Women's Rights

Reimagining Rights & Responsibilities in the U.S.
Reimagining Rights & Responsibilities in the United States: Women’s Rights

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“I want to be remembered as a woman ... who dared to be a catalyst of change.”

-SHIRLEY CHISHOLM
INTRODUCTION

In 1972, Shirley Chisholm made history as the first African American woman to seek a nomination from a major political party as a candidate for President of the United States. Prior to her campaign, Chisholm served in the House of Representatives for seven terms, co-founded the National Women’s Political Caucus, served on the House Rules Committee, and introduced more than 50 pieces of legislation. Despite those accomplishments, her presidential campaign was marked by discrimination, as she was barred from participating in primary debates, and was allowed to make a single televised speech only after she took legal action.

While Chisholm’s presidential campaign was ultimately unsuccessful, she nevertheless opened up many doors for women in politics, and in equal rights more broadly. Since then, women have been appointed to the Supreme Court, led major House and Senate committees, and served as Secretary of State. Just 44 years later, in 2016, Hillary Rodham Clinton became the first woman to win the presidential nomination from a major political party. She won the popular vote by 3 million votes, even though she lost the electoral college, and thus the presidency. Two years later, in 2018, Americans elected a record number of women into Congress, with 102 women serving in the House, and 25 in the Senate. These electoral victories spanned political ideology, race, religion, sexual orientation, geography, and age.

While the 2018 elections marked significant progress for women in Congress, more work needs to be done. Today, women hold only 23.7% of Congressional seats, and at the current rate, the Institute for Women’s Policy Research predicts that it will take 88 years to reach gender parity in Congress. And while the 2020 election saw no fewer than six women running for president, the United States has yet to elect a woman to lead the country.

Political representation matters. It ensures women are influential in political decisions, that their interests are represented, and that they can increase governmental legitimacy in the eyes of the public. It may also help to address some of the overlapping barriers to equality that women continue to face, such as wage discrimination and unequal access to comprehensive healthcare. Despite significant progress, women are still not treated equally relative to men, and the Trump administration has taken action to rescind many of the protections that ensure equal rights. Women, for example, experience significant wage disparities compared to men, ranging from $0.79 to $0.54 for every dollar. Women are also 35% more likely to live in poverty, and forgo health care services at a higher rate than men due to cost barriers. At home, women often bear more care and household responsibilities. Higher rates of sexual violence against women at home, work, or in educational settings similarly impact women’s health, well-being, and economic outcomes.

The rest of this chapter analyzes the current state of women's rights in the U.S. and proposes policy recommendations designed to advance them. The following section, “Setting the Landscape,” describes how identity influences women’s experiences and provides historical context on women’s rights. The next section, “Women’s Rights Today,” assesses the current state of women’s rights in the areas of employment, education, poverty, domestic violence, health, and civil society. This chapter concludes with policy recommendations that are designed to advance women’s rights moving forward.

SETTING THE LANDSCAPE

In analyzing the current state of women’s rights, it is important to understand both the shifting definitions of women’s identity today and the context that worked to both expand and restrict women’s rights historically.

THE MODERN WOMAN: INTERSECTIONAL IDENTITIES AND GENDER

Intersections between sex and other identities such as race, class, disability status, sexual orientation, and religion, influence each person’s experience differently. As such, it is important to apply an intersectional lens to understanding women’s rights. This report defines intersectionality as “the interconnected nature of social categorizations such as race, class, and gender, regarded as creating overlapping and interdependent systems of discrimination or disadvantage.”

By taking an intersectional approach, we can see how law, policy, and judicial decisions affect women differently. Women with identities that American society marginalizes may be more vulnerable to laws and court decisions that neglect to consider these other identities. For example, the Equal Pay Act of 1963 failed to benefit women with disabilities, because there were no federally established employment protections for people with disabilities at the time. Policymakers seeking to increase protections for women must be particularly sensitive to these nuances when passing legislation.

In addition, while this chapter concerns the rights of women, as opposed to men, the very nature of gender is shifting today, both in terms of public perception and legal protections on the basis of sex. Public concepts of gender are continuing to evolve beyond biological sex as more individuals identify as transgender or nonbinary, among other categories. These shifts in identity and public opinion may influence legal protections that were originally established on the basis of sex.

This was recently the case, for example, in the Supreme Court’s decision in Bostock v. Clayton County, Georgia (2020). The Court found that the protections established by Title VII of the Civil Rights Act of 1964 apply to gay and transgender workers, ruling: “It is impossible...to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex.” This landmark case illustrates a shift in the legal conceptualization of sex, which must be increasingly taken into account, even as we analyze the discrimination that women have experienced throughout our country’s history and today.

HISTORICAL OVERVIEW OF WOMEN’S RIGHTS

Many women’s rights battles today are rooted in America’s past. In 1769, the British colonial government denied women the right to “own property in their own name or keep their own earnings,” making women reliant on their male relatives or husbands for survival. This legislation only applied to white women, given that slavery denied Black women any rights, defining them as property themselves. Over time, states challenged this law, gradually increasing property rights for married women.

This law was rooted in societal views of women that were actualized in the legal concept of coverture, which “held that no female person had a legal identity.” Coverture influenced many aspects of women’s lives, including denying women the right to enter certain professions and providing no legal recourse for marital rape victims. Despite seeming like an issue of the past, coverture laws continue to have modern cultural and legal impacts, influencing how women’s rights to equal protection and bodily autonomy are perceived; it wasn’t until 1993, for example, that all 50 states had some laws criminalizing marital rape (and many loopholes remain).

Starting in the 19th century, women’s rights activists increasingly challenged societal perceptions and the law. In 1848, suffragists held the Seneca Convention, calling for women’s equal rights and the right to vote. After 80 years of activism, women won the right to vote with the ratification of the 19th Amendment in 1920. While the 19th Amendment was widely celebrated, it failed to enfranchise most Black female voters, continuing to shut out millions of women from the vote, particularly in the Jim Crow South. Mob violence and voting requirements further prevented Black people from voting until the passage of the Voting Rights Act of 1965.

The 19th amendment’s failure to enfranchise all female voters exposes how white suffragists prioritized voting rights for white women over women of other races, despite the activism of Black suffragists and women of color. This pattern of prioritizing rights for white women is a trend that has continued through today. A similar dynamic has played out in the current women’s rights movement, where the needs of able-bodied heterosexual women are often prioritized over the needs of women with disabilities and from the LGBTQ community.

KEY LEGISLATION FROM THE 1960S TO TODAY

The rise of the feminist movement helped advance equal protections during the 1960s and 1970s. Following significant activism, Congress passed a series of landmark laws increasing equal protections for women. These key pieces of legislation and their effects include:

1. **The Equal Pay Act (1963):** Banned “sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions.”

2. **The Civil Rights Act of 1964:** Title VII of the Act prohibited “employment discrimination based on race, color, religion, sex and national origin.”

3. **Public Health Service Act (1970):** Title X of the Act appropriates funding for grants that help increase health care access by funding: “comprehensive family planning and related preventative health services...[it] is designed to provide access to contraceptive services, supplies, and information. By law, priority is given to persons from low-income families.”

4. **The Education Amendments Act (1972):** Title IX of the Act established that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Protections apply to any educational institution receiving federal funding, including schools, universities, museums, and libraries.

5. **The Equal Employment Opportunity Act (1972):** Amended Title VII of the Civil Rights Act of 1965 to increase the authority of the Equal Employment Opportunity Commission (EEOC) to pursue enforcement litigation in cases of employment discrimination. The Act expanded Title VII protections to include public and private employers and labor organizations with 15 or more members.

6. **The Pregnancy Discrimination Act (1978):** Forbids “discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment.”

7. **The Family and Medical Leave Act (1993):** Provides “certain employees with up to 12 weeks of unpaid, job-protected leave per year. It also requires that their group health benefits be maintained during the leave.”

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22. This list is non-exhaustive of all legislation increasing equal protections for women.


The Violence Against Women Act (1994): Created guidelines on domestic violence cases for the criminal justice system and provided federal funding to programs that prevent domestic violence, sexual assault, dating violence and stalking. It has also funded shelters, community programs and studies tracking violence against women.  

The Clery Act (1990): Requires higher education institutions to publicly report campus safety policies, publish campus crime statistics in accordance with federal guidelines, and support crime victims.  

The Affordable Care Act (2010): Expanded public access to affordable health insurance, extended Medicaid eligibility to adults that live 138% below the federal poverty level, supported service delivery methods that lower health care costs, and increased insurance eligibility and coverage for services and medications.

KEY SUPREME COURT DECISIONS FROM THE 1960S TO TODAY

Supreme Court decisions have similarly influenced women’s rights. Some of these decisions are summarized below, categorized by employment, education, and health.

SUPREME COURT DECISIONS RELATING TO EMPLOYMENT

Congress largely established equal protections in the workplace via the Equal Pay Act, Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Act, and the Pregnancy Discrimination Act. The Supreme Court built upon these protections through court decisions that included expanding women’s access to unemployment benefits (Califano v. Westcott 1979), clarifying restrictions relating to sexual harassment, and clarifying protections for pregnant workers.

In terms of sexual harassment, the Court held that Title VII prohibits sexual harassment that creates a hostile work environment (Meritor Savings Bank v. Vinson 1986), and that the Title VII prohibition on sex discrimination includes same-sex harassment (Oncale v. Sundowner Offshore Services 1998). In 1999, the Supreme Court clarified the standard of proof for employer-based sex discrimination in Kolstad v. American Dental Association by establishing that the plaintiff only needs to illustrate that their employer knowingly violated federal law in order to have punitive damages imposed. Swierkiewicz v. Sorema (2002) made it easier for plaintiffs to come forward with an employment discrimination case by only requiring the employee to make a “claim showing the pleader is entitled to relief” instead of the facts required for establishing a prima facie case.

The Supreme Court also made decisions relating to the rights of pregnant workers. In Turner v. Department of Employment Security of Utah (1975) the Court protected the right of pregnant employees to receive unemployment compensation from the state during the third trimester and the six weeks following birth. In General Electric Co v. Gilbert (1976), the Court restricted women’s rights by deciding that employee benefits plans “excluding disabilities arising from pregnancy, does not constitute sex discrimination under Title VII.” In response, Congress passed the Pregnancy Discrimination Act in 1978, effectively overturning this decision.

SUPREME COURT DECISIONS RELATING TO EDUCATION

Title IX of the Equal Amendments Act established equal protections in educational institutions and served as the cornerstone for many Supreme Court decisions, especially those clarifying standards for school liability in cases of sexual harassment or assault. In Franklin v. Gwinnett County Public Schools (1992), the Court established that school districts may be required to pay monetary damages to victims in cases of sexual harassment.

It further clarified scenarios in which school districts are liable in two subsequent cases. In Gebser v. Lago Vista Independent School


District (1998), the Court found victims must show that school district officials with authority knew of the incident and that the district deliberately failed to address the incident, despite having knowledge of the event.\textsuperscript{40} Davis v. Monroe County Board of Education (1999) built upon this ruling by establishing that school boards can be held liable for private damages when they act with deliberate indifference in cases of sexual harassment between students.\textsuperscript{41}

SUPREME COURT DECISIONS RELATING TO WOMEN’S HEALTH

Supreme Court decisions have at times both expanded and restricted the right to have a medically safe abortion. In Roe v. Wade (1973), the Court found that the choice to have an abortion is protected by the right to privacy: “State criminal abortion laws, like those involved here, that except from criminality only a life-saving procedure on the mother’s behalf without regard to the stage of her pregnancy and other interests involved violate the Due Process Clause of the Fourteenth Amendment, which protects against state action the right to privacy, including a woman’s qualified right to terminate her pregnancy.” Roe v. Wade also established criteria for states to regulate abortions, with increasing regulatory power for states during the final two trimesters. Regardless of the trimester, state laws could not interfere with preserving the mother’s life or health.\textsuperscript{42}

The Court shifted from the trimester system to a fetal viability system with its decision in Planned Parenthood of Southeastern Pennsylvania v. Casey (1992). With this case, the Court established that “a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.”\textsuperscript{43} This change allowed states to regulate and prohibit abortions at an earlier stage relative to Roe v. Wade’s standards. It also increased focus on what constitutes fetal viability. The Planned Parenthood of v. Casey decision also reaffirmed Roe v. Wade and introduced a new “undue burden” standard on which state restrictions on abortion are evaluated.\textsuperscript{44} The “undue burden...exists, and therefore a provision of law is invalid, if its purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability.”\textsuperscript{45} The Supreme Court’s vague definition of “undue burden” allowed for states and lower courts to subjectively interpret the standard and created more opportunities for states to pass and uphold restrictive laws. Thus, the “undue burden” standard increased states’ ability to restrict abortion access and is considered by some to have weakened Roe v. Wade.\textsuperscript{46}

Following Planned Parenthood v. Casey, the Supreme Court decided a number of cases that further defined reproductive rights under the “undue burden” standard. In 1992, the Court applied “undue burden” in Planned Parenthood v. Casey to expand abortion access when it established that a state may not require a married woman to notify her husband that she is having an abortion.\textsuperscript{47} Eleven years later, the Court used this standard to restrict abortion access when they upheld restrictions on the medical procedure used to perform an abortion that were established under the Partial Birth Abortion Ban Act (2003).\textsuperscript{48} In this same decision, the Court also upheld Congress’s decision to exclude an exception clause that allows this procedure to be used to ensure the health of the mother.\textsuperscript{49} Lastly, in 2016 the Court used the "undue burden" standard to establish that states may not create arbitrary licensing and facility requirements, such as requiring the physician to have admitting privileges at a hospital within 30-mile radius, or requiring abortion clinics to comply with ambulatory surgical center standards (Whole Woman’s Health v. Hellerstedt, 2016).\textsuperscript{50}

The final area where the Supreme Court has influenced reproductive rights is around the use of public funding for abortions. In a number of cases, the Supreme Court ruled in favor of legislation restricting the use of public funds to perform abortions at both the federal and state levels. In Harris v. McRae (1980) the Court upheld the Hyde Amendment, which “bans the use of federal funding for abortions except in the case of rape,

incest, or a threat to the life of the pregnant person.”53 This ban includes Medicaid, which serves many low-income Americans. Webster v. Reproductive Health Services (1989) upheld state-level restrictions on funding abortions.54 In both cases, the Court found that restricting public funding did not preclude a woman from getting an abortion. These decisions reduced abortion access for low-income women.

The Supreme Court has also influenced how publicly funded programs can communicate to patients about family planning. While Title X funding may not be used to finance abortions, the Court evaluated in Rust v. Sullivan (1991) whether or not the Department of Health and Human Services (HHS) could set regulations that prohibit funding for counseling or referrals for family planning. Opponents frequently refer to these regulations as “gag rules.” The Court determined that Title X’s broad language allowed HHS to establish these regulations and that they were not a violation of the First Amendment.55 President Clinton rescinded these regulations in 1993.56

**POLITICAL BACKLASH AGAINST INCREASED EQUAL PROTECTIONS FOR WOMEN**

Two key areas of political backlash in recent decades against advances in women’s rights include the effort to stop the ratification of the Equal Rights Amendment (ERA) and the rise of the religious right in opposition to abortion and family planning. The ERA is a proposed amendment to the Constitution which states that: “Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex.”57 The ERA was meaningful because it would address the problem that men and women are not viewed equally under the law, and make it more difficult for the government to roll back protections or rescind women’s rights.58 Originally introduced to Congress in 1923, the ERA gained momentum during the 1960s and 1970s and was approved by Congress in 1972, with bipartisan support.59 In order for the ERA to become a constitutional amendment, however, it needed to be ratified by three-fourths of all US states. Despite Congressional support, the ERA faced a groundswell of opposition by “religious groups and social conservatives who feared it would diminish women’s traditional roles, embolden the gay community and lead to increased abortions,” according to one report.60 State’s rights advocates opposed the ERA, viewing it as a federal attempt to take power from the states.61 Eventually, this conservative movement caused some states to revoke their ERA ratification and stopped others from signing on. As a result, the ERA failed to meet its threshold for state ratifications by the 1982 deadline.

The Supreme Court decision in Roe v. Wade and other expansions in women’s reproductive rights also drew conservative political backlash, attracting many of the ERA’s original opponents.62 The religious right, a Christian socially conservative political faction, was originally mobilized in the early 1970s in response to strictures on religiously based private schools.63 It expanded its platform to include anti-abortion organizing in 1979, 6 years after Roe v. Wade. The religious right’s activism against medically safe abortion substantially impacted women’s reproductive and broader rights, influencing public opinion, presidencies, legislation, and courts. The public opinion campaign, which used strategies like televangelism and radio preachers, helped recruit people to join the religious right while shaping their opinions on core issues like

abortion. The religious right also mobilized citizens to campaign for the election of presidents opposed to abortion, including Ronald Reagan, George W. Bush, and eventually, Donald Trump; these presidents, in turn, influenced the composition of the judiciary by nominating judges also opposed to abortion.

**Women’s Rights Today**

Today, women still do not have the same legal rights as men, resulting in vast inequalities ranging from wage discrimination to insufficient protections against sexual violence. In recent years, many policies advancing women’s rights have been rolled back, resulting in fewer protections against discrimination and broader harm. Political leadership and laws affect women’s rights across policy issues, including the workplace, education, poverty, domestic violence, healthcare, and civil society. Within these policy areas, legislation, court decisions, and public opinion have established, reinforced, or undermined women’s rights.

**WOMEN AND THE WORKPLACE**

In 1998, Lilly Ledbetter received an anonymous note informing her that she was being paid significantly less than her male colleagues who held the same managerial position at Goodyear, the tire company. The note caused her to file a complaint with the EEOC, alleging sex discrimination. She eventually sued the company in a case that went before the Supreme Court. The Court decided Ledbetter v. Goodyear Tire & Rubber Co., Inc. (2007) in favor of Goodyear because Ledbetter had not filed her suit within the required 180-day period. In response to the Supreme Court’s procedural ruling, Congress passed the Lilly Ledbetter Fair Pay Act of 2009, which both expanded the time period in which an individual is eligible to file a pay discrimination complaint and included a retroactivity provision.

Ledbetter’s case is an example of the current challenges surrounding women’s rights in the workplace. These challenges exist despite earlier enactment of legislation protecting against sex discrimination, including the Civil Rights Act of 1964, the Equal Employment Act of 1972, and the Family and Medical Leave Act.

Although women make up nearly half of the workforce, unequal pay between men and women persists today, with disparate impacts across race.

This gap in pay is larger for women of color, and it produces significant financial disparities. For example, the pay inequity of $0.54 to $1 translates to a loss of $28,036 in annual earnings for Hispanic women.

Unequal pay affects women across other identities as well. The pay gap is particularly notable for mothers who, according to the National Women’s Law Center (NWLC), “are typically paid only 69 cents for every dollar paid to fathers” for full-time year-round work. With respect to women with disabilities, NWLC found that “women with disabilities working full time, year-round are typically paid just 80 cents when compared to their male counterparts with disabilities.”

Separately, with respect to transgender women, research by Kristen Schilt of Rice University and Matthew Wiswall of New York University estimated that “average earnings for female-to-male transgender workers increase slightly following their gender transitions, while average earnings for male-to-female transgender workers fall by nearly 1/3.”

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These laws were intended to provide protection against sex-based wage discrimination and employment discrimination and to ensure job-security and health benefits for workers who take leave for caregiving or health reasons. Despite these laws, unequal treatment and discrimination persist.

**GENERAL OVERVIEW**

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Factors contributing to the wage gap include discrimination, differences in the types of jobs that women perform, differences in hours worked, availability of paid family and maternal leave, and childbearing. In terms of discrimination, Pew Research found that 42% of women report experiencing “discrimination on the job because of their gender.” The hours that women work and their ability to hold full-time work is affected by the fact that women are more often burdened with caregiving and home responsibilities. A New York Times analysis of OECD data found that “women perform an average of four hours of unpaid work per day, compared to men’s two and a half hours.” Furthermore, the Pew Research Center found that women were more likely to experience career disruptions due to unpaid caregiving responsibilities relating to parenting.

These disruptions illustrate the importance of providing paid family leave so that workers aren’t forced to choose between their employment and their families. Currently, the only federal family leave policy in the US, the Family Medical Leave Act (FMLA), is unpaid and available for only 12 weeks. The United States is one of a few countries without a national paid family leave policy. Gender-neutral paid leave policies increase employee retention, reduce the spread illness, and prevent talent loss. They also increase female workforce representation and attachment.

While the United States lacks a paid national policy, California, New Jersey, Rhode Island, New York, and the District of Columbia all have a version of paid family and parental leave.

Massachusetts will start paying family leave benefits starting in 2021, followed by Connecticut in 2022 and Oregon in 2023.

FEDERAL ACTIONS RELATING TO THE WORKPLACE:

In recent years, women have experienced both progress and setbacks in employment rights, due to legislative changes and court decisions. In 2019, the Equal Employment Opportunity Commission (EEOC) ruled that companies may not use online marketing to discriminate during recruitment. Prior to the ruling, three companies were accused of discriminating against women when using Facebook’s job marketing function. The companies had selected a feature of Facebook marketing that allowed recruitment to only be pushed toward male-identifying Facebook users. This meant that female users did not see these employment ads, limiting their ability to apply for positions. After the ruling, Facebook agreed to change its credit, housing, and marketing advertisement criteria to better prevent discrimination on the basis of sex.

Despite this progress, there have been recent setbacks. In 2016, the EEOC under the Obama administration announced a new transparency rule which required companies with 100 or more employees “to begin collecting data about how much they pay workers of different genders, races and ethnic groups.”

Previously, the EEOC required employers to report employee demographic data including race, gender, and ethnicity. The new transparency rule is an incremental expansion of that data

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The United States is one of a few countries without a national paid family leave policy.

collection. This change was lauded by equal pay advocates as a way to reduce wage discrimination.82

In 2017 the Office of Management and Budget (OMB) attempted to halt the implementation of the rule citing that it would create a high administrative burden. After a lengthy legal battle, a District Court mandated the Trump administration to uphold data reporting requirements for 2017 and 2018. The District Court did not establish pay data requirements for 2019 onward.83 In 2019, the Trump Administration made another attempt to remove this requirement under the Paperwork Reduction Act. The EEOC’s permissions to collect employee demographic data (Component 1) and pay transparency data (Component 2) had expired under the Act in September 2019.84 According to the Federal Register, the EEOC only requested to renew data collection for Component 1, not Component 2.85 The request to only collect Component 1 data was finalized in March 2020; however, the Component 1 collection deadlines have been postponed to 2021 due to COVID-19.86

The Trump administration also revoked the Fair Pay and Safe Workplaces Executive Order in 2017. This executive order prohibited federal contractors from requiring arbitration for claims of discrimination and sexual harassment.87 Forced arbitration requires employees to settle issues of workplace harassment and discrimination outside of court, a measure that disproportionately favors employers in outcomes and disincentivizes women from reporting workplace harassment.88 While the revocation of the 2014 executive order is a setback, there has been some progress made with removing forced arbitration requirements at the state level. New Jersey, New York, Washington, California, Maryland, and Vermont all have laws banning forced arbitration relating to sexual harassment.89

Other federal agencies in the Trump administration have similarly rolled back anti-discrimination protections for women in the workplace. In 2017, the Federal Communications Commission (FCC) voted to remove some of the rules that support diversity and competition in broadcast media ownership, undermining access to ownership opportunities for women and people of color. After extensive litigation, the Third Circuit Court remanded the FCC’s rule for failing to consider the impact on ownership.90 Since then, the FCC has requested to have the Supreme Court review the case, with the hope of overturning the Third Circuit Court’s decision.91 In 2019, the Centers for Medicare and Medicaid Services (CMS) issued a rule preventing homecare workers from using a payroll deduction to pay union dues and benefits.92 Since most home care workers are non-white women, this rule had a disproportionate racial and gendered impact.

Lastly, the coronavirus outbreak disproportionately affected women in vulnerable front-line occupations. According to a New York Times analysis: “One in three jobs held by women has been


designated as essential...Nonwhite women are more likely to be doing essential jobs than anyone else.” The analysis found that women hold nearly 90% of nursing, nursing assistant, and other health support positions. Women also represent the majority of grocery store and fast food counter workers (66%).93 Women are also more likely to bear the burden of unpaid caregiving during the pandemic, with millennial women three times more likely to report child care as a reason for not working right now.94

WOMEN AND EDUCATIONAL INSTITUTIONS

In the past decade, sex and gender-based harassment and assault have received increased attention within education, particularly on college campuses. According to the 2019 Association of American Universities Survey on Sexual Assault and Misconduct (AAU Survey), 25.9% of female and 22.8% of TQGN95 undergraduates report experiencing “nonconsensual sexual contact by physical force or inability to consent or stop what was happening since enrolling in college.” For male undergraduates that rate was 6.8%. These rates are even higher with sexual harassment, where “more than half of undergraduate women (59.2%) and TQGN students (65.1%) reported experiencing at least one harassing behavior.” For males that rate was 36.2%.96 These statistics highlight the gendered nature of these issues, as well as the frequency with which these incidents occur at higher educational intuitions.

GENERAL OVERVIEW

Title IX of the Education Amendments Act advanced women’s rights in educational settings by prohibiting discrimination on the basis of sex in “any education program or activity receiving Federal financial assistance.”97 School responses to sexual harassment and assault are regulated by Title IX and the Clery Act, which compliments Title IX by requiring higher education institutions to publish policies and data on campus crimes in accordance with federal requirements.98 As a result of these laws, colleges and universities receiving federal funds are required to have their own procedures for addressing sex and gender-based harassment and assault, and to report statistics on crime on campus, including “dating violence, domestic violence, sexual assault, and stalking.”99

From the point of view of victims, there are some benefits to having a school-based process and data transparency requirements for sexual violence in schools. First, unlike the police, schools are legally required to adjudicate and respond to every student report.100 They are also able to respond more quickly and implement accommodations including mental and sexual health support and dorm transfers. Victims may also be more comfortable with using their college’s processes due to concerns like mistrust in the justice system, self-blame, fear of the accused, and shame. A report from the Center for Public Integrity (CPI) on campus sexual assaults found that “95 percent of victims do not end up reporting the incident to the police.”101

While reporting to schools is higher, students still frequently underreport cases of sexual harassment and assault: “For incidents involving penetration, women contacted a program for 29.5 percent of incidents,” according to AAU. Transgender and gender non-conforming students reported 42.9 percent of such incidents, while men reported 17.8 percent. In addition to issues of shame, emotional distress, and lack of faith in school reporting systems,102 lower reporting also stems from the institutional


95. TQGN includes students that listed their gender identity as any of the following: transgender woman, transgender man, nonbinary/genderqueer, gender questioning, or gender not listed.


barriers that students experience when they file a report. CPI found that victims who decide to report incidents “must maneuver through a system shrouded in secrecy where they encounter mysterious disciplinary proceedings, closed-mouth school administrations, and off-the-record negotiations.”

In response to increased reporting on the issue, the Obama Administration published a 2011 letter expanding the definition of sexual and gender-based harassment under Title IX. It shifted the standard of evidence from “clear and convincing evidence” to a lower “preponderance of evidence” standard meaning there must be more than a 50 percent chance that the claim is true. The Obama guidelines also expanded the schools’ obligation to address cases of sexual assault in an attempt to address broader cultural issues around sexual violence on campuses. These changes were opposed by civil libertarians decrying the lower standard of evidence but were praised by feminist and victims’ advocate organizations.

FEDERAL ACTIONS RELATING TO EDUCATIONAL INSTITUTIONS

In 2017, the Department of Education (DOE) withdrew the 2011 guidelines and announced a new rulemaking process, a move lauded by many due process advocates. Women’s rights activists largely condemned the withdrawal of the guidelines, concerned that it would discourage reporting, reduce campus safety, and cause confusion with Title IX rules.

In May 2020, the DOE released its final Title IX rules on sexual harassment, which took effect in August. The new rules significantly alter how schools handle accusations of sexual harassment and assault. Some of the specific changes include:

- Redefining criteria for sexual harassment more narrowly, as being “any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access."
- Requiring schools to allow a third-party cross-examination of the complainant and the respondent during a live hearing, with the choice of separate rooms for the complainant and the respondent.
- Establishing that schools have “actual knowledge” and are required to respond once an official with authority or the Title IX coordinator is notified.
- Increasing flexibility for schools on whether or not to apply their Title IX policies to their programs outside of the United States, such as study abroad.
- Requiring schools to respond to incidents in “locations, events, or circumstances over which the school exercised substantial control.” This change excludes incidents occurring in non-university housing under Title IX.
- Allowing schools to choose between the “preponderance of evidence” standard and the “clear and convincing” standard.

In response, attorney generals from 18 states filed a lawsuit against the DOE and Secretary Devos, citing concerns that the regulations would “reverse decades of effort to end the corrosive effects of sexual harassment on equal access to education” and require a “complete overhaul” of their current procedures. The ACLU also filed a lawsuit citing concerns that the new rules significantly lower institutional responsibility to respond to


student reports of harassment and assault, and that the new definition of sexual harassment is too narrow.\textsuperscript{112}

**WOMEN AND ANTI-POVERTY ASSISTANCE**

American women are 35% more likely to live in poverty than men.\textsuperscript{113} Women are also more likely to head single-parent households, a factor associated with a higher chance of living in poverty.\textsuperscript{114} Given this data, anti-poverty assistance programs disproportionately impact women and their families, highlighting the importance of applying a gendered lens when designing and altering anti-poverty programs.

**GENERAL OVERVIEW**

While women are more likely to use anti-poverty programs, utilization of anti-poverty programs such as the Supplemental Nutrition Assistance Program (SNAP), varies across states, race, and ethnicity. According to a USDA report on SNAP, in 2018, California, Florida, Texas, New York, and Pennsylvania had the highest percentage of SNAP household recipients. In that same year, Wyoming, North Dakota, Alaska, South Dakota, and Vermont had the lowest. In terms of SNAP usage by race and ethnicity, non-Hispanic whites made up the greatest percentage of the total SNAP participants (35.7%). Non-Hispanic African Americans and Hispanics of any race make up 25.1% and 16.7% of recipients respectively, highlighting SNAP’s universal importance in supporting poverty reduction across racial lines.\textsuperscript{115}

**FEDERAL ACTIONS RELATING TO ANTI-POVERTY ASSISTANCE**

The Trump administration proposed changes to SNAP and Medicaid introducing work requirements and reducing aid. In 2018, President Trump signed an executive order directing agencies to increase work requirements for federal assistance programs.\textsuperscript{116} The USDA adopted a rule change following that requirement in December 2019 that was supposed to go into effect on April 1, 2020. A federal judge issued an injunction that prevented the rule from going into effect in light of the coronavirus pandemic.\textsuperscript{117} Two years later, the Trump administration proposed two changes to federal assistance programs. First, the Office of Management and Budget proposed to shift how the Official Poverty Measure is calculated, using a different indicator for inflation than the Consumer Price Index-Urban inflation measure.\textsuperscript{118} Organizations ranging from the Robert Wood Johnson Foundation to the Collaborative of Poverty Centers submitted commentary opposing this shift.\textsuperscript{119} They argued that the change would lower the inflation measure thus lowering the poverty line and making many ineligible for aid. Second, President Trump’s 2021 budget proposal included a 30% reduction in SNAP funding, more than $180 billion over the next 10 years.\textsuperscript{120} While Congress has yet to finalize the 2021 Federal Budget, the House passed their version of the appropriations bill without President Trump’s proposed changes and included an increase in SNAP funding.\textsuperscript{121}


### WOMEN AND DOMESTIC VIOLENCE

Approximately 80% of domestic violence survivors are women. The consequences of domestic violence are severe, harming the health and well-being of victims as well as other household members. According to the Centers for Disease Control and Prevention (CDC), approximately 41% of female victims and 14% of male victims of intimate partner violence (IPV) experience physical injuries. Children of IPV victims are also affected, with 15.5 million children being exposed to at least one incident of intimate partner violence annually. In addition to harming victims and their children, IPV results in high economic costs to society. An analysis from the Journal of Preventive Medicine found that the cost of intimate partner violence produced a population economic burden of about $3.6 trillion over the lifetime of the victims, with the government paying about $1.3 trillion of that cost.

### GENERAL OVERVIEW

Women from certain demographic groups experience higher rates of violence, especially from their intimate partners. According to the American Psychological Association, "women with disabilities have a 40 percent greater risk of intimate partner violence, especially severe violence, than women without disabilities." For female immigrants, domestic violence rates are as high as 49.8%. Rates of IPV are also higher within the LGBTQ community: "43.8% of lesbian women and 61.1% of bisexual women have experienced rape, physical violence, and/or stalking by an intimate partner at some point in their lifetime, as opposed to 35% of heterosexual women.

Women living in rural settings also report higher IPV rates. The Journal of Women’s Health found that women living in small rural towns reported IPV at a rate of 22.5%, compared to 15.5% for women living in urban and suburban areas. In terms of race and ethnicity, multiracial, American Indian and Alaska Native, and non-Hispanic Black women reported higher IPV rates, including sexual violence, physical violence, and/or stalking.

Measuring domestic violence is difficult because these acts are largely underreported due to the highly personal nature of the crime. Of domestic violence victimizations reported to the police, 67% of the violent acts were committed by a relative, and 54% were committed by an intimate partner (IPV). These statistics likely underestimate the scope of violence given underreporting. Among the reasons why someone may not report domestic violence are fear of further violence, fear of having one’s sexual identity exposed, a history of abuse, shame, financial dependence, psychological manipulation, cultural or religious beliefs, language barriers, immigration concerns, children, and love.

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123. Intimate partner violence (IPV) is a topic within domestic violence that refers to violence committed by a person's partner.


Domestic violence and IPV are forms of oppression rooted within a difference in power, and as such, the experience of sexual and other forms of violence varies depending on a woman’s identity in relation to the dominant culture. Those differences may affect how victims of domestic violence are treated by society and may also influence whether victims choose to report domestic violence. For example, a Black woman “may fear that calling the police will subject their partners to racist treatment by the criminal justice system as well as confirm racist stereotypes of Blacks as violent.” For undocumented female immigrants, the fear of deportation or family separation may similarly prevent reporting.

In 1984, Congress passed the Family Violence Prevention and Services Act (FVPSA), which funded support services and shelters for victims of domestic violence and their children. Two years later, it passed the Federal Sexual Abuse Act which “criminalized marital rape on all federal lands.” By 1993, every state had some type of marital rape law on record. A year later, Congress passed the Violence Against Women Act (VAWA) providing increased protections and federal funding for programs serving victims of domestic violence. The 2013 VAWA Reauthorization included new protections for lesbians, immigrants, and Native American women assaulted by non-tribal residents while on tribal lands.

**FEDERAL ACTIONS RELATING TO DOMESTIC VIOLENCE**

VAWA expired on February 15, 2019, and has not been reauthorized. In that same year, the House passed a new version of VAWA with bipartisan support, but it was blocked in the Senate. The House version includes a new provision “that expanded law enforcement’s ability to strip domestic abusers of their guns, known as the ‘boyfriend loophole’.” According to the American Journal of Public Health, women are 5 times more likely to be murdered in domestic violence situations when abusers have access to a gun. (See “Gun Rights and Public Safety.”) Gun rights advocates, including the NRA, opposed the House bill, arguing that “the new provision is ‘too broad and ripe for abuse.’”

Since November 2019, the VAWA reauthorization bill has become a partisan battleground in the Senate, with Democratic – and Republican – sponsored versions of the bill. The Senate Democratic bill parallels the House version by closing the ‘boyfriend loophole,’ and increasing protections for tribal communities and LGBTQ survivors. The Republican version excludes these provisions. As of June 2020, the Senate had not passed a bill.

**ADDITIONAL AREAS FOR DOMESTIC VIOLENCE REFORM**

For centuries, the U.S. did not have laws protecting against marital rape. Many believed that “a woman’s unconditional sexual

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140. Ibid.


consent was just part of the marriage contract.”\footnote{149} It wasn’t until 1993, less than 30 years ago, that all 50 states passed some form of legislation criminalizing marital rape.\footnote{150}

Nevertheless, marital rape persists today, with 10 to 14\% of women still raped within marriage, according to national surveys.\footnote{151} Even worse, many states have lax laws permitting marital rape in certain situations. This issue came under national scrutiny in Minnesota, when Jenny Teeson discovered videos of her husband raping her while she was unconscious. When she sought charges she learned about a legal loophole which “prevented someone from being prosecuted if they are in a ’voluntary sexual relationship’ at the time of the alleged offense, or if the complainant is the actor’s legal spouse.”\footnote{152} Prosecution of marital rape was only legal in cases where “the couple is living apart and one of them has filed for legal separation or dissolution of the marriage,” leaving many women unprotected.\footnote{153} In 2019, Minnesota passed a bi-partisan law that removed the “voluntary sexual relationship” defense, thus eliminating this loophole.\footnote{154}

While the Minnesota law marks progress, many other states have legal loopholes permitting marital rape. In 17 states there are legal exemptions for spouses that rape a partner who is "unconscious, drugged, or otherwise incapacitated.”\footnote{155} Other states have laws that create barriers to reporting marital rape. In South Carolina, perpetrators are only liable if the rape involves a weapon or aggravated violence. Even then, victims have only 30 days to report the incident to the police.\footnote{156}

**WOMEN AND HEALTH CARE**

Access to affordable health care is a challenge for women of limited means. A recent news report cited the example of Leyila,\footnote{157} a working single mother from rural Kansas. Leyila is at high risk of experiencing an aggressive form of uterine cancer and has struggled to obtain access and afford the preventative screenings essential for early detection. Leyila doesn’t have health insurance and “she struggles to feed and clothe her two children, making the extra expense of a doctor’s visit nearly unsustainable.” She has not had a screening in 5 years because of the cost and distance from a federally subsidized health clinic.\footnote{158}

Leyila is among millions of low-income women who struggle to access and afford health care. Compared to men, a higher share of women forgo health care because of cost barriers.\footnote{159}

Women experience additional barriers beyond cost in accessing healthcare, particularly as it relates to identity. Women in the LGBTQ community report being denied medical treatment and experiencing disrespect when seeking medical aid.\footnote{160} Black American “patients tend to receive lower-quality health services, including for cancer, HIV, prenatal care and preventive care.”\footnote{161}

Women living in rural communities often have to travel long

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151. Ibid.


157. Last name omitted from the original source for privacy purposes.


distances to receive medical care.162

Leyila’s struggles highlight the importance of legislation such as Title X of the Public Health Service Act, which funds family planning, preventative health services, and “access to contraceptive services, supplies and information.” The program requires that priority is given to patients from low-income families.163 While Title X improved health access and affordability for many low-income women and families, it has become a target of partisan conflict around women’s health, particularly in terms of reproductive freedom. These partisan debates significantly influence healthcare access and affordability for low-income women, impacting women’s health issues including maternal mortality, contraception, and medically safe abortion.

FEDERAL ACTIONS RELATING TO MATERNAL MORTALITY

The U.S. has one of the highest maternal mortality rates among industrialized nations. According to the CDC, “the majority of lives lost—approximately three out of five, or 60 percent—could have been saved if the mothers had access to better medical care.”164 Maternal mortality is also an area of significant racial disparity, with Black women 3.3 times more likely and Native women 2.5 times more likely to die a pregnancy-related death than white women.165

In response to these statistics, Congress in 2018 passed the Preventing Maternal Deaths Act, which sought to improve national data collection on this issue and enable agencies to increase efforts to reduce the maternal mortality rate.166 The new legislation was cosponsored in the House by 141 Democrats and 51 Republicans, marking a rare bipartisan achievement. The bill passed the Senate without amendments.167 This new law authorizes the CDC to support state and tribal maternal mortality review committees (MMRCs) and creates a new level of standards and financial support for MMRCs. The MMRCs collect, analyze, and report specified data relating to pregnancy-associated deaths.168

FEDERAL ACTIONS RELATING TO AFFORDABLE HEALTH CARE AND CONTRACEPTIVE ACCESS

Title X and the Affordable Care Act (ACA) increase the affordability of health care services and medical prescriptions. Title X funds family planning, preventative health, and contraceptive services. The original ACA (2010) addressed affordability in a few key ways: First, the ACA increased health insurance affordability by providing subsidies to reduce insurance costs for low-income households,169 and also expanded Medicaid eligibility. After the enactment of the ACA, an additional 20.4 million women were able to access preventative care, and the uninsured rate for women fell by 39%. Notably, the ACA reduced gender-related healthcare barriers including higher premiums and preclusion from insurance due to pre-existing issues like pregnancy, infertility, or chronic health conditions due to sexual violence.170

The ACA also included a contraceptive coverage mandate, which required most private health insurers to cover contraceptive costs.171 Contraceptive access offers both individual and societal benefits. It increases the number of women in the workforce, produces higher earnings, and affords women the ability to choose if and when they would like to have children.172 These benefits extend to society, by reducing public assistance reliance, decreasing children born into poverty, and narrowing the pay gap.


The cost-savings for Medicaid are particularly notable: “For every public dollar spent on contraception, $5.68 is saved in Medicaid spending.”

The contraceptive coverage mandate in the ACA raised the question of whether institutions should be required to provide contraceptive coverage if contraceptives are contrary to their religious beliefs. Originally, only houses of worship were exempt from the mandate. This issue reached the Supreme Court in *Burwell v. Hobby Lobby Stores Inc.* (2012), where Hobby Lobby “argued that the requirement that the employment-based group health care plan cover contraception violated the Free Exercise Clause of the First Amendment and the Religious Freedom Restoration Act of 1993 (RFRA).” The Supreme Court ruled 5-4 in favor of Hobby Lobby, requiring the ACA to provide exemptions for for-profit companies. (See “Freedom of Religion.”)

In 2018, the Trump Administration expanded the types of institutions that can file for “Religious Exemption” or “Moral Objection” under the ACA. The “Religious Exemption” clause expands exemptions relating to “entities and individuals with sincerely held religious beliefs opposed to coverage of some or all contraceptive or sterilization methods” to include “non-profits, for-profits and higher education institutions” and allows for exceptions to be made for “issuers and individuals” based on their religious beliefs. The “Moral Objection” clause creates exemptions for “entities and individuals with sincerely held moral convictions opposed to coverage of some or all contraceptive or sterilization methods.” This was expanded to include nonprofits, for-profit entities that do not have publicly traded ownership interests, higher education institutions, health insurance issuers, and in certain cases, individuals.

This change allows qualifying employers to exclude contraceptive and sterilization coverage in their health insurance plans. Groups claiming exemption are not required to file a notice; rather the government is responsible for identifying cases where exemptions are inappropriately claimed. This makes it more difficult to ensure the exemption isn’t being misused. The vagueness of these exemptions also increases the power of employers to determine whether or not employees have contraceptive coverage, impacting women’s health and society more broadly.

**FEDERAL ACTIONS RELATING TO WOMEN’S HEALTH SERVICES AND MEDICALLY-SAFE ABORTIONS**

Title X has played an essential role in health care access for millions of low-income families: “In 2017, nearly 4,000 clinics nationwide relied on Title X funding to help serve 4 million people.” Some Title X-funded services include screenings for breast and cervical cancer, contraception, treatment for sexually transmitted diseases (STI), pregnancy diagnosis, and client education. One of Title X’s biggest providers was Planned Parenthood, which until 2019, served 40% of Title X patients; in some states, it was the only provider of such services. Opinions on Planned Parenthood are highly politicized because some Planned Parenthood clinics provide medically-safe abortions as part of their health services. According to Planned Parenthood’s 2018 – 2019 Annual Report, abortions make up 4% of their services. STI testing and treatment, contraception, and other preventative health services make up the majority of their activities.

In 2019 the Trump administration issued rules restricting Title X funding from being used to promote, make referrals, or support medically safe abortion. Previously, Title X funds could be granted to clinics that provided family planning services, including abortions and abortion referrals; the funds could not be used to fund an abortion. Trump’s new rules included requirements regarding “clear financial and physical separation for Title X

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funded programs from programs and facilities where abortion is a method of family planning.” This change forced many smaller and rural clinics to close because of the challenges associated with ensuring separate offices, staff, and recordkeeping mechanisms.

The new rules substantially impacted Title X’s largest provider, Planned Parenthood, who chose to withdraw from Title X, rather than follow the new regulations. Planned Parenthood and the American Medical Association argued against the restrictions stating that they would undermine the doctor-patient relationship, inhibit doctors from sharing key medical information with patients, and prevent pregnant women from accessing all medical options. In states where Planned Parenthood was the only Title X recipient, the group’s decision to withdraw from Title X meant the state would no longer receive funding. In addition, many state health departments and private clinics also elected to drop out of Title X funding in response to these rules. As a result, Maine, Oregon, Utah, Vermont, and Washington are no longer receiving funding because either the state or the sole grantee in the state withdrew from Title X. An estimated 876 clinics have closed nationally due to this change, reducing health care access for many low-income families and women.

As these actions show, significant political debate surrounds reproductive rights. In 2018, President Trump appointed Brett Kavanaugh to the Supreme Court. Justice Kavanaugh publicly praised the justices who dissented in Roe v. Wade and has sided with court decisions that exempt employers from contraceptive coverage. His appointment to the Supreme Court increases the likelihood of decisions that restrict access to contraception and abortions.

If the Court attempted to overturn Roe v. Wade, it would conflict with the opinion of most Americans. According to Pew Research Center (2019), 70% of Americans are opposed to having Roe v. Wade overturned and 61% believe that abortion should be legal in all (27%) or most (34%) cases. For those opposed to abortion, 26% believe it should be illegal in most cases, and 12% believe it should be illegal in all. Most Americans are concerned about greater restrictions on abortion: “a majority of Americans say their greater concern is that some states are making it too difficult (59%) rather than too easy (39%) for people to be able to get an abortion.”

STATE ACTIONS RELATING TO WOMEN’S HEALTH SERVICES AND MEDICALLY-SAFE ABORTIONS

Across the U.S., recent state laws and judicial decisions have affected access to medically safe abortions. A map from the Guttmacher Institute illustrates states that have enacted legislation affecting abortion access in 2019. The general state legislative trend has been to increase restrictions on access to abortions. As noted by the Journal of the American Medical Association, “in 2019, 7 states enacted bans on abortion in all or most circumstances, clearly violating Roe and Casey. Alabama banned abortion at all stages of pregnancy. Georgia, Kentucky, Louisiana, Mississippi, Missouri, and Ohio banned abortion once a fetal heartbeat can be detected, around 6 weeks. Statutes often fail to grant exceptions for rape or incest, or for the woman’s physical and mental health.” Other states enacted restrictions on gestational age, type of procedure, or rationale for the abortion. Some states included new criminal penalties for physicians and patients. The courts have struck down or enjoined many of these restrictions from going into effect. These efforts illustrate a repeated effort to chip away at the legislation and Court decisions that established women’s rights to medically safe abortion.

While seventeen states increased abortion restrictions in 2019,
nine states enacted laws expanding abortion access.\textsuperscript{190} New York, Illinois, and Rhode Island passed laws “protect[ing] abortion up to the point of fetal viability and when a patient’s life or health is at risk at any stage.”\textsuperscript{191} Other states enacted laws that improved access, patient confidentiality, and removed penalties if \textit{Roe v. Wade} were overturned.\textsuperscript{192}

Lastly, a notable change in expanding reproductive rights occurred at the state judiciary level in Kansas, where the state supreme court issued a ruling to guarantee access to medically safe abortion in the state. The court’s ruling was based on the right to personal autonomy as guaranteed by the Kansas Constitution’s Bill of Rights.\textsuperscript{193} This decision ensure a woman’s right to choose under state law in Kansas, regardless of \textit{Roe v. Wade}.

**CONSTITUTIONAL AMENDMENT, SOCIAL MOVEMENTS AND CIVIL SOCIETY**

One of the recent driving forces to advance women’s rights has been the rise of social activism and movements, including the new effort to ratify the ERA, and the #MeToo Movement. Historically women’s social movements have resulted in a number of successes, including voter enfranchisement and increased protections in the workplace, education, and other settings. Yet even today, women remain legally unequal to men under the Constitution and are subject to inequality and discrimination as a result. This inequality manifests in many of the policy issues discussed throughout this chapter, highlighting a clear need for change.

**THE EQUAL RIGHTS AMENDMENT**

While Congress and the courts have expanded women’s rights via a patchwork system of laws and judicial decisions, women are still not legally equal to men in a number of ways. Many women’s rights advocates believe that the way to address this problem is by certifying the Equal Rights Amendment (ERA). Adding the ERA to the Constitution would help to close the legal loopholes that still not legally equal to men in a number of ways. Many women’s rights advocates believe that the way to address this problem is by certifying the Equal Rights Amendment (ERA). Adding the ERA to the Constitution would help to close the legal loopholes created by the current system by establishing universal equality on the basis of sex. In turn, this could help protect against the rollback of protections for women’s rights across Congress, the judiciary, and the Executive Branch.\textsuperscript{194} In recent years the ERA regained attention when three additional states, Nevada, Illinois, and Virginia, ratified the Amendment during the last three years.\textsuperscript{195} The recent ratifications have produced a national debate about what will happen with the ERA moving forward.

By 1982, 35 states had ratified the ERA, three short of the 38 required for ratification. In the following years, Tennessee, Nebraska, Kentucky, Idaho, and South Dakota rescinded their ratification of the ERA, reducing the number of approvals to 30. Questions about whether states can reverse their ratifications remain and are a source of major debate today. Based on the precedent set after the Civil War, states were not permitted to rescind ratification of the 14th and 15th Amendments. This precedent might be applied to the ERA today. For those who argue that states can reverse ratifications, three new ratifications place the total number at 33 states, still short of 38. However, for those who argue that states cannot reverse ratifications, the ERA has met the 38 state minimum required to be certified as a constitutional amendment. With Nevada, Illinois, and Virginia’s ratifications, the ERA has picked up momentum. However, there is a debate about how the ERA would further women’s rights. Legislation and judicial decisions since 1972 have secured a number of the equal rights and protections for women that the ERA originally sought to accomplish, such as legislative requirements around equal pay and protections against discrimination in employment and education. Yet, significant gaps remain in these and other policy areas. Adding the ERA to the Constitution would explicitly guarantee equal rights for women.\textsuperscript{196}

ERA proponents argue that it could help further eliminate pay inequality and discrimination, and institute other changes, such as state intervention into domestic violence and sexual harassment and protect against discrimination based on pregnancy.\textsuperscript{197}

ERA opponents argue that current U.S. law is sufficient for protecting gender equality and that adopting the ERA could even be counterproductive, for example, denying women alimony


\textsuperscript{191} Ibid.

\textsuperscript{192} Ibid.


payments after divorce. They also cite concerns that the ERA could threaten family structures, render restrictions on abortion procedures unconstitutional, and encroach upon religious beliefs.

Efforts to push the ERA forward are being challenged. Alabama, Louisiana, and South Dakota are suing to block the ERA's certification on the basis that the ratification deadline had passed. The Justice Department also published a Memorandum stating that "Congress may not revive a proposed amendment after a deadline for its ratification has expired." In response to these anticipated barriers, the House proposed and passed a bill removing this deadline in early 2020, the Senate referred the bill to the Judiciary Committee.

THE #METOO MOVEMENT

Women's activism in recent years has increased, as evidenced by the Women's March and the #MeToo Movement. On January 21, 2017, activists across the globe held the first Women's March as a response to the bitter and often vitriolic rhetoric that emerged during the 2016 U.S. presidential campaign between Donald Trump and Hillary Rodham Clinton. Organizers held the event the day after Trump's presidential inauguration. One of the goals was “to tell the new administration that on Day 1, 'women's rights are human rights.'” On the day of the event, millions of women peacefully protested. The first Women's March evolved into an annual event, accompanied by smaller protests throughout the year.

In 2017, the #MeToo Movement sparked national activism in the wake of sexual harassment and assault allegations against film producer Harvey Weinstein, who was found guilty of criminal sexual assault and rape in 2020. Tarana Burke originally founded #MeToo in 2006 to support low-income Black and other non-white victims of sexual abuse. Due to the attention on Weinstein and other high-profile figures accused of sexual misconduct, the movement gained a broader audience, with millions of women sharing their experiences of sexual assault and harassment in their personal lives and the workplace. In the years following this moment, 15 states and New York City have passed laws on workplace harassment, sexual harassment, and assault.

#MeToo also led to the creation of Times Up, a coalition working to end sex discrimination, assault, the gender leadership gap, and the pay gap in Hollywood and beyond. The group aims to have a nationwide impact with plans to “create a legal defense fund, administered by the National Women’s Law Center, to help survivors of sexual harassment — especially those in low-wage jobs, like farm or factory workers — get legal representation.”

POLICY RECOMMENDATIONS

This report aspires to move the United States toward a future where women receive equal pay for their work, have access to high-quality health care, are safe from sexual violence and harassment, and have equal rights legally guaranteed by the U.S. Constitution, among other policies. To make this world a reality, significant work needs to be done to advance women's rights, not only under the law but in the beliefs of American society. The following policy recommendations offer opportunities to strengthen women's rights and promote greater gender equality.


HOW TO REIMAGINE RIGHTS & RESPONSIBILITIES:

• **Strengthen Women’s Rights in the Workplace.** Establish child care for working parents, protect pregnant workers from discrimination, and provide three-month paid parental leave. In addition, mandate fair pay and pay equity, require large employers to disclose employee pay by gender and race, prohibit employers from requiring employees to settle gender discrimination cases by arbitration as a condition of their employment. Finally, include low-wage workers and domestic workers under minimum wage laws, and prohibit government contractors from firing employees whose identities or choices do not conform to the employer’s religious views.

• **Protect Women’s Access to Health Care.** Guarantee women’s right to choose when to bear children, protect access to contraceptive services and medically safe abortion services, expand pregnancy coverage in federal health insurance programs, and provide federal funding for programs to decrease preventable maternal deaths.

• **Expand Women’s Access to Anti-Poverty Assistance.** Abolish work requirements and expand eligibility and funding for federal anti-poverty assistance programs, expand Child Tax Credit eligibility so that single mothers living in poverty can access benefits.

• **Expand Protection Against Sexual Violence and Harassment.** Define “sexual harassment” as “unwelcome conduct of a sexual nature,” amend the Violence Against Women Act to include provision banning marital rape, update the legislative definition of “sex” to include people who are transgender or gay.

• **Ratify Equal Rights Amendment.** Complete the process of amending the Constitution to affirm that “equality of rights shall not be denied or abridged on account of sex.” The Equal Rights Amendment would assure that women’s rights have full constitutional protection and cannot be curtailed by judicial, legislative, or administrative decisions.

• **Ratify International Convention on the Elimination of All Forms of Discrimination Against Women.** The Convention is the international counterpart of the Equal Rights Amendment. It has been signed but not yet ratified by the United States.