Iowan women's officeholding to declare that "Iowa has the most liberal laws relating to women of any State in the Union."³⁰⁵ Reversing the oft-assumed path that suffrage would precede officeholding, the writer continued: "We predict that Iowa will be the first State in the Union to grant women the long-denied but natural right of suffrage."³⁰⁶ A few years later, an article observed that women could hold any office in the state except for two. The state's constitution limited state legislators to male citizens, and a law enacted in 1876 required that judges of the superior court be "electors."³⁰⁷ Still, "[f]rom Governor down to the lowest township office," the constitution used the word "person" in describing eligibility, so women qualified.³⁰⁸

Missouri was nearly as cutting-edge as Iowa. Missouri admitted its first woman lawyer in 1870,³⁰⁹ permitted a woman to hold the elected office of county recorder of deeds in 1872,³¹⁰ and drew repeated praise for the significant number of women appointed as notaries by successive governors.³¹¹ An article reprinted across the country in 1870 linked the appointment of Missouri's first woman notary and lawyer (both of whom were natives of Brooklyn, New York, and the latter of whom had moved to St. Louis to attend law school) to the efforts of

301. *Id.*

302. *Id.*

303. *News Gleanings*, STAR TRIB. (Minneapolis), July 27, 1872, at 2.

304. *Id.*

305. (No title), NEW NORTHWEST (Portland), July 19, 1872, at 2.

306. *Id.*

307. *Iowa Inklings*, ST. LOUIS GLOBE DEMOCRAT, Dec. 14, 1876, at 3.

308. *Id.* Women's rights proponents sought a constitutional amendment to authorize women's ability to sit in the Iowa legislature (sometimes along with suffrage) in 1898, 1904, and 1906, before giving up to focus just on a suffrage amendment. RUTH A. GALLAHER, LEGAL AND POLITICAL STATUS OF WOMEN IN IOWA 236 (1918).

309. DRACHMAN, *supra* note 34, at 251 (Lemma Barkaloo).

310. *A Woman Elected Recorder of Deeds*, ST. JOSEPH GAZETTE (Mo.), Dec. 11, 1872, at 1 (explaining the local county attorney "gave an elaborate opinion as to her eligibility, taking affirmative grounds").

311. *E.g.*, (No title), AUSTIN WKLY. STATESMAN, Nov. 13, 1879, at 2 ("The Governor of Missouri appoints women notaries public, because they are honester than men."); *Lady Notaries*, ST. LOUIS POST-DISPATCH, Jan. 29, 1893, at 29.

Missouri's suffragists.³¹² "The strong-minded women who have been incessantly laboring for years to secure a recognition of their rights are in a measure reaping their reward," the writer explained.³¹³

Missouri women held offices with seemingly no legal challenge until 1897. That year, a woman was elected to be the clerk in St. Clair County to replace her deceased husband.³¹⁴ After she beat her male opponent by a vote of 1,938 to 92, he sued to question her eligibility.³¹⁵ The state's highest court recognized that the constitution limited many positions to "male" citizens. These included governor, attorney general, state legislator, and superintendent of schools.³¹⁶ Others, such as circuit judges, were limited to "qualified voters," which had the same effect.³¹⁷ However, there was no law that limited county clerk to men, despite the use of male pronouns.³¹⁸ Noting that women in Missouri were attorneys, notaries public, and the state librarian, under laws similar to the one at issue, and observing that the office under consideration did not encompass duties "incompatible" for a woman to discharge, the court concluded that the woman was entitled to the position.³¹⁹ Although she could not vote for the office, "her fellow citizens may call her to discharge its duties if they see fit."³²⁰

Though the opinion catalogued a number of significant offices women could not hold, it was widely received as recognizing women's expanding officeholding rights. The *New York Times* concluded "there are now few office[s] in the State to which women may not aspire."³²¹ The *Central Law Journal* offered that "[t]he advocates of equal political rights for women will find encouragement" in the case.³²² And indeed, women did continue progressing in Missouri. For instance, in 1901, a woman elected as a city attorney was identified as the only woman in the country to hold such a post.³²³ The following year, Daisy Barbee—who had moved from Kansas to Missouri to attend law school at Washington University and was then a candidate for probate judge³²⁴—declared that Missouri was the "best state for women."³²⁵ A newspaper summarizing her

312. *E.g.*, *A Buxom Lawyeress*, WATERTOWN NEWS (Wis.), Apr. 13, 1870, at 4 (reprinting article from *St. Louis Times*).

313. *Id.* One of the women, Phoebe Couzins, ran for Missouri governor in 1888. She explained that she had received votes in the previous election, which "caused me to think it not impossible for a woman to hold the position." *The Fair Phoebe Couzins*, CHICAGO DAILY TRIB., Jan. 14, 1888, at 10.

314. *State ex rel. Crow v. Hostetter*, 39 S.W. 270, 270 (Mo. 1897).

315. *Id.*

316. *Id.* at 271.

317. *Id.*

318. *Id.*

319. *Id.* at 272.

320. *Id.*

321. *The Women May Hold Office*, N.Y. TIMES, Feb. 22, 1897, at 7.

322. *Eligibility of Women to Office*, 45 CENTRAL L.J. 450 (1897).

323. *Female City Attorney*, WASH. POST, Apr. 7, 1901, at E18.

324. *Woman Lawyer Seeks Nomination for Democratic Probate Judge*, ST. LOUIS POST-DISPATCH, Feb. 23, 1902, at 6.

325. "Missouri Best State for Women," ST. LOUIS POST-DISPATCH, Dec. 2, 1902, at 8.

remarks explained: “Although women cannot vote in Missouri, they are eligible to some of the highest offices in the state.”³²⁶

In other Midwestern states, special legislation was needed for women to hold at least some offices, but women secured officeholding rights over the course of a few years. Two of the first major officeholding disputes arose in Illinois, and both were initiated by Myra Bradwell. In September 1869, the Illinois Supreme Court denied Bradwell’s application for a state law license.³²⁷ The court’s reasoning turned in part on recognizing that an attorney was technically an “officer of the court.”³²⁸ Thus, the court feared that if it permitted women to become lawyers, it would also be indicating that “every civil office in this State may be filled by women; that it is in harmony with the spirit of our constitution and laws that women should be made governors, judges and sheriffs. This we are not yet prepared to hold.”³²⁹ The Illinois governor agreed with the court’s unwillingness to permit women officeholders; the same year as the opinion, he refused to appoint Bradwell as a notary public.³³⁰

As the case testing Bradwell’s right to join the bar awaited a decision from the U.S. Supreme Court, commenters recognized the potentially profound implications of permitting her to be an “officer.” Courts had not yet rejected the New Departure,³³¹ and the fact that the case raised officeholding rather than suffrage seemed powerful. According to one article, a decision for Bradwell would indicate that the Fourteenth Amendment “forbids the States from preventing women from holding office. As the right to hold office would seem to imply the right to vote as to who shall hold office, the question now awaiting decision involves great interests”³³² Ultimately, the U.S. Supreme Court affirmed the state court’s holding on other grounds, without examining the officeholding angle.³³³

When the issue of women’s admission to the bar appeared before the Supreme Court of Wisconsin in 1875, upon the petition of Lavinia Goodell, that court too understood lawyers as officers and worried about a slippery slope if

326. *Id.*

327. *In re Application of Bradwell*, 55 Ill. 535 (1869).

328. *Id.* at 537.

329. *Id.* at 540.

330. More than sixty leading male lawyers supported her application. Gilliam, *supra* note 299, at 113. The technical reason for the denial of the notarial commission was that Bradwell, as a married woman, could not execute a valid bond as required for the post. *Id.* As the married-unmarried distinction was rarely relevant in women’s officeholding litigation, this aspect is not addressed here. *But see In re Opinion of Judges*, 57 So. 351, 352 (Fla. 1912) (determining married women could not be county treasurers because they were unable to issue bonds enforced against them personally, but unmarried women could).

331. *Supra* Part I.B.3.

332. (No title), PITTSBURGH DAILY COM., Oct. 29, 1870, at 4.

333. The U.S. Supreme Court’s reasoning rested on its developing interpretation of the privileges and immunities clause, *see Bradwell v. Illinois*, 83 U.S. 130 (1872), which proved fatal to women’s suffrage in *Minor v. Happersett*, 88 U.S. (21 Wall.) 162 (1873) (discussed *supra* notes 199-200 and accompanying text).

women were admitted. The Wisconsin court's concern was more perplexing, as it was widely known that Goodell already held the office of notary public,³³⁴ a point that she and her lawyer emphasized.³³⁵ (She also had already been admitted to one of the circuit courts, which typically resulted in automatic admission to the other courts in the state.³³⁶) Nevertheless, the court reasoned that if it construed the pertinent statutory language to allow women lawyers, the "logic goes far beyond the bar" and would "make females eligible to almost all offices under our statutes, municipal and state, executive, legislative and judicial, except so far as the constitution may interpose a virile qualification."³³⁷ The court was unwilling to do this, as "[s]uch a rule would be one of judicial revolution, not of judicial construction."³³⁸

Yet despite setbacks such as these, women in Midwestern states soon made strides, often through legislation that specified which offices women could hold. For instance, in 1877, Goodell and others persuaded the Wisconsin legislature to enact a law to authorize women attorneys.³³⁹ The state's highest court, though implying some skepticism about the law's constitutionality, allowed it to remain in place.³⁴⁰ This approach permitted women lawyers without thereby opening all offices to women.

Meanwhile, the Illinois legislature acted in response to Bradwell's litigation and lobbying.³⁴¹ In 1872, it passed a statute permitting women to become lawyers,³⁴² and in 1875, to become notaries.³⁴³ The law authorizing women lawyers went beyond that position. It read in part: "That no person shall be precluded or debarred from any occupation, profession or employment (except military) on account of sex; Provided, that this act shall not be construed to affect the eligibility of any person to an elective office."³⁴⁴ Newspaper coverage hailed the state's progress. Though noting that the law contained an exception for elective offices, one writer predicted: "It will not be long until women will hold elective offices and vote as well in Illinois."³⁴⁵

334. (No title), PUB. LEDGER (Memphis), Mar. 16, 1875, at 2 (reporting on Lavinia Goodell as "the only Notaryess Public in Wisconsin").

335. *May Women Practice Law*, WIS. STATE J. (Madison), Dec. 16, 1875, at 2. For her lawyer's argument before the state supreme court, see *In re Goodell*, 39 Wis. 232, 234 (1875).

336. Catherine B. Cleary, *Lavinia Goodell, First Woman Lawyer in Wisconsin*, 74 WIS. MAG. HIST. 242, 251, 255 (1991).

337. *In re Goodell*, 39 Wis. at 242.

338. *Id.*

339. Cleary, *supra* note 336, at 262, 265.

340. *In re Goodell*, 81 N.W. 551, 551 (1879).

341. The state's highest court seemingly encouraged the legislature to permit women to take on additional roles, writing that it would "cheerfully obey" such a law. *In re Bradwell*, 55 Ill. 535, 542 (1869).

342. *Schuchardt v. Hall*, 99 Ill. 501 (1881) (quoting statute and attributing it to Bradwell's advocacy).

343. On passage of "Bradwell's Bill," see *Female Notaries*, CHI. TRIB., Feb. 9, 1875, at 2.

344. *Schuchardt*, 99 Ill. at 505 (quoting statute).

345. *Well Done, Illinois!*, NEW NORTHWEST, July 19, 1872, at 2.

The Supreme Court of Illinois had an opportunity to construe the 1872 law as applicable to other offices in 1881, after Helen Schuchardt was appointed as a master in chancery.³⁴⁶ In permitting her to hold the post, the court began by noting how at common law women could not be lawyers or hold office “in general.”³⁴⁷ The legislature had changed this, the court summarized, “[p]resumably in response to” *In re Bradwell*.³⁴⁸ The court observed that the legislature’s use of “[t]he word ‘profession’ was doubtless intended to, and certainly does, cover the exact case involved.”³⁴⁹ The fact that the legislature carved out elective office indicated that women were permitted to hold other types of offices.³⁵⁰

In 1873, the Illinois legislature also joined a growing trend in authorizing women to hold school offices.³⁵¹ The school office law inspired an article in the *Chicago Tribune*, republished elsewhere, that argued the cause of women’s rights was “progressing in the state.”³⁵² In fact, it was progressing so quickly that the author facetiously cautioned proponents to slow down. Listing officeholding first among women’s pursuits, the writer warned that “the mistake of these strenuous and somewhat hot-headed champions has been that in their eagerness they have sought to leave man out in the cold, by seizing up all the rights of man at one fell swoop.”³⁵³ More seriously, the *Woman’s Journal* posed that if a woman was qualified for an important school office, “by what rule of logic can it be shown that she is not qualified to exercise the privilege of the ballot?”³⁵⁴

Other Midwestern states also recognized women’s right to be elected to school offices.³⁵⁵ In 1872, Ellen Webster was elected superintendent of Public Instruction in Harvey County, Kansas, prompting her losing male opponent to challenge her eligibility.³⁵⁶ His theory seems to have been that because Webster could not vote for the office, she could not hold it.³⁵⁷ According to one newspaper writer, “If there *is* a law of this State which denies her right to [hold this office],

346. Schuchardt, 99 Ill. at 501. A master in chancery was authorized by state law “to take depositions, both in law and equity, to administer oaths, to compel the attendance of witnesses, take acknowledgements of deeds and other instruments in writing,” and to complete a number of judicial roles if the county judge was absent. *Id.* at 504 (quoting statute).

347. *Id.* at 505.

348. *Id.*

349. *Id.*

350. *Id.* at 506.

351. *Springfield, April 1, 1873*, ALTON TELEGRAPH (Ill.), Apr. 4, 1873, at 2.

352. *A Woman Elected to Office in Illinois*, CLARION-LEDGER (Jackson, Miss.), Nov. 20, 1873, at 1.

353. *Id.*

354. *Well Qualified for Office*, 52 WOMAN’S J. 410 (1873).

355. Michael Callaghan Pisapia, *The Authority of Women in the Political Development of American Public Education, 1860-1930*, 24 STUDIES IN AM. POL. DEV. 24, 40-41 (2010).

356. *Woman’s Right to Hold Office in Kansas to Be Tested*, TOPEKA WKLY. TIMES, July 11, 1872, at 2.

357. Although women in Kansas exercised school suffrage starting in 1861, KEYSSAR, *supra* note 13, at Appendix Table A.17, the Kansas Supreme Court held that the pertinent statute was unconstitutional and void in 1869. *Winans v. Williams*, 5 Kan. 227, 227-28 (1869).

it ought to be annulled at once.”³⁵⁸ Moreover, the author continued, “A man, fairly beaten, who would contest his competitor[’]s right to hold the office on the ground of her sex must be small indeed.”³⁵⁹ Perhaps due to such commentary, the man failed to show up at the hearing; Webster suggested his absence was due to his being “ashamed of himself.”³⁶⁰

This episode did not stop a different man from challenging the election of Mary P. Wright as superintendent of public instruction in Coffey County, Kansas, a few years later. Wright was one of six women elected as the superintendents of their counties that election cycle.³⁶¹ Future U.S. Supreme Court Justice David Brewer wrote the opinion in Wright’s favor. The opinion acknowledged the argument that women were implicitly excluded from officeholding since they did not have the vote.³⁶² However, the court instead favored the reasoning of a Maine justice who dissented from his court’s refusal to allow women to become justices of the peace in 1874 (discussed below). After quoting that dissent at length, the court concluded that women were eligible.³⁶³ Building on this decision in the following decade, one Kansas attorney general determined women could serve as registers of deeds and county clerks, and another advised the governor that women were eligible to hold the office of justice of the peace.³⁶⁴

In 1887, Kansas became the first state to grant women municipal suffrage, which opened the door to new categories of officeholders.³⁶⁵ Among the first and most notable was Susanna Salter, who was elected by residents of Argonia as the country’s only woman mayor or, as some newspapers titled her, “mayoress.”³⁶⁶ “Kansas is nothing if not radical,” a *Boston Globe* article covering her election

358. *Woman’s Right to Hold Office*, *supra* note 356.

359. *Id.*

360. (No title), CHASE CNTY. LEADER (Cottonwood Falls, Kan.), July 19, 1872, at 2.

361. (No title), OSWEGO INDEP. (Kan.), Jan. 9, 1875, at 2.

362. Wright v. Noell, 16 Kan. 601, 604, 607 (1876).

363. *Id.* The same year, a man in Iowa challenged the eligibility of a woman who beat him in an election for superintendent of common schools. According to newspaper coverage, “[t]he woman came out so far ahead that it was uncertain whether [the man] was a candidate at all.” *Iowa Inklings*, ST. LOUIS GLOBE DEMOCRAT, Dec. 14, 1876, at 3. The Supreme Court of Iowa found “no constitutional inhibition” on the woman holding the post, and also credited the legislature’s decision to pass a law the day before the appeal reading: “That no person shall be deemed ineligible, by reason of sex, to any school office in the State of Iowa.” Huff v. Cook, 44 Iowa 639, 640-41 (1876).

364. *Woman’s Republic*, BELOIT GAZETTE (Kan.), July 23, 1886, at 1 (also suggesting these decisions indicated women should be able to vote).

365. Lorraine A. Gehring, *Women Officeholders in Kansas, 1872-1912*, 9 KAN. HIST. 48, 49 (1986).

366. *Id.* at 50. Some coverage suggests her election may have started as a joke. *E.g. Mayor Susanna Salter*, BOS. GLOBE, Aug. 2, 1887, at 6. According to an historian who later interviewed Salter, the joke related to local men’s opposition to women’s involvement in the temperance movement. They attempted to humiliate the Women’s Christian Temperance Union by arranging a major defeat of Salter, as a W.C.T.U. representative, but instead the local people rallied to elect her. Monroe Billington, *Susanna Madora Salter: First Woman Mayor*, 21 KAN. HIST. SOC’Y 173 (1954), <https://www.kshs.org/p/kansas-historical-quarterly-susanna-madora-salter/13106> [<https://perma.cc/2CXY-JHBW>].

suggested.³⁶⁷ Salter had advantages in obtaining the post; her father had been the first to serve as mayor in this “typical prairie town of 500 inhabitants,” and her husband had been a lieutenant governor.³⁶⁸ Coverage of Salter stressed her reassuring conformity to gender norms. She was a mother of four and promised she “never neglects her home duties.”³⁶⁹ Furthermore, her husband “occupies unchallenged the place of head of the family.”³⁷⁰ According to the same profile, Salter had not supported women’s suffrage until it was already popular, and she claimed no further political ambition even to be reelected.³⁷¹

The following year, the nationwide spotlight was directed to Oskaloosa, Kansas, the first town in the world to elect women to every position in a city government.³⁷² The headline in the local paper proclaimed that this was “The New Departure!”³⁷³ Coverage from elsewhere was also largely favorable. “Kansas leads, of all the States in the Union, in the prominence it gives to women in municipal affairs,” one account began.³⁷⁴ Perhaps the best indication of how the innovation was received is that the same mayor and an all-women city council were elected the following year.³⁷⁵ When the power returned to men in the next election cycle, reports summarized that the women “leave the city in a vastly better condition than when they took it.”³⁷⁶ Over the following decades, reports continued to praise Kansas’s women officeholders.³⁷⁷

Not all Midwestern states were fully accommodating to women’s pursuits. Perhaps because it bordered the Northeast or because it had more urban areas, Ohio fell into this category.³⁷⁸ In the 1870s, Ohio was among the most permissive states: it allowed women to become lawyers, and the state’s highest court issued one of the first opinions that permitted women to hold some offices.³⁷⁹ Yet over the following decades, Ohio fell behind its neighbors to the West. Women lawyers repeatedly sought to become notaries, resulting in decades of disagreement between the state’s attorneys generals, supreme court justices,

367. *Mayor Susanna Salter*, *supra* note 366.

368. *Id.*

369. *Id.*

370. *Id.*

371. *Id.* The article was widely reprinted. *E.g.*, *Mayor Susan Salter*, FORT WORTH DAILY GAZETTE, Aug. 27, 1887, at 5.

372. *Rulers Who Wear Gowns*, KAN. CITY TIMES (Mo.), Apr. 9, 1888, at 4.

373. *The New Departure!*, OSKALOOSA INDEP. (Kan.), Apr. 21, 1888, at 1.

374. *Mary D. Lowman, Mayor of Oskaloosa, Kan.*, DAILY COM. HERALD (Vicksburg, Miss.), Apr. 25, 1888, at 3.

375. Gehring, *supra* note 365, at 52.

376. *Petticoat Government*, FORT WORTH GAZETTE (Tx.), May 1, 1890, at 4.

377. *E.g.*, *Woman’s Suffrage in Kansas*, N.Y. TIMES, Dec. 6, 1897, at 3 (“If the present ratio keeps up it will not be many years until women will occupy a majority of the county offices in this State.”). Notably, many of these officers were elected by men, as municipal suffrage did not apply to county offices. Gehring, *supra* note 365, at 56.

378. Elite urban women, including in Ohio, fought suffrage because they believed it would undermine their authority. FREEMAN, *supra* note 13, at 52.

379. *Warwick v. Ohio*, 25 Ohio St. 21, 24-25 (Ohio 1874).

legislators, and voters.³⁸⁰ Though women were able to become notaries between 1879 and 1883, they were not able to regain that right until ratification of the federal suffrage amendment in 1920.³⁸¹ In the meantime, the only officeholding advancement women made in the state was securing a constitutional amendment in 1914 to permit their service as officers in institutions or on boards that oversaw the care of women and children.³⁸²

The neighboring state of Michigan likewise first seemed to be in line with its Midwestern neighbors but developed the Northeast's conservative tendencies over time. Already by 1870, Michigan had permitted women to serve as a notary public and a state librarian.³⁸³ In 1873, members of the state's constitutional commission, tasked with proposing a revised constitution, saw no legal bar to women's officeholding but sought to clarify the law to avoid how the ambiguity in Ohio had been resolved against women's interests.³⁸⁴ Some versions of their proposed officeholding text were broad, while others excluded certain positions (such as judge) or listed the authorized posts.³⁸⁵ The final version permitted a woman citizen to serve as a register of deeds, as a notary public, in school and library offices, and in "such other offices as may be designated by law."³⁸⁶ The official report stated that this rule "was believed by a majority of the commission to be in accordance with the advanced public sentiment regarding the competency of women for public positions."³⁸⁷ Notably, the commissioners declined to include a provision to enfranchise women.³⁸⁸ In 1874, Michigan voters rejected the entire proposed constitution,³⁸⁹ arguably leaving women's officeholding rights an open question.

The Supreme Court of Michigan first heard a narrow officeholding case in 1891. The question there was whether a woman could serve as a deputy county clerk.³⁹⁰ Her challenger argued that she could not serve in the role because, under the state constitution, only electors could hold the office of county clerk.³⁹¹ Though the court agreed with that argument, it distinguished the deputy, which

380. Elizabeth D. Katz, "A Woman Stumps Her State": *Nellie G. Robinson and Women's Right to Hold Public Office in Ohio*, 53 AKRON L. REV. 313, 321-34, 349-52 (2019).

381. *Id.* at 354.

382. *Id.* at 353.

383. *Historic Role of the Library of Michigan*, *supra* note 282.

384. *The Constitutional Commission*, DETROIT FREE PRESS, Oct. 8, 1873, at 1.

385. *Id.*

386. THE CONSTITUTION OF MICHIGAN WITH AMENDMENTS THERETO AS RECOMMENDED BY THE CONSTITUTIONAL COMMISSION OF 1873, at 39 (1873).

387. *Id.*

388. Women's suffrage was considered but rejected. JOURNAL OF THE CONSTITUTIONAL COMMISSION OF MICHIGAN 72 (1873).

389. John A. Fairlie, *The Referendum and Initiative in Michigan*, in THE INITIATIVE, REFERENDUM, AND RECALL 156 (1912). Voters also rejected a separate women's suffrage amendment at the same time. *Id.*

390. *Wilson v. Genesee Circuit Judge*, 49 N.W. 869, 870 (Mich. 1891).

391. *Id.*

was not technically limited by the constitution and was “wholly ministerial.”³⁹² The county clerk had the discretion to appoint a deputy, and “[h]is choice is not confined to any race, sex, color, or age.”³⁹³

In a second case, the court evaluated University of Michigan Law graduate Merrie H. Abbott’s right to hold the office of prosecuting attorney of Ogemaw County—a position to which the county’s men had elected her in 1898.³⁹⁴ The state’s attorney general questioned her eligibility on the basis that it was implicit that only electors could hold elective offices.³⁹⁵ Finding no “express provision of the constitution or the laws of the state conferring upon the respondent the right to hold this office,” the court turned to “principles of the common law.”³⁹⁶ The stakes of the case were high, as the court reasoned that “[i]f she is eligible to this office, then she is eligible to any constitutional office within the state.”³⁹⁷ Citing treatises as well as officeholding cases from New England and the South, the court determined that only electors were eligible.³⁹⁸

One judge dissented, emphasizing women’s progress toward equality. The jurist began by acknowledging that the majority’s opinion was sustained by the cited authorities but countered that “reason . . . sustained by a very respectable weight of authority, reaches a conclusion more in keeping with the trend of modern thought.”³⁹⁹ The dissenter favored the officeholding opinions he parsed from Midwestern states.⁴⁰⁰ Though common law restrictions on women limited her “to the domestic sphere,” recent developments demonstrated that women should not be so restricted.⁴⁰¹

Turning to the constitutional text, the dissent argued that given that the framers had specified that electors had to be male, and that some offices were reserved for electors, their silence as to other offices implied that the choice should be left to the people.⁴⁰² Rather than merely an issue of women’s rights, a basic democratic principle was at issue: “the absolute liberty of the electors and the appointing authorities to choose and to appoint any person who is not made ineligible by the constitution.”⁴⁰³ Finally, since women in the state could be lawyers, the majority’s holding created the “illogical” result that a woman could represent a defendant in a murder trial but not prosecute a minor crime.⁴⁰⁴

392. *Id.*

393. *Id.*

394. *Attorney General v. Abbott*, 80 N.W. 372, 372 (Mich. 1899).

395. *Id.* at 373.

396. *Id.*

397. *Id.*

398. *Id.* at 373-74 (citing *Robinson’s Case*, 131 Mass. 376 (1881); *Atchison v. Lucas*, 83 Ky. 451 (1885)). A concurrence distinguished Missouri and Kansas cases. *Id.* at 375.

399. *Id.* at 377.

400. *Id.* at 377, 380-83.

401. *Id.* at 377-78.

402. *Id.* at 379.

403. *Id.* at 380.

404. *Id.* at 383.

Coverage of the case criticized the majority's take. An article in the *Western Reserve Law Journal* noted that the relevant authorities were "in conflict," yet concluded the dissent was more persuasive.⁴⁰⁵ The *Detroit Free Press* cast Abbott as "a victim of the law." According to the writer, "[a]dvocates of woman's emancipation" had hailed her election "as the dawning of a new epoch, the inauguration of that equality for which they contend and an opening to the triumphant enjoyment of all the rights incident to American citizenship. But the Supreme Court of Michigan has turned them from rejoicing to weeping."⁴⁰⁶

As a group, Midwestern states took an early lead on women's officeholding, while also demonstrating the significant legal hurdles women faced. Crucially, the region had more women than in the West, less entrenched gender norms than in New England and the South, and an unusual willingness to enroll women in law schools and admit them to the bar—thereby equipping women to demand their legal rights. Yet at the same time, these states did not go so far as to enfranchise women. Allowing women to hold some offices seemed pragmatic and fair and respected male voters' choices, but women's suffrage would go too far.

C. *New England Conservatism*

While Midwestern women progressed in their officeholding rights, their peers in New England remained restricted. Judges and legislators sparred over the permissible scope of women's rights, with judges construing constitutional law conservatively and restricting their legislature's ability to modify the rules by statute. Consequently, women were denied the right to hold established and supposedly masculine roles, such as justice of the peace and notary public. They were able to make some advances, however, in new posts deemed gender appropriate—mostly involving education and charity.

Even before women's officeholding appeared before New England's courts and legislatures, prominent men publicly opposed the possibility. For instance, prolific Connecticut minister Horace Bushnell penned the anti-suffrage book *Women's Suffrage: The Reform Against Nature* in 1869.⁴⁰⁷ Bushnell argued that the suffrage demand "contemplates also, as an integral part of the proposed reform, that women should be eligible to office."⁴⁰⁸ Even if this consequence were not "conceded" before enfranchisement, it was obvious "that the women voters would so wield their balance of power as to conquer the right of office in a very short time."⁴⁰⁹ Indeed, women were already "jubilant" in anticipation of

405. *Prosecuting Attorney—Eligibility of a Woman*, 5 W. RESERVE L.J. 199 (1900).

406. *She is a Victim of the Law*, DETROIT FREE PRESS, Oct. 19, 1899, at 4.

407. HORACE BUSHNELL, *WOMEN'S SUFFRAGE: THE REFORM AGAINST NATURE* (1869).

408. *Id.* at 55.

409. *Id.*

one day taking “a seat in Congress, on the bench of justice, in the President’s cabinet, and why not in the chair of the Presidency itself?”⁴¹⁰ Though willing to acknowledge it might be acceptable for a woman to hold “offices that involve no governing right—post-offices and clerkships, for example,”⁴¹¹ Bushnell believed that if she entered the political sphere, it would break her honor and she would ultimately “cease[] so far to be woman at all.”⁴¹² He was confident this would not come to pass, reassuring readers that “[g]overning women . . . are never going to be in fashion. There is a sentence against it, written so deep down in nature, that not all women and all men together can take it finally away.”⁴¹³ New England judges soon seemingly agreed.

A pair of cases rejecting women as justices of the peace in Massachusetts in 1871 and Maine in 1874 set the legal tone for the region. The Massachusetts governor solicited the first opinion after questions arose about his nomination of prominent suffragist Julia Ward Howe.⁴¹⁴ According to one commenter, it should not be a problem for a woman to take on such a role because justices of the peace in Massachusetts did not have jurisdiction over criminal cases; the position consisted of “taking affidavits and acknowledgement of deeds,” as well as solemnizing marriages.⁴¹⁵ These were “simple acts, requiring neither learning nor experience beyond the range of any very moderately intelligent woman.” Yet for the same reason, the writer considered the office of “very little importance.”⁴¹⁶

Whether Howe would have performed the tasks ably remained untested, as the Supreme Judicial Court of Massachusetts concluded women could not hold any judicial office.⁴¹⁷ In the single-paragraph opinion, the court held that excluding women from the post was supported by “[t]he law of Massachusetts at the time of the adoption of the Constitution, the whole frame and purport of the instrument itself, and the universal understanding and unbroken practical construction for the greater part of a century afterwards.”⁴¹⁸ History, rather than legal text, stood in women’s way.

Taking the opinion to mean the legislature was empowered to change the result by altering the common law, women’s rights supporters petitioned the legislature for an act declaring women’s eligibility.⁴¹⁹ Proponents preferred this route over seeking a suffrage constitutional amendment (which they believed would implicitly carry the right to hold office as well) because they expected that

410. *Id.*

411. *Id.* at 158.

412. *Id.* at 159, 161.

413. *Id.* at 159.

414. *In re* Opinion of the Justices, 107 Mass. 604, 604 (1871).

415. (No Title), *DEMOCRAT & CHRON.* (Rochester, N.Y.), May 27, 1871, at 2.

416. *Id.*

417. *In re* Opinion of the Justices, 107 Mass. at 604.

418. *Id.*

419. *Woman Suffrage Hearing*, *WOMAN’S J.*, Mar. 9, 1872, at 80.

path would “occupy two or three years, and perhaps longer.”⁴²⁰ Several speakers at a legislative hearing argued women should be permitted to hold offices related to schools and charity work, to which they were uniquely suited.⁴²¹ Others had broader ambitions, pointing to the able service of Esther Morris and other women in Western states and territories for evidence of women’s capacity.⁴²² Opponents countered with a slippery slope of the alleged horrors that would befall families if women became officeholders, and they also argued that the matter should be left to constitutional amendment.⁴²³ No legislation was passed at that time.

The Supreme Court of Maine received a similar request from its governor to determine a woman’s eligibility to serve as a justice of the peace in 1874.⁴²⁴ This time the question was prompted by the application of a woman who wished to solemnize marriages.⁴²⁵ Though the Maine governor previously appointed women to the post without controversy, commenters questioned the validity of the new nomination, perhaps because of the Massachusetts case.⁴²⁶

The Maine Supreme Court followed Massachusetts in prohibiting women justices, though with far more detailed analysis.⁴²⁷ The majority observed that the state constitution (partially adopted from Massachusetts) had been “the work of its male citizens” and that “it was never in the contemplation or intention of those forming” the document that there could be women officers.⁴²⁸ Therefore, women were not eligible. To hold otherwise would allow women to obtain “executive power by making them sheriffs and major generals.”⁴²⁹ Potentially softening this result, the court continued that it had “no doubt that the legislature may create new ministerial offices,” which would not fall under constitutional constraints.⁴³⁰ It was also “competent” for the legislature to appoint women “to administer oaths, take acknowledgement of deeds, or solemnize marriages,”⁴³¹ so in other words to perform essential justice tasks without the title.

Three justices dissented. The first two dissenters observed that in examining the state’s constitution, “[w]e fail to find a single word, or sentence, or clause of a sentence, which, fairly construed, either expressly or impliedly, forbids the passage of such a law. So far as the office of justice of the peace is concerned, there is not so much as a masculine pronoun to hang an objection on.”⁴³² Acknowledging that only men could vote, they continued: “But the right to vote

420. *Id.*

421. *Id.*

422. *Id.*

423. *Id.*

424. Opinions of the Justices of the Supreme Judicial Court, 62 Me. 596 (1874).

425. (No title), PORTSMOUTH DAILY TIMES (Ohio), Feb. 28, 1874, at 4.

426. *Id.*

427. Opinions of the Justices of the Supreme Judicial Court, 62 Me. at 597-98.

428. *Id.* at 597-98.

429. *Id.* at 598.

430. *Id.*

431. *Id.*

432. *Id.* at 599.

and the right to hold office are distinct matters. Either may exist without the other.”⁴³³ Pushing back against original intent arguments, the dissenters offered that “[t]he truth probably is that [the framers of the constitution] had no intention one way or the other; that matter was not even thought of.”⁴³⁴ Finally, they condemned the majority’s approach as a “dangerous doctrine.”⁴³⁵ If the court limited the legislature to enacting only those laws that the constitution’s framers affirmatively intended, that “would put a stop to all progress.”⁴³⁶

The other dissenter produced the longest of the opinions, overlapping and then extending beyond the previous dissent—including with analogies to race.⁴³⁷ The jurist began with the observation that the office was “clearly within the sphere of woman’s capacity,” as shown by women’s recent advances in industry, the learned professions, and other “spheres of usefulness.”⁴³⁸ Moreover, “[w]ise statesmanship and enlightened jurisprudence alike seek to enlarge the scope of such instrumentalities, without regard to race, color, sex, or previous condition of servitude, of either race or sex.”⁴³⁹ Though women had long been treated as “inferior beings” under a wide array of laws, “thanks to an advancing civilization, by usage or law, some of these relics of a less enlightened age have been swept away,” leading to women being treated more as “peers of men in both capacity and right.”⁴⁴⁰ Therefore, “[t]o deny women the right to hold office upon the ground of usage would be to set back the clock of time and substitute reaction for progress.”⁴⁴¹ For further support, the judge turned to the recent enactment of the Fourteenth Amendment. Explaining how it had overturned *Dred Scott* and made all persons born or naturalized in the United States citizens, the judge concluded that “[w]omen are thus made citizens by the supreme law of the land, and as such, are entitled to all the rights, privileges and immunities predicated of citizens.”⁴⁴²

Finally, the dissent found the majority’s holding both “arbitrary” and troubling.⁴⁴³ Since women were admitted to the state’s bar the previous year and permitted to be school superintendents, registers of deeds, and members of boards of health, what logical distinction existed to exclude them from judicial posts? If “satisfactory answers” existed to this question, the jurist suggested, “they must be found outside of the constitution.”⁴⁴⁴ Under the majority’s

433. *Id.* at 600.

434. *Id.*

435. *Id.* at 599.

436. *Id.*

437. *Id.* at 600.

438. *Id.*

439. *Id.*

440. *Id.* at 601.

441. *Id.*

442. *Id.* at 602.

443. *Id.* at 604.

444. *Id.* at 605.

approach, it was hard to see how other changes to the common law could remain secure; a consistent approach might invalidate married women's property laws and continue to outlaw freedmen, which was "repugnant."⁴⁴⁵ More broadly, if the majority's "principle of construction" were followed, "there is great reason to fear that written constitutions will soon come to be of little value."⁴⁴⁶

The following year, the Maine legislature accepted its court's invitation to create a workaround law that would permit women to perform the actions of a justice of the peace. The legislature authorized the governor to appoint women to solemnize marriages and acknowledge deeds but without the justice title.⁴⁴⁷

The next major New England officeholding case arose in 1881, when Lelia Robinson sought admission to the Massachusetts bar.⁴⁴⁸ The Massachusetts Supreme Court determined women could not become lawyers, even though the statute merely specified that lawyers had to be "citizens" and did not contain the word "male."⁴⁴⁹ The court began by acknowledging that women were "citizens" but denied that citizenship entitled them to "any absolute right, independent of legislation, to take part in the government, either as a voter or as an officer, or to be admitted to practice as an attorney."⁴⁵⁰ Tracing the common law, the jurists observed that the only offices that women could hold in England were queen and overseer of the poor.⁴⁵¹ Turning to the issue at hand, the court acknowledged that an attorney was not a public officer "in the strict sense . . . [b]ut he comes very near it."⁴⁵² After quoting its entire opinion on the justice of the peace question, the court continued that the legislature had always used clear language and proceeded "one step at a time" when altering women's legal rights yet had made no such change with regard to women's eligibility to join the bar.⁴⁵³ Citing the opinions that excluded Bradwell in Illinois and Goodell in Wisconsin, the court concluded that "[i]t is hardly necessary to add that our duty is limited to declaring the law as it is," and any changes were the domain of another branch of government.⁴⁵⁴

The Massachusetts legislature responded by authorizing women to become attorneys the following year.⁴⁵⁵ The legislators seemingly recognized that newly

445. *Id.* at 606.

446. *Id.*

447. ACTS AND RESOLVES OF THE FIFTY-FOURTH LEGISLATURE OF THE STATE OF MAINE, 1875, at 44 (1875).

448. *In re Robinson's Case*, 131 Mass. 376 (1881).

449. *Id.* at 382.

450. *Id.* at 376-77 (citing *Minor v. Happersett* and *Bradwell v. Illinois*).

451. *Id.* at 377, 379. The court acknowledged a few other scenarios, such as hereditary offices that could be performed by deputies. *Id.* at 378-79.

452. *Id.* at 379.

453. *Id.* at 380-81. For instance, after an 1874 opinion in which the court indicated that the legislature was competent to authorize women to be members of school committees, the legislature enacted clear legislation to that effect. *Id.*

454. *Id.* at 383-84.

455. *Id.* at 384 n.1 (citing statute).

minted women lawyers would also wish to become notaries, yet they realized the constitution might interfere with extending them this opportunity. Thus, they borrowed Maine's approach. In 1883, they authorized the governor to appoint women lawyers as "special commissioners," to perform tasks typically completed by notaries.⁴⁵⁶ As with Maine's justice of the peace statute, this law gave women powers without the traditional title.

Yet the fact that women lawyers were authorized to perform notary-type tasks did not avert two rounds of state supreme court opinions on the notary issue. In 1890, the Massachusetts Supreme Court responded to a request from the governor to analyze whether he could appoint women notaries. The court said no.⁴⁵⁷ The court proceeded from the premise that the "office is of ancient origin," tracing its heritage from Roman law, to most of the Christian nations, to England, and finally to Massachusetts.⁴⁵⁸ In this long history, the court could find no evidence a woman had ever held the office of notary in England or the state.⁴⁵⁹ Moreover, the fact that the legislature had authorized women *lawyers* to perform duties nearly overlapping with the notary role in 1883, and expanded in 1889, indicated the legislature had not intended to open performance of these actions to all women.⁴⁶⁰ The court implied, without fully committing, that the legislature could authorize the governor to appoint women notaries in the future.⁴⁶¹ But when the legislature passed such a law, the court determined it lacked this power.⁴⁶² According to the judges, "the nature of the office" of notary public, just like justice of the peace, implicitly posed a constitutional bar to women.⁴⁶³

Women pressed for a constitutional amendment to permit them to become notaries into the 1910s, but they encountered difficulties because of perceived links to women's suffrage. For example, when the Massachusetts legislature offered male voters the opportunity to approve a narrow women notaries constitutional amendment in 1913, the *Boston Globe* reported that many viewed the vote as "a straw indicating the sentiment of the Commonwealth on the question of equal suffrage."⁴⁶⁴ The men rejected the amendment, a development another newspaper cast as "a mystery."⁴⁶⁵ Mystery or not, women's suffrage leaders attempted damage control. Prominent suffragist Alice Stone Blackwell suggested that if the notary vote indicated the state's sentiment on women's

456. ACTS AND RESOLVES PASSED BY THE GENERAL COURT OF MASSACHUSETTS IN THE YEAR 1883, at 555 (1883).

457. *In re Appointment of Women to Be Notaries Public*, 23 N.E. 850 (Mass. 1890).

458. *Id.* at 851.

459. *Id.* at 852.

460. *Id.*

461. *Id.* at 852-53.

462. *In re Opinion of the Justices*, 43 N.E. 927 (Mass. 1896).

463. *Id.* at 928.

464. *City Vote Against Women Notaries*, BOS. GLOBE, Nov. 17, 1913, at 5.

465. (No title), BERKSHIRE EAGLE (Pittsfield, Ma.), Nov. 28, 1913, at 4.

suffrage, as antisuffragists suggested, “it reflects a great increase in the popularity of votes for women,” as compared to the last time there had been a suffrage referendum.⁴⁶⁶ Women in Massachusetts were finally permitted to become notaries pursuant to an amendment passed in 1918.⁴⁶⁷

Not all New England states were so restrictive. For instance, in 1882, the Supreme Court of Connecticut allowed women to become lawyers, in large part because of developments it observed in other parts of the country.⁴⁶⁸ (By that point, fifteen jurisdictions, including the U.S. Supreme Court, admitted women lawyers.⁴⁶⁹) The statute under consideration did not explicitly mention men, but it was originally passed in 1750 and had not been significantly revised since 1821.⁴⁷⁰ The court explained that it was reluctant to construe the statute to conform to the drafters’ likely intent because, if it took that approach, “where shall we draw the line? All progress in social matters is gradual.”⁴⁷¹ The drafters almost certainly did not consider the possibility that black men would become lawyers; “[s]hall we now hold that it cannot apply to black men?”⁴⁷² Broadening from that question, the court observed that when the state’s constitution had been adopted in 1818, it limited most offices to electors, who in turn were limited to white men.⁴⁷³ “But now that black men are made electors, will it do to say that they are not entitled to the full rights of electors in respect to holding office, because an application of the provision to them was never thought of when it was adopted?”⁴⁷⁴ After examining the history of the statute, the court offered that “all statutes are to be construed, as far as possible, in favor of equality of rights.”⁴⁷⁵ Thus, the court permitted women to join the bar.⁴⁷⁶ The victorious plaintiff soon became the state’s first woman notary.⁴⁷⁷

The Supreme Court of New Hampshire was also influenced by the growing trend to permit women lawyers, yet it shared some courts’ concern that permitting women to be “officers” of the court was a slippery slope. The court thus charted a new path when evaluating Marilla Ricker’s 1890 suit for admission to the bar, in which she was represented by Lelia Robinson.⁴⁷⁸ The court found itself in a difficult position because the state’s statute was similar to

466. Alice Stone Blackwell, *Suffrage More Popular*, BOS. GLOBE, Dec. 1, 1913, at 10.

467. *First Woman Notary Public Sworn In*, BOS. GLOBE, Jan. 2, 1919, at 3.

468. *In the matter of Mary Hall*, 50 Conn. 131 (1882).

469. DRACHMAN, *supra* note 34, at 251-52.

470. *In the matter of Mary Hall*, 50 Conn. at 131.

471. *Id.* at 132.

472. *Id.* at 133.

473. *Id.*

474. *Id.*

475. *Id.* at 137.

476. *Id.* at 138.

477. JILL NORGREN, *REBELS AT THE BAR: THE FASCINATING, FORGOTTEN STORIES OF AMERICA’S FIRST WOMEN LAWYERS* 141 (2013). In the coming years, the Connecticut legislature authorized women to be school trustees (1886) and assistant town clerks (1889) and granted them school suffrage in 1893. *Id.* at 142.

478. *In re Ricker*, 29 A. 559 (N.H. 1890).

the one Massachusetts jurists determined did not authorize women lawyers.⁴⁷⁹ To get around this result without authorizing broad officeholding, the court produced the longest of all cases on this issue, exceeding 25,000 words. After an exhaustive examination of the meaning of the word “officer,” the court concluded that though attorneys were “officers of the court,” they were not “public officers.”⁴⁸⁰ Thus, New Hampshire was able to permit women to become lawyers without inadvertently opening all public offices.

Because New Hampshire allowed women lawyers by distinguishing them from public officers, the case provided no help for women who wanted to be notaries—a post that was undeniably a public office.⁴⁸¹ In 1905, the issue of whether the governor was authorized to appoint women notaries reached the state’s highest court.⁴⁸² Though the statute in place since 1901 did not exclude women, the court deemed the statute insufficient to authorize them.⁴⁸³ Women were ineligible to hold public office “in the absence of enabling legislation” (such as the statutes passed to permit women to hold school offices), so a gender-neutral notary statute did not permit women appointees.⁴⁸⁴

Although New England courts and legislatures were not uniform in their approach, the overall message was that women’s progress as officeholders should be gradual and explicitly authorized by legislatures. But legislatures did not have full discretion to expand women’s officeholding domain. Courts read constitutional silences as excluding women, based on their understandings of what framers intended.⁴⁸⁵

D. *The Moderate Mid-Atlantic*

Spanning from New York to Virginia, Mid-Atlantic states took a gradual and moderate approach to the question of women’s officeholding. Officeholding cases arose relatively late in these jurisdictions. This timing indicates a certain amount of conservatism, but it nevertheless eased the expansion of women’s domain because officials were reassured by how officeholding in other locations had not caused radical disruptions.

479. *Id.* at 559 (citing *In re Robinson’s Case*, 131 Mass. 376, 377, 382 (1881)).

480. *Id.* at 584.

481. In 1893, the governor denied a woman’s application to be a notary because he expected the court would not permit this, based on recent opinions in other states. *Won’t Have Woman Notary Public*, BOS. GLOBE, Nov. 5, 1893, at 5.

482. *In re Opinion of the Justices*, 62 A. 969 (N.H. 1906) (quoting statute). In 1917, the legislature asked for clarification as to whether it had the authority to authorize women notaries by statute, and the court said yes. *In re Opinion of the Justices*, 99 A. 999 (N.H. 1917).

483. *In re Opinion of the Justices*, 62 A. at 970-71.

484. *Id.* For an example of how this case influenced courts in other regions, see *State ex rel. Gray v. Hodges*, 154 S.W. 506 (Ark. 1913).

485. Other New England states were also late in extending women’s rights. As one measure, women were not admitted to the bar in Vermont until 1914 and Rhode Island in 1920. DRACHMAN, *supra* note 34, at 252-53.

As in New England, prominent male authors opposed women's political rights from the start. For instance, in 1869, Orestes Brownson, a prodigious writer best remembered for his vocal support of Catholicism,⁴⁸⁶ published an article on the topic in New York's *Catholic World*.⁴⁸⁷ Brownson did not doubt women's abilities, but rather argued that suffrage and officeholding were not natural rights and to grant them to women would harm the country.⁴⁸⁸ Acknowledging the great executive ability some queens had demonstrated, he attributed the successes of Queen Victoria to "the wise counsels of her husband, Prince Albert, and her domestic virtues as a wife and a mother, by which she has won the affections of the English people."⁴⁸⁹ Though women were untested as legislators, he expected "they would prove themselves not much inferior to the average of the men."⁴⁹⁰ His objection to this scheme was that "the political enfranchisement of women . . . would awaken and finally break up and destroy the Christian family," which was already under assault by the liberalization of divorce laws.⁴⁹¹ If women secured "the political right to vote and to be voted for . . . what remains of famil[y] union will soon be dissolved," he feared. Becoming increasingly dramatic, he imagined how spouses might join opposing political parties and even become "rival candidates for the same office, and one or the other doomed to the mortification of defeat."⁴⁹² Furthermore, while women ran for and even held office, children would be neglected and infanticide would become more prevalent until "the human race be threatened with extinction."⁴⁹³ These harms would not be outweighed by any arguable contribution women could make in political posts. "Women are not needed as men; they are needed as women," he argued.⁴⁹⁴

The first major legal disagreement over officeholding in this region questioned women's right to become notaries in New York. In 1871, the governor asked the state's attorney general to advise him on whether he could appoint women. Just one month before Massachusetts's justice of the peace decision, the New York attorney general responded that women were ineligible to become notaries or for "election or appointment to any civil office within this State."⁴⁹⁵ Under the state's constitution, only men could be electors and, he

486. Though Brownson was raised in New England and lived in several states, during the relevant time period he lived in New Jersey. *Orestes August Brownson*, NEW ADVENT, <https://www.newadvent.org/cathen/03001a.htm> [<https://perma.cc/P9VS-52BS>].

487. Orestes Brownson, *The Woman Question, Part 1*, CATH. WORLD (1869), <http://orestesbrownson.org/80.html> [<https://perma.cc/VQK6-RHCH>].

488. *Id.*

489. *Id.*

490. *Id.*

491. *Id.*

492. *Id.*

493. *Id.*

494. *Id.*

495. Marshall Champlain, Op. Att'y Gen. (May 17, 1871), in OPINIONS OF THE ATTORNEY-GENERAL OF THE STATE OF NEW YORK, 554-55 (Hiram E. Sickels comp., 1872).

reasoned, “[it] seems to be the theory of our Constitution and laws, that all officers to be elected or appointed should be selected from the body of electors.”⁴⁹⁶

The notary issue reappeared in 1884, when it was already commonplace for women to be notaries in the Midwest. That year, when a new N.Y. attorney general advised the State Civil Service Commission that women were eligible to compete with men under the Civil Service rules, he cast doubt on the earlier notary opinion but was not in a position to reverse it.⁴⁹⁷ Apparently relying on this response, the governor appointed at least one woman, Jennie Turner, as a notary, a designation that aided her work as a stenographer.⁴⁹⁸

In January 1885, Turner’s notary authority was subject to a collateral challenge.⁴⁹⁹ The defendants in a lawsuit charged that the pleading they received was not legally verified because Turner had signed it.⁵⁰⁰ The trial judge recognized that “[w]hether a female is capable of holding public office has never been decided by the courts of this State, and is a question about which legal minds may well differ.”⁵⁰¹ While the constitution clearly limited electors to men, it could reasonably be “contended” that the governor and electors had the power to determine whether to select women for office.⁵⁰² Moreover, if women could not hold office, that would invalidate the statute the legislature had passed to permit women to serve as school officers.⁵⁰³ However, the judge maintained that the question of women’s eligibility for public offices was not squarely raised.⁵⁰⁴ Turner had been appointed by the governor and confirmed by the senate, and she had taken the oath of office. Thus, only the attorney general was in the appropriate position to challenge her right to the post.⁵⁰⁵ A law review commenter observed that though the judge had not decided the status of women’s eligibility, “the current of the opinion would seem to be in favor of the right of a woman to hold office.”⁵⁰⁶

The following year, the governor took advantage of this ambiguity by appointing five women as notaries.⁵⁰⁷ According to one journalist, this move “solved one branch at least of the women’s rights question” and was “regarded as a great victory for the women who have been urging their claims, and it excites

496. *Id.*

497. Denis O’Brien, Op. Att’y Gen. (Mar. 19, 1884), in 4 DOCUMENTS OF THE ASSEMBLY OF THE STATE OF NEW YORK, 98-99 (Weed, Parsons, & Co. ed., 1885).

498. *A Woman as Notary Public*, N.Y. TIMES, Jan. 6, 1885, at 8.

499. *Id.*

500. *Id.*

501. *Id.*

502. *Id.*

503. *Id.*

504. *Findlay v. Thorn*, 27 DAILY REG. 33 (Jan. 5, 1885), printed in 31 ALB. L.J. 43 (1885).

505. *Id.*

506. Nathaniel Moak, *Are Women Legally Eligible in New York as Notaries Public?*, 41 ALBANY L.J. 244 (1890) (describing cases from several jurisdictions).

507. *The Sly Old Bachelor*, BUFFALO TIMES, Mar. 24, 1886, at 1.

considerable interest.”⁵⁰⁸ A few years later, an article reported that suffragists sent letters of thanks to the governor as he continued to appoint women notaries.⁵⁰⁹ In 1886, New York suffragists successfully lobbied the legislature to authorize women lawyers.⁵¹⁰

Women’s officeholding progress was gradual in Mid-Atlantic states adjoining New York. In 1875, the New Jersey attorney general determined a woman could not serve as the keeper of a jail.⁵¹¹ The decision attracted criticism from a New York suffrage organization, which argued that the matter “furnishes an additional reason why women should be entitled to vote in order to secure the repeal of such unjust laws.”⁵¹² New Jersey women made few advances for two decades, with a woman first becoming a notary in 1894⁵¹³ and a lawyer 1895.⁵¹⁴ In Pennsylvania, it took a sixteen-year fight for a woman to finally become a lawyer in 1883.⁵¹⁵ The same woman was successfully appointed as a master in chancery in 1887⁵¹⁶ but denied a notary commission the same year.⁵¹⁷ The Pennsylvania legislature authorized women notaries in 1893.⁵¹⁸

East Coast states further south reached women’s officeholding even later, which permitted their staunch gender conservatism to be slightly tempered by the fact that some types of women’s officeholding had become normalized. Throughout these years, Virginia newspapers closely tracked which jurisdictions permitted women to become notaries.⁵¹⁹ In 1898, the Virginia legislature joined the growing trend. A sarcastic recounting was reprinted beyond the state’s borders: “The Virginia senate broke its record for opposing every law allowing privileges to women, and without a dissenting vote authorized the governor to appoint women notaries public.”⁵²⁰ It had only been in the last session, the article noted, that the same legislature refused to authorize women lawyers.⁵²¹ But women in Virginia could not yet celebrate this milestone, as the governor quickly vetoed the bill as unconstitutional.⁵²²

508. *Id.*

509. (No Title), *DEMOCRAT & CHRON.*, Apr. 14, 1888, at 2.

510. *New York’s Lady Lawyer*, *CHI. TRIB.*, May 23, 1886, at 7.

511. *Can Women Legally Hold Office?*, *EVENING STAR* (D.C.), Oct. 16, 1875, at 1.

512. *Id.*

513. *First Woman Notary in Jersey*, *MUSCATINE NEWS-TRIB.* (Iowa), Apr. 5, 1894, at 8.

514. DRACHMAN, *supra* note 34, at 252.

515. Elizabeth K. Maurer, *The Sphere of Carrie Burnham Kilgore*, 65 *TEMPLE L. REV.* 827, 827 (1992).

516. *A Woman Master in Chancery*, *SENTINEL* (Carlisle, Pa.), Jan. 27, 1887, at 4.

517. *Brief Mention*, *NEWS* (Frederick, Md.), Nov. 29, 1887, at 4.

518. *Women as Notaries*, *SUN & ERIE CNTY. INDEP.* (Hamburg, N.Y.), Dec. 8, 1893, at 6.

519. *E.g., Woman as Notaries Public*, *NORFOLK VIRGINIAN*, Mar. 26, 1886, at 2 (discussing New York); *Women Cannot Be Notaries*, *NORFOLK LANDMARK*, Mar. 21, 1895, at 2 (discussing North Carolina).

520. *Permit Women to Be Notaries*, *BUFFALO EVENING NEWS*, Feb. 16, 1898, at 3.

521. *Id.*

522. *A Very Wise Veto*, *RICHMOND DISPATCH*, Feb. 27, 1898, at 3.

Virginia's politicians did not forget their support of women notaries; they waited for the right opportunity to try again. During the constitutional convention of 1902, they included language to authorize this.⁵²³ Once the new constitution came into force, newspapers trumpeted that the governor's first official act after taking his own oath was to swear in Carrie A. Gregory as a notary, making her the first woman ever appointed to office in the state.⁵²⁴ Gregory, a well-respected stenographer, received this honor because she had been the driving force behind the law.⁵²⁵ Over the coming years, she was reappointed as a notary numerous times,⁵²⁶ until finally—after the passage of the Nineteenth Amendment—she became one of the first two women to be sworn into the Virginia bar.⁵²⁷

In neighboring Maryland, questions arose about women's eligibility to become notaries in 1901, after the state's highest court held that women could not become lawyers absent express statutory authority.⁵²⁸ In the lawyer case, the court took a page from New England and observed that the constitution had guaranteed Marylanders the common law, under which no woman could "take an official part in the government of the state, except as queen or overseer of the poor, without express authority of statute."⁵²⁹ Though a recent change to the statute on admission of lawyers had deleted the words "male citizen," the court concluded that the change adjusted procedure rather than qualifications.⁵³⁰ Perhaps not wishing to be perceived as behind the times, the court offered: "We are not to be understood as disparaging the laudable ambition of females to become lawyers. . . . We have no power to enact legislation."⁵³¹

Commenters soon recognized that the court's requirement that there be express statutory language to authorize women lawyers might mean that the several women who had been acting as notaries over the last several years⁵³² were ineligible for their posts.⁵³³ This unsettled the legitimacy of the oaths, contracts, and other matters they had overseen, leading residents to demand that the legislature clarify women's eligibility.⁵³⁴ Rectifying the situation was also

523. *Governor Sworn by Judge S.B. Witt*, RICHMOND TIMES, July 11, 1902, at 6.

524. *Id.*

525. *First Lady Notary a Business Woman*, RICHMOND TIMES, July 12, 1902, at 8.

526. *E.g., Miss Gregory Again Notary*, TIMES DISPATCH (Richmond), June 17, 1906, at 4.

527. *Virginia News*, ALEXANDRIA GAZETTE, June 28, 1920, at 5. Peter Wallenstein identifies Gregory as being one of the first two Virginia women lawyers, persuasively explaining why Belva Lockwood did not secure this distinction in a meaningful sense. Peter Wallenstein, "These New and Strange Beings": *Women in the Legal Profession in Virginia, 1890-1990*, 101 VA. MAG. HIST. & BIOGRAPHY 205 (1993).

528. *In re Maddox*, 50 A. 487 (Md. 1901).

529. *Id.* at 488.

530. *Id.*

531. *Id.* at 490.

532. Maryland's first woman notary was appointed in 1896. The next two were appointed in 1899 by a governor who also appointed the state's first woman librarian. *Women in Office*, BALT. SUN, June 3, 1899, at 9; *Women as Notaries Public*, BALT. SUN, June 5, 1899, at 6.

533. William Hoffman, *Women Notaries Public*, SUN (Balt.), Feb. 20, 1902, at 3.

534. *Id.*

high on the agenda of some suffragists. At a national suffrage meeting the next month, the Maryland woman who had been denied a law license opened a session with congregational singing, after which the Maryland branch president reported on pending legislation to allow women to serve as lawyers and notaries.⁵³⁵ The legislature soon obliged by passing statutes to authorize women in both roles.⁵³⁶

The restrictions implied by the woman lawyer case resurfaced in 1909 when Ada Smith Lang sought to be listed as a Socialist Party candidate for the Maryland House of Representatives.⁵³⁷ The lawyer for the Board of Election Supervisors rejected Lang's request by pointing to male pronouns in the state's constitution, in combination with the court's holding on women lawyers.⁵³⁸ Newspaper coverage suggested that finding Lang ineligible was inconsistent with the fact that a woman had been permitted to hold the office of state librarian.⁵³⁹ Still, the writer concluded it would be "absurd . . . to elect a person to the Legislature who does not possess the right to vote, and it can be safely assumed that the question of the eligibility of females for office did not once present itself to the minds of the members of the convention of 1867."⁵⁴⁰ A city court judge disagreed and ordered the Board of Elections to list her.⁵⁴¹ The judge reasoned that the constitution did not limit legislators to men, and it empowered each house to "judge the qualifications and election of its members."⁵⁴² Though Lang did not win, she remained engaged in politics and, in 1920, became the first Maryland woman to run for Congress.⁵⁴³

Though the Mid-Atlantic states were actively engaged in the legal and political debates surrounding women's officeholding, they were not particularly notable for novelty or timing. Less tied to historical reasoning than New England yet more reluctant to innovate than the Midwest, these East Coast jurisdictions typically followed the general trend of gradually permitting women to be lawyers, notaries, and gender-appropriate officers like state librarians, but they were reluctant to go further.

E. Deep Southern Selectiveness

Southern states were the slowest to extend officeholding rights to women, doing so late and sparingly. When they did, they were careful to avoid indicating broader support for women's political equality or providing a platform to pursue

535. *Woman Suffragists*, SUN (Balt.), Feb. 14, 1902, at 2.

536. On notaries, see *Acts of Assembly*, SUN (Balt.), Mar. 28, 1902, at 9. On lawyers, see DRACHMAN, *supra* note 34, at 252.

537. *Women's Eligibility as Candidates for the Legislature*, SUN (Balt.), Oct. 11, 1909, at 4.

538. *Id.*

539. *Id.*

540. *Id.*

541. *Mrs. Lang Victorious*, BALT. SUN, Oct. 23, 1909, at 9.

542. *Id.*

543. *Defeat Hasn't Worried This Woman Candidate*, EVENING SUN (Balt.), Nov. 5, 1920, at 40.

it. While opposed to women's political rights in principle, Southern legislators slowly determined that it was reasonable to allow women to hold certain gender-appropriate offices as a professional, rather than political, matter. Commenters also recognized that permitting women to hold some offices might reduce demands for suffrage. That the region had few women lawyers⁵⁴⁴ both reflected and likely contributed to the South's stubbornly enforced gender norms.

One of the first offices women in the South were able to obtain was state librarian. This was seemingly uncontroversial in Tennessee (1871)⁵⁴⁵ and Kentucky (1876),⁵⁴⁶ perhaps indicating the idea spread down from adjoining Midwestern states.⁵⁴⁷ In the late nineteenth century, librarianship was becoming increasingly feminized,⁵⁴⁸ yet state librarian remained a desirable post sought by men.⁵⁴⁹

When the idea reached Mississippi in 1876, legislators concocted an odd workarround to join the trend without risking a real expansion of women's rights. At the time, the state librarian was elected by a joint session of the legislature.⁵⁵⁰ Though no constitutional provision limited the office to men or to electors,⁵⁵¹ the legislators either perceived that women could not hold office or did not want to set the precedent that they could. The legislators therefore voted for a man as the "representative" of the woman they wished to select.⁵⁵² They proceeded to reelect the same woman twice, each time with a different male representative.⁵⁵³ The female candidate understood the ploy. When she first sought reelection, she explained that "Mr. Thos. McWillie kindly consents to represent me as a candidate so as to save all questions of eligibility . . ."⁵⁵⁴ The next two people to serve as state librarian were also women who were represented by men.⁵⁵⁵

At the state's constitutional convention in 1890, delegates showed a similar desire to expand the scope of women's activity for pragmatic reasons rather than to embrace women's equality. Discussants considered the possibility of granting

544. See DRACHMAN, *supra* note 34, at 36, 251-53.

545. *The State Library*, PUB. LEDGER (Memphis), Nov. 1, 1871, at 3 (noting that Tennessee followed Minnesota and Michigan).

546. *Various Topics*, DETROIT FREE PRESS, Jan. 28, 1876, at 2 ("Kentucky is coming to the front in the enfranchisement of woman. Emulating the example of Michigan the Legislature has chosen a woman for State Librarian. . .").

547. *Supra* notes 284-87.

548. Mary Biggs, *Librarians and the "Woman Question": An Inquiry into Conservatism*, 17 J. LIBRARY HIST. 409, 413 (1982).

549. This is apparent from newspaper articles that describe men campaigning against the women discussed herein.

550. *From the State Capital*, VICKSBURG HERALD (Miss.), Jan. 22, 1878.

551. MISS. CONST.

552. THE OFFICIAL AND STATISTICAL REGISTER OF THE STATES OF MISSISSIPPI 142 (1904) (listing state librarians).

553. *Id.*

554. Mary Morancy, *To the Members of the Legislature*, CLARION-LEDGER (Jackson), Jan. 16, 1878, at 4. It is not clear from the records how the men were chosen.

555. See THE OFFICIAL AND STATISTICAL REGISTER OF THE STATES OF MISSISSIPPI, *supra* note 552, at 142.

suffrage to women who owned extensive lands within the state, or whose husbands did, in order to increase the white vote.⁵⁵⁶ Because the delegates were concerned about the potential implications of this limited grant of women's suffrage, they developed two protections. First, each woman would select a man to cast her ballot.⁵⁵⁷ And second, the provision would "not be framed so as to grant to women the right to hold office."⁵⁵⁸ Yet these protections were not enough to counter opposition; the measure was not included in the new constitution.⁵⁵⁹

Another convention proposal addressed women's service as the state librarian. It read that "any white woman" meeting certain age and residency requirements "who is of good moral character, shall be qualified to hold the office of Keeper of the Capitol and State Librarian."⁵⁶⁰ The new constitution adopted a streamlined version of this provision, omitting the requirements of whiteness and moral character.⁵⁶¹ Presumably those restrictions were unnecessary, as the legislature could consider those factors without the text so requiring. The legislature then continued to elect women as state librarians, no longer needing male stand-ins.⁵⁶²

Over the course of the same years, Georgia likewise showed interest in selecting a woman as the state librarian but was reticent to expand women's officeholding rights. In 1877, a woman regarded as well-qualified applied for the position.⁵⁶³ Because women were excluded from all civil offices under the state code (though not by the constitution), legislators in both houses introduced bills to make her eligible.⁵⁶⁴ A contributor to the *Atlanta Constitution* wrote a supportive account, explaining that the office "of state librarian is one wholly suited to female incumbency."⁵⁶⁵ The writer assured readers, "[i]t involves no participation, however remote, in politics, or in political office-holding."⁵⁶⁶ Moreover, Tennessee had passed a similar law and employed a woman as state librarian "to the entire satisfaction of the people and government of that state."⁵⁶⁷ Yet despite news coverage suggesting Georgia would "presently relent and follow the example of Tennessee,"⁵⁶⁸ the legislators did not pass the law.

556. A. Elizabeth Taylor, *The Woman Suffrage Movement in Mississippi, 1890-1920*, 30 J. MISS. HIST. 1 (1968).

557. THE PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATES OF MISSISSIPPI 79 (1890) [hereinafter PROCEEDINGS].

558. *Id.*

559. MISS. CONST.

560. PROCEEDINGS, *supra* note 557, at 113.

561. MISS. CONST. art. IV, § 106.

562. *Mississippi Legislature*, TIMES PICAYUNE, Jan. 19, 1892, at 1.

563. *The State Librarian*, ATLANTA CONST., Jan. 19, 1877, at 2.

564. *Id.*

565. *Id.*

566. *Id.*

567. *Id.*

568. (No title), ATLANTA CONST., Sept. 4, 1877, at 3.

When another woman sought the position two decades later,⁵⁶⁹ discussants weighed the seeming propriety of a woman serving as state librarian with the risk that even one woman officer might fan the flames of the suffrage movement.⁵⁷⁰ Some state legislators reacted favorably, proposing a bill that would have allowed women to hold all civil offices appointed by the governor or other state officer.⁵⁷¹ As one official acknowledged, men's "complete monopoly of all the offices seems not to be quite just."⁵⁷² Another supported the idea that women could hold offices that chiefly involved "clerical duties."⁵⁷³ Still, the legislature declined to move forward on the bill.⁵⁷⁴ Two years later, the same woman tried again, submitting a letter that listed thirteen states where women were serving in the role.⁵⁷⁵ Moreover, she explained, it had "not proven true" that earning a living from the state converted women into suffragists. "On the contrary, in the states where the laws are fairest toward women, where the men are most generous to them in the hard struggle of their working lives, we hear little or no talk of 'woman's rights.'"⁵⁷⁶

Legislators responded with a bill to allow women to hold offices that were not filled by elections by the people or the legislature,⁵⁷⁷ with connections to suffrage again infusing the discussion. The bill's sponsor explained he was completely opposed to women's suffrage and simply sought to permit women to hold a limited range of gender-appropriate offices.⁵⁷⁸ "My object in introducing the bill has clearly one purpose—to preserve intact the purity of woman but to allow them while they toil to share in some of the honors and emoluments of public office. Is not this fair and right?"⁵⁷⁹ Women's presence would elevate men, rather than degrade women, he continued. "Without invading the sacred, womanly sphere, my bill protects her from the evils of politics and gives the women of our state new avenues of livelihood."⁵⁸⁰ After "spirited debate," a revised version of the bill, which only permitted women to serve as the state librarian, passed both houses.⁵⁸¹ While some legislators emphasized that it was time for women to have "equal rights and privileges" and "selfish" for men to keep all the positions, others reassured themselves that permitting a woman to

569. *Loaves and Fishes*, ATLANTA CONST., Oct. 31, 1894, at 9.

570. *Woman Wants It*, ATLANTA CONST., Oct. 7, 1896, at 6.

571. *To Open the Gates*, ATLANTA CONST., Nov. 24, 1894, at 7.

572. *Id.*

573. *Id.*

574. *In Georgia Sanctums*, ATLANTA CONST., Dec. 11, 1894, at 4.

575. *Woman Wants It*, *supra* note 570.

576. *Id.*

577. *Office for Women*, ATLANTA CONST., Nov. 22, 1896, at 6.

578. *Victory for Women*, ATLANTA CONST., Nov. 28, 1896, at 9.

579. *Id.*

580. *Id.*

581. *Woman's Bill Passes*, ATLANTA CONST., Dec. 5, 1896, at 7; *Dortch Bill Passes Senate*, ATLANTA CONST., Dec. 11, 1896, at 7.

be the state librarian was nonthreatening because “the duties are akin to housekeeping work.”⁵⁸²

Whether women could hold office in Southern states also appeared before appellate courts in notary cases. The Tennessee Supreme Court first heard a notary case in 1892, after a woman was already commissioned by the governor.⁵⁸³ The court recognized that women were deemed eligible to serve as notaries in fourteen states,⁵⁸⁴ yet in twenty-one, women were ineligible or the issue hadn’t been decided.⁵⁸⁵ Citing cases on women’s officeholding and citizenship rights under the Fourteenth Amendment, the court reasoned that “unless there is some constitutional or legislative provision enabling her to hold office, she is not eligible to the same.”⁵⁸⁶ The state’s constitution was silent on the matter. “It is true that a woman fills the office of state librarian, and there is no act providing therefor,” the court acknowledged, “but she is elected directly by the legislature, which is equivalent to conferring upon her the power to hold the office.”⁵⁸⁷ In sum, without a statute, women in Tennessee could not serve as notaries.

When Tennessee legislators considered the issue in 1911, their votes were influenced by the extent to which they understood authorizing women notaries as related to suffrage. Legislators who favored permitting women to become notaries saw this as a matter of their own convenience, rather than as a step toward women’s legal equality.⁵⁸⁸ During a committee meeting, one explained it would be convenient for him in his law practice if his “girl stenographer” could complete notary tasks. “I believe that every lawyer in the state will favor such a measure,” he suggested.⁵⁸⁹ He also reminded his colleagues that they had permitted women to become lawyers the previous year.⁵⁹⁰ The leading opponent retorted that he objected to women lawyers and would have voted against that measure if he had been in the legislature at the time.⁵⁹¹ Turning to the issue at hand, he “took a strong stand relative to so-called women’s rights, stating emphatically that he was unalterably opposed to anything that puts women in competition with men along the lines contemplated by woman’s suffrage,” as it would cause women to “lose their finer instincts.”⁵⁹² When the bill was debated before the full senate, he “pleaded against woman suffrage and against the

582. *Woman’s Bill Passes*, *supra* note 581.

583. *State ex rel. Peters v. Davidson*, 22 S.W. 203, 203 (Tenn. 1892).

584. *Id.* (listing Alabama, California, Connecticut, Florida, Illinois, Iowa, Kansas, Missouri, Michigan, New Hampshire, Nebraska, New York, South Dakota, and Wisconsin).

585. *Id.*

586. *Id.* at 204 (citing *Robinson’s Case*, *Schuchardt v. People*, *Minor v. Happersett*, and *Bradwell v. Illinois*).

587. *Id.*

588. *Declares Against Woman Suffrage*, NASHVILLE TENNESSEAN, Feb. 1, 1911, at 9.

589. *Id.*

590. *Id.*

591. *Id.*

592. *Id.*

notaries public bill, in the name of the womankind of the south and of the manhood of the south” and warned of an imminent “woman suffrage problem.”⁵⁹³ The bill was defeated, seventeen to twelve.⁵⁹⁴

Discussants in North Carolina also drew direct connections between the notary issue and women’s suffrage, especially by the 1910s.⁵⁹⁵ After decades of advocacy,⁵⁹⁶ the state legislature approved a bill allowing women to become notaries in 1915, despite their concern that it might run afoul of constitutional language limiting officeholding to men.⁵⁹⁷ They reasoned that notary might not be encompassed within the constitutional restrictions on officers,⁵⁹⁸ and they passed the law with the understanding that the governor would appoint only one woman for a test case.⁵⁹⁹ Even still, there was opposition, with one member “asserting that to enact the bill would be to open a veritable Pandora’s Box.”⁶⁰⁰ As many anticipated, the Supreme Court of North Carolina soon held that only voters could be officers under the state’s constitution, and the legislature could not override this limit or reclassify notary public as a non-officer.⁶⁰¹

Reaction to the case showed support for extending women’s officeholding rights and clear recognition of connections to women’s suffrage.⁶⁰² According to one editorial, “[t]he decision will hasten the coming of equal suffrage, it now being evident that a change in the constitution i[s] necessary to give women a decent showing for their rights.”⁶⁰³ And, indeed, after women in the state were enfranchised by the Nineteenth Amendment, their “first entrance” into politics was appointment as notaries public.⁶⁰⁴

In the Southern states, progress on women’s officeholding was slow. Traditional gender norms and, relatedly, the presence of few women lawyers, meant there was little appetite or initiative for expanding women’s political rights. To the extent women’s officeholding could be cast as apolitical, not threatening to traditional gender norms, and for women’s economic benefit, there was some support for change. But the closer the nation came to the Nineteenth

593. *Senate Sits Down on Women Notaries Bill*, NASHVILLE TENNESSEAN, Feb. 8, 1911, at 1.

594. *Id.*

595. Women were able to become lawyers in the state in 1878. DRACHMAN, *supra* note 34, at 251.

596. State legislators authorized women notaries in 1895, but the governor refused to sign the law because he believed it was unconstitutional. *Cannot Hold Office*, ATLANTA CONST., Mar. 20, 1895, at 1. Women continued to press for this office in the following years. *See, e.g., Woman Notaries*, ASHEVILLE SEMI-WKLY. CITIZEN (N.C.), Feb. 2, 1897, at 1; *Committee Votes Against Measure*, TIMES DISPATCH (Richmond), Feb. 12, 1913, at 9.

597. *Fighting Day for Senators*, NEWS & OBSERVER (Raleigh, N.C.), Jan. 29, 1915, at 1.

598. *Id.*

599. *Assembly Will Send Its Felicitations*, TIMES DISPATCH (Richmond), Jan. 17, 1915, at 9.

600. *Id.*

601. *Bickett v. Knight*, 85 S.E. 418, 420-21 (N.C. 1915). *Cf. Harbour-Pitt Shoe Co. v. Dixon*, 60 S.W. 186, 188 (Ct. App. Ky. 1901) (casting the office of notary as being of “legislative creation” and therefore not constrained by the constitution).

602. *Press on Notary Public Decision*, FARMER & MECHANIC (Raleigh, N.C.), June 1, 1915, at 7 (collecting editorials).

603. *Id.* (printing editorial from the *Sand Hill Citizen*).

604. *Four Women Notaries*, DAILY FREE PRESS (Kinston, N.C.), Aug. 28, 1920, at 1.

Amendment, the more reluctant Southern lawmakers were to alter laws that might inadvertently fuel women's political equality.

For the half century following the Civil War, women across the nation demanded political rights. To secure suffrage, they would need to revise their state constitutions—a difficult proposition. Yet to obtain offices, they had several viable paths independent of the ballot. Depending on the wording of the office-related provisions in their state constitutions, as well as local legal and political cultures, women could seek offices by simply putting themselves forward as candidates, suing, lobbying state legislatures for statutes, or developing office-specific constitutional amendments. In some places it was savvy for women to try several of these options, while in others a single approach seemed wisest.

Though women's successes varied significantly by region, the overall message was clear: women were committed and competent officeholders. While this lesson was important in its own right, it also added pressure to the question of why states continued to deny women the franchise.

III. OFFICEHOLDING EXPANSION AFTER FULL STATE SUFFRAGE (1890-1919)

Women obtained the highest offices after they secured full state suffrage. Achieving suffrage typically opened the range and number of offices for one of four reasons: constitutional amendments expressly granted officeholding alongside suffrage, state constitutions specified that “electors” were eligible to hold office, legislators found it prudent to enact statutes to authorize women officeholders after enfranchisement, or legal decisionmakers determined that suffrage amendments encompassed officeholding.

Women's officeholding successes were a double-edged sword. While commenters lauded women officials' contributions as demonstrating competence in the political arena, these gains also provided fodder for antisuffragists to dramatize the potentially revolutionary consequences that would follow from women's enfranchisement. Moreover, even as women obtained new posts, such as legislator, they were careful to emphasize their unthreatening femininity.

A. Early Enfranchisement in the Western Mountain States and the First Women Legislators

In the 1890s, two of the former Western Territories were joined by two nearby states in becoming the only four states that fully enfranchised women by

the end of the century: Wyoming (1890), Colorado (1893), Utah (1896), and Idaho (1896).⁶⁰⁵ Full suffrage opened officeholding opportunities, in part because the suffrage law in each state clearly carried with it the right to hold office.⁶⁰⁶ The most notable office women obtained was legislator.

The decade opened with impassioned congressional debate over whether to admit Wyoming as a state with a constitution guaranteeing women the same voting and officeholding rights as men.⁶⁰⁷ Some House members expressed concern that this provision would permit Wyoming to send women to sit in Congress, a “dangerous innovation.”⁶⁰⁸ Pro-suffrage members countered that if the strongest claim against women’s political rights was “apprehension of danger that some lady might occupy a seat on this floor dressed in a particular fashion,” then the “case must be devoid of argument.”⁶⁰⁹ Supporters further charged that what truly motivated opponents was the fear that they “may some day see sitting in the Presidential chair of the nation a woman with a black skin.”⁶¹⁰ Expressing “no sympathy” with such views,⁶¹¹ House members favoring the women’s rights language predicted women would sit in the House “with credit to themselves and their constituents” during the lifetime of present members.⁶¹² For support, a Kansas representative described how women across the country, including in his home state, had held a wide range of offices “for years” and were “the best officers we have.”⁶¹³ Responding to a question about whether such officeholding had “unsexed” women, he responded in the negative. “It does not hurt their looks,” he insisted, “if such a thing were possible, I think it makes them better looking.”⁶¹⁴

Senators raised similar claims for and against Wyoming’s sex-equality constitution, as well as debating the significance of male pronouns in the U.S. Constitution’s rules on congressional qualifications.⁶¹⁵ Ultimately, Wyoming

605. KEYSSAR, *supra* note 13, at Appendix Table A.20. Indeed, they were the only states in this category by 1910, despite 480 campaigns in 38 states between 1870 and 1910. FLEXNER & FITZPATRICK, *supra* note 12, at 214.

606. The constitutional provisions in Wyoming and Utah expressly included officeholding, the Colorado constitution directly connected suffrage and officeholding, and the Idaho constitution specified that certain officers had to be “electors.” *See supra and infra*.

607. MEAD, *supra* note 13, at 43.

608. 21 CONG. REC. 2685, 2690 (1890).

609. *Id.* at 2690.

610. *Id.* at 2694. This allegation was based on a line from the Committee on the Territories minority report. The report included an appendix of supporting documents, the first of which was a magazine article by British antisuffragist Goldwin Smith that stated: “Some are sanguine enough to think that America will have rest when a black woman has been elected President of the United States.” H.R. REP. NO. 39, pt. 2, at 3, Appendix (1890).

611. 21 CONG. REC. 2694 (1890).

612. *Id.* at 2691.

613. *Id.*

614. *Id.*

615. 21 CONG. REC. 6569, 6581-82, 6584-85 (1890).

was admitted as a state with language mandating sex equality in suffrage and officeholding.⁶¹⁶

In 1893, Colorado became the first jurisdiction to fully enfranchise women through a statewide referendum.⁶¹⁷ One motivator may have been Colorado's then-outlier position on women's officeholding. In 1886, the Supreme Court of Colorado had held that because the state's constitution limited all civil offices to electors,⁶¹⁸ a recent statute authorizing women notaries was unconstitutional.⁶¹⁹ After the suffrage campaign was victorious, commenters expected a "flood of applications" by women to become notaries,⁶²⁰ and the governor soon obliged women with appointments.⁶²¹ Though some commentary discouraged Colorado's women from seeking office, all parties ran and elected women.⁶²²

In 1894, Coloradans made officeholding history by electing three women to the state's house of representatives.⁶²³ Press profiles indicated that the trio, one of whom was a lawyer, did not challenge gender norms in their appearance or family life and deemed them "essentially womanly women."⁶²⁴ One journalist speculated they would propose bills "for the amelioration of conditions affecting women and children."⁶²⁵ Later reports confirmed this expectation, crediting the women with securing a law to raise the age of consent and appropriations to fund a home for wayward girls.⁶²⁶

The legislative trio recognized that their high-profile role could be significant for suffragists' aspirations across the nation. As one explained, "We know that the suffrage movement may be injured by indiscreet action on our part, and we have to be very careful."⁶²⁷ In December 1895, a pro-suffrage journalist observed that "[t]hese women feel that they have a duty to perform in demonstrating to the entire nation that suffrage will be of value to them by being earnest, conservative, yet courageous."⁶²⁸ The writer deemed the "legislatresses" to be "shrewd and capable."⁶²⁹ Further reassuring skeptics, the author insisted

616. MEAD, *supra* note 13, at 43.

617. FLEXNER & FITZPATRICK, *supra* note 12, at 214. Coloradans had considered women's suffrage as early as 1870, when legislators debated following Wyoming Territory's lead. BEETON, *supra* note 211, at 119, 105.

618. COLO. CONST. art. VII § 408 (amended 1893); *id.* art. XIV § 485 (amended 1893).

619. *In re* House Bill No. 166, 21 P. 473, 473 (1886). This issue was soon linked to women's suffrage, at least in the eyes of antisuffragists. See *Do Women Really Want to Vote*, FORT COLLINS EXPRESS (Colo.), Feb. 19, 1887, at 2. The Supreme Court of Colorado allowed women to become deputy clerks two years later, on the basis that the position was not a constitutional office. Jeffries v. Harrington, 17 P. 505, 506 (Colo. 1888).

620. *Women as Notaries*, DELTA INDEP. (Colo.), Nov. 29, 1893, at 2.

621. *Woman Notaries*, DAILY SENTINEL (Grand Junction, Colo.), Dec. 5, 1893, at 1.

622. MEAD, *supra* note 13, at 70.

623. *Women in Politics*, CALDWELL TRIBUNE (Idaho), Dec. 29, 1894, at 7.

624. *Lady Law-Makers*, ST. LOUIS POST-DISPATCH, Feb. 3, 1895, at 5.

625. *Three Lady Solons*, SAINT PAUL GLOBE, Jan. 21, 1895, at 6.

626. *Women of Colorado*, INDEP. (Hutchinson, Kan.), Dec. 14, 1895, at 3.

627. *Lady Law-Makers*, *supra* note 624.

628. *Women of Colorado*, *supra* note 626.

629. *Id.*

that becoming lawmakers “did not make them less womanly or bring disastrous results upon the state.”⁶³⁰ A national survey of women’s officeholding published in 1896 crowned Colorado, along with Kansas, as the “banner states,” even in comparison to the overall “startling” progress throughout the West.⁶³¹ Colorado women continued to make officeholding gains into the 1910s.⁶³²

Utah’s women also built on their 1896 constitution’s express grant of suffrage and officeholding rights.⁶³³ That year Martha Hughes Cannon became the first woman elected to a state senate.⁶³⁴ Some press reported that she ran against her husband, with whom she was in a polygamous (unlawful) marriage as his fourth wife.⁶³⁵ As one humorous commenter observed: “Mrs. Cannon believes in polygamy, and is a victim of it, if victim she can be called, when she can whip her lord and master at the polls.”⁶³⁶ A medical doctor, Cannon explained she would “take great interest in all the sanitary bills, of course, and all bills pertaining to educational matters.”⁶³⁷ Generalizing from her own experience, she offered that “[w]omen are good ones for those things. We know how to keep house and we know how to keep a city.”⁶³⁸ Along the same lines, she thought there were some offices that would be “unseemly” for women.⁶³⁹ For instance, one account noted, “she thinks the gubernatorial chair too mannish altogether for a woman to occupy.”⁶⁴⁰ Over the following years, Utah women continued to obtain offices. A 1919 report found that all but one county in the state had elected a woman to a county office or the state legislature, “and this is believed to be the largest number of women officials in any state in the union.”⁶⁴¹

In large part due to the influence of Mormons who migrated from Utah, Idaho also enfranchised women in 1896.⁶⁴² Prior to the suffrage referendum, the constitution there had excluded women from several offices (including legislator) by specifying that only “electors” were eligible.⁶⁴³ In 1897, two Idaho women held office for the first time, as notaries public.⁶⁴⁴ The following year,

630. *Id.*

631. Joseph Dana Miller, *The New Woman in Office*, 132 *GODEY’S MAG.* 59, 60 (1896).

632. *E.g.*, *Many Women Hold Office*, *CHIPPEWA HERALD-TELEGRAM* (Wis.), Apr. 7, 1911, at 1 (reporting on Colorado).

633. On the 1896 Utah constitution, see *supra* Part II.A.

634. *First Senator Among Women*, *S.F. EXAMINER*, Nov. 9, 1896, at 1. For more on Cannon, see Jennifer Baker, *Martha Hughes Cannon*, *NAT’L WOMEN’S HIST. MUSEUM*, <https://www.womenshistory.org/education-resources/biographies/martha-hughes-cannon> [<https://perma.cc/RJZ7-57Y9>].

635. *First Senator Among Women*, *supra* note 634.

636. *Woman State Senator*, *COFFEYVILLE DAILY J.* (Kan.), Dec. 17, 1896, at 7.

637. *First Senator Among Women*, *supra* note 634.

638. *Id.*

639. *First Woman Senator*, *KNOXVILLE J.*, Dec. 23, 1896, at 10.

640. *Id.*

641. *Utah Women Hold Many Offices*, *RENO GAZETTE-J.*, Apr. 7, 1919, at 7.

642. *BEETON*, *supra* note 211, at 130-33.

643. *IDAHO CONST.* art. III, § 6, *amended by* *IDAHO CONST.* art. VI, § 2; *IDAHO CONST.* art. V §§ 18, 23, *amended by* *IDAHO CONST.* art. VI, § 2.

644. *First Idaho Women to Hold Office*, *WOMAN’S STANDARD*, Nov. 9, 1897, at 3.

voters elected a trio of women legislators, one of whom soon was selected by her peers to preside over the chamber—making her the first woman to hold that honor in the country.⁶⁴⁵ In 1901, more than a half dozen women were serving in the Idaho legislature.⁶⁴⁶

By the turn of the century, women’s officeholding in the four full-suffrage states was a regular talking point on both sides of the debate. In 1903, syndicated columnist Ida Husted Harper observed that women’s officeholding status could be used against the suffrage cause no matter what women did.⁶⁴⁷ One “stock objection” made by antisuffragists was that women “would join in the general scramble for office to the neglect of the truly feminine duties and with all sorts of demoralizing consequences.”⁶⁴⁸ At the same time, suffrage opponents pointed to the small number of women holding offices in suffrage states as evidence that giving women the franchise was inconsequential and, therefore, unnecessary.⁶⁴⁹ Husted’s own view—based on her review of able women officeholders in the four full-suffrage states—was that most women would not “desert their households to run for office,” and so men could rest easy they would keep “the lion’s share . . . for all time to come.”⁶⁵⁰

The first four states to fully enfranchise women maintained the West’s reputation as being especially supportive of women’s rights.⁶⁵¹ After ratifying constitutional text that clearly opened officeholding to women, these jurisdictions became the first to elect women to state legislatures. Women legislators, in turn, drew attention to women’s demands for equality and demonstrated the possibility that women could hold office capably and without radical consequences.

B. State Suffrage and Connections to Officeholding in the 1910s

Between 1896 and 1910, no additional states enfranchised women—a period known as “the doldrums” of the suffrage movement⁶⁵²—but a new burst of wins

645. Rick Just, *A Little Slice of History: First Women*, IDAHO PRESS, Oct. 3, 2021, https://www.idahopress.com/community/life/a-little-slice-of-history-%c3%aarst-women/article_b4ca22e0-2384-5037-b7c3-fc1fb26f374e.html [<https://perma.cc/D5P8-UWXS>].

646. *Women Who Hold Office*, CLARION-LEDGER (Miss.), Oct. 21, 1901, at 6.

647. Ida Husted Harper, *The Advance of Woman: Women as Officeholders*, CHI. DAILY TRIB., May 10, 1903, at 48.

648. *Id.*

649. *Id.*

650. *Id.*

651. Press commonly noted regional patterns. For example, an 1893 article that included discussion of women’s officeholding concluded that “the tendency in the East and South is to keep women in a restricted sphere while in the West it is just the opposite, the idea appearing to be to give her all the rope she wants and let her swing.” *In the Eye of the Law*, DELTA INDEP. (Colo.), Dec. 6, 1893, at 6.

652. The only suffrage referenda in these years were held in Oregon, Washington, South Dakota, and New Hampshire, and all failed. FLEXNER & FITZPATRICK, *supra* note 12, at 241.

in the 1910s reinvigorated the campaign.⁶⁵³ The West again led the nation, enfranchising women in legal provisions that often clearly extended officeholding rights as well. As states from other regions belatedly joined this cluster, their more conservative orientations, in combination with ambiguous language in suffrage referenda and amendments, prompted disputes over the scope of women's political rights.

In the first half of the decade, seven states amended their constitutions to fully enfranchise women citizens and thereby expanded or clarified officeholding rights: Washington (1910), Arizona (1910), California (1911), Kansas (1912), Oregon (1912), Montana (1914), and Nevada (1914).⁶⁵⁴ The constitutional amendments ratified in Arizona,⁶⁵⁵ Kansas,⁶⁵⁶ Montana,⁶⁵⁷ and Nevada⁶⁵⁸ expressly guaranteed women's right to hold office. In the other three states, reasonable interpretations led to the conclusion that women had full officeholding rights. In Washington, women held many offices before enfranchisement;⁶⁵⁹ the only constitutional restraint limited service in the legislature to qualified voters, so it followed that suffrage automatically rendered women eligible.⁶⁶⁰ In Oregon, no clause in the constitution stated that women were ineligible for offices, so enfranchisement seemed sufficient to award officeholding.⁶⁶¹ In California, the legislature determined that amending the statutory political code was all that was necessary to authorize women officeholders after enfranchisement, and they did so promptly.⁶⁶² Notably, in three states that did not enfranchise women in these years but bordered those that did, state supreme courts upheld women's officeholding rights.⁶⁶³

653. KEYSSAR, *supra* note 13, at Appendix Table A.20. More than a dozen other states (mostly in the Midwest) authorized women to vote in presidential elections between 1913 and 1919. *Id.* at Appendix Table A.19.

654. *Id.* at Appendix Table A.20.

655. See *Arizona State Constitution*, CONSTITUTION.COM, <https://constitution.com/arizona-state-constitution-1912/> [https://perma.cc/HU5B-PWTX].

656. R.E. MCINTOSH, GENERAL STATUTES OF KANSAS 1915, at 52 (1917).

657. *Notice of Election*, GREAT FALLS TRIB. (Mont.), Oct. 5, 1914, at 9.

658. See *Resolutions and Memorials*, NEVADA GOV., <https://www.leg.state.nv.us/Statutes/26th1913/Stats1913R01.html#Stats1913R01page581> [https://perma.cc/H3AW-AS9J].

659. (No title), COLFAX GAZETTE (Wash.), Sept. 3, 1909, at 4 (explaining that a woman could likely hold the position of deputy county auditor, given that women held many other types of offices).

660. WASH. CONST., art. II, § 39 (amended 1910).

661. OR. CONST., art. II, § 2 (amended 1912) (providing qualifications for electors without reference to officeholding). It is more difficult to determine the legal understanding of women's officeholding eligibility in Oregon, as sources do not indicate public discussions or legal proceedings.

662. See *Bill to Make Women Eligible to All Offices*, L.A. EXPRESS, Dec. 7, 1911, at 19; STATUTES OF CALIFORNIA AND AMENDMENTS TO THE CONSTITUTION PASSED AT THE EXTRA SESSION OF THE THIRTY-NINTH LEGISLATURE, 1911, at 15 (1912).

663. See *State ex rel. Jordan v. Quible*, 125 N.W. 619, 620 (Neb. 1910) (holding that a woman could hold the elective office of county treasurer); *Gilliland v. Whittle*, 127 P. 698, 699 (Okla. 1912) (permitting a woman to serve as a clerk of court); *Stone v. Riggs*, 142 P. 298 (Okla. 1914) (holding that constitutional amendment allowing women to vote in school elections rendered them eligible for other categories of posts open to voters, such as county clerks); *State v. De Armijo*, 140 P. 1123, 1128-29 (N.M. 1914) (allowing a woman to retain position as state librarian).

After enfranchisement, women pursued a greater number and breadth of offices.⁶⁶⁴ One of the first women elected in California, as a member of a city council, maintained that “suffrage without holding office [was] like apple pie with the apples left out.”⁶⁶⁵

Women in full-suffrage states did not limit their ambitions to the city or state levels; they ran for Congress, despite lingering uncertainty about women’s eligibility.⁶⁶⁶ For instance, when a woman ran in Colorado in 1909, an editorial in the *Houston Post* observed that it would be necessary to reckon with the pronoun “he” in the congressional eligibility language, yet also emphasized that the House was empowered to judge the qualifications of its members.⁶⁶⁷ “We believe if a Colorado district desire[s] to send an attractive young woman to congress, the house will not construe the pronoun ‘he’ strictly, especially if she be a democrat,” the column offered.⁶⁶⁸

In 1916, Montana suffragist Jeannette Rankin became the first woman elected to the House,⁶⁶⁹ a victory she attributed partly to geography.⁶⁷⁰ According to Rankin, the West lacked the “conventions” that restricted women’s opportunities in the East.⁶⁷¹ Soon there was speculation about whether House members would deny her admission, the strongest argument seeming to be the use of the pronoun “he” in the qualifications.⁶⁷² But because the decision was left to fellow members, politics made her disqualification unlikely. According to one commenter, the House would not find Rankin ineligible because “[s]uch a move would bring down on the head of the party ousting her the wrath of women voters of all suffrage states.”⁶⁷³

664. See, e.g., *Kansas Women Office-Seekers Worry the Men*, ST. LOUIS POST-DISPATCH, May 28, 1916, at 7B; *Many Women Elected to Office*, 44 SUFFRAGIST 3 (1918) (“Reports from many Western states show that many women have been elected to state and local offices in the suffrage states.”).

665. Katz, *Redefining “the Political,”* *supra* note 37, at 23.

666. For an early example, see *Woman Named for Congress*, IDAHO STATESMAN, Apr. 6, 1900, at 6. In the 1910s, Colorado, Kansas, and California launched the greatest number of women candidates. See, e.g., *First “Congresswoman” in the United States If!*, ARKANSAS DEMOCRAT (Little Rock), Sept. 18, 1912, at 7 (describing Colorado candidate); *Prohibitionist Candidate Talks*, SAN BERNARDINO COUNTY SUN, Oct. 11, 1912, at 2 (describing California candidate); *Our First Woman Member of Congress (Possibly)*, ST. LOUIS POST DISPATCH, Oct. 18, 1915, at 7 (describing three Kansas candidates).

667. *Are Women Eligible for Congress?*, HOUS. POST, Oct. 13, 1909, at 6.

668. *Id. But see* (No title), EL DORADO REPUBLICAN (Kan.), Oct. 15, 1909, at 4 (arguing that women were not eligible).

669. For more on Rankin, see Rankin, *Jeannette*, U.S. HOUSE OF REPRESENTATIVES, [https://history.house.gov/People/Listing/R/RANKIN,-Jeannette-\(R000055\)/](https://history.house.gov/People/Listing/R/RANKIN,-Jeannette-(R000055)/) [<https://perma.cc/8DBS-356S>].

670. In the same election, there were women candidates from California, Washington, and Kansas. *Woman Leads Montana Race for Congress*, ST. LOUIS POST-DISPATCH, Nov. 10, 1916, at 3.

671. Jeannette Rankin, *Why the West Leads the East in Recognition of Women*, S.F. CHRONICLE, Dec. 24, 1916, at 3.

672. See, e.g., John Allison, *Letter, A Woman in Congress*, N.Y. TIMES, Nov. 18, 1916, at 10.

673. *Nothing to Rumor of Ousting Miss Rankin*, MISSOULIAN (Missoula, Mont.), Nov. 14, 1916, at 2.

States outside the West also considered women's suffrage and officeholding in the 1910s, often with less certainty and greater concern about how these rights fit together. Leading lawyers in Massachusetts, long the most prominent of the conservative states on women's political rights,⁶⁷⁴ continued to prefer an incremental approach. For instance, a couple of years after women's unsuccessful campaign for a constitutional amendment to authorize them to become notaries,⁶⁷⁵ the secretary of state cautioned that a pending (and ultimately failed) suffrage amendment would be insufficient to reach officeholding rights.⁶⁷⁶

Suffrage wins in New York in 1917 and Michigan in 1918 broke the regional stalemate⁶⁷⁷ and prompted legal adjudications of women's officeholding rights that had been unnecessary in the Western states. After a suffrage-only referendum passed in New York, women immediately campaigned for and won an array of offices.⁶⁷⁸ Though the winners assumed their posts, questions remained about women's eligibility.⁶⁷⁹ The following year, the state's attorney general resolved the issue in women's favor, concluding that the removal of "male" from the state's voting provision also opened offices.⁶⁸⁰

In Michigan, a test case arose in 1920, after a litigant challenged the authority of a woman elected as a justice of the peace the previous year.⁶⁸¹ Precedent in Michigan indicated that women's ineligibility for public office had been tied to their disenfranchisement.⁶⁸² Following a lower court decision in the woman's favor, newspaper coverage suggested the male challenger's "argument could scarcely create anything more serious than a chuckle," yet it would be best for the state's highest court to settle the matter.⁶⁸³ The Supreme Court of Michigan obliged in 1921, confirming the woman's eligibility for the post in an extremely brief opinion.⁶⁸⁴

The final pair of states to fully enfranchise women before the Nineteenth Amendment further demonstrated how each state's unique constitutional provisions, suffrage amendments, and local culture determined the relationship between voting and officeholding. In Oklahoma, women had been successful in

674. *Supra* Part II.C.

675. *Id.*

676. *May Win Vote But Not Office*, BOS. GLOBE, Apr. 4, 1915, at 6.

677. KEYSSAR, *supra* note 13, at Appendix Table A.20.

678. Elizabeth D. Katz, *Women's "Chilly Path" to the New York Judiciary*, S.H.G.A.P.E. BLOG, Sept. 8, 2021, <https://www.shgape.org/womens-chilly-path-to-the-new-york-judiciary> [<https://perma.cc/67RC-TF4R>].

679. *Id.*

680. Opinion of the N.Y. Attorney General, Feb. 28, 1918.

681. *Test Suit to Settle Right of Women to Hold Office in Mich.*, OSHKOSH NORTHWESTERN (Wis.), Dec. 9, 1920, at 1.

682. *Supra* Part II.B.

683. *A Commonsense Decision*, DETROIT FREE PRESS, Dec. 18, 1920, at 6. *See also In Michigan Women Are People*, WOMAN'S J., Jan. 8, 1921, at 865.

684. *People v. Patterson*, 183 N.W. 28, 28 (Mich. 1921).

obtaining constitutional provisions that specified certain positions were open to both sexes and that women could be notaries, while other positions were limited to men.⁶⁸⁵ Consequently, enfranchisement had no legal relevance to women's officeholding.⁶⁸⁶ In sharp contrast, in South Dakota, the constitution limited certain high-level offices to electors and stated that women could hold "any office in this state, except as otherwise provided in this constitution."⁶⁸⁷ This meant suffrage automatically brought full officeholding.

As women's suffrage and officeholding spread, antisuffragists continued to proffer arguments that blurred the supposed harms of the two. Shortly after women in Illinois gained municipal suffrage and presidential suffrage, both in 1913,⁶⁸⁸ a man who was a member of the Chicago Bar turned to officeholding as a reason to oppose any further enfranchisement.⁶⁸⁹ "It is a matter of general knowledge that the right to elect implies the right to be elected," he began in a chapter about "The Meaning of Equal Suffrage." Pointing to the recent candidacies of several women in Cook County, he determined that "the aim of the ladies is not to select competent officers and competent or clean cut judges. They want to secure as many offices as they can for themselves."⁶⁹⁰ The writer was particularly bothered by imagining how "the woman candidate will use all her charm and all her coquetry in her quest for votes," shaking hands, "kiss[ing]," and employing her "seductive power" over unsavory voters and "debased workers."⁶⁹¹ Meanwhile, he maintained, her home life would be destroyed, which in turn would become an embarrassing campaign tactic used against her.⁶⁹² Finally, because a woman "regardless of her intelligence, which is great, is, at times, incapable of controlling her feelings," a term in office "would endanger her government and her country."⁶⁹³

Many commenters were not persuaded by such concerns. One article that ran across the country mocked those who feared women officeholders. It ran under the lengthy and facetious headline: "How Would You Like: To Be Shot by a Woman Firing Squad? To Be Arrested by a Woman Policeman? To Be Tried by a Woman Judge? . . . Any of These Things COULD Happen [to] You in the Near Future."⁶⁹⁴

Though advocates recognized that suffrage and officeholding were independent rights, legal and political reasoning rendered officeholding

685. OKLA. CONST. art. VI, §§ 3, 28 (amended 1943); *id.* art. XXIV, § 6 (amended 1943).

686. Oklahoma women continued to fight for officeholding rights into the 1940s. *Infra* Part IV.B.

687. *Women Claim Right to Hold Offices in South Dakota*, OMAHA DAILY BEE, Feb. 7, 1911, at 1.

688. KEYSSAR, *supra* note 13, at Appendix Tables A.18 and A.19.

689. CAIROLI GIGLIOTTI, WOMAN SUFFRAGE: ITS CAUSES AND POSSIBLE CONSEQUENCES 20-24 (1914).

690. *Id.* at 20.

691. *Id.* at 22, 24.

692. *Id.* at 23-24, 55.

693. *Id.* at 75.

694. Nora Weston, *How Would You Like*, S.F. CHRON., Sept. 29, 1918, at SM4.

important for suffragists and their opponents. The extent to which suffrage clearly and fully brought officeholding eligibility varied by state because of differences in wording, historical treatments, and decisionmakers' attitudes. Yet regardless of the precise relationship of these rights in specific states, the overall cumulative effect of women's state-level political advances was to inspire other states to follow and to build momentum toward a federal suffrage amendment.

IV. THE NINETEENTH AMENDMENT AND WOMEN'S STATE OFFICEHOLDING (1869-1943)

As suffragists pressed for voting and officeholding rights at the state level, they continued to seek a federal suffrage amendment.⁶⁹⁵ Congressmen's stances reflected home state politics, as well as their beliefs about women's proper sphere.⁶⁹⁶ Advocates on both sides used officeholding as a talking point to exemplify the possible ramifications of enfranchising women, arguably implying that they understood officeholding as encompassed in the proposed amendment. Still, neither the congressional debates nor the text of what became the Nineteenth Amendment expressly stated whether officeholding was included. Modeled on the Fifteenth Amendment,⁶⁹⁷ the Nineteenth forbade discrimination on the basis of sex only for *suffrage*.

After ratification of the federal suffrage amendment, uncertainty about its scope prompted continued legal advocacy in the states. While in some places women immediately secured offices that had previously been forbidden, in others, women were forced to embark on new campaigns for court opinions, legislation, and constitutional amendments before they were permitted to hold office on an equal basis with men.

A. *Officeholding in the Susan B. Anthony Amendment Debates*

After women's exclusion from the Fifteenth Amendment, Congress considered enfranchising women across the nation numerous times over a period of approximately fifty years.⁶⁹⁸ Congressmen on both sides of the issue turned to

695. FLEXNER & FITZPATRICK, *supra* note 12, at 167, 261-63.

696. On how politics surrounding the Fifteenth Amendment contributed to Southerners' opposition to the proposed Nineteenth, see Liette Gidlow, *The Sequel: The Fifteenth Amendment, the Nineteenth Amendment, and Southern Women's Struggle to Vote* 17 J. GILDED AGE & PROGRESSIVE ERA 433, 439-40 (2018).

697. TETRAULT, *supra* note 74, at 103. The Eleventh Circuit determined that the Nineteenth Amendment's similarity to the Fifteenth constrained its analysis in the recent case *Jones v. Governor of Florida*, 15 F.4th 1062, 1067-68 (11th Cir. 2021).

698. For a recent helpful and concise history, see Tracy Thomas, *Reclaiming the Long History of the "Irrelevant" Nineteenth Amendment for Gender Equality*, 105 MINN. L. REV. 101 (2021). For more detail, see KIMBERLY A. HAMLIN: FREE THINKER: SEX, SUFFRAGE, AND THE EXTRAORDINARY LIFE OF HELEN HAMILTON GARDENER 253-56, 273 (2020).

officeholding for ammunition. While some viewed the links between suffrage and officeholding as a persuasive reason to oppose women's enfranchisement, others pointed to women's successful state-level officeholding as evidence of women's readiness for the ballot. Both stances recognized connections between voting and officeholding without clearly explaining or interrogating the relationship.

A federal women's suffrage amendment was first introduced to the House by an Indiana congressman on March 15, 1869,⁶⁹⁹ the month after Congress sent the Fifteenth Amendment to the states for ratification.⁷⁰⁰ That version, supported by leading suffragists, read: "The right of suffrage in the United States shall be based on citizenship . . . without any distinction or discrimination whatever founded on sex."⁷⁰¹

The next time a congressman formally proposed a women's suffrage amendment, in 1878, the text tracked the Fifteenth Amendment. Introduced by California Senator Sargent, the provision simply replaced "on account of race, color, or previous condition of servitude" with "on account of sex."⁷⁰² To support his proposal, Sargent described signs of growing support for women's suffrage in Colorado, Kansas, Michigan, Minnesota, and the territories, and further observed that "[t]housands of women hold offices under the national and State governments, all innovators in American politics."⁷⁰³ That Americans entrusted women with these positions, Sargent implied, demonstrates a belief in women's capacity to vote.

Over the following decades, Congressmen considered the same version of the women's suffrage amendment,⁷⁰⁴ holding debates that often suggested that officeholding was directly connected. For example, in 1887, one of the most vocal opponents of women's suffrage detailed his "aversion" to women's officeholding by comparing the "gentle words and caressing hand" of a deceased mother to "the idea of a female justice of the peace or [a] township constable."⁷⁰⁵

699. Siegel, *She the People*, *supra* note 35, at 970 n. 61.

700. *Supra* Part I.B.2.

701. Siegel, *She the People*, *supra* note 35, at 970-71 n. 61.

702. TETRAULT, *supra* note 74, at 103. Scholars disagree about whether women's suffrage leaders supported this version. Tetrault claims that Elizabeth Cady Stanton wrote it, implying she supported it. *Id.* See also Ellen Carol DuBois, *Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution, 1820-1878*, 74 J. AM. HIST. 836, 861 (1987) (describing how the National Woman Suffrage Association (NWSA) promoted a women's suffrage amendment based on the Fifteenth). By contrast, Ann Gordon maintains that Stanton and NWSA preferred the 1869 version. Ann D. Gordon, *Many Pathways to Suffrage, Other than the 19th Amendment*, 11 CONLAWNOW 91, 95-96 (2019).

703. 7 CONG. REC. 268 (1878).

704. FLEXNER & FITZPATRICK, *supra* note 12, at 165. One slight variation considered in 1880 added that the right to vote could not be denied "for any reason not equally applicable to all citizens of the United States." TETRAULT, *supra* note 74, at 225 n.164. In 1914, some suffragists supported the proposed Shafroth-Palmer amendment, which would require states to hold a referendum on women's suffrage if 8 percent of voters signed a petition at the previous election. FLEXNER & FITZPATRICK, *supra* note 12, at 260-61.

705. 18 CONG. REC. 986 (1887).

He warned his colleagues that women “want to be Presidents, to be Senators, and Members of the House of Representatives, and, God save the mark, ministerial and executive officers, sheriffs, constables, and marshals.”⁷⁰⁶ Permitting women to do so, he continued, would “desolate our homes and firesides” and “unsex our mothers and wives and sisters.”⁷⁰⁷ (These remarks came only three years before Congressmen expressed concern about Wyoming electing a woman to be their colleague.⁷⁰⁸) Another member countered by emphasizing the rights of voters; if Americans wanted to elect a woman, even in a position as significant as president, their choice should be respected.⁷⁰⁹

From the 1890s through 1910s, treatment of the federal suffrage amendment largely mirrored developments in the states. Congressmen introduced the amendment repeatedly until 1896,⁷¹⁰ followed by a period of relative inactivity until the early 1910s.⁷¹¹ At that point, the West’s newly enfranchised women voters increased the pressure for a federal amendment.⁷¹² As Congressmen returned to the possibility of enfranchising the nation’s women, fault lines tracked home state politics. Western and Midwestern Congressmen were the most likely to support it, followed by those from the East, and with the most opposition coming from the South.⁷¹³

Officeholding continued to feature in members’ thinking through the final moments before passage.⁷¹⁴ For instance, in January 1918, a representative from Colorado reassured naysayers that experience in his state showed that although enfranchised women would hold some offices, and do so capably, they would not deprive men of the vast majority of positions.⁷¹⁵ During the House’s next major debate on the amendment, in May 1919, another Colorado representative began by praising the women who had been elected to the Colorado legislature, promising his colleagues that “[t]hey are just exactly the same kind of women as your own mothers and sisters.”⁷¹⁶ He concluded by asking the “gentlemen of Dixie . . . to help your own mothers reelect you. You may need their votes.”⁷¹⁷

706. *Id.* at 988.

707. *Id.*

708. *Supra* Part III.A.

709. 18 CONG. REC. at 1002.

710. FLEXNER & FITZPATRICK, *supra* note 12, at 167.

711. *Id.* at 255.

712. MEAD, *supra* note 13, at 151.

713. GRIMES, *supra* note 158, at 90, 92, 95. (Grimes groups all states west of Indiana as the “West,” which includes much of what this Article terms the “Midwest.”)

714. Similar points came through invited testimony. *E.g.*, H.R. DOC. NO. 754, at 64 (1913) (statement of Annie Bock opposing women’s suffrage, in part because of women’s ambitions for office); *id.* at 180 (statement of Alice Stone Blackwell supporting women’s suffrage by arguing, in part, that people should be allowed to select their preferred candidates and that few women would secure offices).

715. 56 CONG. REC. 803 (1918). These remarks came on the first day the House voted to pass the Nineteenth Amendment. HAMLIN, *supra* note 698, at 283-85.

716. 58 CONG. REC. 87 (1919).

717. *Id.*

Though Southerners remained opposed, the House passed the amendment that day.⁷¹⁸ On June 4, 1919, the amendment carried in the Senate by a narrow margin, and it was ratified by the states on August 18, 1920.⁷¹⁹

Whether Congress intended the Nineteenth Amendment to encompass officeholding was noticeably absent from their discussion. The most likely reason seems to be a combination of path dependence and timing. When Senator Sargent proposed a women's suffrage amendment in 1878, the straightforward and least controversial option was to model it on the Fifteenth Amendment. By that point, state constitutional law protected black men's officeholding rights, which minimized awareness and concern about the Fifteenth's uncertain scope.⁷²⁰ Though congressmembers had more reason to be alert to the need for clarity on the relationship between suffrage and officeholding by the 1910s, based on women's experiences in the states, suffragists may have reasoned that reworking the text at that point would unduly complicate and raise objections to their main objective of suffrage. Furthermore, women's rights supporters may have expected that enfranchised women could demand offices as a next step, if necessary, just as supporters of black men's rights accepted a Fifteenth Amendment with no mention of office.⁷²¹ At the same time, opponents of women's political rights may have embraced the possibility that the language would require a second step to expand to officeholding, slowing changes they viewed as undesirable. Whatever the reason, the omission of officeholding had meaningful consequences back in the states.

B. Post-Ratification Uncertainties in the 1920s through 1940s

Though officeholding routinely featured in congressional discussions about the Nineteenth Amendment, whether the federal suffrage law altered state officeholding rules was a debatable proposition.⁷²² Even as states considered whether to ratify it, the *Harvard Law Review* published a Note that pointed to a "half-century" of cases to argue that the rights to vote and hold office did not necessarily depend on each other.⁷²³

718. GRIMES, *supra* note 158, at 95-96.

719. *Id.* at 95.

720. *Supra* Part I.B.2.

721. *Id.*

722. Though most discussion and legal challenges focused on state offices, there were also immediate questions about women's eligibility for president. *Voters Split on Eligibility of Woman to Be President*, COURIER-J. (Louisville, Ky.), Aug. 23, 1920, at 10.

723. *Eligibility of Women for Public Office* (1919), *supra* note 6, at 295-96. Adding to the confusion, or in some instances the opposition, was the potential relationship between officeholding and jury service. This point warrants further research. For preliminary evidence, see *Women Can't Be Jurors, Missouri Judge Rules*, COURIER-J. (Louisville, Ky.), Oct. 1, 1921, at 2 (explaining that Missouri officeholding amendment did not extend to jury service); *Women's Right to Hold Office Is Not Affected*, KANE REPUBLICAN (Pa.), May 17, 1921, at 1 (explaining that judges and lawyers drew distinction between jury service and women's "status as public office holders").

After ratification of the Nineteenth, journalists, lawyers, legislators, and other officials expressed deep uncertainty about its scope. A representative headline read: “Women Hold Office? Lawyers Are Puzzled.”⁷²⁴ Preliminary answers were mixed. Women in some states immediately secured new offices. But in numerous others, women were forced to embark on campaigns for court opinions, legislation, and constitutional amendments—a situation a *New York Times* headline cast as “Slow Full Suffrage.”⁷²⁵ The law’s ambiguity also prompted advocacy for a federal Equal Rights Amendment; the first version proposed in 1921 expressly covered the right to hold office.⁷²⁶

In the states where women obtained the quickest successes, a woman was elected or appointed without challenge or an attorney general preemptively clarified that women were eligible.⁷²⁷ There were different lines of reasoning to reach this result. For example, Minnesota’s attorney general determined that the Nineteenth Amendment “expunges” the word “male” from the state’s constitution.⁷²⁸ In Pennsylvania, the attorney general reasoned that though the amendment did not itself change state laws on officeholding, it would be “anomalous” to have suffrage without officeholding; being an elector “implied the further attribute of eligibility to participate therein as an officeholder in the absence of a disability specifically imposed.”⁷²⁹

But in jurisdictions where statutes dictated that some or all offices were limited to “male citizens” or where textual silences had been construed as blocking women, a suffrage amendment did not necessarily alter this restriction.⁷³⁰ For example, the Arkansas attorney general explained that “since the question of holding office and the question of suffrage are two entirely separate and distinct questions it seems to me to follow” that further legislation was needed to expand women’s officeholding.⁷³¹ Accordingly, many legislatures, including in Arkansas,⁷³² sprang into action to pass officeholding statutes.⁷³³

724. *Women Hold Office? Lawyers Are Puzzled*, SUN (Balt.), Aug. 21, 1920, at 18.

725. *Slow Full Suffrage*, N.Y. TIMES, July 31, 1921, at 26.

726. REBECCA DEWOLF, *GENDERED CITIZENSHIP: THE ORIGINAL CONFLICT OVER THE EQUAL RIGHTS AMENDMENT, 1920-1963*, at 50, 53 (2021).

727. M.S.B., *Common Law Handicaps on Women’s Citizenship* 34 WOMAN’S J. 909 (1921) (listing Connecticut, Indiana, Mississippi, New Jersey, Ohio, Virginia, Wisconsin, Vermont, and Minnesota).

728. *Id.*

729. *First Woman Public Office to Be Named Following Decision*, EVENING NEWS (Harrisburg, Pa.), Dec. 23, 1920, at 3.

730. M.S.B., *supra* note 727.

731. *Women Ineligible to Hold Offices*, DAILY ARK. GAZETTE (Little Rock), Oct. 10, 1920, at 8.

732. *Arkansas Permits Women Hold Office*, MUSKOGEE TIMES-DEMOCRAT (Okla.), Feb. 4, 1921, at 3.

733. *E.g., Bill Giving Women Right of Holding Office Introduced*, NASHVILLE TENNESSEAN, Mar. 11, 1921, at 1 (discussing bill introduced by a woman legislator in Tennessee).

Officials in other states determined that only a constitutional amendment would suffice to permit women officeholders.⁷³⁴ In Maryland, the attorney general cited the 1901 case that excluded women lawyers to support his view that male pronouns barred women from holding office in the absence of explicit changes.⁷³⁵ Maryland's suffragists immediately fought back, asking "What are 'votes for women' without 'offices for women'?"⁷³⁶ The following year, the state passed a constitutional amendment to grant women's officeholding rights.⁷³⁷

In still other locations, state supreme courts were called upon to determine whether allowing women to hold office automatically followed the Nineteenth Amendment or something further was needed.⁷³⁸ Several years into these contests, a Pennsylvania newspaper editorial blamed Congress's failure to include "officeholding" for causing the uncertainty.⁷³⁹ Though acknowledging that most people assumed the Nineteenth was intended to grant women full political rights, the writer pointed to the history of the Fifteenth Amendment to explain why this result could not be taken for granted. He contended that officeholding had been deliberately omitted from the Fifteenth Amendment to allow states to exclude black men from posts, which "might well have warned the authors of the nineteenth amendment of the advisability of inserting the words 'or hold office.'"⁷⁴⁰ Congress's "short-sightedness," he concluded, left women in many states at the mercy of court decisions.⁷⁴¹

The Supreme Courts of Maine and Massachusetts, long the exemplars of conservative restraints on women's officeholding, seized opportunities to redeem themselves. The Maine Supreme Court issued one of the first opinions on the matter. Just a few weeks after the amendment's ratification, the state legislature passed a law to eliminate sex discrimination for all civil offices.⁷⁴² The following February, the governor asked the court to determine whether that statute was lawful and permitted him to appoint a woman as a justice of the peace—the position the court had determined was off-limits to women in 1874.⁷⁴³ The justices began by embracing the dissenting opinion from that earlier case, which they now said had been "based upon the fundamental principle that

734. *E.g.*, *All Proposals at the Special Election Carried*, ST. LOUIS-POST DISPATCH, Aug. 12, 1921, at 11; *Women Eligible to Senate*, DES MOINES REG., Feb. 7, 1921, at 3.

735. *No "Offices for Women" in Maryland*, 8 WOMAN PATRIOT 12 (1921) (citing *Maddox*).

736. *Id.*

737. *New Bills Give Women Right to Hold Office*, BALT. SUN, Jan. 7, 1922, at 6; *Maryland Democrats Gain Added Power in Washington*, EVENING SUN (Balt.), Nov. 8, 1922, at 1.

738. *E.g.*, *Preston v. Roberts*, 110 S.E. 586, 586 (N.E. 1922); *Dickson v. Strickland*, 265 S.W. 1012, 1023 (Tex. 1924).

739. *Can Women Hold Office?*, EVENING NEWS (Wilkes-Barre, Pa.), Sept. 20, 1924, at 6. The controversy prompting the editorial was a woman's election as governor of Texas. *Id.*

740. *Id.*

741. *Id.*

742. *Opinion of the Justices*, 113 A. 614, 614 (Me. 1921).

743. *Id.*

the sovereign power is lodged in the people.”⁷⁴⁴ The jurists believed “[t]here was great logical force in this position,” and noted that it was the dissent that “received the approval and concurrence of cases in other jurisdictions, one of the most enlightening of which” was the Kansas case decided by Justice Brewer.⁷⁴⁵ Under that understanding, the legislature had the authority to enact a law permitting women officeholders.⁷⁴⁶

However, the court continued, “[c]onceding for the sake of argument that the majority view was the correct one at the time when rendered,” there was a question about the Nineteenth Amendment’s consequences.⁷⁴⁷ The court first determined that the effect of the amendment “was to strike the word ‘male’” from Maine’s franchise law.⁷⁴⁸ Then, casting the Nineteenth as parallel to the Fifteenth, the court relied on U.S. Supreme court cases connecting black men’s suffrage to jury rights as evidence that the Nineteenth’s suffrage grant extended to women’s officeholding.⁷⁴⁹ Though jurors and justices of the peace were not the same, the court offered “there can be no vital distinction.”⁷⁵⁰

The Maine court further bolstered its opinion by reference to past practices in other states, about which it was somewhat mistaken. The court found it meaningful that though several states had previously granted women the vote, it could find no opinion that denied a woman the right to hold an office for which she could vote.⁷⁵¹ (Here, the court was not wrong but overlooked two relevant facts. First, several suffrage states expressly included officeholding in the constitutional amendments that enfranchised women.⁷⁵² And second, some states allowed women to vote for offices they could not hold; there simply had not been appellate opinions on this issue.⁷⁵³) The court also recognized that Midwestern and Western courts had upheld women’s right to hold elective offices for which they could not vote.⁷⁵⁴ (This fact could just as easily support the conclusion that suffrage and officeholding were not necessarily tied.) Turning again to the Fifteenth Amendment for guidance, the court observed that when black men were enfranchised, “it is common knowledge that it was followed by the election of persons of that race to office in various sections throughout the Southern States, and we are unable to find that their right to hold office was ever questioned.”⁷⁵⁵ (Here, the court seemingly failed to recall, or chose to overlook,

744. *Id.* at 615.

745. *Id.*

746. *Id.*

747. *Id.*

748. *Id.*

749. *Id.* at 615-16 (discussing *Neal v. Delaware*, 103 U.S. 370).

750. *Id.* at 616.

751. *Id.* at 617.

752. *Supra* Part III.

753. For example, see discussion of Oklahoma *infra*.

754. Opinion of the Justices, 113 A. at 617 (citing cases).

755. *Id.*

that states amended their constitutions to expressly authorize officeholding for black men.⁷⁵⁶) Thus, the court concluded that the Nineteenth Amendment, in conjunction with the state's legislation, permitted a woman to become a justice of the peace.⁷⁵⁷

Maine's decision was persuasive precedent in Massachusetts, but steps were necessary on the path to that outcome. In 1920, the Massachusetts attorney general opined that women were not rendered eligible to hold office by the Nineteenth, based on his reading of decades-old state supreme court cases.⁷⁵⁸ Constrained by this interpretation, the legislature passed a statute to authorize women to hold offices "except those from which they may be excluded by the Constitution of the Commonwealth."⁷⁵⁹ According to one legal commentator, "[t]he practical result of this statute was merely to emphasize the doubt."⁷⁶⁰ Seeking clarity, the senate asked the supreme court to answer whether the Nineteenth automatically granted women equal officeholding rights or effectively empowered them to authorize this result and, if not, what steps were needed to render women eligible.⁷⁶¹ The court responded that the Nineteenth had not altered state control over the qualifications for officeholders, and the state's constitution did not make officeholding "incident to the right to vote."⁷⁶² However, the court also reasoned that if a state constitutional amendment had struck "male" from the franchise language, that change "would plainly make women eligible to office upon the same footing as men." The same result should follow, the court concluded, from a federal suffrage amendment.⁷⁶³ Governor (and Vice-President Elect) Calvin Coolidge welcomed the decision, especially because the alternative path—amending the constitution—would have meant women could not hold constitutional offices until 1926.⁷⁶⁴

In other states it took far longer for women to achieve equal officeholding rights. For instance, a New Hampshire amendment to delete "male" from the state constitution failed to receive the necessary two-thirds vote in mid-1921, when a number of women were already serving in elected positions in the state.⁷⁶⁵ According to press coverage, "Nobody would be idiot enough to dispute their title . . . but it does seem a little queer that the New Hampshire folks are so averse to squaring the State Constitution to the federal."⁷⁶⁶ The issue first reached

756. Avins, *supra* note 47, at 296, 304.

757. Opinion of the Justices, 113 A. at 617.

758. *Women Eligible to All Offices in State*, BOS. DAILY GLOBE, Apr. 14, 1922, at 1 (explaining background).

759. John G. Palfrey, *The Eligibility of Women for Public Office under the Constitution of Massachusetts*, 7 MASS. L.Q. 147, 147 (1922) (quoting statute).

760. *Id.*

761. *Women Eligible to All Offices in State*, *supra* note 758.

762. *In re Opinion of the Justices*, 135 N.E. 173, 174-75 (Mass. 1922).

763. *Id.* at 176 (also noting the decision was in accord with the holding in Maine).

764. *Women Eligible to All Offices in State*, *supra* note 758.

765. *Slow Full Suffrage*, *supra* note 725.

766. *Id.*

the state's highest court in 1927, when the governor inquired about the legality of appointing a woman as a justice of the peace.⁷⁶⁷ The court took a unique stance, determining that though women in the state were already eligible to elective office because of constitutional language authorizing electors to hold office, women could not hold appointive posts because common law constraints remained intact. Further legislation was needed to overcome the common law.⁷⁶⁸

The most intransigent state turned out to be Oklahoma, though this was partly for procedural reasons. Oklahoma was initially on par with other states, and arguably ahead. The state allowed women to hold some offices before suffrage and extended full suffrage before the Nineteenth Amendment.⁷⁶⁹ In 1920, they elected the country's second woman congressmember, though this was seen by some as an unfortunate development because the candidate was outspoken on her previous stance as an antisuffragist and did not perceive herself as a representative of women.⁷⁷⁰

Despite these advances, it took more than twenty years to eliminate the state constitution's exclusion of women from select offices: governor, lieutenant governor, state treasurer, secretary of state, attorney general, and a few other categories that cumulatively totaled seventy offices.⁷⁷¹ In 1923, the legislature presented the voters with an amendment to equalize officeholding rights.⁷⁷² The voters approved, but the results were thrown out on a technicality.⁷⁷³ The legislature returned to the issue in 1927, but voted 47 to 27 (with 36 absent) against resubmitting the amendment to the people.⁷⁷⁴ While some members declared that the right to vote should include the right to hold all offices, opponents subscribed to traditional views that women belonged in the home and that the governor and attorney general roles should be filled by "a real he-man."⁷⁷⁵ One claimed that the few states that had elected women governors had "gone down in public estimation by at least 60 percent."⁷⁷⁶ The only woman member of the House spoke in favor of the bill but then voted against it.⁷⁷⁷ In 1930, a suit before the supreme court prompted that institution to issue a writ of mandamus to put the issue back on the ballot for the voters.⁷⁷⁸ Though 242,439

767. *In re* Opinion of the Justices, 139 A. 180, 181 (1927).

768. *Id.* at 183-84.

769. *Supra* Part III.B.

770. For representative coverage, see *Woman in Congress Has Many Problems*, BOS. GLOBE, Apr. 2, 1922, at 14.

771. *Oklahoma Women*, HARLOW'S WKLY. (Okla. City), Sept. 15, 1923, at 10; *House Refuses to Open Way for Women to Hold Highest State Offices*, MIA. DAILY NEWS-REC. (Okla.), Jan. 16, 1927, at 9.

772. *Call Oklahoma Special Session*, SPOKESMAN-REV. (Wash.), Oct. 7, 1923, at 2.

773. *Id.*

774. *House Refuses to Open Way for Women to Hold Highest State Offices*, MIA. DAILY NEWS-REC. (Okla.), June 16, 1927, at 9.

775. *Id.*

776. *Id.*

777. *Id.*

778. *Amendment Gains Place on Ballot*, DAILY OKLAHOMAN (Okla. City), Oct. 15, 1930, at 7.

cast ballots in favor, with just 119,766 opposed, the majority vote was insufficient because the pro votes did not meet the mandatory threshold of half the votes cast (more than 500,000 people had voted for governor).⁷⁷⁹ When the voters had the opportunity yet again in 1935, they did not pass the amendment.⁷⁸⁰ Finally, the necessary portion of voters approved the amendment in 1943, but again a technical snafu threatened the result because one county's vote was incorrectly recorded.⁷⁸¹ After the state supreme court refused to intervene,⁷⁸² the legislature passed a law to force the State Election Board to fix the count and certify the amendment.⁷⁸³ News coverage suggested that Oklahoma thereby became the final state to permit women to hold high elective office.⁷⁸⁴ Oklahoma elected its first woman governor in 2011.⁷⁸⁵

Thus, far from clearly enshrining women's full political equality, the Nineteenth Amendment provided an ambiguous basis for claiming rights beyond suffrage itself. Once again it was state lawmakers and judges who considered women's demands for officeholding rights, with the federal suffrage amendment a new trigger rather than a straightforward basis for their decisions. State and federal legal advancements developed in concert, with states serving as the more longstanding, dynamic, and decisive forums to consider women's officeholding eligibility.

CONCLUSION

American women remain underrepresented in public offices today. Despite significant and high-profile gains in recent decades, women comprise around one-quarter of each chamber of Congress.⁷⁸⁶ Less than a third of state legislators are women.⁷⁸⁷ Only eighteen percent of states' current governors are women, and twenty states have never had a woman in the top spot.⁷⁸⁸ Around a third of

779. *State Election Returns Given*, CHEROKEE CNTY. DEMOCRAT (Tahlequah, Okla.), Nov. 14, 1930, at 1.

780. *Oklahoma Women Denied Right to Hold Public Office*, GAZETTE & DAILY (York, Pa.), Sept. 26, 1935, at 7.

781. *Right of Women to Hold Major Office to Vote*, OKEMAH DAILY LEADER (Okla.), Mar. 10, 1943, at 6.

782. *Williams v. State Election Board*, 135 P.2d 982 (Okla. 1943).

783. *Women Will Hold Offices After Kerr Signs Bill*, CUSHING DAILY CITIZEN (Okla.), Mar. 26, 1943, at 2.

784. *Id.*

785. *See Mary Fallin*, WIKIPEDIA, https://simple.wikipedia.org/wiki/Mary_Fallin [<https://perma.cc/D9G3-BMMG>].

786. Ella Koeze et al, *More Women Are Holding Political Office—But Not Everywhere*, FIVE THIRTY EIGHT (Jan. 30, 2020), <https://fivethirtyeight.com/features/more-women-are-holding-political-office-but-not-everywhere/> [<https://perma.cc/776W-E4P6>].

787. *Id.*

788. *Id.* Only around a quarter of posts in city government are held by women. Molly Bangs, *Women's Underrepresentation in Politics: No, It's Not Just an Ambition Gap*, TCF (Sept. 21, 2017), <https://tcf.org/content/commentary/womens-underrepresentation-politics-no-not-just-ambition-gap/?session=1> [<https://perma.cc/6Y5U-H3NJ>].

state court judges are women,⁷⁸⁹ and under a third of federal court judges are.⁷⁹⁰ Although black women have made major advances in politics in recent years, they remain especially underrepresented in some positions.⁷⁹¹ No black woman has ever been a governor⁷⁹² or served on the U.S. Supreme Court.⁷⁹³

While there are complex structural, financial, racial, and other factors at play that contribute to women's underrepresentation, the continuities between the past and present in women's officeholding are provocative. The century of women's demands discussed in this Article—which have been almost entirely overlooked in previous scholarship—highlight the staying power of stereotypes that plague women candidates. Just as the first women legislators had to be reassuringly “womanly women”⁷⁹⁴ and disclaimed any desire to progress to “mannish” positions,⁷⁹⁵ today's candidates face a difficult balancing act in which their qualifications are judged through the prism of sex.⁷⁹⁶ Thus, despite significant progress in the number and type of positions women hold, the conclusion to America's chapter on women's political equality remains unwritten.

More optimistically, this account provides numerous and varied examples of how individuals can directly contribute to the expansion of rights. Countless women pressed for access to offices, forcing change and inspiring people in other states to do the same. While many of the offices they obtained were relatively minor, their service in these roles drew attention to women's rights, built toward more prominent offices, and demonstrated women's capacity for full citizenship.

789. THE AMERICAN BENCH (2019), NAT'L ASSN. OF WOMEN JUDGES, <https://www.nawj.org/statistics/2019-us-state-court-women-judges> [https://perma.cc/A3L8-CTNP].

790. Danielle Root et al, *Building a More Inclusive Federal Judiciary*, CTR. FOR AM. PROGRESS (Oct. 3, 2019), <https://www.americanprogress.org/issues/courts/reports/2019/10/03/475359/building-inclusive-federal-judiciary/#:~:text=Today%2C%20more%20than%2073%20percent,sitting%20judges%20on%20the%20courts> [https://perma.cc/82EX-F542].

791. Andre M. Perry, *Analysis of Black Women's Electoral Strength in an Era of Fractured Politics*, BROOKINGS (2018), https://www.brookings.edu/wp-content/uploads/2018/09/2018.09.10_metro_black-women-office_Perry_Final-version-sep10.pdf [https://perma.cc/D6QM-NBQ3].

792. Allison Norlian, *In 244 Years, America Has Never Elected a Black, Female Governor*, FORBES (Mar. 23, 2021), <https://www.forbes.com/sites/allisonnorlian/2021/03/23/in-244-years-america-has-never-elected-a-black-female-governor-virginias-jennifer-carroll-foy-could-change-that/?sh=14065aad1bc1> [https://perma.cc/98AP-E358].

793. This Article went to press the same week that the Senate Judiciary Committee began hearings on the nomination of Ketanji Brown Jackson, the first black woman nominated to the U.S. Supreme Court. Carl Hulse, *On Eve of Confirmation Hearings, G.O.P. Steps Up Attacks on Jackson*, N.Y. TIMES (Mar. 20, 2022), <https://www.nytimes.com/2022/03/20/us/ketanji-brown-jackson-republicans.html> [https://perma.cc/LQ8F-3KGD].

794. *Supra* Part III.A. (discussing Colorado legislators).

795. *Id.* (discussing Utah state senator).

796. For further discussion, see RENEE KNAKE JEFFERSON & HANNAH BRENNER JOHNSON, SHORTLISTED: WOMEN IN THE SHADOWS OF THE SUPREME COURT 117, 122-24 (2020); Paula Monopoli, *Gender and Constitutional Design*, 115 YALE L.J. 2643, 2648 (2006); Maggie Astor, “A Woman, Just Not That Woman”: How Sexism Plays Out on the Trail, N.Y. TIMES (Feb. 11, 2019), <https://www.nytimes.com/2019/02/11/us/politics/sexism-double-standard-2020.html> [https://perma.cc/A9MC-FHBY].

Also crucial to the women's officeholding story is that some men in powerful positions chose the unconventional path, supporting the expansion of women's rights through state constitutional amendments, legal interpretations, and more. Individuals had the power—especially at the state level—to meaningfully advance women's political and professional opportunities.

Although the fact that women pursued officeholding as a state constitutional issue meant that their rights lagged in some locations, the state-level approach was productive and secured successes more quickly than a focus on the federal would have. Supporting a growing literature on the promise of state constitutional law, this account serves as a century-long example of how state-level advocacy can secure and protect rights. Women's competent service as officeholders in city and state posts helped reassure politicians and judges in more conservative places to move in the same direction and invigorated the women's suffrage campaign. Women's state officeholding and suffrage, in turn, factored into congressional acceptance of the Nineteenth Amendment. Though the federal suffrage amendment was inadequate on its own to secure women's full political rights, it sparked the final necessary round of state-level advocacy. A symbiotic state-federal approach, with state law in the predominant position, proved a winning posture for advancing women's rights—a worthwhile lesson for modern efforts.