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REMEMBERING THE LADIES: TAKING A LOOK AT SOME OF
VIRGINIA'S MOST NOTABLE FEMALE LEADERS AS
VIRGINIA FIGHTS FOR RECOGNITION OF THE EQUAL
RIGHTS AMENDMENT

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ABSTRACT

In January 2020, Virginia ratified the Equal Rights Amendment, fulfilling the constitutional ratification requirements and thus enshrining it as the Twenty-Eighth Amendment to the United States Constitution. This article seeks to highlight and explore the lives and contributions of some of the Virginia women who paved the way for this monumental achievement and shaped our nation and our Commonwealth. From Pocahontas to Barbara Johns and the women of the Virginia Military Institute, the history of Virginia women has been one of grit and determination even in the face of subjugation and exploitation. This article seeks to amplify their voices and their stories for the debt of gratitude we owe these women – and *all* Virginia women – who have fought to advance the ideals of equality.

INTRODUCTION

This past January, Virginia became the thirty-eighth and final state required to ratify the Equal Rights Amendment.¹ As Virginia Attorney General Mark R. Herring said, the General Assembly’s vote marked an “absolutely historic day for our commonwealth and a major milestone in the fight for equality in this [N]ation.”² This momentous accomplishment was undoubtedly a crucial step forward in the centuries-long fight for women’s equality in the Commonwealth and beyond—but that fight continues today.³ Notwithstanding Virginia’s ratification, the Archivist of the United States (the official tasked with the ministerial duty of certifying and publishing ratified Constitutional amendments) refuses to acknowledge the Equal Rights Amendment as valid.⁴ Days after Virginia’s ratification vote, Attorney General Herring—along with the Attorneys General of Illinois and Nevada, the two other States to ratify in recent years—filed suit in federal court in DC, alleging that the Archivist is legally required to accept the three States’ ratifications and

¹ Tara Law, *Virginia Just Became the 38th State to Pass the Equal Rights Amendment. Here's What to Know About the History of the ERA*, TIME (Jan. 15, 2020), <https://time.com/5657997/equal-rights-amendment-history/>. See generally U.S. CONST. art. V (requiring three fourths of state ratification to validate amendments); H.R.J. Res. 1, 2020 Gen. Assemb., Reg. Sess. (Va. 2020) (explaining the 38th state meets the threshold requirement of Article V of the United States Constitution).

² Bill Chappel, *Virginia Ratifies The Equal Rights Amendment, Decades After The Deadline*, NPR (Jan. 15, 2020), <https://www.npr.org/2020/01/15/796754345/virginia-ratifies-the-equal-rights-amendment-decades-after-deadline>.

³ See Law, *supra* note 1.

⁴ See Ratification of the Equal Rights Amendment, 44 Op. O.L.C. 12, 24 (Jan. 6, 2020); Press Release, Nat'l Archives & Records Admin., NARA Press Statement on the Equal Rights Amendment (Jan. 8, 2020), <https://www.archives.gov/press/press-releases-4> (deferring to the Office of Legal Counsel's opinion).

formally publish the Equal Rights Amendment as part of the United States Constitution.⁵

Virginia's role as the final State to ratify the Equal Rights Amendment gives us all an opportunity to both be proud that the Commonwealth is leading the charge today, and also reflect on our complicated—and in some cases appalling—record on gender and racial equality. In fact, the very reason Virginia was able to be the State that secured the Equal Rights Amendment's place in the Constitution was because ratification efforts here had been unsuccessful until now, even if hard-fought in recent years.⁶ In the words of Senator Jennifer McClellan, there is a sort of “poetic justice” in “the fact that Virginia is the 38th state.” “We’ve been on the wrong side of history so many times; it’s good to be the state that puts this over the top.”⁸

Understanding our Commonwealth's complex history on issues of equality—good and bad—helps paint a fuller picture of this historic moment. Virginia did not ratify the Nineteenth Amendment granting women the right to vote until 1952, more than thirty years after it had already been officially adopted.⁹ The first women did not earn degrees from the University of Virginia until 1922, and the university did not become completely co-educational until 1970.¹⁰ And, less than twenty-five years ago, Virginia fought all the way to the Supreme Court to keep women out of the Virginia Military Institute.¹¹ It is also impossible to disentangle from this history our State's legacy of seizing land from the first Virginians, perpetuating the institution of slavery, serving as the capital of the Confederacy, entrenching Jim Crow, perpetuating systemic racism and discrimination, and failing to protect women of all colors, races, backgrounds, and identities.¹²

⁵ Complaint at 1, 11–12, *Virginia v. Ferriero*, No. 20-242 (D.D.C. filed Jan. 30, 2020).

⁶ See Jenna Portnoy, *ERA bill dies for good in GOP-controlled Virginia House of Delegates*, WASH. POST (Feb. 21, 2019), https://www.washingtonpost.com/local/virginia-politics/virginia-house-kills-era-ratification-bill/2019/02/21/82920204-3560-11e9-854a-7a14d7fec96a_story.html (noting the narrow failure of the bill).

⁷ Alison Thoet, *Virginia votes to ratify ERA, putting amendment one step closer to Constitution*, PBS NEWS HOUR (Jan. 15, 2020), <https://www.pbs.org/newshour/politics/virginia-votes-to-ratify-era-putting-amendment-one-step-closer-to-constitution>.

⁸ *Id.*

⁹ *Equal Suffrage League of Virginia*, VA. MUSEUM OF HIST. & CULTURE, <https://www.virginiahistory.org/collections-and-resources/virginia-history-explorer/equal-suffrage-league-virginia-0> (last visited Aug. 26, 2020).

¹⁰ Anne E. Bromely, *Six Memorable Milestones for Women at UVA*, UVA TODAY (Nov. 15, 2017), <https://news.virginia.edu/content/six-memorable-milestones-women-uva>.

¹¹ See *United States v. Virginia*, 518 U.S. 515, 539–40 (1996).

¹² See MURRAY N. ROTHBARD, *CONCEIVED IN LIBERTY* 85 (2011) (outlining Virginia's early history of seizing land); *Racial Inequality*, VA. MUSEUM OF HIST. AND CULTURE, <https://www.virginiahistory.org/what-you-can-see/story-virginia/explore-story-virginia/1876-1924/racial-inequality> (last visited Aug. 27, 2020) (discussing segregation and Jim Crow in Virginia). See generally *Women in Virginia*, VA.

In the face of these obstacles, women have always played a pivotal role in the history of this Commonwealth.¹³ Their lives, stories, and voices are part of the rich and complex fabric, history, and heritage of this State. It is on their shoulders that today's advocates for equality—both here in the Commonwealth and all throughout America—stand.

Every time we tell a story, especially every time we recount history, we must decide when to start and when to end, what to include and what to leave aside, who deserves a biography and who deserves a footnote, and who and what will be left out altogether.¹⁴ These conversations are not limited to, though they surely include, who deserves a monument and who does not; but they go far beyond that. They include whose words children read in classrooms, whose names are discussed around dinner tables, and whose images appear in the news. This article highlights the voices and stories of some extraordinary Virginia women—Pocahontas, Maggie Walker, Barbara Johns, Mildred Loving, the first women at the Virginia Military Institute, and trailblazing legislators in the General Assembly today—and their crucial importance to not only the history of the Commonwealth but the Nation as a whole. These figures are part of Virginia's rich history and represent a heritage in which we can all take pride as we carry on their legacies and work to advance the cause of equality.¹⁵

MUSEUM OF HIST. AND CULTURE, <https://www.virginiahistory.org/collections-and-resources/virginia-history-explorer/women-virginia> (last visited Aug. 27, 2020) (describing the unequal treatment of women in post-Civil War Virginia); *Richmond*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Richmond-Virginia> (last visited Sept. 5, 2020) (noting that Richmond served as confederate capitol).

¹³ See generally *Virginia Women in History*, LIBR. OF VA., <https://edu.lva.virginia.gov/virginia-women-in-history/> (last visited Aug. 29, 2020) (explaining the various roles women have played in Virginia's history).

¹⁴ See Billie Melman, *Gender, History and Memory: The Invention of Women's Past in the Nineteenth and Early Twentieth Centuries*, 5 HIST. & MEMORY 5, 5–6 (1993).

¹⁵ See generally *Pocahontas*, ENCYCLOPEDIA BRITANNICA (Feb. 26, 2020), <https://www.britannica.com/biography/Pocahontas-Powhatan-princess> (providing a biography of Pocahontas); *Maggie L Walker*, NAT'L PARK SERV. (Nov. 15, 2019), <https://www.nps.gov/mawa/learn/historyculture/index.htm> (providing a biography of Maggie Walker); *Barbara Johns*, LIBR. OF VA., <https://edu.lva.virginia.gov/changemakers/items/show/121> (last visited Aug. 30, 2020) (providing a biography of Barbara Johns); *Mildred Loving*, ENCYCLOPEDIA BRITANNICA (Jul. 18, 2020), <https://www.britannica.com/biography/Mildred-Loving> (providing a biography of Mildred Loving); Laurence Hammack, *20 years after their admission, women continue the VMI legacy*, THE ROANOKE TIMES (Aug. 19, 2017), https://roanoke.com/news/education/20-years-after-their-admission-women-continue-the-vmi-legacy/article_cb675c3b-5943-5111-9858-ebf6ec61a789.html (describing the role of women at Virginia Military Institute since the adoption of coeducation there).

I. Pocahontas

Every school child and Disney fan¹⁶ knows the legend of Pocahontas: how she threw herself between her father and English colonist, John Smith, saving Smith's life.¹⁷ Although historians have filled pages debating whether this incident ever happened and what it signified, it is undeniable that Pocahontas was a real person who lived right here in Virginia and an influential historical figure both then and now.¹⁸ But like too many women in American history, her own voice has been lost to future generations.¹⁹ Pocahontas left behind no letters and no diaries; the only words that we have attributed to her come through the pen of John Smith.²⁰ In fact, linguists know very little about Pocahontas's language—an Algonquian dialect—and much of it has been completely lost.²¹ The only written records of the language come from English colonists.²² Like her language, we only have brief glimpses into Pocahontas's life, all of which are narrated by British voices.²³ Yet her story is still one that resonates with millions of Virginians and Americans.²⁴

Pocahontas was likely not even her real name.²⁵ Historians believe her formal name was Matoaka and that Pocahontas was a nickname meaning “playful one” or “ill-behaved child.”²⁶ Pocahontas is often presented as a “princess”—even a Disney princess—but that may be an oversimplification and Anglicization of the indigenous political system.²⁷ Though Pocahontas's father appears to have been the principal leader of the Powhatan tribe at this time, the British likely did not understand enough Algonquian to truly grasp

¹⁶ See *POCAHONTAS* (Walt Disney Pictures 1995). The 1995 Disney movie, *Pocahontas*, made nearly \$350 million worldwide in box office sales. It also won two Oscar awards, including for best original song with “Colors of the Wind.” *Pocahontas*, IMDB, <https://www.imdb.com/title/tt0114148/> (last visited July 27, 2020).

¹⁷ *Id.*

¹⁸ See HEIKE PAUL, *THE MYTHS THAT MADE AMERICA: AN INTRODUCTION TO AMERICAN STUDIES* 94 (Sebastian Schneider ed., 2014); Jackie Mansky, *The True Story of Pocahontas*, SMITHSONIAN MAG. (Mar. 23, 2017), <https://www.smithsonianmag.com/history/true-story-pocahontas-180962649/>.

¹⁹ See Mansky, *supra* note 18.

²⁰ PAUL, *supra* note 18, at 89.

²¹ Helen C. Rountree & Brendan Wolfe, *Languages and Interpreters in Early Virginia Indian Society*, ENCYCLOPEDIA VA. (May 30, 2014), https://www.encyclopediavirginia.org/Languages_and_Interpreters_in_Early_Virginia_Indian_Society.

²² *See id.*

²³ *See* PAUL, *supra* note 18, at 95.

²⁴ Sarah J. Stebbins, *Pocahontas: Her Life and Legend*, NAT'L PARK SERV., <https://www.nps.gov/jame/learn/historyculture/pocahontas-her-life-and-legend.htm> (last updated July 17, 2015).

²⁵ Mansky, *supra* note 18.

²⁶ *Id.*

²⁷ Gail Tremblay, *Reflecting on Pocahontas*, 23 *FRONTIERS: A J. OF WOMEN STUD.*, 121, 121 (2002).

the nuances of the indigenous political system and Pocahontas's role.²⁸ Regardless of how she ranked among the Powhatans, the English treated her as a Native American princess.²⁹ We know that Pocahontas was likely around thirteen years old when she first met (and potentially saved) Smith, and she continued to foster a relationship with him and the English at the Jamestown colony.³⁰ Pocahontas was likely a key source of cultural exchange between the Powhatans and the English.³¹ Among Smith's papers from his time in Virginia are fragments of lessons³² where he and Pocahontas are believed to have taught one another English and Algonquian.³³

We also know that, when she was around seventeen, Pocahontas was abducted and held as a hostage by the English colonial government to ransom her for British prisoners, seized weapons, and corn.³⁴ Her father refused to return the weapons and the British kept Pocahontas.³⁵ During this time she converted to Christianity and then married Englishman John Rolfe, eventually giving birth to a son.³⁶ Historians believe that Pocahontas was already married to a member of her tribe when she was abducted.³⁷ However, the Powhatans had a form of divorce and her father appeared to consent to Pocahontas's marriage with Rolfe, sending one of Pocahontas's uncles to the wedding.³⁸ What Pocahontas herself thought, felt, hoped, or feared during this time is unfortunately lost to history. Later, Pocahontas traveled to London in 1616 and, at least in the minds of the English, was said to have succeeded in the court of King James I.³⁹ According to one contemporary recorder, while in London Pocahontas "carried her selfe as the Daughter of a King, and was accordingly respected."⁴⁰ But, a year after arriving in London, at only twenty-one years old, Pocahontas died, likely of tuberculosis or pneumonia, and was

²⁸ *Id.*

²⁹ Jone J. Lewis, *Who Was the Real Pocahontas?*, THOUGHTCO. (Feb. 3, 2019), <https://www.thoughtco.com/history-of-pocahontas-3529957>.

³⁰ PAUL, *supra* note 18, at 90.

³¹ *See* Lewis, *supra* note 29.

³² Among Smith's papers is this sentence written first in Algonquian and then in English: "Kekaten pokahontas patiaquagh niugh tanks manotyens neer mowchick rawrenock audowgh. Bid Pokahontas bring hither two little Baskets, and I wil [sic] give her white beads to make her a chaine [sic]." Rountree & Wolfe, *supra* note 21.

³³ Mansky, *supra* note 18.

³⁴ Stebbins, *supra* note 24.

³⁵ *Id.*

³⁶ PAUL, *supra* note 18, at 90.

³⁷ Stebbins, *supra* note 24.

³⁸ *Id.*

³⁹ *See* PAUL, *supra* note 18, at 90.

⁴⁰ *Id.* at 96.

buried in St. George's church in Gravesend, an ocean away from her homeland.⁴¹

Though often described as a success story in crossing the cultural divide, it is unclear how much autonomy Pocahontas had in her decisions. Indeed, a surprisingly high number of settlers left Jamestown to live with the Powhatans in the early years of the colony, not the other way around.⁴² After Pocahontas's death, relations between the Powhatans and the Jamestown colony grew increasingly tense.⁴³ It became clear to the Powhatans that the English were there to stay and conquer.⁴⁴ In 1622, five years after Pocahontas's death, her uncle, Opechancanough, led an attack against the Jamestown settlement that killed more than three hundred colonists, including Pocahontas's husband John Rolfe.⁴⁵ The eruption of violence that followed broke the uneasy truce that had marked the first few years of English colonialism in the area and forever changed English-Native relations.⁴⁶

In the telling and re-telling of her story, as one historian described, Pocahontas has been portrayed as a symbol of the ““good Indian,”” one that ““admires the white man, admires Christianity, admires the culture, wants to have peace with these people, is willing to live with these people rather than her own people, marry him rather than one of her own.”⁴⁷ Though this deeply biased notion is at best an oversimplification, and at worst a deliberate mis-telling, it has long persevered in the popular imagination.⁴⁸ For example, the painting entitled “The Baptism of Pocahontas,” created two years after the Trail of Tears, hangs in the U.S. Capitol Rotunda.⁴⁹ Clad in a white gown (the traditional color of virginity and rebirth), Pocahontas kneels before a Christian priest with Rolfe and several members of her family behind her.⁵⁰ A ray of sunlight falls on Pocahontas and the priest, centering the eye of the viewer

⁴¹ Tremblay, *supra* note 27, at 121; Stebbins, *supra* note 24.

⁴² PAUL, *supra* note 18, at 98.

⁴³ *See id.* at 100.

⁴⁴ *Id.*

⁴⁵ *Id.* at 97.

⁴⁶ *Id.* at 101.

⁴⁷ Mansky, *supra* note 18.

⁴⁸ *See* PAUL, *supra* note 18, at 125–26 (“Having traced the Pocahontas myth through several centuries of US-American history and culture, we find the strategy of de-indigenization intricately intertwined with that of de-politicization.”); *see also* Mansky, *supra* note 18 (“This narrative of Pocahontas turning her back on her own people and allying with the English, thereby finding common ground between the two cultures, has endured for centuries. But in actuality, Pocahontas’ life was much different than how Smith or mainstream culture tells it.”).

⁴⁹ PAUL, *supra* note 18, at 108–09.

⁵⁰ *Baptism of Pocahontas*, ARCHITECT OF THE CAPITOL, <https://www.aoc.gov/explore-capitol-campus/art/baptism-pocahontas> (last visited Aug. 25, 2020).

on them and the ritual taking place.⁵¹ Rather than the famous rescue scene,⁵² the painting captures the moment “when European ritual symbolized her rejection of her own culture and her incorporation into the ranks of the saved.”⁵³ It is also at this moment where Pocahontas shed her Algonquin name and takes the English name Rebecca.⁵⁴ Not all are pleased in this moment as depicted in the painting.⁵⁵ Pocahontas’ uncle, Opechancanough, turns completely away from the scene, potentially foreshadowing his later attack on the English colonists and serving as a sharp contrast to his doe-eyed, reverential niece.⁵⁶

This painting casts a false romantic veneer over a far more complex story for other reasons as well. The baptism scene depicted falls between two catastrophic events in Pocahontas’s life: her abduction from her family and her death an ocean from home before her twenty-second birthday.⁵⁷ It also foretells the subsequent history of forced conversions of Native Americans and thousands of Native American children ripped from their families and cultures to be forcefully assimilated in government-run boarding schools.⁵⁸

Pocahontas has also been claimed and appropriated as a symbol by various groups.⁵⁹ In 1803, the *Female Biography* referred to Pocahontas as a “princess politician” and a model woman.⁶⁰ During the Civil War, she became a symbol of southern sectional pride, embodying the southern founding myth to compete with the northern story of the Pilgrims.⁶¹ First wave feminists

⁵¹ *Id.*

⁵² A painting in the Fourth Circuit’s courthouse in Richmond depicts Pocahontas’s rescue of John Smith. *The Conservation of Two WPA Murals at the Lewis F. Powell, Jr. U.S. Courthouse in Richmond, Virginia*, GEN. SERV. ADMIN., <https://www.ca4.uscourts.gov/docs/pdfs/the-story-of-the-murals.pdf?sfvrsn=0> (last visited Aug. 29, 2020).

⁵³ PAUL, *supra* note 18, at 109.

⁵⁴ *Baptism of Pocahontas*, *supra* note 50.

⁵⁵ *See id.*

⁵⁶ *Id.* (“The seated, brooding figure of another uncle, Opechancanough, turns completely away from the ceremony . . .”); *The Powhatan Indian Attack of March 22, 1622*, VIRTUAL JAMESTOWN, <http://www.virtualjamestown.org/phantmass.html> (last visited Aug. 30, 2020) (“Opechancanough’s response to the threat of cultural deconstruction was to plan and stage a massive attack on the English settlement as a demonstration of Indian power and in an attempt to drive off the English for good.”); Edward J. Gallagher, *Pocahontas Time Line*, THE POCAHONTAS ARCHIVE, digital.lib.lehigh.edu/trial/pocahontas/time.php (last visited Aug. 27, 2020) (“1613: Pocahontas is baptized sometime this year or early 1614, taking the Christian name Rebecca . . . 1622: The so-called ‘massacre’ in Virginia—a widespread, concerted Indian attack—wipes out 1/3 of the colonists.”).

⁵⁷ Gallagher, *supra* note 56.

⁵⁸ As Lt. Col. Richard Henry Pratt—the leader of the off-reservation boarding school initiative—repeatedly stated in the late 1800s, the goal of the schools was to “Kill the Indian, Save the Man.” *Past*, CARLISLE INDIAN SCH. PROJECT, <https://carlisleindianschoolproject.com/past/> (last visited Aug. 27, 2020).

⁵⁹ *See* PAUL, *supra* note 18, at 111.

⁶⁰ *Id.* at 112.

⁶¹ *Id.* at 111–12. The Union ironically sent the USS Pocahontas, at the time the only ship named for a woman, to fight the Confederacy during the Civil War. *Id.* at 112.

depicted Pocahontas as an idealized “new woman,” and she was repeatedly featured in plays and poems produced by suffragettes.⁶² The lack of contemporary historical sources or any records in Pocahontas’s own words has allowed others to choose how and when to tell, emphasize, and manipulate her story.⁶³ In this way, Pocahontas and her portrayal highlight how the stories of many women throughout history have been stolen—here, by the Virginia colonists who abducted Pocahontas, and then again by centuries of historians and mythmakers.

Pocahontas’s legacy lives on—quite literally. Her descendants became some of the most prominent members of colonial and revolutionary Virginia society, including members of the powerful Randolph family.⁶⁴ One of Pocahontas’s heirs, Thomas Mann Randolph, even married Thomas Jefferson’s eldest daughter Martha.⁶⁵ “Powhatan” appeared to be a family name in some branches of descendants through at least the Civil War.⁶⁶ Robert E. Lee’s wife, Mary Custis Lee (who was also related to George Washington by marriage), Woodrow Wilson’s second wife, Edith Bolling Gait Wilson, and former Virginia Senator Harry Flood Byrd⁶⁷ have all claimed a direct relationship to Pocahontas at one point or another.⁶⁸

Once we wade through the centuries of legend-making, we find, as one historian said, a “spunky girl who did everything she could to help her people.”⁶⁹ By studying the actual story of Pocahontas, Townsend hopes that “the most important lesson is that she was braver, stronger and more interesting than the fictional Pocahontas.”⁷⁰ Right here in Richmond, the Pocahontas Building is currently serving as the temporary home of the General Assembly, and the Office of the Attorney General was located there.⁷¹ It was in this

⁶² *Id.* at 113.

⁶³ Kara Nelson, *Distorted Reality: The Devaluation of Pocahontas*, 12 HOHONU 42, 45–46 (2014).

⁶⁴ WYNDHAM ROBERTSON & R.A. BROCK, POCAHONTAS, ALIAS MATOAKA, AND HER DESCENDANTS THROUGH HER MARRIAGE AT JAMESTOWN, VIRGINIA, IN APRIL, 1614, WITH JOHN ROLFE, GENTLEMEN 49 (J.W. Randolph & English 1887).

⁶⁵ *Id.*

⁶⁶ *Id.* at 41–42, 55.

⁶⁷ Despite his own family lineage, Byrd was a segregationist and a major opponent to civil rights legislation. He helped lead Virginia’s massive resistance efforts to school desegregation. Ronald L. Heinmann, *Dictionary of Virginia Biography: Harry Flood Byrd*, LIBR. OF VA. (2001), https://www.lva.virginia.gov/public/dvb/bio.php?b=Byrd_Harry_Flood_1887-1966.

⁶⁸ Geraldine Hartshorn Wheeler, *Laying Claim to Pocahontas*, WASH. POST (July 9, 1995), <https://www.washingtonpost.com/archive/opinions/1995/07/09/laying-claim-to-pocahontas/37df7358-fa6e-4008-8e13-0c8fac00ee67/>.

⁶⁹ Mansky, *supra* note 18.

⁷⁰ *Id.*

⁷¹ Patrick Wilson, *Even state government veterans get lost in the bland Pocahontas Building*, RICH. TIMES-DISPATCH (Jan. 10, 2018), https://richmond.com/news/local/government-politics/even-state-government-veterans-get-lost-in-the-bland-pocahontas-building/article_9fc74b78-3ebe-5d2c-aec9-115750626546.html.

building, named for a young, brave Virginian woman, that the committee hearings on the Equal Rights Amendment took place when Virginia ratified earlier this year.⁷²

II. Maggie Walker

Born in the waning days of the Confederacy to two enslaved parents, Maggie Walker grew to become one of the most influential female philanthropists and business leaders in the United States.⁷³ Starting as a teenager, Walker was heavily involved in the Independent Order of St. Luke, a fraternal organization dedicated to humanitarian causes and encouraging self-help.⁷⁴ Quickly rising to a position of prominence in the organization, she insisted that her “first work” as a member of the Board “was the draw around me *women*” in positions of leadership.⁷⁵ Walker was true to her word, and two years after Walker had been elected Grand Worthy Secretary at St. Luke’s, two-thirds of St. Luke’s board members were women.⁷⁶

Working with the Order, in 1903 Walker became the first woman of any race to charter a bank in the United States.⁷⁷ The Penny Savings Bank she opened in Richmond became not only a powerful representation of black entrepreneurship in the South but also an engine of economic growth and opportunity in the black community.⁷⁸ As Walker said in a speech, “Let us put our money together; let us use our money; Let us put our money out at usury among ourselves, and reap the benefit ourselves.”⁷⁹

The Bank was especially important because many of the traditional forms of economic power and credit available to white citizens were denied to black Americans.⁸⁰ Laws and the financial structure more generally were designed

⁷² Patrick Wilson, *House panel rejects ERA on 4-2 vote after VA lawmaker spars with longtime activist*, RICH. TIMES-DISPATCH (Jan. 22, 2019), https://richmond.com/news/local/government-politics/house-panel-rejects-era-on-4-2-vote-after-va-lawmaker-spars-with-longtime-activist/article_45e46ed7-fc84-5e5a-a68d-4dfabdb487c3.html.

⁷³ Arlisha R. Norwood, *Maggie L. Walker*, NAT’L WOMEN’S HIST. MUSEUM (2017), <https://www.womenhistory.org/education-resources/biographies/maggie-l-walker>.

⁷⁴ *Who Was Maggie Lena Walker?*, NAT’L PARK SERV., <https://www.nps.gov/mawa/learn/historyculture/index.htm> (last updated Nov. 15, 2019).

⁷⁵ Elsa Barkley Brown, *Constructing a Life and a Community: A Partial Story of Maggie Lena Walker*, 7 ORG. AM. HISTORIANS MAG. OF HIST. 28, 29 (1993).

⁷⁶ *Id.*

⁷⁷ Norwood, *supra* note 73.

⁷⁸ *Id.*

⁷⁹ *Who was Maggie Lena Walker?*, *supra* note 74.

⁸⁰ Charles Lewis Nier III, *The Shadow of Credit: The Historical Origins of Racial Predatory Lending and Its Impact Upon African American Wealth Accumulation*, 11 U. PA. J.L. & SOC. CHANGE, 131, 133–34 (2008).

to limit black ownership of property and economic power.⁸¹ In Walker's own lifetime (and for centuries before), as one former slave remembered, "according to Southern laws, a slave, *being* property, can *hold* no property."⁸² For instance, a 1692 Virginia law required that all livestock owned by a slave either be "converted by the owner of such slave" or be "forfeited to the use of poore [sic]."⁸³

After the Civil War and emancipation, economic weapons were still used to keep former slaves in a position of subordination.⁸⁴ As the Governor's Commission to Examine Racial Inequity in Virginia Law recently explained, "[t]he cumulative impact of [Jim Crow's] acts of racism and discrimination was to deny these Virginians full opportunities to gain employment, own property, participate in a democratic society, receive high-quality health care, or have equitable access to education."⁸⁵ During Walker's lifetime, the General Assembly passed a law designating "segregation districts" and defining where African Americans could live.⁸⁶ Another law required the race of owners to be included in all real estate assessments.⁸⁷ Federal labor laws, including the National Labor Relations Act and the Fair Labor Standards Act, that were adopted as part of the New Deal largely excluded workers of color.⁸⁸ Although black Americans were no longer enslaved as a technical matter, upper-class white society "maintained their economic hegemony over black labor."⁸⁹

The exclusion of blacks from the financial system made it all the more important that Walker's bank was one of the few credit-granting institutions

⁸¹ *See id.* at 134.

⁸² *Id.* at 137.

⁸³ 3 WILLIAM WALLER HENING, THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA FROM THE FIRST SESSION OF THE LEGISLATURE IN THE YEAR 1619, at 103 (1823).

⁸⁴ Nier III, *supra* note 80, at 144.

⁸⁵ COMM'N TO EXAMINE RACIAL INEQUALITY IN VA. L. INTERIM REP., at 1 (2019) [hereinafter COMM'N]. The Commission is chaired by another trailblazing Virginia woman, Cynthia Hudson, who served as Chief Deputy Attorney General of Virginia for six years and was the first black woman to serve in that role. *See* Bob Brown, *SUNDAY Q&A: Cynthia Hudson, Virginia's chief deputy attorney general*, RICH. TIMES-DISPATCH (July 22, 2014), https://richmond.com/news/virginia/sunday-q-a-cynthia-hudson-virginia-s-chief-deputy-attorney-general/article_5ae72ad5-d819-5ea2-a9ff-32ee01ec1924.html.

⁸⁶ COMM'N, *supra* note 85, at 14; GARLAND POLLARD, POLLARD'S CODE BIENNIAL 1912 CONTAINING ALL STATUTES OF A GENERAL AND PERMANENT NATURE PASSED BY THE GENERAL ASSEMBLY OF VIRGINIA AT ITS SESSION OF 1912 285 (1912) ("... in the cities and towns of this commonwealth . . . the entire area within the respective corporate limits thereof shall, by ordinance, adopted by the council of each such city or town, be divided into districts, the boundaries whereof shall be plainly designated in such ordinance and which shall be known as 'segregation districts.'").

⁸⁷ COMM'N, *supra* note 85, at 18; *see also* DAVIS BOTTOM, ACTS AND JOINT RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE STATE OF VIRGINIA 34 (1920).

⁸⁸ Danyelle Solomon et al., *Systemic Inequality and Economic Opportunity*, CTR. FOR AM. PROGRESS (Aug. 7, 2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/472910/systemic-inequality-economic-opportunity/>.

⁸⁹ Nier III, *supra* note 80, at 149.

not controlled by whites.⁹⁰ Following the Civil War, Congress had attempted to create the Freedman's Savings and Trust Bank to help newly freed slaves build up financial stability.⁹¹ Tens of thousands of newly emancipated individuals opened accounts, the vast majority depositing less than \$50.⁹² But, in 1874, the Bank collapsed—wiping out the savings of half of its customers, and refunding others on average only 60% of what they had deposited.⁹³ Losses totaled an estimated \$3 million, which was a harsh blow to the nascent black property class.⁹⁴ When African Americans were able to access credit from whites or white-managed institutions (usually through loans from local merchants or the owners of their farms), they were often cheated by white creditors who took advantage of their social subordination and lack of financial education.⁹⁵ Fearful of violent retaliation, blacks were hesitant to challenge the word of whites.⁹⁶

It was against this backdrop that Maggie Walker's bank was launched in Richmond: a bank for black Americans, by black Americans. On its first day of opening, almost 300 customers opened accounts, depositing over \$8,000 into the bank.⁹⁷ The smallest account held a mere 31 cents.⁹⁸ Dedicated to expanding black access to credit and black economic opportunity, Walker's bank had helped over six hundred black families obtain mortgages and buy homes by 1920.⁹⁹ By keeping money within Virginia's black community, the bank helped an otherwise marginalized and excluded group accumulate its own wealth.¹⁰⁰ Walker also worked hard to encourage children to save at her bank, helping to raise a new generation of financially educated black citizens.¹⁰¹ As Walker's great-great-granddaughter said last year, “[s]he gave

⁹⁰ See Alexia Fernández Campbell, *The Rise and Fall of Black Wall Street*, THE ATLANTIC (Aug. 31, 2016), <https://www.theatlantic.com/business/archive/2016/08/the-end-of-black-wall-street/498074/>.

⁹¹ Nier III, *supra* note 80, at 151 n.122.

⁹² *The Freedman's Savings Bank: Good Intentions Were Not Enough; A Noble Experiment Goes Awry*, OFF. OF THE COMPTROLLER OF THE CURRENCY, <https://www.occ.treas.gov/about/who-we-are/history/1863-1865/1863-1865-freedmans-savings-bank.html> (last visited Aug. 30, 2020) [hereinafter *The Freedman's Savings Bank*].

⁹³ Nier III, *supra* note 80, 151 n.122.

⁹⁴ *The Freedman's Savings Bank*, *supra* note 92.

⁹⁵ See Nier III, *supra* note 80, at 160.

⁹⁶ In the words of one Mississippi man, “there is no use jumping out of the frying pan and into the fire. If we ask any questions we are cussed, and if we raise up we are shot, and that ends it.” *Id.* at 160–61.

⁹⁷ *The St. Luke Penny Savings Bank*, NAT'L PARK SERV., <https://www.nps.gov/mawa/the-st-luke-penny-savings-bank.htm> (last updated Jan. 4, 2017).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See *id.*

¹⁰¹ See Norwood, *supra* note 73.

women, as well as African Americans in general, the opportunity for economic empowerment.”¹⁰²

It was not only black Americans who had difficulty accessing the financial system in Walker’s time; women were also severely limited in their financial autonomy.¹⁰³ As with the overall St. Luke’s organization, Walker sought to bring women into her efforts to lead the bank.¹⁰⁴ Though she was not able to make the bank the female-run operation she had hoped, Walker took pride in the fact that eight of the nineteen members¹⁰⁵ of the original Board of Directors were women.¹⁰⁶ Although these women sat on the Board of Directors, the vast majority of women around the country struggled to independently access basic credit, including procuring student loans, credit cards, mortgages, and car loans.¹⁰⁷ Through the 1960s, credit-granting institutions, including the Fair Housing Administration and the Department of Veterans’ Affairs, required many single female borrowers to submit a letter from their doctor assuring the bank that they used birth control or some other assurance that they would not have children.¹⁰⁸ As one female activist explained, “[s]ome people needed a lawyer, or a realtor to get a house . . . I needed a gynecologist.”¹⁰⁹ When married couples applied for credit, only about 22% of lenders in the early 1970s counted 100% of the wife’s income in the lending decision.¹¹⁰ It was not until 1974 that the Equal Credit Opportunity Act made it illegal for creditors to discriminate against applicants on the basis of race, color, religion, marital status, or sex.¹¹¹ Running her own bank in the early 1900s, Walker was decades ahead of most women’s access to the financial system.¹¹²

¹⁰² Joan Tupponce, *Maggie Walker’s Great-great Granddaughter Has Thoughts about the Women’s Monument*, RICH. FAM. MAG. (Mar. 1, 2019), <https://richmondfamilymagazine.com/justjoan/maggie-walkers-great-great-granddaughter-has-thoughts-about-the-womens-monument/>.

¹⁰³ See Brown, *supra* note 75, at 28.

¹⁰⁴ See *id.* at 29.

¹⁰⁵ This is significantly higher than the percentage of women in leadership positions in financial services today. The Federal Reserve reported that, as of 2014, “only 18.7 percent of S&P 500 finance company boards and only 2.1 percent of CEOs were women.” Ann L. Owen & Judit Temesvary, *Gender Diversity on Bank Board of Directors and Performance*, BD. OF GOVERNORS OF THE FED. RSRV. SYS. (Feb. 12, 2019), <https://tinyurl.com/y4lh7w6p>.

¹⁰⁶ See Brown, *supra* note 75.

¹⁰⁷ Lawrence Austin Bowdish, *Invidious Distinctions: Credit Discrimination Against Women, 1960s-Present 45* (2010) (unpublished Ph.D. dissertation, The Ohio State University) (available online at <https://tinyurl.com/y37y3bnw>).

¹⁰⁸ *Id.* at 44.

¹⁰⁹ *Id.* at 41.

¹¹⁰ *Id.* at 88.

¹¹¹ 15 U.S.C. § 1691; John H. Matheson, *The Equal Credit Opportunity: A Functional Failure*, 21 HARV. J. ON LEGIS. 371, 371 (1984).

¹¹² See *Early Women in Banking*, NAT’L. PARK SERVICE, <https://www.nps.gov/mawa/learn/historyculture/female-bank-presidents.htm> (last updated Nov. 15, 2019).

While many banks collapsed during the Great Depression, Walker's managed to survive.¹¹³ It eventually combined with two other banks and Walker served as chairwoman of the new consolidated board of directors.¹¹⁴ Until 2009, the Consolidated Bank and Trust Company was America's oldest continually African American run bank.¹¹⁵

Maggie Walker's great-great-granddaughter, Liza Mickens, is a vocal supporter of the Equal Rights Amendment.¹¹⁶ In 2019, she testified in support of ratification before the Virginia Senate Subcommittee on Privileges and Elections.¹¹⁷ In her remarks, Mickens said she was there "to continue [Walker's] legacy" of using "her position of influence for raising awareness and enacting change on a myriad of issues affecting the people of the time."¹¹⁸ At a recent celebration of the ratification of the ERA in Virginia, advocates carried that legacy forward by marching under a parade puppet of Maggie Walker.¹¹⁹

III. Barbara Johns

On April 23, 1951, sixteen-year-old Barbara Johns stood in an auditorium filled with her fellow students.¹²⁰ Earlier, a forged note purporting to be from the principal had been delivered to the teachers of her all-black high school calling for an assembly.¹²¹ When the students and teachers arrived, however, it became clear that Johns—not the principal—had called the assembly and Johns greeted her fellow students with a radical plan: Johns asked the 450 students of her high school to stage a walk-out demanding better educational facilities.¹²² Following Johns' leadership, they did just that.¹²³ The students refused to return to classes for nearly three weeks, until May 11th, 1951.¹²⁴

Johns' high school, Robert Russa Moton High School in Prince Edward County, Virginia was overcrowded and plagued with substandard

¹¹³ See *The St. Luke Penny Savings Bank*, *supra* note 97.

¹¹⁴ See *Who Was Maggie Lena Walker?*, *supra* note 74.

¹¹⁵ See *id.*

¹¹⁶ *Celebrate!38 Speakers*, VA RATIFY ERA, <https://varatifyera.org/celebrate38-speakers/> (last visited August 29, 2020).

¹¹⁷ Liza Mickens, *Liza Mickens VA General Assembly*, YOUTUBE (July 24, 2019), <https://www.youtube.com/watch?v=gd5v4u6iYFU>.

¹¹⁸ *Id.*

¹¹⁹ *Celebrate!38 Parade Colors*, VA RATIFY ERA, <https://varatifyera.org/celebrate38-colors/> (last visited August 23, 2020).

¹²⁰ Lance Booth, *Overlooked No More: Barbara Johns, Who Defied Segregation in Schools*, N.Y. TIMES (May 8, 2019), <https://www.nytimes.com/2019/05/08/obituaries/barbara-johns-overlooked.html>.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See *Va. Pupil's Strike Ends; JC Schools' Fight Set*, RICH. AFRO-AMERICAN, May 12, 1951, at 1.

conditions.¹²⁵ One contemporary newspaper account described the school's conditions as "[d]eplorable."¹²⁶ In contrast, the all-white schools across town were larger and had significantly better facilities with fewer students.¹²⁷ For example, the black high school's building was valued at \$120,700, while the two white high schools in town were valued at a combined total of \$592,500.¹²⁸ As Johns wrote in her diary, "it wasn't fair that we had such a poor facility, equipment, etc."¹²⁹ The situation in Prince Edward epitomized the truth that separate was *not* equal. Later, Johns reflected: "[w]e wanted so much here and had so little and we had talents and abilities here that weren't being realized and I thought that was a tragic shame."¹³⁰

At first, Johns and her classmates simply wanted a better facility.¹³¹ But, after speaking with the NAACP's office in Richmond, they decided to broaden their requests and demand an integrated education.¹³² "Initially, nobody dared dream beyond a separate facility with proper equipment and good buildings," Johns explained, "[b]ut once the lawyers explained that integration could be the best way for us to accomplish our goals, I said, 'Certainly. Let's go for it all.'"¹³³ Eventually, the Prince Edward suit that grew out of Johns' demonstration, *Davis v. County School Board*, was consolidated with four other cases as part of *Brown v. Board of Education*.¹³⁴ Of the four cases considered by the Supreme Court, *Davis* had the largest number of plaintiffs and was the only student-led case.¹³⁵

In front of the Supreme Court of the United States, the Attorney General of Virginia argued on behalf of Prince Edward against integrated schools.¹³⁶ Since 1870, the beginning of public education in Virginia, students had been separated based on race.¹³⁷ The 1902 Virginia Constitution enshrined

¹²⁵ Booth, *supra* note 120.

¹²⁶ See *Va. Pupil's Strike Ends; JC Schools' Fight Set*, *supra* note 124.

¹²⁷ Booth, *supra* note 120.

¹²⁸ *Va. Pupil's Strike Ends; JC Schools' Fight Set*, *supra* note 124.

¹²⁹ Booth, *supra* note 120.

¹³⁰ Anthony Antoine, *The story of Barbara Johns and the road to integrated schools in Virginia*, NBC 12 (Feb. 12, 2020), <https://www.nbc12.com/2020/02/12/story-barbara-johns-road-integrated-schools-virginia/>.

¹³¹ See Booth, *supra* note 120.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ See *id.*

¹³⁶ *Our History: Featured Alumni: Almond, J. Lindsay, Jr., 1923*, UNIV. OF VA. SCH. OF L., <https://lib-guides.law.virginia.edu/c.php?g=39996&p=254097> (last updated Aug. 5, 2020).

¹³⁷ Brian J. Daugherty, *Desegregation in Public Schools*, ENCYCLOPEDIA OF VA. (May 30, 2014), https://www.encyclopediavirginia.org/desegregation_in_public_schools#start_entry. While the segregation of public schools is often remembered as primarily affecting black students and families, Native American students in Virginia were almost completely excluded from public education until 1963.

segregated education, stating: “[w]hite and colored children shall not be taught in the same schools.”¹³⁸ Addressing the Justices about “the impact of [their] decision,” the Attorney General proclaimed that desegregation would be “contrary to the customs, the traditions and the more” of Virginians that had been “established through generations who themselves are fiercely and irrevocably dedicated to the preservation of the white and colored races.”¹³⁹ He further claimed that desegregation “would destroy the public school system of Virginia as we know it today. That is not an idle threat.”¹⁴⁰

As we know now, the Attorney General was not entirely wrong in his dire prediction. After the Court handed down its decision in *Brown*, school districts across the South generally and Virginia specifically—with then-Governor Harry Byrd leading the way¹⁴¹—refused to integrate as part of a pro-segregation movement that became known as “massive resistance.”¹⁴² In 1956, Virginia held a special legislative session to allow the State to intervene if school systems integrated, either voluntarily or under a judicial mandate.¹⁴³ The State promised to reimburse localities for educational “grants” to students who refused to attend integrated schools and made an exception to compulsory school attendance laws.¹⁴⁴ Prince Edward cut off all funds to its entire public school system for five years.¹⁴⁵ The provision of Virginia’s 1902 Constitution that required school segregation remained in force until 1971.¹⁴⁶ It was not until the middle of the 1970s—two decades after *Brown*—that Virginia schools would be considered desegregated.¹⁴⁷

In the aftermath of *Brown*, Barbara Johns and her family were singled out for harassment and retaliation.¹⁴⁸ After the Ku Klux Klan burned a cross on

Virginia Native Americans could attend black-only high schools, but many refused, fearful of further losing their cultural identity. Many Powhatans ended up sending their children to Oklahoma for their secondary and in some cases post-secondary education.

¹³⁸ VA. CONST. of 1902, art. IX, § 140.

¹³⁹ FRANK D. WAGNER, UNITED STATES REPORTS VOLUME 551: CASES ADJUDGED IN THE SUPREME COURT AT OCTOBER TERM, 2006, at 744 (U.S. Gov’t Printing Off. 2011).

¹⁴⁰ CHRISTOPHER BONASTIA, SOUTHERN STALEMATE: FIVE YEARS WITHOUT PUBLIC EDUCATION IN PRINCE EDWARD COUNTY, VIRGINIA 45 (Univ. of Chi. Press 2012).

¹⁴¹ *Massive Resistance*, VA. MUSEUM OF HIST. & CULTURE, <https://www.virginiahistory.org/collections-and-resources/virginia-history-explorer/civil-rights-movement-virginia/massive> (last visited Sept. 10, 2020).

¹⁴² See *Barbara Johns*, LIBR. OF VA, <https://edu.lva.virginia.gov/changemakers/items/show/121> (last visited Sept. 1, 2020).

¹⁴³ COMM’N, *supra* note 85, at 7.

¹⁴⁴ *Id.*

¹⁴⁵ See *Barbara Johns*, *supra* note 142.

¹⁴⁶ Susan Breitzer, *Virginia Constitutional Convention (1901-1902)*, ENCYCLOPEDIA OF VA. (May 20, 2015), https://www.encyclopediavirginia.org/Constitutional_Convention_Virginia_1901-1902.

¹⁴⁷ Daugherty, *supra* note 137.

¹⁴⁸ See *The story of Prince Edward County schools – Biography of Barbara Johns*, PBS NEWSHOUR (Mar. 21, 2014), <https://www.pbs.org/newshour/extra/app/uploads/2014/04/Barbara-Johns.pdf>.

her family's yard, Johns' parents sent Barbara to live with relatives in Alabama for her own safety.¹⁴⁹ Johns eventually graduated from Drexel University and pursued her passion for education by becoming a librarian in the Philadelphia Public Schools.¹⁵⁰ She married William Powell and together they raised five children.¹⁵¹ Johns passed away in 1991 from bone cancer at the age of 56.¹⁵²

Virginia has belatedly sought to recognize Johns as the civil rights hero that she is.¹⁵³ In 2008, a statue of Johns was unveiled on the grounds of the Virginia State Capitol and, starting in 2018, Virginia has recognized "Barbara Johns Day" on April 23.¹⁵⁴ Nearly 65 years after the Commonwealth argued in favor of segregation before the Supreme Court of the United States, Barbara Johns' legacy endures as the namesake of the state building where the Office of the Attorney General is located today.¹⁵⁵

IV. Mildred Loving

In the 1967 case *Loving v. Virginia*, the Supreme Court of the United States declared anti-miscegenation laws unconstitutional, overturning three centuries of legal tradition and laws in nearly half of the States.¹⁵⁶

The aptly named Lovings were a couple from Carolina County, Virginia.¹⁵⁷ Their story was like so many others in 1950s rural Virginia. They had met

¹⁴⁹ *Id.*; Saraya Wintersmith, *A heroine honored: Barbara Johns Day in Virginia honored student activist who helped dismantle public school segregation*, CAP. OUTLOOK (May 7, 2018), <http://capitaloutlook.com/site/a-heroine-honored-barbara-johns-day-in-virginia-honored-student-activist-who-helped-dismantle-public-school-segregation/>.

¹⁵⁰ *Barbara Johns*, *supra* note 142.

¹⁵¹ Booth, *supra* note 120.

¹⁵² *Id.*

¹⁵³ See generally Booth, *supra* note 120 (providing an overview of Barbara Johns' social activism).

¹⁵⁴ *Virginia Civil Rights Memorial, 2008*, LIBR. OF VA., https://edu.lva.virginia.gov/online_classroom/shaping_the_constitution/doc/virginia_civil_rights_memorial (last visited Aug. 27, 2020); *Virginia's 2019 Commemoration Honors Student Civil Rights Activist on First Annual Barbara Johns Day*, AM. EVOLUTION, (Apr. 23, 2018), <https://www.prnewswire.com/news-releases/virginias-2019-commemoration-honors-student-civil-rights-activist-on-first-annual-barbara-johns-day-300634564.html>.

¹⁵⁵ Booth, *supra* note 120. Ironically, the building now named for Barbara Johns served as the headquarters of Harry Byrd's pro-segregationist Democratic Party and his 1968 senatorial campaign. Several Confederate offices were also located at the same address during the Civil War. Michael Martz, *Renovation of state office building brings long history back to life*, RICH. TIMES-DISPATCH (Mar. 29, 2015), https://richmond.com/news/renovation-of-state-officebuilding-brings-long-history-back-to-life/article_5ecb832d-99b3-54b8-929c-3d322caa6801.html.

¹⁵⁶ Douglas Martin, *Mildred Loving, Who Battled Ban on Mixed-Race Marriages, Dies at 68*, N.Y. TIMES, (May 6, 2008), <https://www.nytimes.com/2008/05/06/us/06loving.html>.

¹⁵⁷ *Id.*

through Mildred's brother, had fallen in love, and decided to get married.¹⁵⁸ However, one key difference set them apart from the other young couples around them: Mildred Loving was a black woman and Richard Loving was a white man.¹⁵⁹ Because Virginia law at the time prohibited interracial marriage, the young couple drove to Washington, DC to be married on June 2, 1958.¹⁶⁰ After their wedding, they returned to their small home in Virginia, framed and hung their marriage certificate on their bedroom wall, and quietly began their lives together as husband and wife.¹⁶¹ Five weeks after their wedding, they woke to the sound of three police officers bursting into their bedroom, shining flashlights in their eyes.¹⁶² Mildred described the experience in a later interview: "It was 2 am, and I saw this light, you know, and I woke up. There was a policeman standing beside the bed. And he told us to get up, that we were under arrest."¹⁶³ Richard spent one night in jail and was released the next day.¹⁶⁴ But Mildred was detained for nearly a month, in a filthy small cell with a metal bunk.¹⁶⁵ She was five months pregnant.¹⁶⁶

The couple pleaded guilty to violating Virginia's Racial Integrity Act,¹⁶⁷ a felony offense.¹⁶⁸ They were sentenced to a one-year term of imprisonment suspended on the condition they leave Virginia immediately and not return together for twenty-five years.¹⁶⁹ The Virginia circuit court judge stated in a now infamous opinion:

Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents. And but for the interference with his

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Hillary Kelly, "We Were Married on the Second Day of June, and the Police Came After us the 14th of July," WASHINGTONIAN (Nov. 2, 2016), <https://www.washingtonian.com/2016/11/02/virginia-case-legalized-interracial-marriage-the-loving-story/>.

¹⁶¹ Martin, *supra* note 156.

¹⁶² *Id.*

¹⁶³ Kelly, *supra* note 160.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Martin, *supra* note 156. Virginia passed the "Racial Integrity Act" in 1924 prohibiting whites from marrying anyone who was not white. The bill was also the first time that Virginia legally attempted to define "whiteness," determining that anyone with any "trace whatsoever of any blood other than Caucasian" was not white. However, to cater to the powerful Virginians that took pride in their descent from Pocahontas, the law made an exception for anyone with less than 1/64 Native American blood as long as they had no African American heritage. Brendan Wolfe, *Racial Integrity Laws (1924-1930)*, ENCYCLOPEDIA VA. (Nov. 4, 2015), http://www.EncyclopediaVirginia.org/Racial_Integrity_Laws_of_the_1920s.

¹⁶⁸ See Martin, *supra* note 156.

¹⁶⁹ *Id.*

arrangement there would be no cause for such marriages. The fact that he separated the races shows that he did not intend for the races to mix.¹⁷⁰

Banished from their home, the Lovings moved to Washington, D.C.¹⁷¹ Mildred did not like living in D.C., especially because it forced her to live away from her family.¹⁷² Speaking about her time in D.C., Mildred said: “I didn’t want to, you know, leave away from ‘round my family and my friends. . . . When I was in Washington, well, I just wanted to go back home.”¹⁷³

Five years into their banishment, Mildred decided to write the Attorney General of the United States, Robert F. Kennedy, to ask for help.¹⁷⁴ In her own words, “I wasn’t in anything concerned about civil rights. I was just trying to get back to Virginia.”¹⁷⁵ Kennedy wrote back that he could not help in his official capacity, but he suggested that she contact the American Civil Liberties Union (ACLU) to see if they could.¹⁷⁶ Mildred did just that.¹⁷⁷

Remembering his first meeting with the Lovings, ACLU lawyer Bernie Cohen explained that Richard was a shy and quiet man and Mildred did most of the talking.¹⁷⁸ At first, to the Lovings, this case was just about them and their marriage but, as the case progressed, they quickly began to realize that it had the potential to change the lives of millions of Americans.¹⁷⁹ The Lovings, represented by the ACLU, forcefully argued in state circuit court that Virginia’s 1924 law was “solely for the purpose of establishing and maintaining a supremacy of the white race.”¹⁸⁰ The Supreme Court of Virginia unanimously upheld the law, but the Lovings did not give up.¹⁸¹ Their case continued to wind its way through the legal system, and was eventually argued—for two and a half hours—before the United States Supreme Court in 1967.¹⁸²

The assistant attorney general defending the anti-miscegenation law on behalf of the Commonwealth was kept at the podium by the Justices for twice

¹⁷⁰ *Loving v. Virginia*, 388 U.S. 1, 3 (1967).

¹⁷¹ Martin, *supra* note 156.

¹⁷² Kelly, *supra* note 160.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *See id.*

¹⁷⁹ *See id.*

¹⁸⁰ *Va. Couple Challenges Mixing Law*, THE CHI. DEFENDER, Oct. 31, 1964, at 5.

¹⁸¹ *Ban on Interracial Marriages Upheld by Virginia High Court*, N.Y. TIMES, Mar. 8, 1966, at 26.

¹⁸² *See* Jean M. White, *Virginia’s Racial Marriage Curbs Called ‘Slavery Laws’ Before Court*, WASH. POST, Apr. 11, 1967, at A1.

his allotted time, fielding questions from a skeptical bench.¹⁸³ He cited the “scientific” opinion of Dr. Albert I. Gordon that “intermarriage is definitely inadvisable, that they are wrong because they are most frequently if not solely entered into under the present-day circumstance by people who have a rebellious-attitudes towards [] society, self-hatred, neurotic tendencies, immaturity and other detrimental psychological factors.”¹⁸⁴ He further argued that “[i]t is not infrequent that the children of intermarried parents are referred to not merely as the children of intermarried parents but as the victims of intermarried parents and as the martyrs of intermarried parents.”¹⁸⁵ Justice John M. Harlan pointedly asked Virginia’s attorney how the Commonwealth could “rationalize” its laws with the Court’s decision in *Brown v. Board*.¹⁸⁶ Neither Mildred nor Richard attended the Supreme Court argument but, at Richard’s request, one of their attorneys passed along a message: “Tell the Court that I love my wife and it is just unfair that I can’t live with her in Virginia.”¹⁸⁷

On June 12, 1967, the Supreme Court unequivocally rejected the Commonwealth’s racist arguments.¹⁸⁸ A unanimous Court declared:

[t]he Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State.¹⁸⁹

The Lovings—and generations of interracial couples to follow¹⁹⁰—could live married and unhindered in Virginia for the rest of their lives.¹⁹¹ When asked how she felt about the ruling, Mildred said: “I feel free now . . . it was a great burden.”¹⁹²

¹⁸³ See Kelly, *supra* note 160.

¹⁸⁴ Oral Argument at 1:25:26, *Loving v. Virginia*, 388 U.S. 1 (1967) (No. 395), <https://www.oyez.org/cases/1966/395>.

¹⁸⁵ Oral Argument at 1:27:05, *Loving v. Virginia*, 388 U.S. 1 (1967) (No. 395), <https://www.oyez.org/cases/1966/395>.

¹⁸⁶ White, *supra* note 182.

¹⁸⁷ *Id.*

¹⁸⁸ See Kelly, *supra* note 160.

¹⁸⁹ *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

¹⁹⁰ According to a Pew Research study, in 2015, 17% of U.S. newlyweds were married to a person of a different race or ethnicity—a dramatic increase from a mere 3% in 1967, the year *Loving* was decided. See Kristen Bialik, *Key facts about race and marriage, 50 years after Loving v. Virginia*, PEW RSCH. CTR. (June 12, 2017), <https://www.pewresearch.org/fact-tank/2017/06/12/key-facts-about-race-and-marriage-50-years-after-loving-v-virginia/>.

¹⁹¹ See Kelly, *supra* note 160.

¹⁹² Helen Dewar, *Victor in Mixed Marriage Case Relieved*, WASH. POST, June 13, 1967, at A11.

The *Loving* case was an instrumental precedent for future marriage equality cases.¹⁹³ A year before her death, Mildred released a statement in favor of same-sex marriage.¹⁹⁴ She said:

[N]ot a day goes by that I don't think of Richard and our love . . . and how much it meant to me to have that freedom to marry the person precious to me, even if others thought he was the "wrong kind of person" for me to marry. I believe all Americans, no matter their race, no matter their sex, no matter their sexual orientation, should have that same freedom to marry. . . . I am proud that Richard's and my name is on a court case that can help reinforce the love, the commitment, the fairness, and the family that so many people, black or white, young or old, gay or straight, seek in life. I support the freedom to marry for all. That's what Loving, and loving, are all about.¹⁹⁵

Eight years later, in *Obergefell v. Hodges*, the Supreme Court held that Americans have the right to marry regardless of sex.¹⁹⁶ Justice Anthony Kennedy wrote that in *Loving*, "a unanimous court held marriage is 'one of the vital personal rights essential to the orderly pursuit of happiness of free men.'"¹⁹⁷ That is a legacy of which Mildred Loving would have been proud.

Loving was a reluctant activist who shaped history nonetheless.¹⁹⁸ When she married her childhood sweetheart, she had no intention of changing the world—she simply wanted to live with the man she loved, raise their children together, and be near her family.¹⁹⁹ Yet, like many women in Virginia over the years, when injustice knocked on her door, she sprang to action.²⁰⁰

V. Virginia Military Institute

Addressing a United States Supreme Court with two female Justices, counsel for the Commonwealth of Virginia argued in 1996 that the Virginia Military Institute (VMI) should remain one of two all-male public universities in the Nation.²⁰¹ Founded in 1839, VMI is dedicated to producing "fair specimens of citizen-soldiers."²⁰² VMI relies on an "adversative" method of character development which "emphasizes physical rigor, mental stress, absolute

¹⁹³ See *Obergefell v. Hodges*, 576 U.S. 644, 664 (2015).

¹⁹⁴ Kelly, *supra* note 160.

¹⁹⁵ *Id.*

¹⁹⁶ *Obergefell v. Hodges*, 576 U.S. 644, 681 (2015).

¹⁹⁷ *Id.* at 664.

¹⁹⁸ See Kelly, *supra* note 160.

¹⁹⁹ See *id.*

²⁰⁰ See, e.g., *The St. Luke Penny Savings Bank*, *supra* note 97 (detailing the history of the bank and Maggie Walker's role in it); Booth, *supra* note 120.

²⁰¹ Oral Argument at 42:32, *United States v. Virginia*, 518 U.S. 515 (1996) (No. 94-1941), <https://www.oyez.org/cases/1995/94-1941>.

²⁰² *History*, VA. MIL. INST., <https://www.vmi.edu/about/history/> (last visited Aug. 28, 2020).

equality of treatment, absence of privacy, minute regulation of behavior, and indoctrination of values.”²⁰³ In response to earlier litigation, Virginia had attempted to create a “parallel” all-women’s program, the Virginia Women’s Institute for Leadership (VWIL), in 1993.²⁰⁴ Like VMI, VWIL was designed to observe VMI’s holistic educational model and prepare young women to be military and civic leaders.²⁰⁵ But based on the assumption that fully adopting VMI’s approach “would be destructive of women’s self-confidence,”²⁰⁶ the creators of VWIL abandoned VMI’s “extreme adversative method” and instead created “an analogous, carefully tailored and rigorous program” that was supposedly more suitable for women.²⁰⁷ Despite the existence of VWIL, 347 young women, interested in the adversative method and everything else VMI had to offer, contacted VMI about admissions in the two years preceding the commencement of the lawsuit.²⁰⁸ In a historic decision, the Supreme Court of the United States rejected Virginia’s sex-based stereotypes and held “the Constitution’s equal protection guarantee precludes Virginia from reserving exclusively to men the unique educational opportunities VMI affords.”²⁰⁹

At oral argument, Virginia’s counsel insisted that VMI’s system simply “will not work” if women were allowed to attend.²¹⁰ The Commonwealth relied on a series of purported experts who expounded upon antiquated gender norms insisting that, if women ended up at VMI, they would “almost inevitably [be] cheerleaders” and impair the VMI experience with their “aspirations” of marriage.²¹¹ These experts compared the intensity of VMI’s “rat line”—a seven month physical and academic ordeal—to the strain women would experience at VWIL attempting to develop skills in “fields in which women at present so often flounder,” such as “[s]patial things, geometric things, topology, math and physics, and leadership itself.”²¹² Furthermore, in a classic example of demeaning women leaders by calling them “bossy,” VMI’s experts hoped that confident and out-going women would learn at VWIL that “their leaderships styles, while impressive, have also the hazard of being oppressive.”²¹³

²⁰³ Brief for Petitioner at 3, *United States v. Virginia*, 518 U.S. 515 (1996) (No. 94-1941).

²⁰⁴ *Id.* at 7–8.

²⁰⁵ Brief for Respondent at 4, *United States v. Virginia*, 518 U.S. 515 (1996) (No. 94-1941).

²⁰⁶ *Id.* at 12.

²⁰⁷ *Id.* at 28.

²⁰⁸ *United States v. Virginia*, 518 U.S. 515, 523 (1996).

²⁰⁹ *Id.* at 519.

²¹⁰ Transcript of Oral Argument at 53, *United States v. Virginia*, 518 U.S. 515 (1996) (No. 94-1941).

²¹¹ Brief for Petitioner, *supra* note 203, at 39.

²¹² *Id.* at 4, 38–39.

²¹³ *Id.* at 39.

The federal government, by contrast, declared VMI “an official monument to the discredited view that women are categorically different from, and in many respects inferior to, men.”²¹⁴ On behalf of the United States, the Deputy Solicitor General condemned arguments in favor of keeping VMI male-only as “another example in a long history of official discriminations against and exclusions of women in the name of protecting them.”²¹⁵ Rather than agreeing with Virginia’s argument that differences between VMI and VWIL were “directly attributable to a reasoned analysis of modern scholarship and professional determinations regarding the most successful techniques for educating women,”²¹⁶ the United States argued that the differences between VMI and VWIL were “unconstitutionally premised on explicit and archaic sex-based stereotypes and generalizations about the sociological and psychological characteristics of women and men.”²¹⁷ The United States implored the Supreme Court to declare unconstitutional and outdated the notion that “for women, biology truly is destiny.”²¹⁸

The Supreme Court—in an opinion drafted by Justice Ruth Bader Ginsburg—obliged.²¹⁹ Referring to VWIL as “a pale shadow” of VMI, the Court drew comparisons to earlier civil rights cases, like the one championed by Barbara Johns, where States attempted to create separate but equal schools for white and black students.²²⁰ The Court accepted the United States’ argument that keeping VMI all-male and creating a “parallel” all-women program sent a “harmful message about the different capabilities of men and women.”²²¹

Many members of the VMI community were less than supportive of the high Court’s decision.²²² Later that same year, a VMI student wrote in the student newspaper that he was “extremely disappointed, angry to a point, and heart-broken by the recent decisions.”²²³ An alumnus wrote in a Letter to the Editor that he had ended all financial support to the university because the decision to go co-ed “made a mockery of my experience at VMI and what it

²¹⁴ *Id.* at 24.

²¹⁵ *Id.* at 17.

²¹⁶ Brief for Respondent, *supra* note 205, at 16.

²¹⁷ Brief for Petitioner, *supra* note 203, at 33.

²¹⁸ *Id.* at 25.

²¹⁹ *United States v. Virginia*, 518 U.S. 515, 519 (1996).

²²⁰ *Id.* at 553.

²²¹ Brief for Petitioner, *supra* note 203, at 20.

²²² See *Last Male-Only Military College Goes Coed VMI Board Rejects Going Private, Will Open Its Infamous ‘Rat Line’ To Women In 1997*, THE SPOKESMAN-REVIEW (Sept. 22, 1996), <https://www.spokesman.com/stories/1996/sep/22/last-male-only-military-college-goes-coed-vmi/>.

²²³ See Jimmy Duncan, *W&L Editorial Receives Sharp Reply From Duncan*, THE CADET (Oct. 11, 1996), <http://digitalcollections.vmi.edu/digital/collection/p15821coll8/id/20953/rec/14>.

stood for, which is sometimes simply put by our motto ‘Never Say Die!’”²²⁴ He warned that “year by year” VMI would fall “unless, by a supreme recovery of our moral health and vigor we arise again and take our stand for VMI and freedom.”²²⁵

Despite Virginia’s assertion that “VMI’s methodology would be ineffective or counterproductive for many, if not most, women college students,” women have thrived at VMI since it became co-educational.²²⁶ In the fall of 1997, VMI enrolled thirty-one women from across the Nation.²²⁷ Upon their arrival, they, like their male counter-parts, donned drill uniforms, shaved their heads, and moved into the school’s “spartan” barracks.²²⁸ Turning the former all-male bastion into a co-educational institution was not without its struggles. In 1999, the highest-ranking male cadet was expelled after demanding sex from three women.²²⁹ Women recount incidents and an environment riddled with sexism and misogyny.²³⁰ After the Court’s decision, however, the school began the long journey of making room for all its cadets.²³¹ VMI’s Superintendent at the time, Josiah Bunting III, admitted that co-education “wasn’t perfect... But on the whole it was a great performance.”²³² He refers to the VMI’s efforts to integrate women as “one of its finest hours.”²³³

On May 15, 1999, two women—Chih-Yuan Ho and Melissa Kay Graham—became the first women in history to graduate from VMI.²³⁴ They had both transferred in 1997, survived the rat line, and earned their diploma alongside 217 men.²³⁵ Following graduation, Ho hoped to attend dental school while Graham planned on commissioning in the Army.²³⁶ Before receiving their diplomas, however, they had to endure G. Gordon Liddy’s

²²⁴ See Paul Van Doren, *Letter to the Editor*, THE CADET (Jan. 24, 1997), <http://digitalcollections.vmi.edu/digital/collection/p15821coll8/id/21089/rec/11>.

²²⁵ See *id.*

²²⁶ Brief for Respondent, *supra* note 205, at 29; see *First Female Cadets at V.M.I. Are in Class and in Uniform*, N.Y. TIMES (Aug. 19, 1997), <https://www.nytimes.com/1997/08/19/us/first-female-cadets-at-vmi-are-in-class-and-in-uniform.html>.

²²⁷ *First Female Cadets at V.M.I. Are in Class and in Uniform*, *supra* note 226.

²²⁸ *Id.*

²²⁹ Bill Lohmann, *Women at VMI*, RICH. TIMES-DISPATCH (Jul. 22, 2007), https://richmond.com/news/women-at-vmi/article_50286f85-97b8-59c3-89f3-bf80b992d337.html.

²³⁰ *Id.*

²³¹ See *id.*

²³² *Id.*

²³³ *Id.*

²³⁴ *First Women Graduate From VMI*, ASSOCIATED PRESS (May 15, 1999), <https://ap-news.com/80b0f5d4f2d83f523a01237feca0a59e>.

²³⁵ *Id.*

²³⁶ John Koubaroulis, *VMI’s First Ladies Walk Stage*, THE CADET (May 15, 1999), http://digitalcollections.vmi.edu/digital/collection/p15821coll8/id/21740/rec/1_

commencement speech.²³⁷ In it, Liddy argued against allowing women to hold combat positions in the military.²³⁸ Praising the role of women in World War II, Liddy urged the graduates of VMI to keep the military the way it was—with women’s sole role being to “free a man to fight.”²³⁹

The women of VMI have proven just how wrong the Commonwealth and people like Liddy were.²⁴⁰ Pamela Chen came to Virginia for her military education all the way from Taiwan.²⁴¹ After graduating in 2013, she went on to become her Nation’s first female combat helicopter pilot.²⁴² In 2017, Nat-tachat “Nina” Srikongyos, VMI class of 2015, became the eighth woman and first Thai-American woman in history to graduate from the Army’s Ranger School, one of the most intense leadership schools in the Nation.²⁴³ In 2019, 80 women—15% of the incoming class—matriculated at VMI.²⁴⁴

Justice Ginsburg concluded the Court’s opinion in *U.S. v. Virginia* declar-ing:

A prime part of the history of our Constitution, historian Richard Morris re-counted, is the story of the extension of constitutional rights and protections to people once ignored or excluded. VMI’s story continued as our comprehension of “We the People” expanded. There is no reason to believe that the admission of women capable of all the activities required of VMI cadets would destroy the Institute rather than enhance its capacity to serve the “more perfect Union.”²⁴⁵

The women of VMI have proven many times over that Justice Ginsburg’s and the Court’s faith in their ability was more than justified.

Earlier this year, Delegate Jennifer Carroll Foy, one of the first African-American women to graduate from VMI, helped lead Virginia’s efforts to ratify the Equal Rights Amendment.²⁴⁶ Carroll Foy praised the ERA as

²³⁷ See Clarence Page, *Military Women Have Vital Roles*, DAILY PRESS (May 21, 1999), <https://www.dailypress.com/news/dp-xpm-19990521-1999-05-21-9905210452-story.html>.

²³⁸ See *id.*

²³⁹ *Id.*

²⁴⁰ See generally Magnus Nordenman, *Four Years of Struggle for '99*, THE CADET (May 15, 1999), <http://digitalcollections.vmi.edu/digital/collection/p15821coll8/id/21740> (discussing the initiative the class of 1999 took to enact change).

²⁴¹ See Lu Hsin-hui & Elaine Hou, *Taiwan's first female combat helicopter pilot aims to fly Apaches*, FOCUS TAIWAN (Jan. 17, 2017), https://focustaiwan.tw/politics/201701170011_

²⁴² *Id.*

²⁴³ Ashlie Walter, *Willing to Go the Extra Mile*, VA. MIL. INST. (Dec. 14, 2017), <https://www.vmi.edu/news/headlines/2017-2018/willing-to-go-the-extra-mile.php>.

²⁴⁴ Mary Price, *Class of 2023 Matriculates*, VA. MIL. INST. (Aug. 19, 2019), <https://www.vmi.edu/news/headlines/2019-2020/class-of-2023-matriculates.php>.

²⁴⁵ See *United States v. Virginia*, 518 U.S. 515, 557–58 (1996).

²⁴⁶ Jennifer Carroll Foy, *I Was One of the First Black Women to Attend the Virginia Military Institute. This Is What I Know About Patriotism*, GLAMOUR (June 15, 2020), <https://www.glamour.com/story/jennifer-carroll-foy-virginia-military-institute-protest>; see also Mel Leonor & Justin Mattingly, *'It's Our Time': Virginia Legislature Passes Equal Rights Amendment as Courts Debate Deadline*, RICH. TIMES-

establishing “a legal basis for attack on the most subtle, most pervasive and most institutionalized form of prejudice that exists.”²⁴⁷ During the General Assembly’s ratification proceedings, Carroll Foy remarked that Virginia had again found itself “on the battleground of equality”—but this time, on the right side.²⁴⁸

VI. Women in the General Assembly Today

Virginia’s tradition of bold leaders of all genders continues today. For the first time in the House of Delegates’ four-hundred-year history, all three seats of the leadership dais are filled by women: Eileen Filler-Corn is serving as the first female (and first Jewish) Speaker; Charniele Herring is the first female and first black Majority Leader; and Suzette Denslow is the first female Clerk.²⁴⁹ On the other side of Capitol Square, Louise Lucas, a black woman, currently serves as President pro tempore of the Virginia Senate.²⁵⁰ Upon taking the oath of office, Filler-Corn remarked: “A new torch is being passed today. One that ushers in a modern era representing all Virginians.”²⁵¹ The historic diversity of the members of the current General Assembly is not limited to just the leadership. The current General Assembly has the most women—and most black lawmakers since Reconstruction—in the Commonwealth’s history.²⁵² Women currently hold 41 out of the 140 seats in the General Assembly—an impressive figure, though still 29 seats fewer than an even half.²⁵³

By virtue of serving in this historic session, all of these women are ground-breakers in their own right. And yet a few deserve special recognition in other respects as well. In 2010, then-Delegate (now Senator) Jennifer McClellan became the first delegate to be pregnant during a legislative session—the same session the General Assembly considered a bill to require pregnant women to undergo ultrasounds before choosing to terminate a pregnancy.²⁵⁴

DISPATCH (Jan. 15, 2020), https://richmond.com/news/virginia/it-s-our-time-virginia-legislature-passes-equal-rightsamendment/article_b4bd2452-617b-591c-9075-df88251ae57f.html.

²⁴⁷ Leonor & Mattingly, *supra* note 246.

²⁴⁸ *Id.*

²⁴⁹ Max Smith, *Women take charge of Virginia House as historic assembly session convenes*, WTOP (Jan. 8, 2020), <https://wtop.com/virginia/2020/01/women-take-charge-of-virginia-house-as-historic-assembly-session-convenes/>.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ Mario Sequeira Quesda, *Va. General Assembly reaches highest women representation in history*, NBC12 (Nov. 6, 2019), <https://www.nbc12.com/2019/11/06/general-assembly-reaches-highest-women-representation-history/>.

²⁵⁴ Graham Moomaw, *After ‘devastating’ 2016 election, McClellan plans next political chapter*, RICH.

McClellan has said that she counts her effort to ratify the Equal Rights Amendment as one of her top legislative accomplishments thus far, along with the passage of the Reproductive Health Protection Act and the Pregnant Workers Fairness Act.²⁵⁵

As for the House of Delegates, in 2017, Danica Roem was elected in the 13th district, becoming the first openly transgender person elected to any State legislature in the country.²⁵⁶ Despite the historic nature of her run and her eventual win, Roem focused her campaign on policies that mattered to her constituents.²⁵⁷ On her campaign website, Roem describes how she wrote many stories as a local journalist on transportation issues—“[l]ots and lots and lots”—before getting into politics.²⁵⁸ To Roem, her “number one job as [an] elected representative isn’t to speak. It’s to listen to the residents, write down their concerns, ideas and questions, follow-up with them, and work what they tell me into my policy platform.”²⁵⁹

Earlier this year, Senator McClellan and Delegates Roem and Carroll Foy—along with many other women legislators and advocates throughout the Commonwealth—played an important role in getting the Equal Rights Amendment ratified here in Virginia.²⁶⁰ Carroll Foy and Roem co-sponsored the ratifying resolution in the House, and McClellan did the same in the Senate.²⁶¹ The day before the General Assembly’s final vote on ratification, Roem had the first section of the amendment tattooed on her arm—“a values statement,” she said, that she is “proud to carry with [her] for the rest of [her] life.”²⁶²

TIMES-DISPATCH (Dec. 23, 2016), https://richmond.com/news/virginia/article_2123a95d-db43-59c6-b3af-fc34b8edde66.html.

²⁵⁵ See generally *Meet Jenn*, JENNIFER MCCLELLAN FOR GOVERNOR, <https://www.jennifermcclellan.com/meet-jenn/> (last visited Sept. 3, 2020) (displaying a list of McClellan’s legislative accomplishments on her gubernatorial campaign website).

²⁵⁶ Elly Belle, *Danica Roem on Coming Out as Trans and Her Life Before Politics*, TEEN VOGUE (June 17, 2020), <https://www.teenvogue.com/story/danica-roem-coming-out>.

²⁵⁷ *Id.*

²⁵⁸ *My Promise to District 13 Focusing on What Really Matters to Virginia*. DANICA ROEM HOUSE DISTRICT 13, <https://www.delegatedanicaroem.com/our-vision> (last visited Sept. 1, 2020).

²⁵⁹ *Id.*

²⁶⁰ See Gregory Schneider et al., *‘A Long Time to Wait’: Virginia Passes Equal Rights Amendment in Historic Vote*, WASH. POST (Jan. 15, 2020), https://www.washingtonpost.com/local/virginia-politics/2020/01/15/0475d51a-36f1-11ea-9541-9107303481a4_story.html.

²⁶¹ Christopher Brown, *100 years after women earned the right to vote, will Va. legislatures pass Equal Rights Amendment?*, NBC 12 (Dec. 11, 2019), <https://www.nbc12.com/2019/12/11/years-after-women-earned-right-vote-will-va-legislators-pass-equal-rights-amendment/>.

²⁶² Daniella Chelsov, *Meet The Virginia Lawmaker Who Got The Equal Rights Amendment Tattooed On Her Arm*, NPR (Jan. 29, 2020), https://www.npr.org/local/305/2020/01/29/800901844/meet-the-virginia-lawmaker-who-got-the-equal-rights-amendment-tattooed-on-her-arm_.

Some of these women are looking to set new records in other parts of Virginia's government as well. McClellan and Carroll Foy have both announced that they are running for Governor in the upcoming 2021 election.²⁶³ If either were to win, she would be the first female Governor in Virginia's history, and the first black woman to serve as Governor in the Nation.²⁶⁴

Today's political leaders are also making important changes on issues of equality here in the Commonwealth. During the last legislative session, the legislature passed and the Governor signed fourteen bills striking down racist or discriminatory language and laws that remained on Virginia's books.²⁶⁵ In addition to ratifying the Equal Rights Amendment, the General Assembly this year also worked to restore reproductive rights to Virginians, ban conversion therapy for minors, and increase protections for the LGBTQ+ community.²⁶⁶ Another new law requires menstrual supplies to be available for free in all public schools.²⁶⁷ And in July 2020, Attorney General Mark Herring announced that Virginia had become the seventh state in the Nation to "completely eliminate[]" its "backlog of untested rape kits."²⁶⁸ While hundreds of thousands of rape kits remain untested around the Nation, Virginia has tested 2,665, updated the national DNA database with 851 new profiles, and sent 354 matches to law enforcement.²⁶⁹

Although these have been impressive strides, the work in Virginia is far from over. Virginia has never had a female Governor²⁷⁰ or a female United States Senator.²⁷¹ Virginia women still earn only 79% as much as men,

²⁶³ Graham Moomaw, 'A critical moment in our history': McClellan announces run for Va. governor, VA. MERCURY (June 18, 2020), <https://www.virginiamercury.com/2020/06/18/a-critical-moment-in-our-history-mcclellan-announces-run-for-va-governor/>.

²⁶⁴ Chandelis Duster, *Virginia state Sen. Jennifer McClellan jumps into pivotal governor's race*, CNN (June 18, 2020), <https://www.cnn.com/2020/06/18/politics/jennifer-mcclellan-virginia-governor-race-2021/index.html/>.

²⁶⁵ C.J. Paschall, *Northam signs bills repealing discriminatory language remaining in Virginia laws*, NBC 12 (Apr. 20, 2020), <https://www.nbc12.com/2020/04/20/northam-signs-bills-repealing-discriminatory-language-remaining-virginia-laws/>.

²⁶⁶ In non-gender related issues, the General Assembly increased gun safety measures, widened access to voting, and implemented new environmental protections. *VA House Dems Celebrate Historic Legislative Accomplishments*, VA. HOUSE DEMS, <https://www.vahousedems.org/2020/03/08/va-house-dems-celebrate-historic-legislative-accomplishments/> (last visited Sept. 1, 2020).

²⁶⁷ Maia Stanley, *Virginia Senate passes bill for schools to provide menstrual products*, WHSV 3 (Jan. 23, 2020), <https://www.wHSV.com/content/news/Virginia-Senate-Passes-Bill-for-Schools-to-Provide-Menstrual-Products-567246801.html>.

²⁶⁸ Eileen McMenamin, *Virginia has eliminated its rape kit backlog, state attorney general says*, CNN (July 9, 2020), <https://www.cnn.com/2020/07/08/us/virginia-rape-kit-backlog-eliminated/index.html>.

²⁶⁹ *Id.*

²⁷⁰ See generally *Former Virginia Governors*, NAT'L GOV. ASS., <https://www.nga.org/former-governors/virginia/> (last visited August 30, 2020) (showing a list of all former male Governors).

²⁷¹ See generally *Women Senators*, U.S. SENATE, <https://www.senate.gov/senators/ListofWomenSenators.htm> (last visited August 30, 2020) (showing a list of all current and former female senators; no such senator has ever been from Virginia).

making Virginia in the bottom half of all States when it comes to pay equality.²⁷² On the bench, women remain incredibly underrepresented, accounting for only a quarter of all judges in the Commonwealth and only two out of seven Justices on the Virginia Supreme Court.²⁷³ The first female Justice—Elizabeth Bermingham Lacy—was not appointed to the Virginia Supreme Court until 1988.²⁷⁴ Virginia has come a long way, but there is still much to do to ensure full and meaningful equality for everyone in the Commonwealth.

CONCLUSION

As we walk through the halls of power today, we rarely see women. Few women fill the seats on daises, at committee tables, or on the bench. For too long, an allegorical depiction of “Justice” was the only woman in courthouses around the nation. Portraits of (usually white) men form long lines gazing down at us. These serve as reminders of a time in Virginia’s history where women’s voices were not heard and their stories were not told. Just because women were often side-lined from many formal positions of power, however, does not mean that they did not have an impact on the Commonwealth and the world around them.

Even when the Virginia government was not taking a strong stand for equality—and especially when actively fighting *against* equality, as has happened on several occasions—generations of brave and dedicated women have carried the cause forward, often at great cost and sacrifice. As ambassadors, businesswomen, education advocates, civil rights leaders, politicians, soldiers, athletes, and more, Virginia’s women have helped change the world and our society for the better. It is because of these women’s legacies that Virginia is joining the right side of history, including as the 38th and final State necessary to ratify the Equal Rights Amendment in the United States Constitution.

Although Virginia may have been decades or even centuries behind, our Commonwealth is finally beginning to heed Abigail Adams’s admonition to “Remember the Ladies.”²⁷⁵ In October 2019, a new statue collection was

²⁷² See *Gender Pay Gap by State*, AM. ASS’N OF UNI. WOMEN, <https://www.aauw.org/resources/article/gender-pay-gap-by-state/> (last visited August 29, 2020).

²⁷³ *2019 Representation of United States State Court Women Judges*, NAT’L ASS’N OF WOMEN JUDGES, <https://www.nawj.org/statistics/2019-us-state-court-women-judges> (last visited August 29, 2020).

²⁷⁴ *Elizabeth Bermingham Lacy*, LIBR. OF VA., <https://edu.lva.virginia.gov/changemakers/items/show/141> (last visited August 29, 2020).

²⁷⁵ While this is usually the only part of Adams’ letter that is cited, the full context of the quote demanded much more for women in the Founding era: “[B]y the way in the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If perticular care and attention is not paid to the Laidies

unveiled on Capitol Square as part of The Virginia's Women's Monument.²⁷⁶ Designed "to showcase the full range of achievements and contributions made by remarkable women in a variety of fields and endeavors," the monument includes seven life-size bronze statues²⁷⁷ and the names of another 230 women on the Wall of Honor.²⁷⁸ The organizers of the monument purposefully left room on the wall for future Virginia women who will impact the State and the Nation.²⁷⁹

The history of Virginia women can be viewed as one of suppression and subjugation, but it can also be seen as one full of resilience and grit. The fierce champions who have come before—and the generation of advocates who continue their work today—set the stage for the "poetic justice" of Virginia's ratification of the Equal Rights Amendment. And as the recent protests in response to ongoing police brutality and systemic racism show, there is much work left to be done. By reflecting on where we have been, and looking ahead to where we are going, it is our hope that we can both take pride in what we have accomplished as a Commonwealth and keep up the momentum to do even better.

we are determined to foment a Rebellion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation." *Abigail Adams to John Adams, 31 March 1776*, FOUNDERS ONLINE, <https://founders.archives.gov/documents/Adams/04-01-02-0241> (last visited Aug. 29, 2020).

²⁷⁶ *Voices from the Garden: The Virginia Women's Monument Honoring Full Scope of Women's Achievements*, VA. WOMEN'S MONUMENT COMM'N (Oct. 1, 2019), http://womensmonumentcom.virginia.gov/Files/Dedication%20of%20Va%20Womens%20Monument_PressRelease.pdf.

²⁷⁷ According to the Monument Commission, statues are of: "Cockacoeske, Pamunkey chieftain; Anne Burras Laydon, Jamestown colonist; Mary Draper Ingles, frontierswoman; Elizabeth Keckly, seamstress and confidante to Mary Todd Lincoln; Laura Copenhagen, entrepreneur in the textile industry; Virginia Randolph, educator; Adèle Clark, suffragist and artist." *Id.*

²⁷⁸ *Id.*

²⁷⁹ This is a similar sentiment to the suffrage statue in the U.S. Capitol. Unveiled in 1921, the statue depicts three suffragettes (Susan B. Anthony, Lucretia Mott, and Elizabeth Cady Stanton). An uncarved fourth pillar stands behind them, representing the work remaining in the fight for women's equality. *Compare Virginia Women's Monument Unveiling Newly Completed Granite Plaza and Revealing Names on Wall of Honor*, VA. WOMEN'S MONUMENT COMM'N (Oct. 30, 2018), http://womensmonumentcom.virginia.gov/Files/Virginia%20Womens%20Monument_Oct30_Press%20Release.pdf (where blank space was left for more to be added in the future), with Lorraine Boissoneault, *The Suffragist Statue Trapped in a Broom Closet for 75 Years*, SMITHSONIAN MAG. (May 12, 2017), <https://www.smithsonianmag.com/history/suffragist-statue-trapped-broom-closet-75-years-180963274/> (stating that the rough look was meant to show the unfinished work).