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## Foreword

### **Glass Ceilings, Glass Walls: Intersections in Legal Gender Equality and Voting Rights One Hundred Years After the Nineteenth Amendment**

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The Nineteenth Amendment was a milestone for women's rights but has often been criticized for being passed at the expense of people of color.<sup>1</sup> Though a significant milestone, the Nineteenth Amendment was certainly not an endpoint for equality for women and in voting rights. In the one hundred years since it was ratified on August 18, 1920, a lot has changed in the ways of improving gender equality and increasing access to voting. However, much is still left to be achieved, and this Symposium dove deep into the questions of what we can learn from history and what we can do moving forward.

The 2020–21 *Minnesota Law Review* Symposium assembled leading legal scholars and practitioners in the fields of gender equality and voting rights. On April 1 and April 2, 2021, our Symposium looked back on the one hundred years since women were given the right to vote using a rough chronological approach.<sup>2</sup> The first day of the Symposium opened with a historical overview of the Nineteenth Amendment, discussing who contributed to its ratification and who was left out after its passage. This background created a foundation for our

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\* Lead Symposium Articles Editor, *Minnesota Law Review*, Volume 105. I would like to thank Professor Jill Elaine Hasday for her constant guidance and support throughout the development of this Symposium. An abundance of thanks is also due to Olivia Kurtz, University of Minnesota Law School's Event Manager, for her attention to detail throughout the planning process and Abby Oakland, *Minnesota Law Review's* incomparable Editor-in-Chief, who was always willing to bounce ideas around with me. Copyright © 2021 by Jessica Szuminski.

1. See *The 19th Amendment: A Crash Course*, NAT'L PARK SERV. (Feb. 22, 2021), <https://www.nps.gov/wori/learn/historyculture/2020-crash-course.htm> [<https://perma.cc/6EFW-YVBV>].

2. The Volume 105 Symposium was originally intended to occur in the fall of 2020, the year of the centennial anniversary. Due to the uncertainty caused by the COVID-19 pandemic, the Executive Board determined that postponing the Symposium until spring of 2021 was necessary.

subsequent gender equality conversations, focusing on gender identity and sexual orientation on day one and the modern legal feminist agenda on day two. The second day opened with keynote speaker Desmond Meade, who presented about his role in fighting for legislative change in Florida to restore the right to vote to 1.4 million Floridians. Day two culminated in a panel discussing the current state of voting rights. Following the presentations during each panel, the speakers took questions from the audience.

Professor Jill Elaine Hasday, Distinguished McKnight University Professor and Centennial Professor in Law at the University of Minnesota Law School, helped launch the Symposium with opening remarks. She positioned the audience in women's history and explained how women have attempted to situate themselves in stories of America's history for a long time. She identified two primary ways in which they did so. The first was to link their activism to foundational expressions and symbols of America's democratic ideals, such as the Declaration of Independence or the Statue of Liberty. The second was to disseminate knowledge of women's history, such as the National American Woman Suffrage Organization's desire not only to achieve women's suffrage but to have their fight for suffrage be remembered. Professor Hasday urged that the project of making sure women's history is remembered is still ongoing.

Following Professor Hasday's opening remarks, the first panel, "Analyzing the 19th Amendment in a Historical Context," dove deeper into analyzing women's role in history. This panel was moderated by Barbara Young Welke, Distinguished McKnight University Professor, Professor of History and Professor of Law, and Co-Director, Program in Law and History, at the University of Minnesota. This panel featured Jill Elaine Hasday; Phylcia H. Hill, Counsel, Economic Justice Project, Lawyers' Committee for Civil Rights Under Law; Martha S. Jones, Society of Black Alumni Presidential Professor and Professor of History and the SNF Agora Institute at John Hopkins University; and Tracy A. Thomas, Seiberling Chair of Constitutional Law and Director of the Center for Constitutional Law at the University of Akron School of Law.

Professor Hasday based her presentation on her forthcoming book *We the Men*, addressing how America's stories about itself too often exclude women's struggles for equality. She encouraged listeners to reflect on the way America represents its history—how almost every statue of an American hero depicts a man; how monumental speeches in America's history focus on the experience of men; and how the Supreme Court, historically dominated by men, often leaves

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women out of its narrative. She rejected the notion that sex equality has already been achieved in America, despite what some anti-women's rights advocates proclaim. She cited anti-Equal Rights Amendment (ERA) opponents as an example of a group that claims that equality has already been achieved and argues that the ERA is therefore unnecessary. Professor Hasday argued that incorporating a richer and truer history of women's struggles for equality into our collective memory can sharpen our understanding of how reform takes place, focus our attention on the battles that are still not won, and fortify our determination to push for a more equal future as we shape the next chapter in this American story.

Ms. Hill brought the discussion specifically to the role of Black women in the movement for suffrage. In her talk titled "Ain't I a Woman?: The Exclusion of Black Women from the Voting Rights and Suffrage Movements and the Early Origins of Contemporary Political Intersectionality Theory," Ms. Hill explored how Black women anchored two movements for access to the ballot, despite their access to these same rights not being a priority for either movement. She discussed how Black women, who exist at the intersection of two oppressed identities, faced unique challenges accessing the ballot and the lessons current voting rights activists can learn from their political intersectionality.

Professor Jones recounted the history of several key Black women in the time surrounding the Nineteenth Amendment to question whether it was ever intended to extend the vote to Black women. Based on her recently published book *Vanguard*,<sup>3</sup> Professor Jones first discussed Fannie Lou Hamer's activism and her work with the Freedom Democratic Party. She noted how Hamer would criticize the Thirteenth, Fourteenth, and Fifteenth Amendments as failing to provide any of the protections they were meant to provide for Black women. However, Hamer would never invoke the Nineteenth, as she never saw that amendment as protecting her, especially given its historical ties to white supremacy. Professor Jones also highlighted Josephine St. Pierre, Frances Ellen Watkins Harper, Anna Julia Cooper, and Maggie Lena Walker in recounting the measured and intentional exclusion of African American women from the right to vote under the Nineteenth Amendment.

The first panel ended with Professor Thomas speaking based on her Article in this Issue, "Reclaiming the Long History of the

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3. MARTHA S. JONES, *VANGUARD: HOW BLACK WOMEN BROKE BARRIERS, WON THE VOTE, AND INSISTED ON EQUALITY FOR ALL* (2020).

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‘Irrelevant’ Nineteenth Amendment.” Professor Thomas explored how the Nineteenth Amendment has been unfairly labeled an “irrelevant” amendment, assumed to have little importance beyond its literal effect of prohibiting disqualification in voting based on sex. Her work reclaims the long history of the Nineteenth Amendment from the beginning of women’s first voting in colonial times, through federal and state suffrage campaigns, to modern restrictive interpretations of its meaning. Professor Thomas ultimately argued for a better understanding of the historical depths of the structural legal shift demanded by the Nineteenth Amendment and incorporation of that understanding to gender discrimination cases today.

The second panel, titled “Modern Intersections with Gender Equality and LGBTQ+ Rights,” featured Jessica Clarke, Professor of Law and FedEx Research Professor and Co-Director of the George Barrett Social Justice Program at Vanderbilt Law School; and Kyle C. Velte, Associate Professor of Law at the University of Kansas School of Law. This panel was moderated by Cooper Christiancy, ‘21, Senior Articles Editor, *Minnesota Law Review*, Volume 105.

Professor Clarke spoke on “LGBTQ Rights as Gender Equality: The Upsides and Downsides of *Bostock v. Clayton County*” and mapped out where LGBTQ rights fit into the landscape of gender equality following the Supreme Court’s decision in *Bostock v. Clayton County*.<sup>4</sup> Professor Clarke began by explaining *Bostock* and its reasoning and addressing the tremendous upside of the decision for gay, lesbian, and trans employees. Her main argument criticized how *Bostock*’s formulaic reasoning fails to capture how discrimination on the basis of LGBTQ status is a threat to gender justice; offers uncertain protection for bisexual, non-binary, and queer individuals; and leaves all rights to sex equality vulnerable to religious carve-outs and exceptions. She concluded with the hope that an alternative vision of LGBTQ people as full and equal citizens, inspired by and expanding on the activism behind the Nineteenth Amendment and the Voting Rights Act, might one day replace *Bostock*’s sterile formalism.

Professor Velte addressed “The Nineteenth Amendment as a Generative Tool for Defeating LGBTQ Religious Exemptions,” her Article published in this Issue. She connected today’s battle over religious exemptions for sexual orientation and gender identity discrimination to the Nineteenth Amendment, using sex discrimination law from the intervening period as the bridge between the two. She combined the norm-generative potential of the Nineteenth Amendment’s history

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4. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020).

with the holdings of *Roberts v. U.S. Jaycees*<sup>5</sup> and *Bostock v. Clayton County*.<sup>6</sup> She argued that together, they defeat one of the central arguments of today's religious exemption seekers, namely that states do not have a compelling state interest in eradication of sexual orientation and gender identity discrimination through public accommodation laws. This panel concluded the first day of the Symposium.

The second day of the Symposium began with the keynote address. Our keynote speaker was Desmond Meade, President and Executive Director of Florida Rights Restoration Coalition (FRRC). Mr. Meade presented about his role in fighting for legislative change in Florida to restore the right to vote to 1.4 million Floridians. As President and Executive Director of FRRC, which is recognized for its work on voting and criminal justice reform issues, Mr. Meade led the FRRC to a historic victory in 2018 with the successful passage of Amendment 4,<sup>7</sup> a grassroots citizen's initiative that restored voting rights to over 1.4 million Floridians with past felony convictions.<sup>8</sup> Amendment 4 represented the single largest expansion of voting rights in the United States in half a century and brought an end to 150 years of a Jim Crow-era law in Florida. While responding to questions from the audience moderated by Carol L. Chomsky, Professor of Law at the University of Minnesota Law School, Mr. Meade used his experience to inspire the possibilities for voting reform moving forward.

The third panel, moderated by Maria Ponomarenko, Associate Professor of Law at the University of Minnesota Law School, brought together Serena Mayeri, Professor of Law and History at the University of Pennsylvania Carey Law School; and Joan C. Williams, Distinguished Professor of Law and Hastings Foundation Chair and Director of the Center for WorkLife Law at the University of California, Hastings Law.

Professor Mayeri built on her expertise in legal history to discuss "Voting Rights as the Future of Feminism." She began with a recounting of Pauli Murray's role in the women's suffrage movement and the victories achieved by women legislators in the twentieth century. Professor Mayeri followed this history to explain its impact on

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5. *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984).

6. *Bostock*, 140 S. Ct. 1731.

7. See generally *Voting Rights Restoration Efforts in Florida*, BRENNAN CTR. FOR JUST. (May 19, 2019), <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-florida> [<https://perma.cc/PD52-VCLH>], for background about Amendment 4's passage and subsequent limiting legislation.

8. See generally DESMOND MEADE, LET MY PEOPLE VOTE: MY BATTLE TO RESTORE THE CIVIL RIGHTS OF RETURNING CITIZENS (2020).

achievements in sex equality, such as informing the late Justice Ginsberg's constitutional strategy in litigating landmark sex discrimination cases. Professor Mayeri traced this strategy through historical feminist accomplishments (and setbacks). She explored structural issues, such as the electoral college and overwhelming power of the Senate, that give power to a political minority that do not reflect the progressive policies that the majority of Americans support. To remedy this, Professor Mayeri argued that voting rights and the project of rescuing democracy must be at the center of today's feminist agenda in order to build the foundation needed for achieving every other goal.

Professor Williams responded to Professor Mayeri's presentation, exploring where their opinions converge and where they differ on the question of what feminist strategy should focus on moving forward and how it interacts with popular political ideologies. With a focus on operationalizing intersectionality, Professor Williams emphasized the way gender inequalities have been exacerbated during the COVID-19 pandemic, such as by stark fairness gaps between men's and women's household contributions. She then explored the way economic inequality plays a large role in perpetuating sex inequality and how the focus on wealth accumulation divides the elite from the non-elite workers that they exploit. Professor Williams addressed the ERA and admitted that she does not find pursuing it a wise use of our time—that it would have little effect and would not be very helpful since it would only affect state actors when we need to be more concerned with private actors.

Our final panel focused on the "The Current State of Voting Rights," featuring Kat Calvin, Founder and Executive Director of Spread the Vote and Co-Founder and CEO of the Project ID Action Fund; and Terry Ao Minnis, Senior Director of Census and Voting Programs, Asian Americans Advancing Justice – AAJC, and Senior Fellow, Democracy Fund. This panel was moderated by Professor June Carbone, Robina Chair in Law, Science and Technology at the University of Minnesota Law School.

Ms. Calvin provided an overview of legal movement in voting law in her presentation, "SCOTUS, Congress, and the States: Action in Voting Law in 2021." She focused on four of the main actions happening right now. First was the influx of proposed bills surrounding voter access issues—bills both attempting to suppress access to voting (such as the one passed in Georgia) and those to improve access to voting. She views these bills as setting the grounds for an epic battle to determine the future of democracy. The second action she highlighted was HR 1, or the For the People Act of 2021. Though she doubts the bill will

successfully pass in the Senate, she views it as a dream voting rights bill. Third, Ms. Calvin focused on activity in the Supreme Court about the Voting Rights Act of 1965. Following the Supreme Court's gutting of Section 5 in 2013,<sup>9</sup> she identified that the next provision on the table for the Supreme Court's debate is Section 2. Finally, she covered the Biden Executive Order about voting, which addresses issues concerning disability discrimination at polling places, improves access to voting ID and registration for formerly incarcerated individuals, and allows federal agencies to make improvements to employee IDs so that they can satisfy voting ID requirements. With all these actions in play, the next two years are sure to be full of litigation surrounding voting rights.

Mrs. Minnis presented on her Article in this Issue, "Voting Is a Universal Language: Ensuring the Franchise for the Growing Language Minority Community in Minnesota." She addressed the language barriers that result in depressed voter participation, especially among Minnesota's large limited-English proficient population. She explained how these barriers have only been exacerbated during the COVID-19 pandemic despite the increase in absentee ballot availability. Mrs. Minnis offered several possible solutions for remedying this barrier to enfranchisement, such as increased legislative protections at both the state and local levels.

*Minnesota Law Review's* Volume 105 Symposium highlighted the efforts of those who have largely been left out of historical narratives and explored where reform efforts can be focused today. Each panelist brought forth her own expertise to highlight a nuance in the realms of gender equality and voting rights. The following Articles expand upon the remarks shared and further the discussions started during each panel. Our keynote speaker used his unique journey to offer an optimistic perspective of what work can be done in the future.

One hundred years after the Nineteenth Amendment's ratification, many necessary reforms have yet to be accomplished. We hope Mr. Meade's optimism and the ideas presented at this Symposium provide a foundation for solutions and progress moving forward in the sake of equality.

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9. See *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013).