

PHYLLIS SCHLAFLY AND HOW FORGETTING WOMEN’S STRUGGLES FOR EQUALITY PERPETUATES INEQUALITY

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TABLE OF CONTENTS

INTRODUCTION	1801
I. ANTI-FEMINISTS CAPITALIZE ON AMERICA’S MISREMEMBERED PAST	1806
II. PHYLLIS SCHLAFLY AND HER ALLIES.....	1807
III. SCHLAFLY’S HEIRS	1820
CONCLUSION	1837

INTRODUCTION

At the end of 1922, the *Washington Times* asked Alice Paul to predict how “modern feminism” would shape “the course of history in the next 100 years.”¹ Paul led the National Woman’s Party, which had infuriated many men in the 1910s by picketing the White House to demand woman suffrage. She was knocked from the picket line and dragged on the ground, arrested while her assailants went free, brutalized in prison, and force-fed.²

After the Nineteenth Amendment’s ratification in 1920, Paul’s optimism was buoyant. She was only thirty-five when the Nineteenth Amendment made sex-based denials of the franchise unconstitutional, and she had already helped women achieve a major victory against ferocious opposition.³ She saw no stopping point to what women would win in the century ahead. Paul told newspaper readers in December 1922 that it would “not require one hundred years to elect a woman President of the United States” and that women would “comprise half of the membership of Congress” before 2023. She forecast that women and men would have the same economic opportunities by 2023. In sum, she was hoping and working for a world where women participate “equally in the control of government,

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1. Alice Paul, *Women Will Be Real Equals in 2023*, WASH. TIMES, Dec. 28, 1922, at 24 (emphasis omitted).

2. See INEZ HAYNES IRWIN, THE STORY OF THE WOMAN’S PARTY 232, 244–50, 254–55, 283–87 (1921); DORIS STEVENS, JAILED FOR FREEDOM 128, 184–91 (1920).

3. See JILL ELAINE HASDAY, WE THE MEN: HOW FORGETTING WOMEN’S STRUGGLES FOR EQUALITY PERPETUATES INEQUALITY 30–32 (2025).

of family, and of industry.”⁴ In 1923, Paul launched her campaign for the Equal Rights Amendment she had drafted.⁵ Paul wanted the Constitution to declare that: “Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction.”⁶

America has not reached the milestones that Paul thought would already be behind us. Although women’s rights and opportunities have unquestionably expanded over the past century, progress has not been nearly fast or far-reaching enough. Sometimes courts and legislatures have dragged women backward, taking away earlier victories.

Consider politics. Our line of male presidents remains unbroken, and a 2019 survey found just a third of Americans reporting that their neighbors would be comfortable with a female President.⁷ As of September 2025, women fill only 28.2% of the voting seats in Congress and only 33.5% of the seats in state legislatures.⁸

Consider economics. People living in families led by a woman with no spouse present are almost twice as likely to be poor as people living in families led by a man with no spouse present.⁹ The median annual earnings for women working full-time and year-round in 2023 were just 82.7% of the median annual earnings for full-time, year-round male workers, with African American women earning just 66.5% of white men’s earnings and Latinas earning just 57.8%.¹⁰ Only 11% of the chief executives at Fortune 500 companies are women.¹¹ Only 21% of the equity partners in the two hundred biggest law firms are women, and only about 3% are women of color.¹²

Consider constitutional law. After more than a century of feminist advocacy, our constitutional text still does not include an explicit

4. Paul, *supra* note 1, at 24.

5. See Alice Paul, *An Approaching Anniversary*, CHRISTIAN SCI. MONITOR, June 2, 1923, at 20; *Women Adopt Form for Equal Rights*, N.Y. TIMES, July 22, 1923 (§ 1), at 1.

6. S.J. Res. 21, 68th Cong. (1923) (internal quotation marks omitted); see also H.R.J. Res. 75, 68th Cong. (1923).

7. See Lisa Lerer, *Six Female Candidates, One Unrelenting Refrain*, N.Y. TIMES, July 4, 2019, at A1.

8. See CTR. FOR AM. WOMEN & POL., RUTGERS UNIV., WOMEN IN THE U.S. CONGRESS 2025 (2025) (copy on file with author); CTR. FOR AM. WOMEN & POL., RUTGERS UNIV., WOMEN IN STATE LEGISLATURES 2025 (2025) (copy on file with author).

9. See EMILY A. SHRIDER, U.S. DEP’T OF COM., POVERTY IN THE UNITED STATES: 2023, at 21 tbl.A-2 (2024).

10. See ARIANE HEGEWISCH, MIRANDA PETERSEN & NINA BESSER DOORLEY, INST. FOR WOMEN’S POL’Y RSCH., PUB. NO. C527, GENDER AND RACIAL WAGE GAPS WORSENERD IN 2023 AND PAY EQUITY STILL DECADES AWAY 4 tbl.1 (2024).

11. See Scott Suttell, *Cleveland Aside, Slow Progress for Female CEOs at Giant Companies*, CRAIN’S CLEV. BUS., June 9, 2025, at 6.

12. See DESTINY PEERY, NAT’L ASS’N OF WOMEN LAWS., 2020 SURVEY REPORT ON THE PROMOTION AND RETENTION OF WOMEN IN LAW FIRMS 8, 40 (2020).

commitment to sex equality. The Supreme Court reversed progress in 2022 by eliminating federal constitutional constraints on abortion regulation and empowering lawmakers to compel childbearing.¹³

These facts are striking. The urgent questions are about *why* women's inequality persists and *what* we can do about it. I want to add another dimension to that crucial conversation by focusing on new answers.

In a nation whose Constitution purports to speak for "We the People," too many of the stories that powerful Americans tell about law and society include only We the Men. America's dominant modes of forgetting about women help perpetuate women's inequality, rationalizing the status quo, promoting complacency, and undercutting reform. I argue that remembering women's stories more often and more accurately can help the nation advance toward sex equality.

Two ways of forgetting about women predominate in America's stories about itself. The first centers on simply ignoring women and their struggles for equality. Some examples are concrete (literally). A 2021 survey of federal courthouses found more than 165 named for a man and just four named for a woman.¹⁴ Only three women made a 2021 list of the fifty most frequently commemorated people in America's public monuments, compared to forty-four white men, many of them slaveholders.¹⁵ Struggles over commemorating women have drawn much less mainstream attention than commemoration conflicts framed as centrally about race,¹⁶ even though many struggles over commemorating women are simultaneously intertwined with race. Perhaps our male-dominated commemorative landscape is such a perennial fact of life that it sometimes fades into the background as we enter yet another government building with a man's name over the door or walk through yet another public square featuring a man immortalized on horseback. But commemorations are not just decorative flourishes or scenery. They shape the vision of America that we carry around with us, which is why generations of women have fought to

13. See *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022). I note at the outset that I do not mean "women" to be an exclusionary term and include transwomen within my definition of women. I also recognize that abortion regulation can directly impact anyone with the capacity to become pregnant.

14. See E-mail from Christi Chidester Votisek, Commc'ns Specialist, U.S. Gen. Servs. Admin., to author (July 28, 2021) (copy on file with author).

15. See MONUMENT LAB, NATIONAL MONUMENT AUDIT 12, 17, 19 (2021).

16. For recent examples from the vast literature focused on race and commemoration conflicts, see KAREN L. COX, *NO COMMON GROUND: CONFEDERATE MONUMENTS AND THE ONGOING FIGHT FOR RACIAL JUSTICE* (2021); CONNOR TOWNE O'NEILL, *DOWN ALONG WITH THAT DEVIL'S BONES: A RECKONING WITH MONUMENTS, MEMORY, AND THE LEGACY OF WHITE SUPREMACY* (2020).

reconstruct the commemorative landscape and why they have faced such persistent resistance.¹⁷

Women's erasure also runs through the stories that powerful Americans tell with torrents of words rather than blocks of concrete and stone. Politicians delivering odes to America on significant anniversaries commonly celebrate the Founders for establishing government by the consent of the governed. That account depends on excluding almost everyone who was not a white male property owner.¹⁸ Supreme Court opinions regularly ignore women when remembering the Court's key decisions. They skip over both rulings that offered crucial support to women striving for equality and the many cases where the Court blocked or undid women's progress.¹⁹ Law professors making lists of the Court's most important or most terrible constitutional judgments routinely omit decisions about women's rights.²⁰

Indeed, my research for my latest book, *We the Men: How Forgetting Women's Struggles for Equality Perpetuates Inequality*, surprised me by revealing how frequently legal authorities and popular writers marginalize women even within discussions of women's status. When judicial opinions mention women, judges on and off the Supreme Court often write as if men decided on their own to expand women's rights and opportunities. I call these tales "spontaneous enlightenment stories," and they feature in generations of popular press and political debates as well.²¹ These stories attribute progress to consensus and men's wisdom while erasing the conflict and female agency that forward momentum required, with women needing to demand change and fight for reform against determined opponents.

Women's frequent erasure coexists with a second form of forgetting in America's dominant stories about itself: forgetting the work the nation still has to do. Many of us have encountered contemporaries who announce or assume that the United States has left the sexist bad old days behind, perhaps while offering assurances that any remaining disparities are unimportant or on the verge of disappearing as a matter of course. What I did not realize is

17. See HASDAY, *supra* note 3, at 44–54, 60–70.

18. See *id.* at 54–57.

19. See *id.* at 13–35.

20. See AKHIL REED AMAR, *AMERICA'S UNWRITTEN CONSTITUTION: THE PRECEDENTS AND PRINCIPLES WE LIVE BY* 245–75 (2012); KERMIT ROOSEVELT III, *THE NATION THAT NEVER WAS: RECONSTRUCTING AMERICA'S STORY* 123 (2022); J.M. Balkin & Sanford Levinson, *The Canons of Constitutional Law*, 111 HARV. L. REV. 963, 1018–19 (1998); Jamal Greene, *The Anticanon*, 125 HARV. L. REV. 379, 380–87 (2011); Anita S. Krishnakumar, *On the Evolution of the Canonical Dissent*, 52 RUTGERS L. REV. 781, 781–82, 790–91, 800–03 (2000); Richard A. Primus, *Canon, Anti-Canon, and Judicial Dissent*, 48 DUKE L.J. 243, 250–57 (1998); Ilya Somin, *The Case for Expanding the Anticanon of Constitutional Law*, 2023 WIS. L. REV. 575, 576–77.

21. See HASDAY, *supra* note 3, at 18–35.

just how early in American history those premature declarations began appearing and how important a role they have played in perpetuating inequality.²²

Wildly exaggerated accounts of the nation's progress toward sex equality have been common in everyday settings and rarefied legal institutions since before the Nineteenth Amendment's 1920 ratification made sex-based disenfranchisement unconstitutional. These stories forget what remains undone, even to the point of proclaiming that the United States has already achieved sex equality.²³ For over a century, waves of popular media and schoolchildren's textbooks have been telling Americans that women have been "emancipated" (asserted as early as 1892),²⁴ that no one "will now seriously defend the 'subjection' of woman" (1912),²⁵ that "[a]ll men and women are regarded as equals before the law" (1918).²⁶ Popular writers and textbook authors have routinely framed these declarations in terms of American women universally, although white women have tended to be top of mind. Judges have been suggesting or proclaiming that the nation has moved past sex discrimination for almost as long as American women have been mobilizing to challenge male supremacy.²⁷

Courts routinely make their rosier pronouncements about America's commitment to sex equality while issuing judgments that maintain or exacerbate inequality.²⁸ The practice extends generations back and appears as recently as the Supreme Court's 2022 decision removing federal constitutional restraints on legislative power to prohibit abortion.²⁹ I call these decisions "self-contradictory victory announcements" because they simultaneously trumpet the nation's triumph over inequality and facilitate inequality's persistence.³⁰ The self-contradiction serves a purpose, as the loud overstatements about American progress help judges rationalize their decisions impeding that progress. What's the urgency for safeguarding or strengthening women's rights if America has already come so far?

Politicians and political activists have capitalized on the American inclination to overstate the reach of reform. Asserting that America has

22. See *id.* at 92–111.

23. See *id.* at 71–111.

24. *The Emancipation of Women*, AUSTIN DAILY STATESMAN, Sept. 9, 1892, at 2.

25. For examples of reprintings, see *World Grows Better*, SUNDAY STAR (D.C.), Feb. 4, 1912 (pt. II), at 7; *World's Progress Morally*, L.A. TIMES, Mar. 17, 1912 (pt. III), at 17; see also Marcel Prevost, *Women Afraid of Liberty*, WASH. POST, May 28, 1905 (pt. 4), at 7.

26. GRACE A. TURKINGTON, MY COUNTRY: A TEXTBOOK IN CIVICS AND PATRIOTISM FOR YOUNG AMERICANS 336 (1918).

27. See HASDAY, *supra* note 3, at 73–91.

28. See *id.* at 80–91, 115–46.

29. For the decision, see *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022).

30. See HASDAY, *supra* note 3, at 73, 80–81.

already established women's equality has helped a half century of anti-feminists—like anti-suffragists before them—battle feminist mobilization and champion regression while simultaneously claiming to support women's rights. Opponents of the Equal Rights Amendment, whether today or in the 1970s and 1980s, have insisted that the amendment is unnecessary because America has already vanquished sex discrimination. That contention rang through the halls of Congress as I wrote *We the Men*, deployed whenever federal lawmakers wanted to fight against removing procedural hurdles and recognizing the ERA as part of the Constitution. Anti-feminists have wielded similarly sweeping and premature pronouncements to oppose government support for childcare programs, combat abortion rights, and condemn affirmative action.

In sum, ignoring women's struggles and exaggerating the nation's progress have practical consequences. These strategies obscure how women's inequality has been an organizing feature of American life, frame the issue as wholly or nearly resolved, and promise that America can achieve any additional advances smoothly through consensus without needing organized efforts to overcome impassioned resistance. They allow judges, politicians, and other powerful Americans to criticize (supposedly) abandoned practices, while diverting attention from scrutinizing unequal practices that persist. They tell women to be satisfied and to abandon further mobilization.

My contribution to this symposium focuses on these crucial tools in the anti-feminist arsenal. The pages of the *Washington University Law Review* are a particularly appropriate place to highlight the legacy of Phyllis Schlafly (class of 1978).³¹

I. ANTI-FEMINISTS CAPITALIZE ON AMERICA'S MISREMEMBERED PAST

Exploiting and reinforcing America's penchant for overstating progress toward sex equality has been a key strategy for conservative and reactionary forces since as early as the anti-suffrage movement in the nineteenth and early twentieth centuries. Anti-suffragists commonly insisted that female enfranchisement was unnecessary because "all legal disabilities of women" had already "been removed by men,"³² or were "fast passing away."³³ On

31. For confirmation of Schlafly's December 21, 1978, graduation from Washington University School of Law, see Washington University in Saint Louis, One Hundred Eighteenth Commencement 26 (May 18, 1979) (copy on file with author; Washington University Libraries, University Archives, Department of Special Collections).

32. Fred Perry Powers, *Feminism and Socialism*, 3 UNPOPULAR REV. 118, 118 (1915).

33. L.P. BROCKETT, WOMAN: HER RIGHTS, WRONGS, PRIVILEGES AND RESPONSIBILITIES 332 (Cincinnati, Howe's Subscription Book Concern 1869).

their accounts, there was not “one scintilla of truth in the assertion that woman is oppressed.”³⁴

This Article explores modern manifestations of that hoary political tradition, using internal movement documents along with external primary sources to examine a half century of activism against feminist initiatives. Anti-feminists in the late twentieth and early twenty-first centuries have wielded the contention that America has already established women's equality, leaning on that assertion as they combat feminist reform and promote regression while simultaneously claiming to support women's rights. I begin with the crusade that Phyllis Schlafly and her allies waged in the 1970s and 1980s to stop ratification of the Equal Rights Amendment, which repeatedly relied on assertions about the achievement of women's equality that purported to be universal but had white middle-class heterosexual women foremost in mind. I then turn to Schlafly's ideological heirs battling feminist mobilization in the decades since. Anti-feminists have followed Schlafly's playbook, deploying declarations of victory over sex discrimination to condemn affirmative action, lobby against government support for childcare, oppose abortion rights, fight revitalized efforts to add the ERA to the Constitution, and more.

II. PHYLLIS SCHLAFLY AND HER ALLIES

When feminist activism resurged in the last decades of the twentieth century, countermobilizing anti-feminists promptly tapped into the American inclination to exaggerate progress and forget what remains undone.³⁵ Claims that women's equality was an accomplished fact in the United States soon swirled around efforts to block the Equal Rights Amendment.

Feminist mobilization in the late 1960s and early 1970s amplified interest in the ERA, which Alice Paul's allies first introduced in Congress in 1923.³⁶ Representative Shirley Chisholm of New York was a committed advocate. Her election as the first African American congresswoman had been front-page news in November 1968.³⁷ When Chisholm reintroduced the ERA in the House in May 1969, she assailed one of “the commonest

34. 2 DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF CALIFORNIA 1006 (Sacramento, State Office 1881) (statement of James Caples); *see also* Editorial, DAILY INDEP. (Santa Barbara), Jan. 2, 1895, at 2; Mrs. G.H. Shaw, *Reasons Against Woman Suffrage*, REMONSTRANCE, Jan. 1908, at 1, 2; *Why Women Should Not Vote*, RUTLAND DAILY HERALD, Feb. 23, 1911, at 7.

35. *See, e.g.*, Midge Decter, *The Liberated Woman*, COMMENTARY, Oct. 1970, at 33, 43.

36. *See* H.R.J. Res. 75, 68th Cong. (1923); S.J. Res. 21, 68th Cong. (1923).

37. *See* Richard L. Madden, *Mrs. Chisholm Defeats Farmer, Is First Negro Woman in House*, N.Y. TIMES, Nov. 6, 1968, at 1.

arguments” against the amendment, “that women are already protected under the law and do not need legislation.” Chisholm argued that “the concentration of women in lower paying, menial, unrewarding jobs and their incredible scarcity in the upper level jobs” was “[s]ufficient proof” that “[e]xisting laws are not adequate to secure equal rights for women.” As Chisholm asked: “If women are already equal, why is it such an event whenever one happens to be elected to Congress?”³⁸

Gloria Steinem, a feminist writer and editor who would go on to co-found *Ms. magazine*,³⁹ also drew attention to how sweeping exaggerations about American progress were deployed against the ERA. Her May 1970 testimony urging a Senate subcommittee to support the amendment decried the “myth” “that women are already treated equally in this society” and emphasized “that equal pay for equal work, equal chance for advancement, and equal training or encouragement is obscenely scarce in every field.”⁴⁰

Later that year, Representative Martha Griffiths of Michigan mobilized support for a discharge vote that freed the ERA from the House Judiciary Committee and brought the amendment to the House floor on August 10, 1970.⁴¹ The ERA passed the House the same day, but then died in the Senate.⁴² The amendment finally got through the next Congress on March 22, 1972, when the Senate passed the ERA five months after the House had again voted favorably.⁴³ The amendment Congress sent to the states provided that: “Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.”⁴⁴

At that point, feminists needed to convince three-quarters of the state legislatures—thirty-eight—to ratify the amendment.⁴⁵ Efforts to stop the ERA intensified exponentially as ratification campaigns began.

Phyllis Schlafly was a conservative Republican activist known for the widely circulated book she wrote and privately published to promote

38. 115 CONG. REC. 13,380 (1969) (statement of Rep. Shirley Chisholm).

39. See *The “Equal Rights” Amendment: Hearings on S.J. Res. 61 Before the Subcomm. on Const. Amends. of the S. Comm. on the Judiciary*, 91st Cong. 331 (1970) [hereinafter *The “Equal Rights” Amendment*] (statement of Gloria Steinem); *Ms.*, Spring 1972, at 4 (masthead).

40. *The “Equal Rights” Amendment*, *supra* note 39, at 333 (statement of Gloria Steinem) (typographical error in original corrected, scare to scarce).

41. For the discharge vote and onset of floor debate, see 116 CONG. REC. 28,004 (1970).

42. For the House vote, see 116 CONG. REC. 28,036–37 (1970). On the ERA dying in the Senate, see *Equal Rights for Women Amendment Dropped in Senate*, 26 CONG. Q. ALMANAC 706, 706 (1970).

43. For the Senate vote, see 118 CONG. REC. 9598 (1972). For the House vote, see 117 CONG. REC. 35,815 (1971).

44. H.R.J. Res. 208, 92d Cong., 86 Stat. 1523 (1972).

45. For constitutional amendment requirements, see U.S. CONST. art. V.

Senator Barry Goldwater's 1964 presidential run.⁴⁶ She launched her own newsletter and fundraising operation after a more moderate rival (who supported the ERA) bested her in a bitterly fought May 1967 election for the presidency of the National Federation of Republican Women.⁴⁷ The inaugural issue of *The Phyllis Schlafly Report* appeared in August 1967, complete with appeals for donations to the "Eagle Trust Fund" and allegations of "irregularities and illegalities" in the election Schlafly had just lost.⁴⁸ Schlafly also spent the summer of 1967 urging Republican women's clubs to divert to the Eagle Trust Fund some of the dues they would have otherwise sent to the National Federation of Republican Women.⁴⁹

The Phyllis Schlafly Report first discussed the ERA a month before the amendment passed Congress, when Schlafly devoted her February 1972 newsletter to explaining "What's Wrong with 'Equal Rights' for Women."⁵⁰ It was not immediately apparent that ERA opposition would become Schlafly's signature issue, and the next edition of her newsletter moved on to a diatribe against busing.⁵¹ But by May 1972, Schlafly was announcing that her February attack on the ERA had drawn "the biggest response in the five-year history of this newsletter."⁵² After that encouragement, she launched a multiyear crusade against the ERA, waged in newsletters, endless public appearances, and an anti-feminist manifesto, *The Power of the Positive Woman* (1977).⁵³ Schlafly and the organizations she founded

46. For the book, see PHYLLIS SCHLAFLY, *A CHOICE NOT AN ECHO* (1964). For discussion of the book's publication and circulation, see STEPHEN SHADEGG, *WHAT HAPPENED TO GOLDWATER? THE INSIDE STORY OF THE 1964 REPUBLICAN CAMPAIGN* 124, 262, 266 (1965); *'Choice' Book on GOP Rule Best Seller*, *DEMOCRAT & CHRON.* (Rochester), July 14, 1964, at 2A; Donald Janson, *Extremist Book Sales Soar Despite Criticism in G.O.P.*, *N.Y. TIMES*, Oct. 4, 1964, at 76; Russell Kirk, *Holding LBJ Up by the Ears*, *S.F. EXAM'R*, Oct. 11, 1964 (Book Week), at 5; Lewis Nichols, *In and Out of Books*, *N.Y. TIMES*, Oct. 4, 1964 (§ 7), at 8.

47. On the election, see David S. Broder, *GOP Elects Mrs. O'Donnell*, *WASH. POST*, May 7, 1967, at A1; Thomas J. Foley, *Mrs. O'Donnell Elected to Head GOP Federation*, *L.A. TIMES*, May 7, 1967, at A1; *The Making of a President*, *TIME*, May 12, 1967, at 21. On her rival's support for the ERA, see *Equal Rights 1970: Hearings on S.J. Res. 61 and S.J. Res. 231 Before the S. Comm. on the Judiciary*, 91st Cong. 344-49 (1970) (statement of Gladys O'Donnell, President, National Federation of Republican Women).

48. For the allegations, see *NFRW Club Action*, PHYLLIS SCHLAFLY REP., Aug. 1967, at 3, 3. Schlafly solicited donations to the Eagle Trust Fund on the same page.

49. See Warren Weaver Jr., *Defeated Leader Sets Up a Rival Group for Republican Women*, *N.Y. TIMES*, Aug. 9, 1967, at 21.

50. *What's Wrong with "Equal Rights" for Women?*, PHYLLIS SCHLAFLY REP., Feb. 1972, at 1.

51. *See The Growing Momentum Against Busing*, PHYLLIS SCHLAFLY REP., Mar. 1972, at 1.

52. *The Fraud Called the Equal Rights Amendment*, PHYLLIS SCHLAFLY REP., May 1972, at 1, 3.

53. This Article will discuss many of those newsletters. For examples of public appearances, see *A Heated Debate on the ERA*, *WASH. POST*, Mar. 17, 1977, at D17; Louise Solomon, *Schlafly, MacKinnon Debate Women's Rights*, *STAN. DAILY*, Jan. 27, 1982, at 1. For the manifesto, see PHYLLIS SCHLAFLY, *THE POWER OF THE POSITIVE WOMAN* (1977).

and ran—Stop ERA and Eagle Forum—became the driving forces fighting ratification.⁵⁴

Schlafly emphasized two central arguments. She insisted that the ERA was unnecessary because America had already achieved women’s equality, and she warned that the ERA was dangerous because it threatened women’s domesticity. Schlafly drew on these two themes to oppose a constitutional prohibition on sex discrimination while claiming to support sex equality.

Schlafly maintained that America had eradicated discrimination against women, as a matter of law and fact. In February 1972, only three months had passed since the Supreme Court first struck down legislation for denying women equal protection.⁵⁵ The median woman working full-time and year-round in 1972 earned just 57.9 cents for every dollar a full-time, year-round male worker made.⁵⁶ Nonetheless, Schlafly characterized “[t]he claim that American women are downtrodden and unfairly treated” as “the fraud of the century.”⁵⁷ Schlafly’s proclamation purported to encompass American women as a whole, but she was clearly focused on straight white middle-class women in particular. When Schlafly asserted that “[of] all the classes of people who ever lived, the American woman is the most privileged,”⁵⁸ or criticized Russia for having “women do the heavy, dirty work American women do not do,”⁵⁹ she hardly seemed to be thinking about the impoverished women of color toiling in America’s agricultural fields. Schlafly’s insistence that “American women do *not* want to be liberated from husbands and children” likewise dismissed women who desired female partners, nonmarital relationships, or solitude.⁶⁰

By 1977, Schlafly was announcing “that the Positive Woman in America today faces a future in which her educational and employment options are unlimited.”⁶¹ She reported that “[t]here is no law that discriminates against women.”⁶² She promised that “the Positive Woman in America today has a near-infinite opportunity to control her own destiny, to reach new heights of achievement, and to motivate and influence others. Her potential is

54. On the founding of Stop ERA in 1972 and Eagle Forum in 1975, see *A Short History of E.R.A.*, PHYLLIS SCHLAFLY REP., Sept. 1986, at 1. On Schlafly’s centrality, see sources cited *infra* notes 124–125.

55. See *Reed v. Reed*, 404 U.S. 71 (1971).

56. See EMILY A. SHRIDER, MELISSA KOLLAR, FRANCES CHEN & JESSICA SEMEGA, U.S. DEP’T OF COM., *INCOME AND POVERTY IN THE UNITED STATES: 2020*, at 47 tbl.A-7 (2021).

57. *What’s Wrong with “Equal Rights” for Women?*, *supra* note 50, at 2.

58. *Id.* at 1.

59. *Id.* at 3.

60. *Id.* at 4.

61. SCHLAFLY, *supra* note 53, at 35.

62. *Id.* at 138.

limited only by the artificial barriers erected by a negative view of herself or by the stultifying myths of the women's liberation movement."⁶³

On Schlafly's account, powerful men, rather than feminist women, were responsible for the nation's progress. She endlessly emphasized that Congress had prohibited sex discrimination in employment, education, and credit, with statutes like the 1963 Equal Pay Act, the 1964 Civil Rights Act, the 1972 Equal Employment Opportunity Act, the 1972 Education Amendments, and the 1974 Equal Credit Opportunity Act.⁶⁴ Schlafly reported that this legislation meant that "[e]qual pay for equal work is guaranteed," that women have "[c]omplete protection against discrimination" in employment,⁶⁵ that women enjoy "equal employment opportunity."⁶⁶ Indeed, she proclaimed that "[f]ederal legislation is already more than adequate to assure women of everything they could reasonably want. Women are fully guaranteed equality in educational opportunities, admissions, and employment."⁶⁷ Schlafly's touting of federal civil rights laws proceeded as if male legislators had enacted prohibitions on sex discrimination easily and on their own initiative. She never discussed how feminists within and outside Congress had fought for this legislation against powerful resistance, presumably because she was loath to acknowledge the contributions of feminist mobilization.⁶⁸ Schlafly also chose not to mention that Goldwater—the politician with whom she had most closely identified herself—opposed federal prohibitions on employment discrimination and voted against the 1964 Civil Rights Act and the 1972 Equal Employment Opportunity Act.⁶⁹

This 1976 photograph from a Stop ERA rally in the Illinois capitol rotunda (Figure 1) illustrates how Schlafly's campaign sought to present the amendment as unnecessary in a nation that had purportedly established

63. *Id.* at 29.

64. *See id.* at 34–35, 69–70, 118–19; *The Right to Be a Woman*, PHYLLIS SCHLAFLY REP., Nov. 1972, at 3; *ERA Won't Help Women in Education*, PHYLLIS SCHLAFLY REP., Sept. 1973, at 1; *HEW Regulations About "Sexism" in the Schools*, PHYLLIS SCHLAFLY REP., Aug. 1974, at 1; *E.R.A.'s Assist to Abortion*, PHYLLIS SCHLAFLY REP., Dec. 1974, at 2; *How E.R.A. Will Hurt Men*, PHYLLIS SCHLAFLY REP., May 1975, at 1, 2; *Big Money and Tough Tactics to Ratify E.R.A.*, PHYLLIS SCHLAFLY REP., June 1975, at 1; *The Hypocrisy of ERA Proponents*, PHYLLIS SCHLAFLY REP., July 1975, at 1, 2; *Women's Magazines Promote ERA -- but Deny Equal Rights*, PHYLLIS SCHLAFLY REP., Dec. 1979, at 1, 3; *A Short History of E.R.A.*, *supra* note 54, at 2.

65. *The Right to Be a Woman*, *supra* note 64, at 3 (internal quotation marks omitted).

66. *A Short History of E.R.A.*, *supra* note 54, at 2.

67. *ERA Won't Help Women in Education*, *supra* note 64, at 1.

68. On women's mobilization for the sex discrimination prohibition in Title VII of the 1964 Civil Rights Act, see HASDAY, *supra* note 3, at 35–43.

69. For Goldwater's 1972 vote, see 118 CONG. REC. 4948 (1972). For Goldwater's 1964 vote, see 110 CONG. REC. 14,511 (1964). For Goldwater explaining his 1964 vote, see *id.* at 14,318–19.

women's equality.⁷⁰ Schlafly, then in her fifth year fighting ratification in Illinois,⁷¹ sang into a bullhorn backed by singing supporters holding signs. One sign read: "We HAVE EQUAL Job Opportunities." Another asked: "NEW ILLINOIS CONSTITUTION provides . . . equal work, equal pay — why then, ERA?"⁷²

FIGURE 1. *Magnifying Her Voice Against ERA*, CHICAGO TRIBUNE, April 28, 1976.



Schlafly paired her praise for male politicians with the insistence that male inventors and capitalists had been even more crucial to women's liberation. By the 1970s, Americans had heard from a long line of cultural arbiters inclined to identify advances in household technology and consumer products—rather than changes in law and society—as the key engines driving improvements in women's lives.⁷³ The theme was common enough that hints could seep into America's waging of the Cold War. In 1959, then-Vice President Richard Nixon and Soviet Premier Nikita

70. On the April 27, 1976, rally, see *ERA Opponents Rally in Rotunda of Capitol*, DECATUR HERALD, Apr. 28, 1976, at 27.

71. See *id.*

72. For publication of this photograph, see *Magnifying Her Voice Against ERA*, CHI. TRIB., Apr. 28, 1976 (§ 1), at 5. For the image, see Bettmann via Getty Images (editorial no. 933169356; copy on file with author).

73. See, e.g., FREMONT P. WIRTH, UNITED STATES HISTORY 689–90 (1949); HASDAY, *supra* note 3, at 96.

Khrushchev toured a model house that was part of the American National Exhibition in Moscow.⁷⁴ Nixon pointed to a late-model American washing machine as evidence of capitalism's superiority over communism. He told Khrushchev and the world press: "In America, these are designed to make things easier for our women."⁷⁵

Schlafly drew on this tradition from her very first newsletter on the ERA, maintaining that legal reforms were less important for women than technological advances that facilitated housework:

The real liberation of women from the backbreaking drudgery of centuries is the American free enterprise system which stimulated inventive geniuses to pursue their talents -- and we all reap the profits. The great heroes of women's liberation are not the straggly-haired women on television talk shows and picket lines, but Thomas Edison who brought the miracle of electricity to our homes to give light and to run all those labor-saving devices -- the equivalent, perhaps, of a half-dozen household servants for every middle-class American woman. Or Elias Howe who gave us the sewing machine which resulted in such an abundance of readymade clothing. Or Clarence Birdseye who invented the process for freezing foods. Or Henry Ford, who mass-produced the automobile so that it is within the price-range of every American, man or woman.⁷⁶

Schlafly's argument presumed that women were responsible for keeping neat homes (and hairstyles) while contending that housework was no longer burdensome for American women unable to afford servants because of the men who invented, manufactured, and sold home appliances and consumer goods. In fact, considerable research—and lived experience—made clear that housework's demands on women's time had remained remarkably consistent before and after technological advances, as new inventions led to more exacting standards rather than greater freedom.⁷⁷ Schlafly's decision to include Henry Ford, a notorious antisemite, in her pantheon of male heroes was also jarring and perhaps revelatory.⁷⁸

74. See *A Handshake—Then a Clash*, U.S. NEWS & WORLD REP., Aug. 3, 1959, at 71, 71; *The Two Worlds: A Day-Long Debate*, N.Y. TIMES, July 25, 1959, at 1.

75. *Encounter*, NEWSWEEK, Aug. 3, 1959, at 15, 16 (quoting Richard Nixon) (internal quotation marks omitted).

76. *What's Wrong with "Equal Rights" for Women?*, *supra* note 50, at 2; see also SCHLAFLY, *supra* note 53, at 30–31; Vicki Rutledge, *You've Come a Long Way Baby, but Who Gave You a Lift?*, PHYLLIS SCHLAFLY REP., Jan. 1974, at 4.

77. See RUTH SCHWARTZ COWAN, *MORE WORK FOR MOTHER: THE IRONIES OF HOUSEHOLD TECHNOLOGY FROM THE OPEN HEARTH TO THE MICROWAVE 199–201, 210–16* (1983).

78. For a notorious example from "The Ford International Weekly," see *The International Jew: The World's Problem*, DEARBORN INDEP., May 22, 1920, at 1.

But Schlafly ignored all that in her simultaneous determination to insist that modern American women had nothing to complain about and deny that feminist activism had helped improve women's lives. She told the middle class: "Militant women's liberationists did not produce automatic washers and dryers. It was the American competitive system that manufactured appliances cheap enough for the average American family to afford."⁷⁹

Schlafly's second major line of attack fit with her odes to home appliances. If the ERA was unnecessary because women already had legal, economic, and practical equality, the amendment was dangerous because it would take women from domesticity and "deprive the American woman of her most cherished right of all -- the right to stay home, keep her baby, and be supported by her husband."⁸⁰ Schlafly charged that "[t]he women's libbers are radicals who are waging a total assault on the family, on marriage, and on children."⁸¹ She contended that the ERA would force women to work outside the home, taking "away a woman's present *freedom of choice* to take a job — or to be a full-time wife and mother. In short, it will take away the right to be a woman."⁸²

Schlafly's case against the ERA glossed over the deep internal tensions permeating her constitutional advocacy, her legislative assessment, and her reporting on the facts of women's lives. The constitutional tension was perhaps most glaring: Schlafly used the contention that America had already embraced sex equality as a reason *not* to include a commitment to sex equality in the Constitution. But why wouldn't the nation express its deepest values in its foundational governing document?

Schlafly's overview of the legislative landscape could also induce vertigo. She declared that "[t]here is no law that discriminates against women" while simultaneously applauding state legislation that continued to discriminate against women.⁸³ Some of this contradiction centered on lesbians, whom Schlafly openly denigrated and lumped together with prostitutes and swingers.⁸⁴ Schlafly recognized that prohibitions on same-sex marriage were a form of sex discrimination against lesbians, but never

79. SCHLAFLY, *supra* note 53, at 32.

80. *The Fraud Called the Equal Rights Amendment*, *supra* note 52, at 4; *see also* SCHLAFLY, *supra* note 53, at 33.

81. *What's Wrong with "Equal Rights" for Women?*, *supra* note 50, at 3.

82. *The Right to Be a Woman*, *supra* note 64, at 4; *see also* SCHLAFLY, *supra* note 53, at 70–79; *The Precious Rights ERA Will Take Away from Wives*, PHYLLIS SCHLAFLY REP., Aug. 1973, at 1, 1–4; *Effect of ERA on Family Property Rights*, PHYLLIS SCHLAFLY REP., Jan. 1974, at 1; *Why Virginia Rejected ERA*, PHYLLIS SCHLAFLY REP., June 1974, at 1, 1–2; *The Legislative History of ERA*, PHYLLIS SCHLAFLY REP., Nov. 1976, at 1, 2.

83. SCHLAFLY, *supra* note 53, at 138.

84. *See id.* at 166. For more denigration, *see id.* at 12, 25, 89–93, 95, 140–42, 164; *How E.R.A. Will Hurt Men*, *supra* note 64, at 2.

acknowledged that the persistence of those prohibitions in every state despite growing mobilization for reform undercut her assertion that the law had already eradicated discrimination against women. Instead, she endorsed same-sex marriage bans and warned that the ERA would undo them.⁸⁵

Schlafly similarly contradicted herself when discussing the legislative treatment of heterosexual marriage, never exploring the inconsistencies between her declarations about the end of legal discrimination against women and her praise for state statutes that continued to privilege husbands over wives. Schlafly celebrated “the laws that give the husband the right to establish the domicile of the marriage and to give his surname to his children” as “good laws designed to keep the family together.”⁸⁶ She argued that this legislation was wise to uphold patriarchal control. In her words: “Every successful country and company has one ‘chief executive officer.’ None successfully functions with responsibility equally divided between cochairmen or copresidents. . . . If marriage is to be a successful institution, it must likewise have an ultimate decision maker, and that is the husband.”⁸⁷ Schlafly did not explain how women could be legal equals while legislation still enforced male supremacy.

Schlafly's discussion of workplace law was likewise riddled with contradiction. She praised federal civil rights statutes for purportedly eradicating employment discrimination against women, but simultaneously sought to revise this legislation to augment men's legal advantages. Schlafly opposed “job preference for employed women in order to achieve arbitrary race and sex quotas,” and contended that “[r]everse discrimination unjustly discriminates against the person who is trying to support a family.” As those statements suggest, Schlafly paired her opposition to affirmative action for women and people of color with advocacy seeking a boost for male breadwinners in the job market. She urged Congress to amend federal antidiscrimination law “to authorize employers to give job preference in hiring and promotions and retentions during layoffs to the spouse designated as the ‘principal wage earner’ in each family.”⁸⁸ While facially sex-neutral, this proposal would have predictably benefited married men and set back married women hoping to obtain or retain a job a man might want.

85. See SCHLAFLY, *supra* note 53, at 89–92; *ERA and Homosexual “Marriages,”* PHYLLIS SCHLAFLY REP., Sept. 1974, at 1; *E.R.A.'s Assist to Abortion*, *supra* note 64, at 2; *The Hypocrisy of ERA Proponents*, *supra* note 64, at 3; *Who Will Profit from ERA?*, PHYLLIS SCHLAFLY REP., July 1975, at 4; *A Short History of E.R.A.*, *supra* note 54, at 2.

86. SCHLAFLY, *supra* note 53, at 50; *see also id.* at 93.

87. *Id.* at 50; *see also id.* at 54–55; *How E.R.A. Will Hurt Men*, *supra* note 64, at 2–3.

88. SCHLAFLY, *supra* note 53, at 165; *see also id.* at 23–24, 94; *Unemployment -- Causes and Solutions*, PHYLLIS SCHLAFLY REP., Nov. 1975, at 1, 1–2.

Schlafly twisted herself into more knots when dismissing inconvenient facts, such as women's underrepresentation in political leadership. Although Schlafly proclaimed that women had unlimited opportunities, she knew "that women hold only a small minority of seats in Congress, state legislatures, and national, state, and local boards and commissions."⁸⁹ Schlafly sought to explain away that stark reality by attributing female marginalization to women's supposedly insufficient drive and ambition for political success. She declared in 1977 that "[t]he fact that there may be only 18 women out of 535 members of Congress does not prove discrimination at all."⁹⁰ Instead, "[t]he small number of women in Congress proves only that most women do not want to do the things that must be done to win election—drive all those thousands of miles, shake all those strangers' hands, eat all those third-rate chicken suppers, attend political meetings every night and weekend, subject themselves to press and political attacks that impugn their integrity and their motives, and face probes into personal life and finances."⁹¹ The meandering sentence was a nonresponsive distraction. While most women do not want to run for elected office, neither do most men. Where was Schlafly's evidence for the assertion that discrimination did not factor into women's underrepresentation in Congress? Her own career suggested that sexism still impeded opportunity—even for extraordinarily hardworking and ambitious women.

Schlafly ran for Congress in 1952 and 1970, campaigning tirelessly to become the first woman to represent her Illinois district only to lose to men twice.⁹² While multiple issues potentially contributed to her defeats,⁹³ gender was an inescapable part of both elections. News coverage in 1952 described Schlafly as "an attractive Alton housewife,"⁹⁴ a "tall, honey-haired political fledgling,"⁹⁵ an "attractive brunet."⁹⁶ A September 1970

89. SCHLAFLY, *supra* note 53, at 38; *see also id.* at 37.

90. SCHLAFLY, *supra* note 53, at 38.

91. *Id.* at 39.

92. On Schlafly's 1952 campaigning, see O.T. Banton, *State GOP Pledges Change in Truck Fee Law, Names 10 Taft Delegates*, DECATUR HERALD, June 24, 1952, at 1; *Mrs. Phyllis Schlafly Drives for District Seat in Congress*, ALTON EVENING TEL., Feb. 27, 1952, at 2; *Mrs. Schlafly Glad McGlynn Opposes Her*, BELLEVILLE DAILY ADVOC., Mar. 27, 1952, at 1. On Schlafly's 1952 loss, see *Price Is Winner 112,889 to 61,866*, ALTON EVENING TEL., Nov. 5, 1952, at 1. On Schlafly's 1970 campaigning, see *Barbecue for Phyllis Schlafly Attended by Many Saturday*, ALTAMONT NEWS, Oct. 15, 1970, at 1; Adam Clymer, *Illinois Race's Key Is Locality*, SUN (Baltimore), Sept. 14, 1970, at A8; *Schlafly: Must Defeats Dems*, DIXON EVENING TEL., Oct. 13, 1970, at 2. On Schlafly's 1970 loss, see source cited *infra* note 100.

93. For Schlafly offering explanations for her 1970 loss, see G. Robert Hillman, *Mrs. Schlafly Shatters Mold*, INDIANAPOLIS NEWS, Jan. 4, 1978, at 20.

94. *Woman Wins Nomination for Congress*, DIXON EVENING TEL., Apr. 10, 1952, at 13.

95. Mary Kimbrough, *Housewife Who's Running for Congress*, ST. LOUIS POST-DISPATCH, Mar. 3, 1952, at 2D.

96. *She's Cooking Up Campaign*, STATE J. (Lansing), Apr. 10, 1952, at 12.

news article on Schlafly's second campaign reported that she was running in "a district where many persons, women among them, distrust the idea of women politicians," and observed that anyone who saw Schlafly's billboard photograph "may join the ranks of those who refer to the subject of the highway advertising as 'that woman with her mouth open.'"⁹⁷

By the next month of her campaign, Schlafly was willing to allude to sexism as an obstacle to her political ambitions. "My opponent says a woman's place is in the home," she acknowledged when addressing an October 1970 lunchtime audience in a Shelbyville church basement. "But my husband replies that a woman's place is in the House—the United States House of Representatives."⁹⁸

Schlafly projected optimism about her electoral chances the second time around, telling the press shortly before the election: "I think I'm ahead because no one can outwork me."⁹⁹ Yet Schlafly's unmatched work ethic did not pay off at the polls. She lost in November 1970,¹⁰⁰ which left her with the free time to launch her anti-ERA campaign denying the persistence of discrimination against women.

By 1980, Schlafly's energetic and effective crusade against the ERA had made her a pivotal figure in what she called "the pro-family coalition" propelling the New Right.¹⁰¹ Schlafly signaled in the media that she wanted an important post in Ronald Reagan's incoming presidential administration,¹⁰² and that ambition sparked popular commentary.¹⁰³

She was passed over. Women held only ten of the first hundred and ten key appointments to Reagan's transition team, and each of the first ten people Reagan chose for a cabinet-level position was a white man.¹⁰⁴

Despite—or because of—these tensions in her arguments, Schlafly attracted many allies who echoed her attacks on the ERA. Some of the like-minded joined Schlafly's organizations. Rosemary Thomson, the Illinois

97. Clymer, *supra* note 92, at A8.

98. Taylor Pensoneau, *Shipley-Schlafly Race: Battle of Sexes*, ST. LOUIS POST-DISPATCH, Oct. 25, 1970, at 3C (quoting Phyllis Schlafly) (internal quotation marks omitted).

99. Richard H. Icen, *Ideology an Issue in Congressional Race*, DECATUR SUNDAY HERALD & REV., Oct. 25, 1970 (§ 4), at 1 (quoting Phyllis Schlafly) (internal quotation marks omitted).

100. *See Shipley Decisively Defeats Mrs. Schlafly*, DECATUR HERALD, Nov. 5, 1970, at 29.

101. Jon Margolis, *A Turn to Right?*, CHI. TRIB., Nov. 9, 1980 (§ 2), at 1 (quoting Phyllis Schlafly) (internal quotation marks omitted).

102. *See* John Hanchette, *ERA Opponent Suggests She May Get Reagan Post*, RENO EVENING GAZETTE, Nov. 19, 1980, at 9; Susan Page, *Her Smile Casts a Long Shadow*, NEWSDAY (Long Island), July 10, 1980 (pt. II), at 3; Carol Stocker, *Friedan: 'It Doesn't Look Good . . . ' . . . as Schlafly Looks Beyond ERA*, BOS. GLOBE, Nov. 29, 1980, at 9.

103. *See* Joan Beck, *1980 Had Its Share of Good, Bad Nonevents*, CHI. TRIB., Dec. 29, 1980 (§ 6), at 2; Vera Glaser, *Women Anchor Only 10 of 110 Transition Slots*, MIA. HERALD, Nov. 20, 1980, at 16A.

104. *See* Glaser, *supra* note 103, at 16A; Owen Ullmann, *Women, Minorities Absent from Cabinet*, OAKLAND TRIB., Dec. 17, 1980, at E1.

director of Schlafly's Eagle Forum from the group's founding in 1975,¹⁰⁵ published *The Price of Liberty* (1978), her own book castigating "Women's Lib" and "the Women's Lib Amendment."¹⁰⁶ Like Schlafly, Thomson simultaneously endorsed patriarchal control over the family—with the husband as "president"—and insisted that the ERA was unnecessary because "'equal rights' already are a fact for women."¹⁰⁷

Other allies repeated Schlafly's arguments when mobilizing against the ERA within their own organizations. Beverly LaHaye, who founded Concerned Women for America in 1979 "to combat the goals of the feminist movement,"¹⁰⁸ contended that there was "no need for" the Equal Rights Amendment.¹⁰⁹ LaHaye was a conservative Christian author and speaker whose publications included a bestselling sex manual coauthored with her husband that promised "Spirit-filled Christians" that they enjoyed sex "more on a permanent lifetime basis than any other group of people."¹¹⁰ Her 1980 book, *I Am a Woman by God's Design*, attacked the ERA. Like Schlafly, LaHaye maintained that the amendment was unnecessary while warning that the "ERA will force upon us the rigid, unisex, gender-free mandate demanded by the women's-liberation movement, and will transfer the power to apply this mandate to the federal government and the federal courts."¹¹¹ LaHaye emphasized that there was "already legislation in operation that deals with" "equal pay for equal work, equal job-promotion opportunities, or equal treatment in hiring."¹¹²

Jerry Falwell also echoed and amplified Schlafly's case against the ERA. Falwell was a fundamentalist pastor who hosted the "Old Time Gospel Hour" on television and radio, led a Virginia megachurch, and founded what

105. On Thomson's acquisition of the position, see June Simpson, *Forum Seeks to Save Traditional Values*, SUNDAY PANTAGRAPH (Bloomington-Normal), Nov. 2, 1975, at D1.

106. ROSEMARY THOMSON, *THE PRICE OF LIBERTY* 47 (1978) (internal quotation marks omitted). For confirmation that Thomson was still the Eagle Forum's Illinois director in 1978, see *Eagle Forum Attacks ERA Extension OK*, DAILY PANTAGRAPH (Bloomington-Normal), Oct. 7, 1978, at A3.

107. THOMSON, *supra* note 106, at 61, 50 (internal quotation marks omitted); see also *id.* at 64; Rosemary Thomson, *What's Behind the Equal Rights Amendment?*, MOODY MONTHLY, Feb. 1974, at 48.

108. BEVERLY LAHAYE, *WHO BUT A WOMAN?* 25 (1984).

109. BEVERLY LAHAYE, *I AM A WOMAN BY GOD'S DESIGN* 132 (1980).

110. TIM LAHAYE & BEVERLY LAHAYE, *THE ACT OF MARRIAGE: THE BEAUTY OF SEXUAL LOVE* 21 (1976). For discussion of Beverly LaHaye's career and marriage, see Tim LaHaye, *Introduction to id.* at 7, 7; *The LaHayes Returning for Family Life Seminar*, DAILY SENTINEL (Grand Junction), Nov. 3, 1979 (Search), at 3. For the book's sales, see Julia Duin, *20-Year-Old CWA Struggles to Find, Retain New Leader*, WASH. TIMES, Sept. 12, 1999, at C1; Gayle White, *Evangelical Power Couple*, ATLANTA J.-CONST., July 7, 2001, at B1.

111. LAHAYE, *supra* note 109, at 134–35.

112. *Id.* at 132.

became Liberty University.¹¹³ He co-founded the Moral Majority in 1979 with (among others) LaHaye's husband.¹¹⁴ By 1980, Falwell and Schlafly were headlining an "I Love America — Stop ERA Rally" in front of the Illinois capitol.¹¹⁵ He reportedly introduced her as the "greatest citizen to come out of Illinois since Abraham Lincoln."¹¹⁶ Falwell's 1980 book, *Listen, America!*, urged his enormous audience to "stand against the Equal Rights Amendment, the feminist revolution, and the homosexual revolution."¹¹⁷ Falwell denounced the ERA as a "definite violation of holy Scripture" that "defies the mandate that 'the husband is the head of the wife, even as Christ is the head of the church.'"¹¹⁸ Like Schlafly, he paired his commitment to patriarchal marriage with the insistence that the ERA was unnecessary. Falwell told his readers that Schlafly was "one of the most knowledgeable people I know" and summarized her anti-ERA arguments in his book: "The Equal Rights Amendment offers women nothing in the way of rights or benefits that they do not already have. In the areas of employment and education, laws have already been enacted to protect women. The only thing the Equal Rights Amendment would do would be to take away rights and privileges that American women now have in the best country in the world."¹¹⁹

Ultimately, the anti-ERA campaign that Schlafly spearheaded had the wind at its back. Schlafly's arguments drew strength from the long American tradition of overstating the nation's progress toward sex equality, often while rationalizing and enforcing limits on women's rights. Her appeals reflected and reinforced entrenched norms prioritizing women's roles as wives and mothers, presuming male headship in marriage, and denigrating homosexuality. Her side benefited from the constitutional requirement that at least three-fourths of the states must approve any amendment, which means that just thirteen dissenting states can block ratification.¹²⁰ Congress further tilted the playing field against ratification when it inserted a seven-year ratification deadline into the 1972 joint

113. See *Conservative Protestant Leaders*, CONSERVATIVE DIG., Aug. 1979, at 16, 16; Steve Hill, *Falwell Seeking 'Moral Majority'*, TAMPA TRIB., Aug. 25, 1979 (Logos), at 6; Charles Slack, *Liberty Campus: Not for Ambivalent*, RICHMOND TIMES-DISPATCH, May 10, 1987, at A1.

114. On Falwell, see Hill, *supra* note 113, at 6. On Tim LaHaye, see Louis R. Carlozo, *In World of 'Left Behind,' End Is Weird*, CHI. TRIB., Dec. 6, 2005 (§ 5), at 3; White, *supra* note 110, at B1.

115. *Local Persons Attend 'I Love America' Rally*, J. GAZETTE (Mattoon), May 12, 1980, at 6 (internal quotation marks omitted).

116. *Id.* (quoting Jerry Falwell) (internal quotation marks omitted). For more on the rally, see Bob Springer, *'I Love America' Rally Attacks ERA*, DECATUR HERALD, May 7, 1980, at A19.

117. JERRY FALWELL, *LISTEN, AMERICA!* 19 (1980).

118. *Id.* at 151 (quoting *Ephesians* 5:23).

119. *Id.* at 152–53.

120. See U.S. CONST. art. V.

resolution sending the ERA to the states,¹²¹ and then later enacted just a modest extension until June 30, 1982.¹²²

Schlafly's own shrewdness, determination, and energy also propelled her anti-ERA crusade forward. Schlafly gave her movement the credit when only thirty-five of the required thirty-eight states had ratified the ERA by Congress's first and second deadlines.¹²³ Many ERA supporters, scholars, and popular commentators agreed on Schlafly's pivotal importance,¹²⁴ with some contending that ERA advocates would have won the amendment's prompt ratification if Schlafly had not mobilized.¹²⁵ Schlafly continued to revel in her triumph and champion anti-feminism for the rest of her life.¹²⁶

III. SCHLAFLY'S HEIRS

Schlafly's ideological heirs have recognized the potency of her strategy and followed her approach in the years since Schlafly's campaign against the ERA. Anti-feminist activists and lawmakers continue to lean on the assertion that America has already established women's equality, which helps them claim to support women's rights while they oppose feminist reform and promote regression. This Part traces the persistent deployment of that assertion through the end of the twentieth century and the start of the twenty-first, before turning to how anti-feminists within and outside Congress have exaggerated American progress when fighting resurgent efforts to add the ERA to the Constitution.

Robert Bork's *Slouching Towards Gomorrah* (1996) exemplifies how declarations that America has left sex discrimination behind have remained central to anti-feminist advocacy.¹²⁷ Bork was a conservative legal scholar

121. See H.R.J. Res. 208, 92d Cong., 86 Stat. 1523 (1972).

122. See H.R.J. Res. 638, 95th Cong., 92 Stat. 3799 (1978).

123. See *A Short History of E.R.A.*, *supra* note 54, at 1; Julia Malone, *Phyllis Schlafly: Wife, Politician Who 'Does It All Without the ERA'*, CHRISTIAN SCI. MONITOR, June 25, 1982, at 22; Megan Rosenfeld, *Hits from the Mrs.*, WASH. POST, Mar. 23, 1979, at C1.

124. See, e.g., SUSAN J. DOUGLAS, WHERE THE GIRLS ARE: GROWING UP FEMALE WITH THE MASS MEDIA 232 (1994); CAROL FELSENTHAL, THE SWEETHEART OF THE SILENT MAJORITY: THE BIOGRAPHY OF PHYLLIS SCHLAFLY 258 (1981).

125. See JANE J. MANSBRIDGE, WHY WE LOST THE ERA 110 (1986); Donald T. Critchlow & Cynthia L. Stachecki, *The Equal Rights Amendment Reconsidered: Politics, Policy, and Social Mobilization in a Democracy*, 20 J. POL'Y HIST. 157, 165 (2008); *ERA Debate Marred*, CHICO ENTER.-REC., Nov. 18, 1982, at 2B; Joseph Lelyveld, *Should Women Be Nicer Than Men?*, N.Y. TIMES, Apr. 17, 1977 (§ 6), at 126; Alan Wolfe, *Mrs. America*, NEW REPUBLIC, Oct. 3, 2005, at 32, 32 (book review).

126. See, e.g., SUZANNE VENKER & PHYLLIS SCHLAFLY, THE FLIPSIDE OF FEMINISM: WHAT CONSERVATIVE WOMEN KNOW—AND MEN CAN'T SAY 38–43 (2011); Ginia Bellafante, *A Feminine Mystique All Her Own*, N.Y. TIMES, Mar. 30, 2006, at F1; J.T. Leonard, *Schlafly Cranks Up Agitation at Bates*, SUN J. (Lewiston), Mar. 29, 2007, at A1.

127. ROBERT H. BORK, SLOUCHING TOWARDS GOMORRAH: MODERN LIBERALISM AND AMERICAN DECLINE (1996).

who served as solicitor general in the Nixon and Ford administrations and as acting attorney general for Nixon.¹²⁸ Unlike Schlafly, he managed to secure an important appointment from the Reagan administration. Reagan nominated Bork for a seat on the United States Court of Appeals for the District of Columbia Circuit, and the Senate confirmed him in 1982.¹²⁹ Bork was back before the Senate five years later because Reagan nominated him for the United States Supreme Court.¹³⁰ But the Senate refused to confirm Bork this time,¹³¹ and Bork resigned from the Court of Appeals in 1988 because he wanted “to speak, write, and teach about law and other issues of public policy more extensively and more freely.”¹³² Bork’s 1996 bestseller castigated the liberal forces purportedly driving “American decline.”¹³³ His targets included “the angry activists of feminism.”¹³⁴

Bork’s argument that women should abandon feminist mobilization rested on the contention that America had already triumphed over sex discrimination. On his account, women should “drop the word ‘feminism’ altogether since the movement no longer has a constructive role to play; its work is done. There are no artificial barriers left to women’s achievement.”¹³⁵

Bork was careful not to give modern feminists credit for the nation’s purported accomplishment, assuring readers that “feminists, radical or otherwise, actually had little to do with the progress of women in the latter half of this century. The trends that would *of themselves* produce today’s results were in place at least by the early 1960s.”¹³⁶ Like Schlafly, Bork presumed that housework was women’s responsibility. He downplayed the importance of legal and social change, instead attributing the expanded “opportunities open to women” in the second half of the twentieth century “largely” to technological advances that made “shopping, food preparation, laundering and much else . . . dramatically easier.”¹³⁷ In his words: “For women the new choices are available largely because of technology, for

128. For Bork’s posthumously published memoir about this phase of his career, see ROBERT H. BORK, *SAVING JUSTICE: WATERGATE, THE SATURDAY NIGHT MASSACRE, AND OTHER ADVENTURES OF A SOLICITOR GENERAL* 14–19, 69–113 (2013).

129. For the nomination, see 123 J. EXEC. PROC. SENATE U.S.A. 1207 (1982). For the confirmation, see 128 CONG. REC. 1005 (1982).

130. For the nomination, see 129 J. EXEC. PROC. SENATE U.S.A. 493 (1988).

131. See 133 CONG. REC. 29,121–22 (1987).

132. Letter from Robert H. Bork to Ronald Reagan, 1 PUB. PAPERS 40, 40 (Jan. 7, 1988).

133. BORK, *supra* note 127, at 2–3. On the book’s sales, see *Best Sellers*, N.Y. TIMES, Feb. 2, 1997 (§ 7), at 26 (reporting eighteen weeks on bestseller list).

134. BORK, *supra* note 127, at 3.

135. *Id.* at 194.

136. *Id.* at 195 (emphasis added).

137. *Id.*

blacks because of the success of the civil rights movement.”¹³⁸ Bork presented that sharp distinction as if race and sex did not interact and as if no one could be simultaneously African American and female.

Bork’s book appeared amidst a spate of anti-feminist activism in the 1990s that fought feminist priorities and promoted regression by insisting that America had already left sex discrimination in the past. Laura Ingraham, a former member of the Reagan administration,¹³⁹ embraced this strategy when pursuing the eradication of affirmative action—a longtime focus of conservative activism that ultimately won a 2023 Supreme Court decision prohibiting race-based affirmative action in university admissions.¹⁴⁰

Ingraham testified before a House Judiciary subcommittee in April 1995, speaking on behalf of the anti-feminist Independent Women’s Forum.¹⁴¹ That group had emerged out of an ad hoc predecessor called “Women for Clarence Thomas” that had championed Thomas’s 1991 confirmation to the Supreme Court notwithstanding Anita Hill’s allegation that Thomas had sexually harassed her while he was her supervisor at the Department of Education and the Equal Employment Opportunity Commission.¹⁴² Executive Director Barbara Ledeen described the IWF as an organization for women who believe that feminists should have “declared victory and gone home.”¹⁴³

By 1995, Ingraham had clerked for Justice Thomas on the Supreme Court, joined the IWF’s advisory board, and drawn significant media attention.¹⁴⁴ Meanwhile, the IWF had set its sights on attacking affirmative action, recognizing the popular and political impact that female opponents could have. As Ledeen told the *Washington Post* in 1995, “You can’t have

138. *Id.* at 228.

139. See *Group Preferences and the Law: Hearings Before the Subcomm. on the Const. of the H. Comm. on the Judiciary*, 104th Cong. 153 (1996) [hereinafter *Group Preferences*] (statement of Laura A. Ingraham).

140. See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023).

141. See *Group Preferences*, *supra* note 139, at 153 (statement of Laura A. Ingraham).

142. On the origins of the Independent Women’s Forum, see Paul M. Barrett, *A New Wave of Counterfeminists Is Providing Conservatism with a Sophisticated Female Face*, WALL ST. J., Oct. 13, 1995, at A16 (internal quotation marks omitted). For Hill’s testimony, see *Nomination of Judge Clarence Thomas to Be Associate Justice of the Supreme Court of the United States: Hearings Before the S. Comm. on the Judiciary (pt. 4)*, 102d Cong. 36–40 (1993) (statement of Professor Anita F. Hill). For Thomas’s confirmation, see 137 CONG. REC. 26,354 (1991).

143. Martin Fletcher, ‘*There Is No Male Conspiracy*,’ TIMES (London), Dec. 29, 1995, at 13 (quoting Barbara Ledeen, misspelled LeDeen) (internal quotation marks omitted).

144. For Ingraham’s clerkship, see *Group Preferences*, *supra* note 139, at 143 (statement of Rep. Charles Canady). For Ingraham’s membership on the advisory board, see Laura A. Ingraham, *Enter, Women*, N.Y. TIMES, Apr. 19, 1995, at A23. For an example of media attention, see James Atlas, *The Counter Counterculture*, N.Y. TIMES, Feb. 12, 1995 (§ 6), at 32.

white guys saying you don't need affirmative action."¹⁴⁵ The implication was that white women like Ingraham could promote that argument.

Ingraham's 1995 testimony contended that it was "time to leave" affirmative action "behind us."¹⁴⁶ She urged Congress to amend Title VII of the 1964 Civil Rights Act "to provide that nothing in title VII should be construed to permit gender, racial or other group preferences, quotas or set-asides."¹⁴⁷ After testifying, Ingraham amplified her opposition to affirmative action in the popular press. The assertion that women no longer faced discrimination at work was central to her critique. Ingraham castigated feminists for "whining about" what she called "an imaginary glass ceiling" and maintained "that women in the work force are at long last pushing against a wide open door."¹⁴⁸

Ingraham was just one of many voices in the Independent Women's Forum attacking feminism on the premise that America had already eradicated sex discrimination.¹⁴⁹ Anita Blair was the Forum's executive vice president and general counsel in 1995.¹⁵⁰ She deployed exaggerations about the nation's progress in the Supreme Court brief she filed on behalf of the IWF in *United States v. Virginia*, a suit about the constitutionality of Virginia's exclusion of women from the Virginia Military Institute.¹⁵¹ Blair's brief urged the Justices to uphold the state school's male-only admissions policy,¹⁵² while simultaneously insisting that "[w]omen are not excluded from educational and professional opportunities."¹⁵³ Indeed, the brief suggested that the Court "take this opportunity to declare women emancipated."¹⁵⁴ Virginia ultimately lost this case in 1996,¹⁵⁵ and Blair's efforts as a VMI board member to take the school private rather than admit

145. Megan Rosenfeld, *Feminist Fatales*, WASH. POST, Nov. 30, 1995, at D1 (quoting Barbara Ledeen) (internal quotation marks omitted).

146. *Group Preferences*, *supra* note 139, at 154 (statement of Laura A. Ingraham).

147. *Id.* at 156 (statement of Laura A. Ingraham).

148. Ingraham, *supra* note 144, at A23; *see also* Laura A. Ingraham, *Perspectives on Affirmative Action: Is It an Institutional Crutch or Essential to Women's Progress?*, L.A. TIMES, Apr. 19, 1995, at B7.

149. For more examples, see Jennifer Gonnerman, *Angry White Women: A Right-Wing Women's Group Sets Out to Crush Feminism*, VILL. VOICE, July 11, 1995, at 17; Ellen Ladowsky, *That's No White Male . . .*, WALL. ST. J., Mar. 27, 1995, at A20.

150. *See* Anita K. Blair, *Paperwork Won't Stop Violence Against Women*, AUSTIN AM.-STATESMAN, Aug. 15, 1995, at A9.

151. For Blair as the counsel of record, see Brief of *Amici Curiae* Independent Women's Forum et al. in Support of Respondents at 15, *United States v. Virginia*, 518 U.S. 515 (1996) (Nos. 94-1941 & 94-2107).

152. *See id.* at 2-8.

153. *Id.* at 14 (emphasis omitted).

154. *Id.* at 15.

155. *See United States v. Virginia*, 518 U.S. 515, 519 (1996).

women were unsuccessful.¹⁵⁶ But overstating improvements in women's status continued to be a core component of Blair's anti-feminist advocacy.

Blair used media interviews to deride feminists as baselessly gloomy—along with old and unattractive—declaring that “a telltale way to find a liberal feminist” was to look for “the nasty wrinkles around her mouth that she gets from frowning.”¹⁵⁷ She announced in a November 1997 interview “that feminism should have declared victory and gone home” “in 1977 or 1978” because: “All that was needing to be done had been done.” Here again, the point of the premature declaration of victory was to characterize ongoing feminist efforts as unnecessary and even “pretty destructive.”¹⁵⁸ Blair was comfortable asserting that “[i]n this world, the biggest enemy to truth and common sense and logic is probably feminism.”¹⁵⁹ She criticized feminists for supporting treatment programs for men who committed domestic violence, mocking such programs as “reeducation camp.”¹⁶⁰ She also opposed opening military fighter pilot positions to women as “not economical.”¹⁶¹ A few years later, in the George W. Bush administration, Blair became the Deputy Assistant Secretary of the Navy for Personnel Programs.¹⁶²

As one millennium ended and another unfolded, the contention that America had already triumphed over sex discrimination continued to suffuse conservative politics. Nancy Pfotenhauer was the president of the Independent Women's Forum when she wrote an opinion piece praising President George W. Bush's 2003 State of the Union address. She called Bush's speech “the beginnings of a thoughtful agenda for the women's movement,” singling out Bush's advocacy for tax cuts, interest in altering the Social Security program, and the fact “that he never suggested that women as a group need special help.” Pfotenhauer did not explore whether Bush's proposals—which included eliminating the federal estate tax and reducing or eliminating federal taxation of capital gains—would exacerbate economic inequality and further strain America's social safety net. Instead, her argument that “we should *all* applaud” Bush's “refusal to treat women as ‘victims’ needing special government assistance” turned on the assertion that “[t]raditional feminists” were wrong to “tell us that discrimination must

156. See *VMI Will Admit Women*, DAILY PRESS (Newport News-Hampton), Sept. 22, 1996, at A1.

157. K.C. Swanson, *She's No Feminist, and She's Proud of It*, NAT'L J., Jan. 4, 1997, at 34, 34 (quoting Anita K. Blair) (internal quotation marks omitted).

158. Stephen Goode, *Armed with Common Sense, Anita Blair Attacks Feminism*, INSIGHT, Nov. 24, 1997, at 31, 33 (quoting interview with Anita Blair).

159. *Id.* at 31 (quoting Anita Blair) (emphasis and internal quotation marks omitted).

160. *Id.* at 33 (quoting interview with Anita Blair).

161. *Id.* (quoting interview with Anita Blair) (internal quotation marks omitted).

162. See OFF. OF THE FED. REG., NAT'L ARCHIVES & RECS. ADMIN., THE UNITED STATES GOVERNMENT MANUAL 2002/2003, at 182 (2002).

remain atop every woman's list of concerns." Pfotenhauer declared: "Women now have that equal opportunity. The rest is up to us."¹⁶³

That theme also ran through the 2008 Republican campaign for president. Sarah Palin, the Alaska governor who became John McCain's running mate in the 2008 election,¹⁶⁴ presented women's equality as a completed accomplishment while she opposed feminist efforts to combat persistent sex discrimination. Palin's speech at the 2008 Republican National Convention proclaimed "that this is America and every woman can walk through every door of opportunity."¹⁶⁵ A few weeks later, Palin gave a television interview in which she simultaneously declared "that women certainly today have every opportunity that a man has to succeed and to try to do it all anyway" and criticized a federal bill to extend the statute of limitations for pay discrimination suits. Palin dismissed the bill as "a boon for trial lawyers" and announced that there were already "laws on the books" providing "that no woman could be discriminated against in the workplace in terms of anything, but especially in terms of pay."¹⁶⁶

Palin's assurances that existing legislation had already addressed the problem of sex discrimination at work diverted attention from the gap in antidiscrimination law that Palin and McCain wanted to preserve. A 2007 Supreme Court decision had interpreted Title VII narrowly, barring pay discrimination claims under the statute unless the employee had filed a charge with the Equal Employment Opportunity Commission within one hundred and eighty days after her employer made an allegedly discriminatory pay decision and notified the employee of her pay.¹⁶⁷ An employee who did not quickly realize that her pay was unequal was left without a Title VII remedy, even if the employer's early decision to discriminate meant that the employee was paid less for her entire career. The bill Palin opposed—which Congress enacted after the McCain/Palin defeat as the Lilly Ledbetter Fair Pay Act of 2009—frees employees from the Supreme Court's restrictive reading of Title VII. The legislation restarts Title VII's statute of limitations clock whenever an employee receives a paycheck made smaller by her employer's previous decision to discriminate.¹⁶⁸

163. Nancy M. Pfotenhauer, *Bush Had Message for Women*, KAN. CITY STAR, Jan. 30, 2003, at B7 (emphasis added).

164. For Palin's memoir recounting the experience, see SARAH PALIN, *GOING ROGUE: AN AMERICAN LIFE* 209–339 (2009).

165. *Sarah Palin 2008 Acceptance Speech* (C-SPAN television broadcast Sept. 3, 2008).

166. *CBS News* (CBS television broadcast Sept. 30, 2008) (transcript copy on file with author).

167. See *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 628–29 (2007).

168. See *Lilly Ledbetter Fair Pay Act of 2009*, Pub. L. No. 111-2, § 3, 123 Stat. 5, 5–6. For more on Lilly Ledbetter, see HASDAY, *supra* note 3, at 197–98.

Framing sex discrimination as a past problem has remained a prominent anti-feminist strategy in the years since Palin's campaign for vice president. For example, Cleta Mitchell, a conservative activist and longtime lawyer for Republican politicians and right-wing groups,¹⁶⁹ asserted in 2017 that all the feminist movement "could responsibly achieve, has been achieved." As with many anti-feminists before her, Mitchell's eagerness "to declare victory" was entangled with her contention that Americans should reject contemporary feminism and its ongoing agenda. She criticized "the purposeless 'women's marches'" that protested the start of Donald Trump's first presidential term in January 2017 and condemned feminist support for abortion rights, which she derided as "[t]he ugly truth" "that the women's movement has morphed into a giant abortion-rights lobby."¹⁷⁰ A few years later, Mitchell became notorious for her alleged efforts to promote Republican political power by undermining American elections. She reportedly aided Trump's attempt to overturn his defeat in the 2020 presidential election and mobilized election conspiracists around the 2022 midterms and the 2024 presidential election.¹⁷¹

Of course, all these declarations of victory over sex discrimination have come up against the inconvenient reality that women remain starkly underrepresented at the highest reaches of political and corporate power.¹⁷² Here too, anti-feminists in the last years of the twentieth century and the first years of the twenty-first have followed Schlafly's playbook, striving to explain away women's marginalization and insist that Americans should not attribute persistent disparities between women and men to ongoing discrimination.

Anti-feminists writing at the end of the twentieth century sometimes dismissed such disparities as rapidly dissipating holdovers from an earlier era whose practices the nation had supposedly left behind. When Elizabeth

169. See Julia Edwards, *Cleta Mitchell*, NAT'L J., July 14, 2012, at 31, 31; Jane Mayer, *The Big Money Behind the Big Lie*, NEW YORKER, Aug. 9, 2021, at 30, 33–34; Michael S. Schmidt & Kenneth P. Vogel, *Top Lawyer's Cover Is Blown by Trump Tape*, N.Y. TIMES, Jan. 5, 2021, at A14; Elizabeth Williamson, *Riding Shotgun on Campaign Trail*, WALL. ST. J., Oct. 30, 2010, at A6.

170. Cleta Mitchell, *No Room for Dissent in 'Feminist Club'*, N.Y. TIMES, Apr. 2, 2017, at F3. For an interview with Mitchell along similar lines, see Susan Chira, *Since When Is Being a Woman a Liberal Cause?*, N.Y. TIMES, Feb. 12, 2017, at SR9.

171. See Stuart A. Thompson, Jim Rutenberg & Steven Myers, *Election Fraud? Deniers Quiet as Trump's Win Became Clear.*, N.Y. TIMES, Nov. 8, 2024, at B5; Alexandra Berzon, *Republicans Flag False Threat to Election: Immigrant Voting*, N.Y. TIMES, Sept. 7, 2024, at A1; Alexandra Berzon & Nick Corasaniti, *Trump Allies Quietly Push to Reduce Key Voter Rolls*, N.Y. TIMES, Mar. 4, 2024, at A15; Alexandra Berzon & Ken Bensinger, *A Group Fueled by Falsehoods Stands Ready to Challenge Votes*, N.Y. TIMES, Nov. 8, 2022, at A1; Alexandra Berzon, *Election Denier Musters 'Army' to Watch Vote*, N.Y. TIMES, May 31, 2022, at A1; Mayer, *supra* note 169, at 33–34; Schmidt & Vogel, *supra* note 169, at A14.

172. For evidence of these disparities, see *supra* text accompanying notes 7–12.

Larson co-chaired the Independent Women's Forum in 1995,¹⁷³ she contended that the "relatively few women sitting in the top ranks of major corporations" was "a situation that would *resolve itself* even in the absence of affirmative action."¹⁷⁴ Indeed, Larson primed Americans to expect a quick resolution even without systematic efforts to increase women's representation at the top. She reported that "[i]t takes 25 years to reach the position of president and 30 to reach chairman, and women have only been in managerial positions in significant numbers since the mid-seventies." "Between 1995 and 2000," then, "the first wave of women to have had unbroken, full-time business careers will have 25 to 30 years of experience behind them."¹⁷⁵

Diana Furchtgott-Roth, a fellow at the American Enterprise Institute who had published a book with the Independent Women's Forum,¹⁷⁶ mined the same vein when attacking affirmative action in 1997. Furchtgott-Roth insisted "that women now have equality of opportunity,"¹⁷⁷ and mocked the idea that working women confront a "glass ceiling" as "a figment of feminist imaginations."¹⁷⁸ Her argument denying that persistent discrimination helped explain the paucity of women in top management posts emphasized that "[w]omen received less than 5 percent of graduate degrees in the sixties and seventies, and these are the graduates who now are at the pinnacle of their professions." As Furchtgott-Roth assured readers: "That supports the 'pipeline' theory, which holds that women have not reached the top in greater numbers because they have not been 'in the pipeline' long enough."¹⁷⁹

The pipeline argument always had a built-in expiration date, though, as women's mass entry into first-rung corporate jobs receded further into history. With the passage of time, evidence mounted that women's scarcity at the top would not be rectifying itself as a matter of course once America moved a few decades beyond the 1970s. To cite just one of many examples, only 11% of Fortune 500 companies had female chief executives in 2025.¹⁸⁰

173. See Elizabeth Larson, *Question: Is It Time to End Affirmative Action for Women? Yes: Women Don't Need Extra Help*, INSIGHT, Apr. 24, 1995, at 18, 18.

174. *Id.* at 20–21 (emphasis added).

175. *Id.* at 21.

176. See Diana Furchtgott-Roth, *Q: Should Women Be Worried About the Glass Ceiling in the Workplace? No: The So-Called Glass Ceiling Is a Myth, but We're All Paying Plenty to Tear It Down*, INSIGHT, Feb. 10, 1997, at 25, 25 [hereinafter Furchtgott-Roth, *Myth*]. For confirmation that the book "is a publication of the Independent Women's Forum," see DIANA FURCHTGOTT-ROTH & CHRISTINE STOLBA, *WOMEN'S FIGURES: THE ECONOMIC PROGRESS OF WOMEN IN AMERICA*, at copyright page (1996).

177. Furchtgott-Roth, *Myth*, *supra* note 176, at 27.

178. *Id.* at 25.

179. *Id.* at 27.

180. See Suttell, *supra* note 11, at 6.

So anti-feminists in the late twentieth and early twenty-first centuries have been more inclined to advance another explanation for why men continue to dominate the highest reaches of workplace hierarchies even after America has purportedly left sex discrimination behind. This argument contends that few top jobs go to women because few women want such success.

Melinda Ledden Sidak used that argument when testifying on behalf of the Independent Women's Forum in 1995. Sidak was a former member of the Reagan administration with a track record of unrestrained opposition to government regulation.¹⁸¹ As an attorney for the Tobacco Institute, an industry lobbying group, she had fought a proposed ban on cigarette vending machines in New York City with testimony that sought to erase decades of evidence documenting smoking's dangers.¹⁸² Sidak declared at a City Council hearing in May 1990 that "smoking has not been shown to cause cancer or any other disease."¹⁸³ The blatant falsehood reportedly backfired with the Council and prompted some audience members to jeer or hiss.¹⁸⁴ New York City banned cigarette vending machines from most public places later that year.¹⁸⁵

In her 1995 congressional testimony for the IWF, Sidak opposed affirmative action and insisted that women's underrepresentation "in some jobs" was "not evidence of pervasive discrimination or prejudice." She seemed to attribute sex stratification in employment entirely to "the fact that many women voluntarily choose family as their work."¹⁸⁶

Linda Chavez, another alumna of the Reagan administration,¹⁸⁷ responded similarly to a 1995 federal government report finding "that only 5% of senior managers of Fortune 2000 industrial and service companies

181. On Sidak's role as Chief of Staff to Reagan's Secretary of Transportation, see OFF. OF THE FED. REG., NAT'L ARCHIVES & RECS. ADMIN., THE UNITED STATES GOVERNMENT MANUAL 1988/89, at 435 (1988).

182. For some of the overwhelming evidence Sidak denied, see OFF. ON SMOKING & HEALTH, U.S. DEP'T OF HEALTH & HUM. SERVS., THE HEALTH CONSEQUENCES OF INVOLUNTARY SMOKING: A REPORT OF THE SURGEON GENERAL (1986); PUB. HEALTH SERV., U.S. DEP'T OF HEALTH, EDUC., & WELFARE, PUB. NO. 1103, SMOKING AND HEALTH: REPORT OF THE ADVISORY COMMITTEE TO THE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE (1964).

183. Leonard Buder, *Council to Consider Ban on Cigarette Machines*, N.Y. TIMES, May 4, 1990, at B3 (quoting Melinda Sidak) (internal quotation marks omitted).

184. See *id.*; Dan Koepfel, *An Ethical Plan for Tobacco Marketers*, ADWEEK'S MKTG. WK., May 28, 1990, at 18, 18.

185. See N.Y.C., N.Y., Local Law 67 (Nov. 27, 1990).

186. *Affirmative Action in Employment: Hearings Before the Subcomm. on Employer-Employee Rel's. of the H. Comm. on Econ. & Educ. Opportunities*, 104th Cong. 284 (1995) (statement of Melinda Ledden Sidak).

187. For Chavez's recounting of her work in the Reagan administration, see LINDA CHAVEZ, AN UNLIKELY CONSERVATIVE: THE TRANSFORMATION OF AN EX-LIBERAL [OR, HOW I BECAME THE MOST HATED HISPANIC IN AMERICA] 169-86 (2002).

are women.” Chavez dismissed as “almost entirely wrong” the idea “that women are being denied promotions for which they are as eager to compete and as qualified as their male counterparts.” Rather than explore how discrimination might help explain women’s stark underrepresentation at the top, Chavez emphasized that “most women — including professionals and midlevel executives — put their families first” and recounted women’s purported unwillingness to engage in “cutthroat competition.”¹⁸⁸

Sabrina Schaeffer, the executive director of the Independent Women’s Forum in 2015, wrote about how “women still lag behind men in the political arena” without considering sexism as a potential contributor to why “women only hold 18 percent of congressional seats, comprise 24 percent of state legislatures and hold five gubernatorial seats.” Instead, Schaeffer declared that she was “a firm believer in gender differences.” Schaeffer emphasized women’s distaste for “the noisiness of the campaign environment” and suggested that women might naturally prefer supporting roles to elected office. After reporting that “men and women are different — we share different talents, aptitudes and interests,” she asked: “if women are more inclined toward organizing bodies on the ground or writing about the implications of policy, why not embrace these strengths?”¹⁸⁹

Indeed, anti-feminists have often attributed women’s purportedly different preferences to nature rather than societal constraints or cultural expectations. Kate O’Beirne, a Reagan administration alumna who became a conservative columnist, editor, and commentator,¹⁹⁰ published a 2006 book denouncing feminists as *Women Who Make the World Worse*.¹⁹¹ O’Beirne declared that “American women have more freedom in their personal and professional lives than any man or woman has ever enjoyed in recorded history.”¹⁹² But she proceeded to assail feminist support for day care,¹⁹³ even though many mothers would have no professional lives or ability to support their families without access to affordable day care. O’Beirne proclaimed that “[t]he feminist movement has long been on a collision course with what we know to be true about the natural bond

188. Linda Chavez, *Many Women Don't Want to Break Glass Ceiling*, TENNESSEAN, Mar. 23, 1995, at 15A. For the statistic in the report Chavez was dismissing, see Robert B. Reich, *Message from the Chairman*, in FED. GLASS CEILING COMM'N, GOOD FOR BUSINESS: MAKING FULL USE OF THE NATION'S HUMAN CAPITAL, at iii, iv (1995).

189. Sabrina L. Schaeffer, *Principle Is More Important than Gender When It Comes to Public Office*, TELEGRAPH (Macon), Oct. 16, 2015, at 7A (internal quotation marks omitted).

190. See Sam Roberts, *Kate O'Beirne, National Review Editor*, 67, N.Y. TIMES, Apr. 25, 2017, at B12.

191. KATE O'BEIRNE, *WOMEN WHO MAKE THE WORLD WORSE: AND HOW THEIR RADICAL FEMINIST ASSAULT IS RUINING OUR FAMILIES, MILITARY, SCHOOLS, AND SPORTS* (2006).

192. *Id.* at xviii.

193. See *id.* at 23–46.

between mother and child.” On her account, feminists demanded that women “be every bit as committed to careers as men are, but biology won’t let them have their win. Women fall madly in love with their babies in a way that devoted fathers don’t.”¹⁹⁴

Danielle Crittenden, the founding editor of the IWF’s quarterly magazine,¹⁹⁵ likewise framed women’s disproportionate subordinating of their market participation to their family responsibilities as rooted in biological drives that preceded legal and social arrangements and were independent from them. She told a Senate subcommittee in 1998: “The fact is that when children come along, someone has to accommodate them. A woman who has carried the baby around for 9 months inside of her usually finds it natural to do so and often impossible not to.”¹⁹⁶ The next year, Crittenden published a book announcing that “[w]hat my generation may have discovered is that we have reached the biological limits of our freedom.” The idea was that women had “had every legal, economic, and social impediment removed,” and any remaining disparities between men and women could not shrink without rewriting nature, which was unrealistic. In Crittenden’s words: “To achieve any more, to be truly able to live the same lives as men, we’d actually have to *be* men.”¹⁹⁷ Crittenden’s claim about the disappearance of “every legal, economic, and social impediment” fit uneasily with her 1998 testimony, which advocated for preserving legal, economic, and social arrangements that impede women’s ability to combine motherhood and market success. She opposed “subsidizing day care to free mom to go to work,”¹⁹⁸ arguing that it does not “make sense for society to attempt to reinvent itself so that” a mother “can more conveniently and inexpensively delegate the care of those babies to strangers.”¹⁹⁹

In short, Schlafly’s ideological heirs opposing feminist efforts and promoting regression have continued to embrace her strategy, leaning on declarations about America’s triumph over sex discrimination and

194. *Id.* at 23.

195. See *Caring for America’s Children—A Congressional Symposium on Child Care and Parenting: Hearing Before the Subcomm. on Child. & Fams. of the S. Comm. on Lab. & Hum. Res.*, 105th Cong. 65 (1998) [hereinafter *Caring for America’s Children*] (statement of Sen. Daniel Coats); Joyce Price, *No ‘Angry Agenda,’ No Feminists at New Women’s Quarterly*, WASH. TIMES, Sept. 13, 1995, at A2.

196. *Caring for America’s Children*, *supra* note 195, at 67 (statement of Danielle Crittenden). For an article adapted from her testimony, see Danielle Crittenden, *The Mother of All Problems*, WOMEN’S Q., Spring 1998, at 2.

197. DANIELLE CRITTENDEN, WHAT OUR MOTHERS DIDN’T TELL US: WHY HAPPINESS ELUDES THE MODERN WOMAN 177 (1999); see also *id.* at 173–74.

198. *Caring for America’s Children*, *supra* note 195, at 69 (statement of Danielle Crittenden).

199. *Id.* at 68 (statement of Danielle Crittenden).

scrambling to explain away inconvenient facts. Schlafly's battle plan even continues to guide opposition to the Equal Rights Amendment itself. The remainder of this Article explores how anti-feminists have wielded exaggerated accounts of the nation's progress to fight the ERA in the decades since Schlafly's crusade.

The ERA's absence from the national stage was brief. By the early 1990s, some feminists within and outside Congress were already arguing that the process of ratifying the amendment could resume without starting from scratch, despite the expiration of Congress's ratification deadlines.²⁰⁰ Energized by that prospect, ERA supporters began remobilizing to secure ratification in three additional states and bring the total up to the required thirty-eight.²⁰¹

Advocates of this "three-state strategy" soon confronted ERA opponents insisting again that the amendment was unnecessary because America had already left sex discrimination behind. Elaine Donnelly had spent the 1970s and early 1980s chairing Stop ERA's national media efforts while also founding and leading Michigan's Stop ERA group.²⁰² She turned to the old anti-ERA arguments to fight the three-state strategy, advising the press in 1994 that "[w]omen are already full citizens under the Constitution." Like Schlafly, Donnelly paired that victory announcement with the warning that "[t]hose promoting ERA" had "an underlying agenda" that was "tied to abortion and homosexual rights." Meanwhile, Donnelly championed women's continued unequal treatment. By 1994, she was president of the Center for Military Readiness, which was fighting to maintain policies banning servicewomen from combat positions and prohibiting lesbians and gay men from serving openly in the military.²⁰³

More ERA opponents echoed Schlafly's arguments as renewed ratification efforts intensified. Missouri Representative Vicky Hartzler explained her opposition to ratification by declaring in 2000 "that women

200. See, e.g., H.R. Res. 432, 103d Cong. (1994); Marla Dickerson, *ERA Activists Try to Start Again: 'No Time Limit on Justice,'* DETROIT NEWS & FREE PRESS, Mar. 27, 1994, at 1B; Allie Corbin Hixson, *Equal Rights Amendment,* COURIER-J. (Louisville), June 1, 1992, at A6; Eileen Stilwell, *Women's Groups Hoping to Revive Fight for ERA,* COURIER-POST (New Jersey), Mar. 22, 1994, at 3A.

201. See, e.g., H.R.J. Res. Constitutional Amendment 5, 90th Gen. Assemb., 1997 Sess. (Ill. 1997); H.R.J. Res. 41, 89th Gen. Assemb., 2d Reg. Sess. (Mo. 1998).

202. See *ERA Foes Attack Vote,* SUNDAY STATE J. (Lansing), Oct. 8, 1978, at B4; Diane Haithman, *Elaine Donnelly: Still a Woman with a Cause,* DETROIT FREE PRESS, May 17, 1984, at 1B; John Hanchette, *ERA Now 'Dead as a Doornail,'* LANSING STATE J., Nov. 23, 1980, at D1; Ron Russell, *ERA R.I.P.: The Winner,* DETROIT NEWS, June 27, 1982, at 1C; Willah Weddon, *'Stop ERA' Leader No Little Old Lady,* STATE J. (Lansing), July 12, 1974, at D4.

203. Dickerson, *supra* note 200, at 1B (quoting Elaine Donnelly) (internal quotation marks omitted). For more on Donnelly's opposition to women in combat, see THE PRESIDENTIAL COMM'N ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES, REPORT TO THE PRESIDENT 42-79 (1992) (alternative views).

have all the opportunities in the world” and “we should be telling them that the past is behind us.”²⁰⁴ George Will, a conservative columnist, disseminated that contention in 2007, asserting that “[t]he full inclusion of women in America’s regime of rights was accomplished in the 20th century without an ERA, a constitutional redundancy.”²⁰⁵ Phyllis Schlafly herself spoke out in 2014, when she was eighty-nine, insisting that feminists pursuing ratification were “doing it to raise money, to give people something to do, to pretend that women are being mistreated by society.”²⁰⁶ Nevada Senator Michael Roberson proclaimed before voting against ratification in 2017: “Women have achieved equality and are equal to men in the eyes of the law. This is a great victory, and the battle has been won.”²⁰⁷

Sometimes women opposing the ERA seemed oblivious to the atypicality of their personal experiences and cited their own elite careers as evidence that the nation had moved past sex discrimination. When Florida Senator Ronda Storms called the ERA “anachronistic” in 2007, she emphasized: “You’re talking to a Florida female senator who’s here, who’s equal, who’s achieved parity with men.”²⁰⁸ Margaret Ransone, a Virginia state legislator, helped squash a 2014 ratification proposal and declared: “I’ve never felt like I was discriminated against.”²⁰⁹ Victoria Cobb, president of the Family Foundation of Virginia and “a third-generation opponent of the ERA,” cited herself as evidence “that women didn’t need a vague amendment promising vague rights.” Yet Cobb’s own account of her privileged perch revealed her distance from many women’s lives. Cobb reported in 2018 that she led “an organization, earning the same pay as my male colleagues, while having four children with associated maternity leave and a permanent family-friendly schedule.”²¹⁰

204. Stephanie Simon, *Activists Seek to Bring ERA Back to Life*, L.A. TIMES, Mar. 9, 2000, at A2 (quoting Vicky Hartzler) (internal quotation marks omitted).

205. George F. Will, *The Return of that '70s Thing*, WASH. POST, Apr. 1, 2007, at B7.

206. David Crary, *Equal Rights Fight*, PHILA. INQUIRER, Aug. 11, 2014, at A5 (quoting Phyllis Schlafly) (internal quotation marks omitted).

207. JOURNAL OF THE SENATE OF THE STATE OF NEVADA, SEVENTY-NINTH SESSION 170 (2017) (statement of Sen. Michael Roberson). For Roberson’s vote against ratification, see *id.* at 172. For more examples, see Cathi Herrod, *The Irony of the Equal Rights Amendment*, ARIZ. REPUBLIC, Feb. 27, 2019, at 19A; Ed Vogel, *Panel Revives Equal Rights Amendment Effort*, LAS VEGAS REV.-J., Feb. 25, 2005, at 6B.

208. Rebecca Catalanello, *Equal Rights Amendment Sinks in Legislative Tide*, ST. PETERSBURG TIMES, May 2, 2007, at 6B (quoting Ronda Storms) (internal quotation marks omitted).

209. Nicole Gaudiano, *Fight for ERA Draws New Interest*, BURLINGTON FREE PRESS, Sept. 12, 2014, at 11A (quoting Margaret Ransone) (internal quotation marks omitted).

210. Victoria Cobb, *Modern Feminism Commands Respect — Without the ERA*, RICHMOND TIMES-DISPATCH, Mar. 5, 2018, at A11.

Ultimately, ERA supporters managed to win three additional ratifications. Nevada ratified in 2017,²¹¹ Illinois followed in 2018,²¹² and Virginia ratified on January 27, 2020.²¹³

To date, however, the archivist of the United States, who has the statutory responsibility to publish ratified amendments, has not recognized the ERA as part of the Constitution.²¹⁴ On the first day of Virginia's 2020 legislative session, January 8, the Trump administration's Office of Legal Counsel in the Department of Justice publicly released an opinion contending that the seven-year ratification deadline Congress had inserted into the joint resolution sending the ERA to the states was binding and unalterable, so any ratifications after 1979 were invalid.²¹⁵ The Trump administration's opinion also raised the possibility that several of the states that ratified the ERA before 1979 should not count toward the ratification total because their legislatures subsequently sought to rescind the ratifications.²¹⁶ On the same day the Trump Justice Department publicly released this opinion, the National Archives and Records Administration announced that it would "abide by the OLC opinion, unless otherwise directed by a final court order."²¹⁷

The ERA has remained in limbo since then. Although President Joseph Biden expressed personal support for the ERA and stated his personal belief that the ERA's ratification is complete,²¹⁸ Biden never directed the archivist to publish the amendment.²¹⁹ Instead, the Biden administration's Office of Legal Counsel announced in January 2022 that "[w]hether the ERA is part

211. See S.J. Res. 2, 2017 Nev. Stat. 4551.

212. See S.J. Res. Constitutional Amendment 4, 2018 Ill. Laws 8987.

213. See S.J. Res. 1, 2020 Va. Acts 4627; H.D.J. Res. 1, 2020 Va. Acts 4283.

214. For the archivist's responsibility, see 1 U.S.C. § 106b.

215. For the opinion, see *Ratification of the Equal Rights Amendment*, 44 Op. O.L.C., slip op. at 1–3, 24–25, 37 (Jan. 6, 2020). For discussion of the opinion's public release on the first day of Virginia's 2020 legislative session, see Patricia Sullivan, *Too Late to Ratify ERA, Justice Dept. Says in Opinion*, WASH. POST, Jan. 9, 2020, at B3.

216. See *Ratification of the Equal Rights Amendment*, *supra* note 215, at 36–37. For legislation purporting to rescind prior ratifications, see Legislative Res. 9, 1973 Neb. Laws 1547; S.J. Res. 29, 1974 Tenn. Pub. Acts 1921; H.R. Con. Res. 10, 1977 Idaho Sess. Laws 950; S.J. Res. 2, 1979 S.D. Sess. Laws ch. 2, at 28; S. Con. Res. 4010, ch. 539, 2021 N.D. Laws 2219. In 1978, Kentucky's acting governor, Lieutenant Governor Thelma Stovall, vetoed the state legislature's attempt to rescind. See 124 CONG. REC. 37,923 (1978) (statement of Sen. Birch Bayh) (reprinting Stovall's veto message).

217. Press Release, Nat'l Archives & Recs. Admin., NARA Press Statement on the Equal Rights Amendment (Jan. 8, 2020) (copy on file with author).

218. See Joseph R. Biden, Jr., Statement on the Equal Rights Amendment, 2022 DAILY COMP. PRES. DOC. 42 (Jan. 27, 2022); Joseph R. Biden, Jr., Statement on the Equal Rights Amendment, 2025 DAILY COMP. PRES. DOC. 88 (Jan. 17, 2025).

219. For letters urging that action, see Letter from Kirsten Gillibrand et al., U.S. Sens., to Joseph R. Biden, Jr., U.S. President (Nov. 22, 2024) (copy on file with author); Letter from Carolyn B. Maloney, U.S. Rep., to Joseph R. Biden, Jr., U.S. President, and Kamala Harris, U.S. Vice President (Jan. 22, 2021) (copy on file with author).

of the Constitution will be resolved not by an OLC opinion but by the courts and Congress.”²²⁰ ERA advocates within and outside state government have sued seeking official recognition of the amendment’s ratification, but without success to date.²²¹ Federal lawmakers have also proposed multiple bills that would either remove the ratification deadline or directly recognize the ERA as part of the Constitution.²²²

The amendment’s opponents in Congress have responded to those legislative efforts by returning to Schlafly’s playbook once again. They warn that the ERA would upend the law’s treatment of women while simultaneously insisting that the ERA is “unnecessary” because women “already have equal rights under the law.”²²³

Some of the purported threats that Schlafly invoked to instill panic, like same-sex marriage, have receded from anti-ERA arguments because they have already materialized without the ERA. In the early 2020s, the ERA’s enemies have tended to emphasize that the amendment would provide a new constitutional foundation for abortion rights, a possibility that assumed even greater significance as the Supreme Court’s commitment to protecting abortion rights under the Fourteenth Amendment seemed increasingly wobbly before it collapsed completely in 2022.²²⁴ Representative Doug Collins of Georgia asserted in 2020 that the “ERA would be used to prevent state voters from enacting any limits on abortion, up to the moment of birth.”²²⁵ That same year, Representative Jackie Walorski of Indiana agreed that the ERA would be “enshrining unrestricted abortion in the Constitution and allowing full taxpayer funding for abortion.”²²⁶ Representative Kay Granger of Texas openly expressed contempt for women who terminate a pregnancy. She maintained that the ERA would “create an unlimited constitutional right to abortion,” “[a]llowing women to discard their unborn

220. Effect of 2020 OLC Opinion on Possible Congressional Action Regarding Ratification of the Equal Rights Amendment, 46 Op. O.L.C., slip op. at 2 (Jan. 26, 2022).

221. See *Illinois v. Ferriero*, 60 F.4th 704, 709–10 (D.C. Cir. 2023); *Equal Means Equal v. Ferriero*, 3 F.4th 24, 26–27 (1st Cir. 2021).

222. For recent bills, see H.R.J. Res. 82, 118th Cong. (2023); H.R.J. Res. 25, 118th Cong. (2023); S.J. Res. 39, 118th Cong. (2023); S.J. Res. 4, 118th Cong. (2023); H.R. Res. 891, 117th Cong. (2022); H.R.J. Res. 17, 117th Cong. (as passed by House, Mar. 17, 2021); S.J. Res. 1, 117th Cong. (2021); H.R.J. Res. 79, 116th Cong. (as passed by House, Feb. 13, 2020); H.R.J. Res. 38, 116th Cong. (2019); S.J. Res. 6, 116th Cong. (2019).

223. 167 CONG. REC. H1421 (daily ed. Mar. 17, 2021) (statement of Rep. Debbie Lesko); see also 166 CONG. REC. H1130 (daily ed. Feb. 13, 2020) (statement of Rep. Debbie Lesko); *id.* at H1026 (daily ed. Feb. 11, 2020) (statement of Rep. Debbie Lesko).

224. See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231 (2022). For more on *Dobbs*, see HASDAY, *supra* note 3, at 142–46.

225. H.R. REP. NO. 116-378, at 19 (2020) (dissenting views by Rep. Doug Collins); see also *id.* at 22 (dissenting views by Rep. Doug Collins); 166 CONG. REC. H1139–40 (daily ed. Feb. 13, 2020) (statement of Rep. Doug Collins).

226. 166 CONG. REC. H1132 (daily ed. Feb. 13, 2020) (statement of Rep. Jackie Walorski).

children at taxpayer expense.”²²⁷ Representative Debbie Lesko of Arizona declared in 2021 that “the ERA would be used to codify the right to abortion, undoing pro-life protections, and forcing taxpayers to fund abortions.”²²⁸ That same day, Representative Vicky Hartzler of Missouri, now a federal rather than state legislator, contended that the ERA would “eradicate State and Federal pro-life laws and policies.”²²⁹ Representative Marjorie Taylor Greene of Georgia proclaimed that the ERA would “empower the woke feminist mob” and “enshrine abortion,” creating “a new constitutional right guaranteeing abortion on demand.”²³⁰

After the Supreme Court overruled *Roe v. Wade*,²³¹ Senator Cindy Hyde-Smith of Mississippi declared in 2023 that “advocates of the ERA” were “no longer shy about their goal to use ERA to impose unrestricted abortion-on-demand up to the moment of birth across the nation and to enforce taxpayers to pay for this. Their apparent goal,” she maintained, “is to use ERA to overturn the *Dobbs* decision that returned the issue of abortion to the legislative process and instead re-empower unelected judges to impose a radical abortion policy that is in line with China and North Korea.”²³² Senator Lindsey Graham of South Carolina echoed the contention in the same committee hearing, arguing that the ERA “would require judges to strike down anti-abortion laws” and “mandate abortion on demand up to the moment of birth.”²³³

A critical audience might take these attacks on abortion rights as evidence that American women still lack full and secure control over their own lives. Like Schlafly before them, the ERA’s most recent opponents in

227. *Id.* at H1134 (daily ed. Feb. 13, 2020) (statement of Rep. Kay Granger). For other congressional opponents in 2020, see *id.* at H1135 (daily ed. Feb. 13, 2020) (statement of Rep. Carol Miller); *id.* at H1141–42 (daily ed. Feb. 13, 2020) (statement of Rep. Christopher Smith); *id.* at H1027 (daily ed. Feb. 11, 2020) (statement of Rep. Ann Wagner).

228. 167 CONG. REC. H1421 (daily ed. Mar. 17, 2021) (statement of Rep. Debbie Lesko); *see also* 166 CONG. REC. H1130 (daily ed. Feb. 13, 2020) (statement of Rep. Debbie Lesko); *id.* at H1026 (daily ed. Feb. 11, 2020) (statement of Rep. Debbie Lesko).

229. 167 CONG. REC. H1423 (daily ed. Mar. 17, 2021) (statement of Rep. Vicky Hartzler); *see also* 166 CONG. REC. H1132 (daily ed. Feb. 13, 2020) (statement of Rep. Vicky Hartzler).

230. 167 CONG. REC. H1422 (daily ed. Mar. 17, 2021) (statement of Rep. Marjorie Taylor Greene). For other congressional opponents in 2021, see *id.* at H1424 (daily ed. Mar. 17, 2021) (statement of Rep. Tom McClintock); *id.* at H1425 (daily ed. Mar. 17, 2021) (statement of Rep. Michelle Fischbach); *The Equal Rights Amendment: Achieving Constitutional Equality for All: Hearing Before the H. Comm. on Oversight & Reform*, 117th Cong. 40 (2021) [hereinafter *Achieving Constitutional Equality*] (statement of Rep. Andrew Clyde); *id.* at 45 (statement of Rep. Yvette Herrell).

231. 410 U.S. 113 (1973), *overruled by* *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

232. *The Equal Rights Amendment: How Congress Can Recognize Ratification and Enshrine Equality in Our Constitution: Hearing on S.J. Res. 4 Before the S. Comm. on the Judiciary*, 118th Cong. (2023) (transcript at 4; copy on file with author) [hereinafter *Congress Can Recognize*] (statement of Sen. Cindy Hyde-Smith).

233. *Id.* at 13–14 (statement of Sen. Lindsey Graham).

Congress have sought to counter arguments that the nation still has work to do by pairing their warnings about the changes the ERA would purportedly unleash with declarations that America has already established women's equality. In 2021, for example, Representative Michelle Fischbach of Minnesota contended "that men and women in the United States are already equal under law" and announced that "the ERA is unnecessary, redundant, and divisive."²³⁴ Representative James Comer of Kentucky agreed that the ERA "is simply unnecessary" as "equality under the law for men and women is already guaranteed by the Constitution and by statute."²³⁵ Representative Fred Keller of Pennsylvania maintained that "Americans know the ERA is as unnecessary today as it was 40 years ago" and reported that "[o]ur citizens are protected under the umbrella of existing laws that shield them from sex discrimination or any kind of discrimination."²³⁶ Representative Andrew Clyde of Georgia asserted "that men and women are already considered equals under the Constitution" and derided "the so-called Equal Rights Amendment" as "both a ridiculous fashion statement and a battle cry for many who fail to recognize the progress the United States has made since the 1970's."²³⁷ Representative Hartzler spoke on the House floor against the ERA while proclaiming: "I rise today to celebrate the achievements women have made and reaffirm that we are already equal under current law."²³⁸

In sum, the nation's dominant stories about itself have practical consequences, both inside and beyond the courts. Anti-feminists in the late twentieth and early twenty-first centuries have tapped into the powerful American inclination to exaggerate progress and forget what remains undone. Schlafly, her allies, and her heirs have fought feminist reform and promoted regression by insisting that women's equality is already established and sexism already left behind.

234. 167 CONG. REC. H1420 (daily ed. Mar. 17, 2021) (statement of Rep. Michelle Fischbach); *see also id.* at H1425 (daily ed. Mar. 17, 2021) (statement of Rep. Michelle Fischbach).

235. *Achieving Constitutional Equality*, *supra* note 230, at 5 (statement of Rep. James Comer); *see also id.* at 52 (statement of Rep. James Comer).

236. *Id.* at 35 (statement of Rep. Fred Keller).

237. *Id.* at 39 (statement of Rep. Andrew Clyde).

238. 167 CONG. REC. H1423 (daily ed. Mar. 17, 2021) (statement of Rep. Vicky Hartzler); *see also* 166 CONG. REC. H1131 (daily ed. Feb. 13, 2020) (statement of Rep. Vicky Hartzler); *Congress Can Recognize*, *supra* note 232, at 4 (statement of Sen. Cindy Hyde-Smith); *id.* at 13 (statement of Sen. Lindsey Graham).

CONCLUSION

In *We the Men*, I explore how we can learn from the past to change the future.²³⁹ Too often, America's dominant stories about itself ignore women's struggles for equality or distort them beyond recognition by exponentially exaggerating the nation's progress. Erasing women's unfinished struggles, and glossing over the fierce resistance to those struggles, shields entrenched inequalities, promotes complacency, and denies the concerted mobilization needed to propel reform and fight regression. Foregrounding the history of women's striving for equality spotlights the persistence of women's inequality in the United States and makes clear that real progress has always required women to challenge prevailing certainties, advance uncomfortable demands, and confront powerful opponents.

I argue for more conflict over women's status rather than less. America needs reforms that span teaching, commemoration, political representation, legislation, litigation, and everyday life. Conflict can generate change. Patiently awaiting men's spontaneous enlightenment will not. Incorporating a richer and truer history of women's struggles for equality into the nation's collective memory can reorient our understanding of how women's progress takes place, focus our attention on the battles that are still unwon, and fortify our determination to push for a more equal future as we shape the next chapters in this American story.

Pursuing justice for women has always required sustained mobilization against entrenched resistance. When we come together to challenge the unequal status quo and confront powerful opponents, we need to combine urgent impatience with resilience, grit, and determination over the very long term. Feminists still have many battles to win as we work to transform a nation whose promises of empowering "We the People" have too often been limited to We the Men.

239. See HASDAY, *supra* note 3, at 175–205.