

*SYMPOSIUM: THE 19TH AMENDMENT AT 100: FROM THE
VOTE TO GENDER EQUALITY*

**MANY PATHWAYS TO SUFFRAGE, OTHER THAN THE
19TH AMENDMENT**

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Back when the story began, back when framers of the demand for equal political rights articulated their aspirations, no one imagined ending up with an ambiguous instrument of political change like the Nineteenth Amendment. In the Wesleyan Chapel at Seneca Falls in July 1848, to attain a right to vote was to have one's natural rights acknowledged. Or as Elizabeth Cady Stanton stated two months later, "[t]he right is ours, have it we must—use it we will."¹ Twenty-five years later, Susan B. Anthony became a convicted federal criminal in pursuit of what she called "a citizen's right to vote."² How the suffrage cause went from such ideals to the Nineteenth Amendment is as important in this era of centennial celebrations as the persistent spectacle of mass mobilization of women that finally overcame claims for manhood suffrage. While pursuing their rights, the women who wanted to vote explored many constitutional nooks and crannies looking for a way into the body politic. Their attempts are testament to the structural obstacles of federalism in their way and reveal

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1. Elizabeth Cady Stanton, Address On Woman's Rights, in 1 THE SELECTED PAPERS OF ELIZABETH CADY STANTON & SUSAN B. ANTHONY 94, 105 (Ann D. Gordon, ed., 1997) [hereinafter *Papers*].

2. For Anthony's use of this phrase, see her speech "Is It a Crime for a U.S. Citizen to Vote?" delivered repeatedly in 1873. Susan B. Anthony, Is It a Crime for a U.S. Citizen to Vote? Speech, in 2 *Papers*, *supra* note 1, at 554–83 (2000).

an integral part of the complicated history of voting rights in the United States. Here are elements of that history.

For purposes of legal inquiry, it makes sense to split the history of woman suffrage at the Civil War. It was a watershed: on one side the Declaration of Independence, on the other side the U.S. Constitution; on one side “their sacred right to the franchise,”³ on the other side contested definitions of “privileges and immunities.”⁴ On the antebellum side, overturning disfranchisement assumed a simple (not easy, but simple) form: challenge men’s presumption that biology made them voters and press them to delete the word “male” from state constitutions or omit it when writing new ones. New Jersey’s constitutional convention of 1844 received a petition asking that women be restored to their voting rights.⁵ Women petitioned New York’s constitutional convention of 1846 for the vote.⁶ Antebellum protesters quickly moved beyond individual or neighborhood pleas and convened women for consideration of collective, political action. At Salem, Ohio, in 1850, while white men prepared to write a new constitution, women gathered to discuss how “to secure to all persons the recognition of Equal Rights, and the extension of the privileges of Government without distinction of sex or color.”⁷ They agreed on a memorial asking that in the new constitution “women shall be secured, not only the right of suffrage, but all the political and legal rights that are guaranteed to men.”⁸ Though whiteness and maleness survived the challenge in Ohio, an archetypal suffrage action was born.

Women conducted and won state campaigns until the eve of the Nineteenth Amendment’s passage; vide, New York in 1917 and Michigan, Oklahoma, and South Dakota in 1918.⁹ If territories count, the women of Puerto Rico pursued their “state” campaign until 1935.¹⁰

3. Resolutions adopted at Seneca Falls in 1848 referred to the franchise as a “sacred right.” See 1 Papers, supra note 1, at 77.

4. See U.S. CONST. art. IV, § 2. See also U.S. CONST. amend. XIV, § 1.

5. PROCEEDINGS OF THE NEW JERSEY STATE CONSTITUTIONAL CONVENTION OF 1844, at 438 (John E. Bebout & N.J. Writers’ Project of the Works Project Admin. eds., 1942).

6. JUDITH WELLMAN, THE ROAD TO SENECA FALLS: ELIZABETH CADY STANTON AND THE FIRST WOMAN’S RIGHTS CONVENTION 148–51 (2004).

7. ELIZABETH CADY STANTON ET AL., 1 HISTORY OF WOMAN SUFFRAGE 103 (2d ed., Rochester, Charles Mann 1889).

8. *Id.* at 105.

9. For a list of territories and states granting women suffrage before Nineteenth Amendment, see *Centuries of Citizenship*, NAT’L CONST. CTR., https://constitutioncenter.org/timeline/html/cw08_12159.html [<https://perma.cc/YW42-7PBQ>].

10. See generally IDA HUSTED HARPER, 6 HISTORY OF WOMAN SUFFRAGE 722–24 (New York, NAWSA 1922). See also ALLISON L. SNEIDER, SUFFRAGISTS IN AN IMPERIAL AGE: U.S. EXPANSION AND THE WOMAN QUESTION, 1870–1929, at 117–34 (2008).

However, the act of choosing to pursue political equality through state governments took place in a new context after the Civil War, when alternative pathways to political equality for women were mapped by the federal government's efforts to ensure that black men were entitled to vote. For the next fifty years, activists chose whether to embark on the hard slog of amending state constitutions one by one or to strive for decisive action in federal courts or Congress that would supplant the offending words in state constitutions. The first required a majority of voters in each state, and it left unquestioned the practice of states alone setting qualifications for voters. The federal route through Congress relied on elected representatives in Washington and state capitals, not voters themselves, to override constitutions that made "male" a qualification for voters. With a constitutional amendment, the federal government would claim an interest in who voted and what qualifications were appropriate. If equality were to come by way of federal courts, the stakes were higher. Arguments for reaching political equality through the courts rested on constitutional claims that women were, in the postwar period, already voters by virtue of their national citizenship.

Choices about the way forward affected how woman suffragists organized themselves. State associations might mount campaigns for state-level equality, but they also mobilized to lobby Congress and educate the public. On the national level, a preference for state action distinguished the American Woman Suffrage Association; its leaders also objected to seeking suffrage through the courts. The National Woman Suffrage Association, on the other hand, took the position that voting rights and citizenship were functions of the federal government. Both associations welcomed delegates from state suffrage groups, and both would try to collaborate if a state amendment campaign were underway.

Reconstruction, seen from the perspective of women of all races who sought political equality, was what Victoria Woodhull called a time of settling "the Constitutional Question of Woman's right to suffrage."¹¹ Before the war ended, suffragists were in conversation with Radical Republicans about constitutional paths to citizenship and suffrage for men and women released from slavery. Suffragists were learning, but they asked different questions. What kind of "republican form of government" was it that said only black *men*, not black *women*, gained political rights with their citizenship? What were the "privileges or immunities of citizens of the United States" in the Fourteenth Amendment? Why did the

11. V. Woodhull to Susan B. Anthony, 2 January 1873, in 2 *Papers*, *supra* note 1, at 549 (2000).

Fifteenth Amendment open with the words, “The right of citizens of the United States to vote” if citizens had no such right? With no good answers on offer, the National association declared that “Women Are Already Voters.”¹²

Best known of the legal thinkers behind this new direction were Francis and Virginia Minor of St. Louis, attorney and wife.¹³ In October 1869, before ratification of the 15th Amendment, they urged women to try to register to vote and to sue if denied, and they laid out, in a series of resolutions, the legal argument for women’s right to do so. Section 1 of the Fourteenth Amendment made it perfectly clear that women were citizens of the United States as well as of a state. The privileges or immunities of citizens in the amendment, according to the Minors, “are national in character and paramount to all state authority.” With regard to qualifying electors, the Constitution nowhere gives states “the right to deprive any citizen of the elective franchise.” And that state laws excluding women from the franchise do indeed “abridge the privileges and immunities of citizens.”¹⁴ Women need only take what was theirs.

Hundreds of women across the country tried to vote between 1869 and 1874, and in at least six instances, women sued local officials for failing to perform their duty to register voters.¹⁵ State courts ruled against them, rejecting the claim that suffrage was coextensive with citizenship and affirming that with regard to qualifying voters, the state’s “power of exclusion . . . remains intact,” in the blunt words of California’s Supreme Court.¹⁶ After Missouri’s Supreme Court upheld the state’s right to refuse to register Virginia Minor in St. Louis, she and Francis appealed her case to the Supreme Court of the United States. Meanwhile, when Susan B. Anthony voted, her attempt to make a test case turned into a federal criminal prosecution for voting in a congressional election while “being a

12. See generally *2 Papers*, *supra* note 1.

13. For other formulations of the women’s right to vote claim, see generally *The Memorial of Victoria C. Woodhull to the Honorable the Senate and House of Representatives of the United States in Congress Assembled* (Dec. 19, 1870) <http://hdl.loc.gov/loc.rbc/rbpe.12800900> [<https://perma.cc/72VG-CZMG>]; Albert G. Riddle, *The Right of Women to Exercise the Elective Franchise under the Fourteenth Article of the Constitution*. Speech of A. G. Riddle, in the Suffrage Convention at Washington, January 11, 1871; Rep. Benjamin F. Butler and Rep. William Loughridge, House Committee on the Judiciary, *Victoria C. Woodhull, Views of the Minority*, H.R. REP. NO. 22, pt. 2 (1871).

14. See *2 Papers*, *supra* note 1, at 274–75 (2000).

15. Courts ruled on women’s claims in Connecticut, Pennsylvania, the District of Columbia, Illinois, Missouri, and California.

16. *Van Valkenburg v. Brown*, 43 Cal. 43, 53 (1872).

person of the female sex.”¹⁷ But “test” it did. Henry Selden, her attorney, argued that the Fourteenth and Fifteenth Amendments guaranteed his client “a constitutional and lawful right to vote”;¹⁸ Associate Justice of the Supreme Court Ward Hunt, presiding in the U.S. Circuit Court for the Northern District of New York, ruled that states had indisputable authority to exclude women from the electorate.¹⁹ Delivered in June 1873, Hunt’s opinion foretold what happened when the Supreme Court ruled on Virginia Minor’s case in the spring of 1875. Citizenship, the justices opined, was simply a term for membership in a nation, and women were recognized as citizens long before ratification of the Fourteenth Amendment. They had always enjoyed the privileges and immunities of citizenship, so the question was, “whether all citizens are necessarily voters.” The Court not only answered that question in the negative but also blunted a federal role in elections. Article I, Section 4 gave Congress merely a “power of supervision” over states. In the decision’s most famous line, “the United States has no voters in the States of its own creation. The elective officers of the United States are all elected directly or indirectly by State voters.”²⁰ So ended the era of Women Already Voters—spring of 1875. An age of constitutional amendments followed.

The Nineteenth Amendment as we know it was born in 1878, when Senator Aaron Sargent of California introduced Senate Resolution 12 as a potential Sixteenth Amendment.²¹ It was a complicated birth. Sargent’s text simply adjusted the Fifteenth Amendment to substitute “on account of sex” for the original language that restricted how states could exclude voters. But that was not language used by the suffragists who favored a constitutional amendment. Sargent introduced his resolution on January 10. On either side of that date, Elizabeth Stanton delivered a speech called

17. Words handwritten on printed form, *U.S. v. Anthony*, 24 F. Cas. 829, No. 14459 (C.C.N.D. N.Y. 1873) Indictment for Illegal Voting, U.S. Dist. Ct. for the N. Dist. of N.Y., Criminal Case Files, 1899–2000, *National Archives Catalog*, ARCHIVES.GOV, <https://catalog.archives.gov/id/278295> [<https://perma.cc/TVT2-AL48>].

18. Rights of Women under the Late Constitutional Amendments. Argument of Henry R. Selden in Behalf of Susan B. Anthony, On Habeas Corpus, before the Hon. N. K. Hall, United States District Judge of the Northern District of New York, at Albany, January 21, 1873, at 2, <https://hdl.huntington.org/digital/collection/p15150coll3/id/6925> [<https://perma.cc/EGC3-ARAL>].

19. *Anthony*, 24 F.Cas. at 829 (“If the right belongs to any particular person, it is because such person is entitled to it by the laws of the state where he offers to exercise it, and not because of citizenship of the United States.”). See also AN ACCOUNT OF THE PROCEEDINGS ON THE TRIAL OF SUSAN B. ANTHONY (Rochester, N.Y., Democrat & Chronicle Book Print, 1874); and Ann D. Gordon, “U.S. v. Susan B. Anthony: The Fight for Women’s Suffrage,” FEDERAL JUDICIAL CENTER, <https://www.fjc.gov/history/famous-federal-trials/us-v-susan-b-anthony-fight-womens-suffrage> [<https://perma.cc/8T8B-9XR8>].

20. *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 170–171 (1874).

21. See S. Res. 12, 45th Cong. (1878).

National Protection for National Citizens, first to a meeting of suffragists and then to the Senate Committee on Privileges and Elections. She offered an entirely different Sixteenth Amendment text, one dating back to Congressman George Julian's attempt in 1869 to establish universal suffrage on a firmer and national foundation.²² Twice Stanton read it at the committee hearing: "The right of suffrage in the United States shall be based on citizenship, and shall be regulated by Congress, and all citizens of the United States, whether native or naturalized, shall enjoy this right equally, without any distinction or discrimination whatever founded on sex."²³ That text was circulated by the National Woman Suffrage Association from 1876 into the 1880s at least, despite the fact that the resolution before Congress was the significantly less powerful text modeled on the Fifteenth Amendment.²⁴

For nine years, Sargent's amendment could not get out of committee to the floor for a vote, in purposeful disregard of elaborate campaigns by women in support of its passage. Senators finally took it up in January 1887 and crushed it—16 yeas, 34 nays.²⁵ The defeat, coming after one of the best mobilizations reformers had ever mounted, had a lasting impact on organized advocates of woman suffrage. Activists asked, would it ever be possible to get an amendment through the Senate? Would the defeat make state amendments the only reasonable course? Were there other pathways to achieving woman suffrage through federal action? In this dark moment, talks also began about merging the rival American and National suffrage associations, raising fear among members of the National that the American's states' rights orientation would sink hopes of fighting along a federal path to suffrage.

Just as leaders consummated the merger in 1889 and 1890, suffragists began exploring a new path to enfranchisement suggested by the opinion of the Supreme Court in *Ex parte Yarbrough* (1884)²⁶—that there *was* a federal interest in the conduct of federal elections after all, expressed in Article I, Sections 2 and 4, of the Constitution. *Ex parte Yarbrough* was, at its start, a case about intimidation and violence against Berry Saunders, an African-American voter in Georgia. A group of white men were convicted of federal crimes and jailed. Their lawyers argued

22. H.R.J. Res. 15, 41st Cong. (1869).

23. 3 *Papers*, *supra* note 1, at 352–53 (2003).

24. For example, see petition text in NAT'L WOMAN SUFFRAGE ASS'N, APPEAL TO WOMEN CITIZENS OF THE UNITED STATES, TRACT 1 (1880), *microformed on* The Papers of Elizabeth Cady Stanton and Susan B. Anthony, 21:106–08 (Patricia G. Holland & Ann D. Gordon eds., 1991).

25. 49 CONG. REC. 1002–03 (1887). To review the full debate, *see id.* at 978–1003.

26. *Ex parte Yarbrough*, 110 U.S. 651 (1884).

that the federal government had no authority to criminalize private behavior surrounding elections and cited the Court's opinion in *Minor*: "the United States has no voters in the States of its own creation."²⁷ The Court ruled that Mr. Saunders was protected by federal law because "the function in which the party is engaged or the right which he is about to exercise is dependent on the laws of the United States."²⁸ States did not control federal elections. In a passage that turned earlier opinions on their heads, Associate Justice Samuel Miller explained how federalism worked in this instance.

The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for members of Congress.²⁹

The states' lock on voting rights looked a little less invincible.

Virginia and Francis Minor stepped up again. They were no doubt drawn to the case because *Ex parte Yarbrough* directly addressed the court's opinion in *Minor* and reached conclusions at variance with the earlier opinion.³⁰ In *Woman's Legal Right to the Ballot*, published in December 1886, Francis Minor looked at Article I, Section 2, of the Constitution, as had the Court in deciding *Yarbrough*, and found there a personal right to choose members of Congress that "is federal in character" and all-inclusive. Women's right to vote in federal elections was as strong as men's, even if states disfranchised them for purposes of state elections. Section 2 does not give states "power over the rights and qualifications of the federal electors."³¹ On the contrary, he wrote, it is evident "that the right to vote for federal officers is established in and by the Federal Constitution."³² The time had come, he observed, for the Supreme Court to be asked to reconsider its decision in *Minor v. Happersett*.

27. *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 170 (1874).

28. *Ex parte Yarbrough*, 110 U.S. at 662.

29. *Id.* at 663. Associate Justice Ward Hunt did not participate in this decision; he resigned from the court in 1882 after suffering a stroke.

30. *Id.* at 664.

31. Francis Minor, *Woman's Legal Right to the Ballot*, 2 FORUM, Sept. 1886, at 351, 357.

32. *Id.* at 358.

Virginia Minor traveled east for the January 1889 meeting of the National Woman Suffrage Association to read a letter from her husband on *The Law of Federal Suffrage*. He laid out the legal argument for women who wanted to return to the Supreme Court for a reversal of its decision in *Minor v. Happersett*.³³ In June 1889, the Minors published an elaboration of that letter as a pamphlet, *The Law of Federal Suffrage: An Argument in Support of*. Here Francis Minor engaged directly with *Ex parte Yarbrough*,³⁴ opening his argument with a substantial quotation from the Court's opinion and recommending that woman suffragists consider the power in Section 4 of Article I as the Court explained it. Congress could protect federal elections through its power to regulate. Woman suffragists should insist, Minor advised, that any bill introduced in Congress about regulating federal elections include political equality.³⁵ The full force of the Minors' new ideas landed in December 1891 in *Citizenship and Suffrage: The Yarbrough Decision*, published in the monthly journal *Arena*. Minor had reformulated his advice. He proposed "[a]n Act [t]o protect the right of citizens of the United States to register and to vote for members of the House of Representatives."³⁶ At all congressional elections hereafter, "the right of citizens of the United States of either sex . . . to register and to vote . . . shall not be denied . . . on account of sex."³⁷

Activists responded quickly to this fourth way, embracing federal suffrage as a goal distinct from winning a constitutional amendment. Within weeks of Minor's article appearing in the *Arena*, work was underway. Leaders of the Illinois Woman Suffrage Association founded a Federal Suffrage Association in March 1892.³⁸ The National American Woman Suffrage Association in convention in January created a Committee on Federal Suffrage and put Clara Colby in charge of the work.³⁹ On April 25, Congressman Clarence Clark, Republican of

33. WOMAN'S TRIB., Feb. 16, 1889, at 78–79.

34. 110 U.S. 651, 662 (1884).

35. FRANCIS MINOR, *THE LAW OF FEDERAL SUFFRAGE, AN ARGUMENT IN SUPPORT OF*, at 8 (1889), *microformed on Hist. of Women*, Reel 947, No. 8867 (New Haven, Conn., Res. Publ'ns 1977). A hard copy can also be found in the collection PAPERS OF OLYMPIA BROWN, CA.1849-1963, Schlesinger Library, Harvard, inscribed by Susan B. Anthony to Isabella Beecher Hooker, and by Hooker to Brown.

³⁶ Francis Minor, *Citizenship and Suffrage: The Yarbrough Decision*, 5 *ARENA*, Dec. 1891, at 68, 73.

37. *Id.* at 74.

38. *To All Friends of Liberty*, WOMAN'S TRIB., April 23, 1892; *DEMOCRATIC IDEALS: A MEMORIAL SKETCH OF CLARA B. COLBY*, ch. 6 (Olympia Brown, ed., 1917).

39. *Federal Suffrage for Women*, WOMAN'S TRIB., April 30, 1892.

Wyoming, introduced House Resolution 8369, based on Minor's text.⁴⁰ At the end of the month, Clara Colby put a petition in circulation. It read in part: "Whereas, the right to vote for members of the House of Representatives is, by the Constitution of the United States, vested in the people of the United States without condition, limitation or restriction, and women are people."⁴¹

From this start in 1892 until 1920, the idea of gaining woman suffrage via Article I of the Constitution had passionate adherents who placed a bill before Congress every year. Their bills varied, but they shared the conviction that one might separate state and federal citizenship and, along with each, separate state and federal suffrage. They also shared the belief that Congress could enfranchise women for purposes of federal elections.

As a tactical matter, this was an awkward ask: partial suffrage on a grand scale that would require states to separate their elections from federal elections. There is evidence that early advocates considered the idea as tactical, a way to bring down the enemy. Minor predicted that states, faced with the need for separate qualifications and elections, would fold quickly, ridding their constitutions of "male."⁴² In 1914, the journalist Ida Harper mused: "It is true that the amendment would confer the full suffrage on women, and this federal act would give only a vote for members of Congress, but if women helped to elect Senators and Representatives would they have to wait very long for the national amendment?"⁴³ Olympia Brown, president of the Federal Suffrage Association, called it "an opening wedge."⁴⁴

In time, the fourth way attracted some of the most powerful white suffragists in the South. They adjusted the Minors' insights to serve regional needs. Nowhere in the South had the strategy succeeded of winning woman suffrage through state governments. Where restoring and securing white supremacy were top political priorities and the Fifteenth Amendment was deemed an assault, any proposal for another federal amendment about voting rights was unwelcome. Federal suffrage could be a compromise. Rather than acting as a wedge that might discommode states and motivate them to erase "male" from their constitutions, federal suffrage showed a way to protect state control over state and local

40. 52 CONG. REC. 3639 (1892). *See also* WOMAN'S TRIB., April 16, 1892.

41. *Federal Suffrage for Women*, *supra* note 39.

42. MINOR, THE LAW OF FEDERAL SUFFRAGE, *supra* note 35, at 75.

43. DEMOCRATIC IDEALS, *supra* note 38, at 77 (quoting Mrs. Ida Husted Harper's Article in the *Washington Herald*, June 5, 1914).

44. *Id.* at 73.

elections untouched by the Fifteenth Amendment and maybe stave off a Nineteenth Amendment. If state elections and federal elections were separated and the qualifications for each differentiated, states could concede federal authority but only over congressional or other federal elections. Sallie Clay Bennett of Kentucky, an opponent of the federal amendment, succeeded Clara Colby as chair of the Committee on Federal Suffrage within the National American Woman Suffrage Association. Reporting to the 1897 convention, she sounded like a civil rights pioneer, advocating that Congress impose rules for congressional elections that protected the federal right of white and black women and black men to select members of Congress.⁴⁵ Her way would produce a bit of woman suffrage immediately and perhaps disarm those opponents who feared federal intervention by amendment more than they feared the political voices of white women. Sallie Bennett's sister Laura Clay, arguably the most powerful suffragist in the South, became a convert in 1913 and 1914 and repeatedly introduced bills to Congress up to 1920. Better to concede a constitutional point about federal suffrage while leaving the states in control of their qualifications.

During the last three decades before ratification of the Nineteenth Amendment, these were all methods of trying to break men's monopoly of political power. Money and woman-power poured into state campaigns. In most years, a federal amendment garnered the support of activists, though Congress offered women little encouragement that a measure could pass and be referred to the states. And a federal suffrage movement, born of discouragement in other avenues and a surprising turn in thinking on the Supreme Court, kept right on. Test cases to proceed to the courts may have also continued. When Sara Winthrop Smith of Connecticut testified to a congressional committee in 1894 about federal suffrage, she let them know she had tried to register to vote.⁴⁶

When the Nineteenth Amendment appears in historical memory and narrative as an inevitable and desirable objective in a long and difficult history, the complexities of changing the rights and qualifications of American voters is obscured. Rare is the scholar who places the Supreme Court's decision in *Minor v. Happersett* alongside the major cases of that

45. PROCEEDINGS OF THE TWENTY-NINTH ANNUAL CONVENTION OF THE NATIONAL AMERICAN WOMAN SUFFRAGE ASSOCIATION, AT DES MOINES, IOWA, JANUARY 26TH, 27TH, 28TH, AND 29TH 1897, at 44–45, 52 (Rachel Foster Avery ed., Philadelphia, The Association).

46. *Hearing Before the Committee on Woman Suffrage*, 53rd Cong. 22–30 (1894) (remarks of Sara Winthrop Smith).

era about voting rights for African-American men.⁴⁷ Modern analyses of *Ex parte Yarbrough*'s implications for voting rights are written as if no one noticed until the twenty-first century.⁴⁸ Excited about a centennial celebration of the Nineteenth Amendment, the public is still learning that to say of the moment of ratification "all women got the right to vote" is a statement with more than one error. Women and men are losing the opportunity to choose their leaders at this moment.

47. To pick two examples, *Minor v. Happersett* merits a parenthetical name check in RICHARD M. VALELLY, *THE TWO RECONSTRUCTIONS: THE STRUGGLE FOR BLACK ENFRANCHISEMENT* 117 (2004); while PAMELA BRANDWEIN, *RETHINKING THE JUDICIAL SETTLEMENT OF RECONSTRUCTION* (2011) omits *Minor* entirely.

48. BRANDWEIN, *supra* note 47. See also Daniel M. Katz, *Article I, Section 4 of the Constitution, the Voting Rights Act, and Restoration of the Congressional Portion of the Election Ballot*, 10 U. PA. J. L. & SOC. CHANGE 47, 47–49 (2007).