

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

**THE NINETEENTH AMENDMENT: THE FOURTH
RECONSTRUCTION AMENDMENT?**

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This paper makes two interrelated claims.¹ First, I argue that to understand the Nineteenth Amendment, we must ground it in the context in which it was first proposed in the late 1860s—as a response to the passage of the Fifteenth Amendment and the Reconstruction Amendments’ (both Fourteenth and Fifteenth) failure to include women.² Second, I argue that suffragists, their opponents, and members of Congress continued to understand what came to be the Nineteenth

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1. This essay is a transcribed version of the paper I presented at “The Nineteenth Amendment at 100: From the Vote to Gender Equality,” a conference hosted by the Center for Constitutional Law at Akron on September 20, 2019. These arguments are more fully developed in my book, *Free Thinker: Sex, Suffrage, and the Extraordinary Life of Helen Hamilton Gardener* (2020). Gardener served as the National American Woman Suffrage Association’s (NAWSA) lead negotiator in Washington, D.C., from 1916–1920. Her colleagues called her the “NAWSA Diplomatic Corps” and described her as “the most potent factor” in Congressional passage of the Nineteenth Amendment. To better understand her work, I paid close attention to the Nineteenth Amendment’s journey through Congress, especially in the final years of negotiations, 1916–1919, by studying the records of the NAWSA Congressional Committee, the papers of members of Congress representatives, the papers of President Woodrow Wilson and his top aides, the Congressional Record, and the records of the Senate and House Committees on Woman Suffrage. For a fuller discussion of how the Nineteenth Amendment got through Congress, please see chapters 14 and 15 of *Free Thinker*.

2. This is not a new argument, but it is important context for my second point which is the main contribution of this paper. See, e.g., ELLEN CAROL DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN’S MOVEMENT IN AMERICA, 1848–1869* (2d ed., with a new preface, 1999); ELLEN CAROL DUBOIS, *WOMAN SUFFRAGE AND WOMEN’S RIGHTS* (1998); FAYE E. DUDDEN, *FIGHTING CHANCE: THE STRUGGLE OVER WOMAN SUFFRAGE AND BLACK SUFFRAGE IN RECONSTRUCTION AMERICA* (2011); LAURA E. FREE, *SUFFRAGE RECONSTRUCTED: GENDER, RACE, AND VOTING RIGHTS IN THE CIVIL WAR ERA* (2015).

Amendment in terms of the Fifteenth all the way up through ratification. In the late 1910s, the main impediment to Congressional passage of the Nineteenth Amendment was not sex but race—Congressional representatives from all regions and both parties feared the growth of the black electorate. In fact, members of Congress often voiced their objections to the Nineteenth Amendment by invoking the Fifteenth Amendment.³

What eventually became the Nineteenth Amendment (also known as the Susan B. Anthony Amendment) was first drafted as the Sixteenth Amendment in the late 1860s by Elizabeth Cady Stanton, who was responding to the passage of the Fifteenth Amendment (ratified in 1870). Stanton, along with Susan B. Anthony and other suffragists who would join the National Woman Suffrage Association (NWSA), was disappointed that the Fifteenth Amendment made it illegal to bar citizens from voting based on “race, color, or previous condition of servitude” but said nothing about sex discrimination.⁴ To remedy the exclusion of women, Stanton and her colleagues in NWSA demanded a more expansive definition of national citizenship and voting rights that would include women through a Sixteenth Amendment. With the support of NWSA, Representative George Julian proposed the following amendment to Congress in 1869: “[T]he Right of Suffrage in the United States shall be based on citizenship, and shall be regulated by Congress; and all citizens of the United States. . . shall enjoy this right equally without any distinction or discrimination whatever founded on sex.”⁵ NWSA began lobbying Congress on behalf of the amendment. As they considered the larger landscape of Reconstruction amendments, members of Congress and reformers frequently debated whether women should vote, even though women’s suffrage did not prevail.

In the early 1870s, NWSA leaders, together with Victoria Woodhull, Virginia Minor, and her husband Francis, explored an innovative federal strategy known as the “New Departure” which argued that because women were citizens, women were already enfranchised under the

3. I previewed this argument in an op-ed for the *Washington Post*, which ran on June 4, 2019, the 100th anniversary of Congressional passage. See Kimberly A. Hamlin, *How Racism Almost Killed Women’s Right to Vote*, WASH. POST (June 4, 2019), <https://www.washingtonpost.com/outlook/2019/06/04/how-racism-almost-killed-womens-right-vote/> [https://perma.cc/W2YX-Z53X].

4. Elizabeth Cady Stanton, *The Sixteenth Amendment*, REVOLUTION, April 29, 1869, reprinted in THE SELECTED PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY, vol. II, 236–38 (Ann D. Gordon et al. eds., 2000).

5. LISA TETRAULT, THE MYTH OF SENECA FALLS: MEMORY AND THE WOMEN’S SUFFRAGE MOVEMENT, 1848–1898, at 32 (2014). See also CONG. GLOBE, 41st Cong., 1st Sess. 73 (1869).

Fourteenth and Fifteenth Amendments. To test this legal strategy, dozens of women voted in the 1872 elections and several were arrested. Susan B. Anthony hoped her arrest would provide the test case for the New Departure, but due to technicalities she could not appeal her conviction, so it was Virginia Minor's case that went to the Supreme Court to establish the limits of national citizenship. In 1875, the Supreme Court ruled in *Minor v. Happersett* that citizenship does not inherently confer voting rights.⁶

Following the defeat of the New Departure strategy, NWSA leaders redoubled their efforts on behalf of a Sixteenth Amendment using the nation's 1876 centennial as a backdrop. As the historian Lisa Tetrault established, Stanton, Anthony, and Matilda Joselyn Gage skillfully used the publicity and hoopla surrounding the 1876 Centennial World's Fair in Philadelphia to underscore their message that "the women of 1876 know and feel their political degradation no less than did the men of 1776."⁷ The women even boldly disrupted the Grand Ceremonies on July 4, the marquis celebration at which an original copy of the Declaration of Independence was read aloud by the grandson of one of the document's signatories, to present their own "Declaration of Rights for Women."⁸

NWSA's overarching goal in 1876 (and beyond) was to advocate for a federal amendment enfranchising women. In 1877, NWSA submitted to Congress the petitions members had circulated in 23 states which contained 40,000 signatures in support of such an amendment. On January 10, 1878, Senator Aaron Sargent of California introduced a revised Sixteenth Amendment, written by Stanton and modeled word-for-word on the Fifteenth Amendment substituting "sex" for "race." The very same text that would eventually become the Nineteenth Amendment.⁹ In her supporting testimony before the Committee on Privileges and Elections, Stanton presented a thorough argument on behalf of national citizenship and what she believed to be the federal government's responsibility to guarantee voting rights. She explained that the Constitution gave states the right to determine the qualifications of electors (such as requiring a "fixed residence" or a "sane mind"), but it "nowhere gives [states] the

6. The best study of the New Departure is ELLEN CAROL DUBOIS, *Taking the Law into Our Own Hands: Bradwell, Minor, and Suffrage Militance in the 1870s* (1990), reprinted in *WOMAN SUFFRAGE AND WOMEN'S RIGHTS* 114 (1998). See also Ellen Carol DuBois, *Outgrowing the Compact of Our Fathers: Equal Rights, Woman Suffrage, and the United States Constitution, 1820–1878*, 74 J. AM. HIST. 836 (1987).

7. 3 HISTORY OF WOMAN SUFFRAGE 22 (Elizabeth Cady Stanton et al. eds., 1886), quoted in TETRAULT, *supra* note 5, at 99.

8. See TETRAULT, *supra* note 5, at 100–01, for a description of these events.

9. See *id.* at 103; see also 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 7, at 74–75.

right to deprive any citizen of the elective franchise.” Suffrage, she declared, was a federal matter—not a state one—just like currency.¹⁰ Several months later, the committee issued a negative report on the proposed Sixteenth Amendment declaring that women were unprepared for the vote, dependent upon men, and, in general, disinterested in the franchise. An “experiment so novel, a change so great,” the committee cautioned, “should only be made slowly and in response to a general public demand.”¹¹

For the next forty years, NWSA leaders strove to rouse a “general public demand” for women voting and to press the case for a federal amendment annually before Congress (in 1883, the Senate formed a Committee on Woman Suffrage and women testified before this Committee each year and before the House Judiciary Committee, when possible). In 1890, the NWSA merged with their one-time rival the American Woman Suffrage Association (AWSA) to form the National American Woman Suffrage Association (NAWSA) which continued to testify annually before Congress. NAWSA leaders carefully compiled their Congressional testimonies and the resulting Congressional reports, when they were issued. An 1893 NAWSA pamphlet chronicled the eleven positive committee reports—five from the Senate and six from the House—that had resulted from women’s congressional testimonies, but this annual ritual did not do much to increase Congressional or popular support for woman suffrage by federal amendment.¹²

Prior to 1915, the proposal to federally enfranchise women was still considered so far-fetched, an idea so far in the distant future, that the annual Congressional hearings about the Nineteenth Amendment generally focused on the framing of the Constitution, abstract discussions of rights, and philosophical debates about the fundamental nature of sex difference. After 1900, opponents and supporters pontificated on topics such as what women voting might mean for the family, whether prostitutes and “bad women” would vote, if women would vote en masse for temperance, and if women were intellectually capable of voting. Increasingly, suffragists countered objections with positive examples from the growing number of Western states where women could vote and

10. 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 7, at 80–95.

11. SEN. BAINBRIDGE WADLEIGH, S. REP. NO. 523 (1878), *as quoted in* 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 7, at 112.

12. CONGRESSIONAL REPORTS IN FAVOR OF AN AMENDMENT TO THE NATIONAL CONSTITUTION PROHIBITING THE DISFRANCHISEMENT OF UNITED STATES CITIZENS ON ACCOUNT OF SEX, (N.Y., Nat’l Am. Woman Suffrage Ass’n, n.d.), (available in the Nat’l Am. Woman Suffrage Assoc. Collection, Libr. of Cong.), <https://www.loc.gov/resource/rbnawsa.n8339/> [<https://perma.cc/MX24-XEUU>].

by pointing out the glaring hypocrisy that our foundational documents did not apply to women.

It was not until 1917 that Congressional debates about women voting turned to immediate, pragmatic concerns about what it would actually mean if women voted in all states. Woman suffrage by federal amendment gained significant momentum after NAWSA president Carrie Chapman Catt unveiled her comprehensive “Winning Plan” in late 1916, after the U.S. entered World War I in April 1917, after Helen Hamilton Gardener secured the creation of a House Committee on Woman Suffrage in September, 1917, and after New York, the state with the largest delegation in the House, enfranchised women in November 1917. Three generations of women had advocated for the vote and, finally, woman suffrage by federal amendment seemed attainable in the near future. This new reality shifted the terms of Congressional debate from the abstract to the practical.

Anti-suffragists had often said they opposed women voting because they presumed women would vote in favor of Prohibition, but Congress passed the Eighteenth Amendment in December 1917, nullifying this longstanding objection to women’s suffrage. After 1917, several members of Congress claimed that they would never vote for the Nineteenth Amendment as long as women, led by Alice Paul and her National Woman’s Party (NWP), picketed the White House in a time of war. But most of these men were unlikely to have ever supported votes for women, so this was not a real objection either. After 1917, the most common and most outspoken objection to women voting was Congress’s fear of the growth of the black electorate. Congressional representatives from both parties and all regions expressed concern about enfranchising black women in the South, especially in states where the black population outnumbered the white. Several members of Congress also feared that the ratification Nineteenth Amendment would compel Congress to enforce the Fifteenth Amendment, which it had not done since the Compromise of 1877.¹³

Indeed, between 1918 and Congressional passage in June 1919, Congressional debates about women voting centered not on the

13. This overview of Congressional debates about suffrage draws on research published in my book, *Free Thinker: Sex, Suffrage, and the Extraordinary Life of Helen Hamilton Gardener* (2020). For that project, I relied on sources including the papers of individual members of Congress, the *Congressional Record*, the records of the NAWSA Congressional Committee (held at the Library of Congress), the correspondence of Helen Hamilton Gardener, and the process of Congressional passage as described by Maud Wood Park (chair of the NAWSA Congressional Committee) in her memoir *Front Door Lobby* (1960).

Nineteenth Amendment but on the Fifteenth Amendment. The House passed the Susan B. Anthony Amendment in January 1918, and for the rest of the year NAWSA leaders, with the cooperation of the White House, attempted to wrangle enough votes in the Senate to meet the required two-thirds majority.¹⁴ At the end of September, the Senate began several days of debate on the Amendment. The first Senator to speak was the virulent racist James Vardaman of Mississippi, who had recently proposed repealing the Fourteenth and Fifteenth Amendments. Surprisingly to the suffragists, he intended to vote yes on their Amendment because, as he explained, “I also understand that the negro woman will be more offensive, more difficult to handle at the polls than the negro man But when I realize that five white women will be added to the electorate where only two or three negro women can possibly be brought to the ballot box, the difficulties are minimized[.]”¹⁵ Senator Duncan Fletcher (D-FL) listed ten reasons why he opposed the Amendment, including: its “dangerous precedent[,] . . . federal control of elections, [and] race problems;” his fear that “2,000,000 additional voters of the same class as provided under the Fifteenth Amendment . . . does not commend itself to my judgement and conscience;” and his conviction that “the Fifteenth Amendment was a mistake, and it is so recognized by other sections of the country. I do not believe we remedy that by repeating it.”¹⁶ Senator John Sharp Williams (D-MS) even proposed an amendment restricting the vote to white women; it failed.

On September 30, President Wilson made the extraordinary effort to go to the Senate, accompanied by all but one member of his Cabinet, and demand that Congress pass the Nineteenth Amendment as a war measure. Immediately after Wilson’s speech, two Southern Senators (Oscar Underwood of Alabama and Ellison Smith of South Carolina) took the floor to dismantle his war argument and insist that women suffrage had nothing to do with the war and everything to do with state’s rights, the Fifteenth Amendment, and black people voting in the South. The Senate then voted on the Susan B. Anthony Amendment and not one Senator had budged. It failed to pass by two votes.¹⁷ As Maud Wood Park, chair of the NAWSA Congressional Committee observed, “If I had needed a lesson about the tendency of acquiescence in one injustice to breed tolerance of

14. HAMLIN, *FREE THINKER*, *supra* note 1, chp. 15 “Twenty-two Favors.”

15. 65 CONG. REC. 10771 (1918) (statement of Sen. Vardaman), *quoted in* MAUD WOOD PARK, *FRONT DOOR LOBBY* 195–96 (Edna Lamprey Stantial ed., 1960).

16. 65 CONG. REC. 10775–76 (1918) (statement of Sen. Fletcher), *quoted in* PARK, *supra* note 13, at 199.

17. PARK, *supra* note 13, at 200–11.

another, I should have learned it from the way so many of the men from the South saw other questions only in the light of their determination to keep the Negro from the ballot box.”¹⁸

Throughout this final push, the suffragists’ most perplexing foe in the Senate turned out to be William Borah (R), the “lion of Idaho.” Women had voted in Idaho since 1896, and for years NAWSA had trotted out Borah to give speeches about the positive impact of women voting in his state. But Borah only supported women voting on a state-by-state basis because he did not want to enfranchise black women in the South. Borah elaborated on his position in a long letter to the chair of the Idaho Republican Party, which was later reprinted as anti-suffrage propaganda by the Georgia Association Opposed to Woman Suffrage.

Enfranchising women would, according to Borah, “impose upon the South three and one half million unlettered, untrained, negro women voters.” This scenario would result either in violent civil chaos or in the federal government endorsing discrimination against black women voters, just as it had done in the case of black male voters since the end of Reconstruction. Neither scenario was acceptable to Borah. “I am asked to help write into the fundamental law that which would be to a large portion of the people of the country a cowardly lie,” Borah asserted. “The North has sat still for forty years and witnessed the disfranchisement of the Negroes of the South and now they want their representatives to write another solemn clause into the charter and sit still for forty years or interminably while the negro women are disfranchised.” Borah vowed he would oppose the federal amendment, even if doing so caused him to be voted out.¹⁹ He was comfortably elected several more times before dying in office in the 1940s, twenty years before his prediction about how long it would take the federal government to enforce the Fifteenth Amendment came true.

The Senate again voted on the Nineteenth Amendment on February 10, 1919. Senator William Pollack (D-SC) changed his vote to yes, so this time the Amendment fell just one vote shy. Suffragists had succeeded in defeating enough opponents in the election of 1918 to ensure passage in the 66th Congress, which would convene in the spring of 1919. But nevertheless, during the final months of lobbying, several Democratic senators, sensing that women’s victory was now inevitable, worked to reword the Nineteenth Amendment, so that it was not so similar to the

18. PARK, *supra* note 13, at 177.

19. Borah to S. D. Taylor, May 27 and 29, 1918, Borah Papers, Manuscripts Division, Library of Congress; “Senator Borah’s Letter,” Georgia Association Opposed to Woman Suffrage, National Archives and Records Administration, Record Group 46, box 128.

Fifteenth and to give states, not the federal government, the right of enforcement. These efforts did not succeed.²⁰

President Wilson called the 66th Congress to session in May 1919, and Representative James Mann (R-IL), the incoming Chairman of the House Committee on Woman Suffrage, vowed to make the Nineteenth Amendment the first order of business. To the amazement of NAWSA leaders, he did, and the Amendment overwhelmingly passed the House, showing a huge gain in support over the previous year. Even with the victories from the 1918 election, suffragists still feared the vote was too close to call in the Senate. Maud Wood Park avoided reading the obituaries each morning for fear that one of the suffragists' allies had died during the night. Debate in the Senate began on June 3, 1919, with a three-hour long filibuster about state's rights. Several of the state's rights speakers hailed from the West and North, including Senator Borah of Idaho, Senator Wadsworth of New York, and Senator Brandagee of Connecticut. Senator Ellison "Cotton Ed" Smith of South Carolina summarized the anti-suffrage position when he proclaimed that "the Southern Man who votes for the Susan B. Anthony Amendment votes to ratify the Fifteenth Amendment" which he further described as "the crime of the century."²¹ Senator Andrieus Jones of New Mexico, a suffrage ally, rebutted Smith's remarks and assured his colleagues that the Nineteenth Amendment would not be a "reaffirmation or readoption of the Fifteenth," signaling to Southerners that proponents of the Nineteenth Amendment did not intend for Southern states to enfranchise black women. To the contrary, suffrage allies presumed that black women in the south would be disenfranchised in much the same ways that black men had been—by poll taxes, literary tests, and outright intimidation. Senator Pat Harrison (D-MS, who replaced Vardaman) introduced another measure to limit the franchise to white women.

After two days of heated debate, the Nineteenth Amendment prevailed in the Senate with two votes to spare. After the successful vote tally was read, Senator Edward Gay of Louisiana bitterly declared that "thirteen states will never vote for this measure unless you amend it to spare the South the problem of the negro woman vote."²² But Gay's worry was misplaced—his colleagues had not passed the Amendment thinking it would enfranchise black women in the South. They passed it knowing

20. PARK, *supra* note 13, at 237.

21. 66 CONG. REC. 618–19 (1919) (statement of Sen. Smith), *quoted in* PARK, *supra* note 13, at 262.

22. *Ratification by 36 States Now Needed*, NEW YORK TRIBUNE, June 5, 1919, at 11.

full well that Southern black women would be disenfranchised at the state-level just as black men had been since the end of Reconstruction.

For their part, twentieth-century NAWSA leaders generally maintained that the Nineteenth Amendment had nothing to do with the Fifteenth, even though the previous generation of suffrage leaders had begun calling for a federal suffrage amendment outlawing sex discrimination in voting as a direct response to the Fifteenth. More precisely, twentieth-century white suffrage leaders maintained that the ruses Southern states employed—such as literary tests and poll taxes—to deny black men the vote did not violate the Fifteenth Amendment. NAWSA leaders indicated to members of Congress that they too assumed that states could and would continue to limit the franchise in a variety of ways, as long as no voter was denied solely on the basis of sex. In the 1917 book *Woman Suffrage by Federal Constitutional Amendment* (sections of which were also inserted into the *Congressional Record*), NAWSA President Carrie Chapman Catt openly acknowledged that black women in the South would likely be barred from voting because the federal amendment “will be subject to whatever restrictions may be imposed by state constitutions.”²³

Black women, on the other hand, often fought simultaneously for the Nineteenth and Fifteenth Amendments, as the historian Liette Gidlow has documented.²⁴ For black women to vote in the South, both amendments had to be enforced. In the 1880s and 1890s, woman suffrage briefly gained momentum in the South as one way to shore up white supremacy, but as white Southern leaders realized they could bar black men from voting at the state level, woman suffrage again fell out of favor.²⁵ When NAWSA escalated efforts to pass woman suffrage by federal amendment in the 1910s, some Southern members of congress, including Senator Vardaman of Mississippi, introduced measures to repeal the Fifteenth Amendment. To many white Southern leaders, one federal voting amendment was bad enough; two promised to be unbearable. As Mary Church Terrell, a founding member of the NAACP and the first president of the National

23. Carrie Chapman Catt, *Objections to the Federal Amendment*, in *WOMAN SUFFRAGE BY FEDERAL CONSTITUTIONAL AMENDMENT* (Carrie Chapman Catt ed., 1917), chap. VI, sec. III, digitized by Project Gutenberg.

24. Liette Gidlow, *The Sequel: The Fifteenth Amendment, the Nineteenth Amendment, and Southern Black Women's Struggle to Vote*, 17 *J. GILDED AGE PROGRESSIVE ERA* 433 (2018) <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/9EDB826096C0353E6FE12E3E345FC5CF/S1537781418000051a.pdf/> [https://perma.cc/MP4A-BMCJ].

25. MARJORIE J. SPRULL WHEELER, *NEW WOMEN OF THE NEW SOUTH: THE LEADERS OF THE WOMAN SUFFRAGE MOVEMENT IN THE SOUTHERN STATES* (1993).

Association of Colored Women, wrote in in the NAACP magazine the *Crisis* in 1915: “the reasons for repealing the Fifteenth Amendment differ but little from arguments advanced by those who oppose the enfranchisement of women.”²⁶ The end goal of both tactics was the same—to bar black women and men from the polls.

In fact, after the ratification of the Nineteenth Amendment in 1920, black women leaders including Terrell reached out to Maud Wood Park, then the president of the League of Women Voters (which is what NAWSA became), and to Alice Paul’s National Woman’s Party to enlist their help in getting the Fifteenth Amendment enforced so that African American women (and men) could vote in the South. As Paula Monopoli described in her remarks at the Akron conference, Paul somewhat rudely dismissed the women, while Park and the LWV gave them a full hearing.²⁷ But neither white-led women’s group did anything substantial to fight for black women’s right to vote or to press for the enforcement of the Fifteenth Amendment.

As we approach the suffrage centennial and the second presidential election after the *Shelby Co. v. Holder* decision that dismantled a key provision of the 1965 Voting Rights Act²⁸—the law that made the Fifteenth and Nineteenth Amendments reality across America—we should consider the intertwined histories of these two voting amendments. Their histories highlight the intersections between race and sex, as well as the promises and failures of our democracy. Reflecting on the twinned histories of the Fifteenth and Nineteenth Amendments also underscores that the best way to honor the suffrage centennial (which coincides with the sesquicentennial of the Fifteenth Amendment) is to continue the fight for voting rights.

26. Mary Church Terrell, *Woman Suffrage and the Fifteenth Amendment*, 10 *Crisis* 191 (1915).

27. Paula Monopoli, *The Constitutional Development of The Nineteenth Amendment In The Decade Following Ratification*, 11 *CONLAWNOW* 61, 65 (2019).

28. 570 U.S. 529 (2013).