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SENATOR BIRCH BAYH'S CONTRIBUTIONS TO WOMEN'S RIGHTS

Panel Panel

This panel was held during the Symposium entitled Celebrating the Impact of Senator Birch Bayh: A Lasting Legacy on the Constitution and Beyond

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PANEL DISCUSSION

SENATOR BIRCH BAYH'S CONTRIBUTIONS TO WOMEN'S RIGHTS*

MODERATOR

*Linda Klein***

PANELISTS

Stephanie Gaitley

Billie Jean King

Kelly Krauskopf

Jessica Neuwirth

MS. KLEIN: These women, and what they do and what they have done, inspired so many others to succeed: to see things in ourselves, to encourage us to try, to let us know someone needs to be the first to open doors for all the others. In the words of our panelist Kelly Krauskopf, “Being first is all about earning it.” On September 20, 1973, I was in junior high school and everyone was talking about “women’s lib.” And everyone was talking about the big tennis match that was coming that night between our panelist, Billie Jean King, and Bobby Riggs.¹ And the boys were teasing the girls—they were confident that Bobby Riggs was going to win. But everything we were taught about gender roles, often without words, was about to change. I finished my homework early to be sure that I could watch the tennis match that night. And that night changed my life and the lives of so many girls

* This panel was held during the Symposium entitled *Celebrating the Impact of Senator Birch Bayh: A Lasting Legacy on the Constitution and Beyond*, hosted by Fordham Law School’s Feerick Center for Social Justice on October 16, 2019, at Fordham University School of Law. The transcript has been lightly edited and footnoted. For an overview of the corresponding Tribute, see *Foreword: Celebrating the Impact of Senator Birch Bayh: A Lasting Legacy on the Constitution and Beyond*, 89 FORDHAM L. REV 1 (2020).

** Senior Managing Shareholder, Baker Donelson. In 1997, she became the first woman to serve as president of the State Bar of Georgia. She was also the president of the American Bar Association from 2016 to 2017. During this time, she honored Senator Birch Bayh with a Presidential Citation for his work as a legislator and his example as an attorney rendering exceptional public service.

1. See Neil Amdur, *Mrs. King Defeats Riggs, 6-4, 6-3, 6-3, Amid a Circus Atmosphere*, N.Y. TIMES (Sept. 21, 1973), <https://www.nytimes.com/1973/09/21/archives/mrs-king-defeats-riggs-64-63-63-amid-a-circus-atmosphere-mrs-king.html> [https://perma.cc/M4P4-EHYX].

everywhere, when Billie Jean won every game. I learned again, without words but with positive action, that girls could do anything. Sports was not going to be my thing, but I became the first in my family to attend law school and the first woman president of my state bar. I created opportunities for myself, opportunities I would not have imagined until women like Billie Jean encouraged me to try.

On behalf of girls everywhere, I'm going to introduce our panel in alphabetical order. Coach Stephanie Gaitley is tipping off her thirty-fourth year as a head coach and eighth year as head coach of Fordham University's women's basketball team. She is currently the sixteenth-winningest active National Collegiate Athletic Association (NCAA) coach. A graduate and Hall of Famer at Villanova University, Coach helped lead the Villanova Wildcats to the Final Four. Coach saved her best efforts of her career, of course, for Fordham. Under her leadership, the Fordham Rams have averaged twenty-one wins per year, captured two Atlantic 10 Conference championships, two NCAA tournament bids, and four Women's National Invitation Tournament bids. She has a career record of 633 wins and only 365 losses. That is the second-most wins in the history of the Atlantic 10 Conference.

Billie Jean King is one of the few athletes to not only make history with their abilities but to also go on to use the spotlight to make a historical difference. She is a thirty-nine-time tennis Grand Slam champion and pioneering advocate for gender equality from the early years of her legendary tennis career. Billie Jean advocated for women's rights during her playing career, including by calling for equal pay in women's and men's games. She threatened to boycott the U.S. Open Tennis Championships, forcing them to make the men's and women's prize money equal. She tirelessly campaigned for the passage of Title IX.² Following her tennis career, she became the first woman professional sports commissioner when she cofounded and led World TeamTennis. Even Elton John honored her with a song, "Philadelphia Freedom," the name of her World TeamTennis team, where she was player-coach and among the first women to coach male players. No surprise that in 2009 she was the first female athlete awarded the Presidential Medal of Freedom.

Kelly Krauskopf was denied a television sports job because it was claimed that women didn't know how to cover sports. She was the first woman in National Basketball Association history to be an assistant general manager—the position she currently holds with the Indiana Pacers. Before joining the Pacers, she was the general manager of the Women's National Basketball Association's (WNBA) Indiana Fever. Under her leadership, the team made the playoffs in twelve consecutive seasons, reaching the finals three times and winning the title in 2012. She was previously the WNBA's first director of basketball operations.

2. 20 U.S.C. §§ 1681–1688.

Jessica Neuwirth is the cofounder and copresident of the ERA Coalition and the Fund for Women's Equality. She's the author of *Equal Means Equal: Why the Time for an ERA Is Now*. She's currently serving as the Rita E. Hauser Director of the Human Rights Program at the Roosevelt Public Policy Institute at Hunter College. She's also the director of Donor Direct Action and cofounder of Equality Now. Ms. Neuwirth has worked for Amnesty International and the United Nations (UN). As a special advisor on sexual violence to the UN High Commissioner for Human Rights, in 2010 she organized the UN high-level panel on reparations for victims of sexual violence in the Democratic Republic of the Congo.

Our panel is going to discuss Senator Birch Bayh's achievements on and support for gender equality. That includes Title IX, especially its impact on women's sports, and the proposed Equal Rights Amendment³ (ERA). Title IX banned discrimination based on gender in federally funded educational programs and has had a profound impact on our nation.⁴

Ms. Krauskopf, as a leader in Indiana sports and someone who knew Senator Bayh, please tell us about Senator Bayh's presence at the inaugural game of the Indiana Fever in 2000 and your perspective on Senator Bayh's impact on women's rights.

MS. KRAUSKOPF: Thank you. First of all, thank you Dean John Feerick and Professor John Rogan for the invitation to be here today. This is a special moment for me to come and talk about Senator Bayh and his impact on me and my career path. I first met him in 1997 when the WNBA had its inaugural game. Val Ackerman, who was the commissioner at the time, and I had breakfast with Senator Bayh, whom I had never met. We talked about that moment in time and launching the WNBA, the first professional league for women. We felt it was a seminal moment in women's team sports.

So, I had a chance to meet him then, not knowing that years later I would go to Indiana, his home state, to start the Indiana Fever franchise as president and chief operating officer. When it was time to play our inaugural game in June 2000, I asked him to come be there so we could celebrate him for his role in making that special moment happen. We presented each honoree with a jersey with their name on it.

I remember the night. He and I are standing there on opening night, and we're looking in the arena. It's packed. Every seat, all 16,182 seats, filled all the way to the rafters. And I'm looking around and I'm standing with him, and I said, "Look at this place. This is for opening night for a WNBA

3. ROBERT A. BRADY, THE CONSTITUTION OF THE UNITED STATES OF AMERICA AS AMENDED: UNRATIFIED AMENDMENTS & ANALYTICAL INDEX, H.R. DOC. NO. 110-50, at 30-31 (2007).

4. Press Release, The White House, Off. of the Press Sec'y, Obama Administration Commemorates 40 Years of Increasing Equality & Opportunity for Women in Education and Athletics (June 20, 2012), <https://www.whitehouse.gov/the-press-office/2012/06/20/obama-administration-commemorates-40-years-increasing-equality-and-oppo> [https://perma.cc/Q9XN-SATL].

team, the Indiana Fever. This would never have happened had you not done what you had. Had you not pushed for Title IX, I wouldn't be standing here today. This wouldn't be happening. These women out here, they wouldn't be getting ready to play this game." I just got chills and I turned to look at him and he had these big tears in his eyes. And he said, "I didn't know. This is the kind of thing that, when I meet young women like you, this is when I understand." We both had tears in our eyes and walked out to the floor, but I wanted to make sure that I told him. It was so important for me to tell him that.

Then I had the chance in 2012, when the Fever won the championship, to tell him he was our lucky charm. We celebrated the fortieth anniversary of Title IX in the summer of 2012 and we brought him back again to Indiana. That was a moment for me to express that, without him, I wouldn't have been there, these women wouldn't have been getting ready to tip off and to play in this game, and all these fans wouldn't have been there without the impact he had on our community. Young boys as well as young girls seeing this professional game getting ready to start. And now, fast forward to the present, we just finished year twenty in Indiana, thanks to Senator Bayh.

MS. KLEIN: Ms. King, did you want to add something?

MS. KING: I can add a lot about Senator Bayh. Thank you so much for having me here today. It means a lot to me to be invited, and I'm here for [Senator Bayh's wife] Kitty. It's great to see [Senator Bayh's youngest son] Christopher. And to Dean Feerick and Professor Rogan, thank you for this invite as well.

Senator Bayh had such an influence on so many of us through his years of service. The one thing that always impressed me the most was how much he cared about each and every person and really cared about our country. He put country first, not party first, which I wish we would do now.

I remember meeting him on different occasions, but I never got to just sit down and speak with him. When we were in Cleveland one year at the NCAA Final Four, I finally said, "Can I just talk to you please?" So, we get a room, we sit down, and he says, "What do you need?" And I thought isn't that about right, "what do I need?" And I'm thinking, I didn't ask you to come here for what I need, I wanted to finally thank you. It was quiet, nobody was around. I said, "I just want to thank you for everything you've done for so many people, including me, and of course, especially for Title IX, for women and girls. Without that, we wouldn't have the lives we had."

We talked about how and why he accomplished what he did. He said he did it for all the women in his life—his grandmother, his mother, and his wife. I'll never forget that day for as long as I live. I finally had that quiet moment with him and then saw him again at the White House, with Kitty, for the fortieth anniversary of Title IX. That was a great day.

Senator Bayh is my hero. I'd probably put him up pretty close to number one. I could never thank him enough. What a legacy he's left for all of us.

MS. KLEIN: Senator Bayh was the principal Senate sponsor of the ERA in 1972. I'm going to ask Ms. Neuwirth, as a scholar of the ERA, what is the ERA, why do we still need it, and why does it matter?

MS. NEUWIRTH: Thanks to everyone for inviting me to be on this panel. It's a privilege to be with such accomplished women, especially as I have absolutely no sports talent. I never had the privilege of meeting Senator Bayh, but obviously all of us, and particularly all of the women in the room and in the country, are beneficiaries of his concern for women. I think it means so much to women when men stand up for women. It's really because of all the power men have in this world that they can do so much so quickly. I was reading Senator Bayh's obituary, and it mentioned that he was the chief sponsor of the ERA. But it also said the ERA died in 1982. And nothing could be further from the truth. Because I think, in the end, the ERA will be his greatest legacy—it's just yet to come. It is anything but dead.⁵

So, what is the ERA? It's a simple amendment to the Constitution that provides for equality of rights under the law without any discrimination on the basis of sex. It's twenty-four words.⁶ Most countries already have similar language in their constitutions.⁷ We as a nation have pushed very hard for countries like Iraq and Afghanistan to put it in their constitutions, but we don't have it in our Constitution. And that's because of the way amendments work. They require a two-thirds vote in both chambers of Congress, and they are then sent to the states for ratification.⁸ Three-quarters of the states, which is thirty-eight states, have to ratify the ERA, or any amendment, for it to come into the Constitution.⁹ The ERA first passed Congress in 1972.¹⁰ There was a huge wave of support and a rush to ratify it in the states. The first state to ratify the ERA was Hawaii, which ratified it

5. After twenty-three years during which no additional states voted to ratify the ERA, Nevada and Illinois approved the amendment in March 2017 and May 2018, respectively. In January 2020, Virginia became the thirty-eighth and final state needed to ratify the ERA. See Bill Chappell, *Virginia Ratifies the Equal Rights Amendment, Decades After the Deadline*, NPR (Jan. 15, 2020, 3:36 PM), <https://www.npr.org/2020/01/15/796754345/virginia-ratifies-the-equal-rights-amendment-decades-after-deadline> [<https://perma.cc/BU89-XCAB>].

6. The ERA reads in full:

SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

SEC. 3. This amendment shall take effect two years after the date of ratification.

BRADY, *supra* note 3, at 31.

7. See LAW LIBR. OF CONG., CONSTITUTIONAL PROVISIONS ON WOMEN'S EQUALITY 1–2 (2011), <https://www.loc.gov/law/help/const-provisions-womens-equal/constitutional-provisions-women-equality.pdf> [<https://perma.cc/ENJ7-5LZQ>].

8. U.S. CONST. art. V.

9. *Id.*

10. BRADY, *supra* note 3, at 30.

within one hour of its passage in Congress.¹¹ By the end of that year, twenty-two states had ratified it.

I think many people felt at the time that it would fly across the finish line, which of course it should, because it's totally a no-brainer. But then there was a backlash, and ratification slowed down.¹² The reason that his obituary said the ERA died was because the time limit for ratification was extended from 1977 to 1982. When the time limit expired in 1982, thirty-five states, just three short of the number needed, had ratified. According to many of the women—and men—who worked so hard for the ERA at the time, it was literally a handful of votes in a few states. Right up to the very last minute in Illinois and Florida people were fighting very hard for the ERA. It just didn't make it across the finish line. Then it went off the radar for the most part in 1982. Creative lawyers and legislators started using Title IX, Title VII,¹³ the Fourteenth Amendment,¹⁴ and other tools.¹⁵ But we really need the ERA. We've always needed it. And it will never die until we get it into the Constitution.

There are two basic reasons why we need it. The first is very practical. It provides legal remedies that we don't currently have and can't get in our current constitutional framework. A really great example of that is gender-based violence. You may remember the Violence Against Women Act of 1994¹⁶ (VAWA), championed by then Senator Joe Biden. There was a provision in that Act that said women and men subjected to gender-based violence should have recourse in federal courts.¹⁷ A young woman, who could be like any campus freshman today, Christy Brzonkala, was raped by three varsity football players in her first months of school.¹⁸ She tried to get justice through the school and through the state, but she couldn't get justice. She tried to use VAWA to bring her case to federal court.¹⁹ Her case went all the way up to the U.S. Supreme Court in *United States v. Morrison*,²⁰ where it was thrown out. Not because it wasn't gender-based violence but because the Supreme Court said there was no basis for this provision of

11. See Eileen Shanahan, *Equal Rights Amendment Is Approved by Congress*, N.Y. TIMES (Mar. 23, 1972), <https://www.nytimes.com/1972/03/23/archives/equal-rights-amendment-is-approved-by-congress-equal-rights.html> [<https://perma.cc/6H39-WZA3>].

12. See Jessica Neuwirth, *Time for the Equal Rights Amendment*, 43 HARBINGER 155, 155–56 (2019).

13. 42 U.S.C. § 2000e–2002e-17.

14. U.S. CONST. amend. XIV.

15. See Julie C. Suk, *An Equal Rights Amendment for the Twenty-First Century: Bringing Global Constitutionalism Home*, 28 YALE J.L. & FEMINISM 381, 384, 393–94 (2017) (discussing arguments that sex equality jurisprudence under the Equal Protection Clause and Title VII constitutes a “de facto ERA”).

16. Pub. L. No. 103-322, tit. IV, 108 Stat. 1902 (codified in relevant part at 34 U.S.C. § 12361).

17. *Id.* § 40302(c), 108 Stat. at 1941.

18. *United States v. Morrison*, 529 U.S. 598, 602–03 (2000).

19. *Id.* at 603.

20. 529 U.S. 598 (2000).

VAWA in the Constitution that allowed victims to bring their cases in federal court.²¹ This provision was struck down by the Supreme Court. Since then, no young woman, old woman, any woman, or man who is subjected to gender-based violence has access to federal recourse.

That's one very concrete reason. In all of the areas you think of, there are many reasons that women don't have the equality they should that relate to courts, the law, and obstruction of justice—many of which would be immediately and all of which would be ultimately supported by the ERA.²² That's one set of reasons, very practical and legal. There are many cases that show the injustices of the current legal system.²³ It's not to say that Title IX, Title VII, and other legislative tools haven't been fantastic; they're just not enough. It's like a patchwork of laws that has a bunch of loopholes and bad court interpretations that make it impossible for many women to get justice.²⁴

The second area is a more principled area. It's the fundamental idea that women are equal. When the Constitution was written hundreds of years ago, women were intentionally excluded from it.²⁵ That sends a message, from the highest level of our law, that women are second-class citizens. That's actually how women have been treated since that day.²⁶ I think that for so many of the issues we're working on, big ones like #MeToo, there is this wave of frustration and this idea that time is up. The best thing we can do is to go back and fix the Constitution and put women in the Constitution where they should have been in the first place and where they are in the rest of the world. That will make a huge difference for everyone in sending the message out at the highest level of public policy—in the Constitution, the bedrock of our society—that women are not second-class citizens.

MS. KLEIN: I don't know how you did that so quickly, but that was fabulous and we really appreciate it.

MS. KING: I'm writing notes because it's like a class.

MS. KLEIN: Without grades.

MS. KING: It is. It's great.

MS. KLEIN: Ms. King, when I was in school, girls took cooking and sewing, and boys took shop. We didn't have a choice; that's what we were assigned. You were a pre-Title IX athlete. How was your journey different from the men that were your contemporaries?

21. *Id.* at 617–18.

22. Neuwirth, *supra* note 12, at 156–57.

23. *See, e.g.*, *Castle Rock v. Gonzales*, 545 U.S. 748, 768 (2005) (holding that victims of domestic violence have no right of action under the Due Process Clause of the Fourteenth Amendment for failure to enforce court orders of protection); *Morrison*, 529 U.S. at 598.

24. Neuwirth, *supra* note 12, at 157.

25. *See id.* (arguing that the intentional omission of women in the Constitution has perpetuated a lack of respect for women and engendered a culture that allows sexual harassment to continue unchecked).

26. *See id.*

MS. KING: It's interesting you brought up sewing and cooking because I was a Girl Scout. I would go practice and play tennis every day and they'd say, "Billie isn't spending enough time with us." And my mother said, "That's because she's playing tennis." I had to drop out because the only two badges they gave were for sewing and cooking.

I am pre-Title IX and, therefore, I did not have a scholarship to college, so I went to California State University, Los Angeles and worked two jobs. I thought I was living very large because I had a job and that was very important. About thirty miles away at University of California, Los Angeles, Arthur Ashe had a full scholarship and Stan Smith, who became number one as well, had a full scholarship to the University of Southern California. It was always frustrating to see these inequities. It was just totally frustrating.

I don't think there will ever be a woman president until people start thinking that we lead for all people, not just for women. Every time you talk about us just helping women, you keep our marketplace half as big in every single way. When a woman is up there, don't just say it helps women. We try to help everybody. My younger brother, Randy Moffitt, played twelve years of professional baseball. He and I encouraged each other every step of the way. Believe me, a woman will never be president until the world thinks of us as leaders for all, not just for women. That's my two cents for the day.

MS. KLEIN: This is such an inspirational panel. Coach Gaitley, Title IX is not an entitlement program. It gives no special privileges to one gender or the other, so I'd like you to tell us how Title IX has affected your life and career.

COACH GAITLEY: First of all, like Linda, I remember watching that tennis match. We only had one television. There were eight kids in our house and one television, and I said, "We're not moving. This is what we're watching."

When I was reading about Senator Bayh, I was so inspired by his need to help others, and it reminded me so much of my dad, how everything he did was about others. My dad really had to turn the corner with Title IX. I was the tomboy and I would go to baseball games with my dad and watch. I think he was, at that point, someone who didn't really see the influence of Title IX. When my two sisters and I played in the same game, it was the first time in NCAA history that three sisters played in the same game. I don't know if we would have ever been able to go to college if it wasn't for Title IX.

As I was preparing for this panel, I was thinking about the impact: driving in vans, not getting the same meal money, and not really having new uniforms. You didn't think of it at the time because you didn't know any better. I had our kids do a project on Title IX, and I'm going to make them do it again, knowing even more. You need to know the background and the pieces of why you are where you are today. If it wasn't for Title IX, my sister and I wouldn't have had the education we have today. I have three sons, so it's different and interesting seeing the impact. It has had an amazing impact and I would not be sitting up here if it wasn't for Title IX.

MS. KLEIN: Kelly, you played basketball as a student at Texas A&M University in the years after Title IX's passage. In those years, it was sort of hard to tell there was a Title IX even though it was the law of the land. I'd like you to share with us some of the memories about whether you had the same equipment and opportunities that were promised to women by Title IX.

MS. KRAUSKOPF: We wore the same uniform every year. I would put my shorts on the back of the chair to stretch them out because when they dried, they'd get really tight. We went to the athletic director because we needed new bags just to carry our stuff. We had duct tape on them. We went to J. C. Penny and bought the bags on sale. That was the way it was. We had the 7:00 AM practice time in the gym that had no heat. But I was so thrilled to get to play the game I loved. I had a scholarship, and I'm not sure I would have had the opportunity without it. I tell a lot of people, young people as well, when you get the opportunity, make the most of it. I got the opportunity and I'm very thankful for it. I want to make sure the next generation gets it too. The whole thing about being the first is to make sure you're not the last. You continue to pay it forward. My journey in sports started at Texas A&M University, an all-male military school. You talk about being a minority—we were first-generation women at Texas A&M University, much less playing sports. So, there was a lot of ground to break.

My thrilling moment in Indianapolis was watching the Fever's first game and the next week driving to work and stopping at a crosswalk. I saw a little boy walking by in a Kara Wolters jersey, not a Reggie Miller jersey. One of our jerseys. I just sat there and thought, that's a boy, he's wearing a Kara Wolters jersey. That was a transformational moment—that this was about the boys as well and the impact on the community to see women athletes.

MS. KLEIN: Coach Gaitley, who are your mentors and role models who moved women's basketball to its current status?

COACH GAITLEY: I'd say one of my main role models was Pat Summitt. I had the opportunity in the early 2000s to go to her home with my college coach at Villanova University and spend a couple days. It was fascinating. She had an intimidating way about her, but when you were up close, she was about as nice and as sweet as could be. I learned about her background and stories and how she changed and evolved as a coach. That was fascinating to me because if I hadn't learned that, I don't know if I would have learned to change. Having my children has forced me to be different too, as a parent, but just seeing her change with her players and seeing how she would listen to her assistants and how she would listen to everything everybody had to say—I would say she was my most inspirational role model.

I still remember when I was coaching at Saint Joseph's University, people were shocked that University of Tennessee would come play Saint Joseph's University. We were a pretty solid team. We went to the NCAA tournament, but I remember thanking Pat because she didn't have to do that; they could have played anybody. It was our first sellout. We were up sixteen but ended

up losing because she finally said, “I’m Tennessee.” We were at the Final Four that year, and Pat goes, “Stephanie, I don’t know how you lost that game.” Great memories. An unbelievable, inspirational person, and it definitely had an impact on my life.

MS. KLEIN: Billie Jean, do you have a role model?

MS. KING: I have so many. First of all, I knew Pat as well, and she also got the Presidential Medal of Freedom.²⁷ She was the second woman athlete—thank God! You don’t want to be the first and last, exactly what you said, Kelly.

I think my parents were my role models. My dad was a firefighter. I remember thinking about how he goes in when everyone else is going out. I’d get really scared he wouldn’t be coming home, because he’d work twenty-four hours on and then come home for a day. He always believed in me as much as he believed in my brother. It’s really important to hear that message from somebody.

I had Reverend Bob Richards as my minister. He won the bronze medal in 1948 and the gold medal in 1952 and 1956 in pole vault. Every Sunday in his sermons he made you think you could do anything. He was one of the greatest motivational speakers ever. I was about eleven to fifteen years old, so that was a really crucial time in my life.

My mother was fantastic. Most heroes, and “sheroes,” I find, are really local. Great athletes, musicians, or artists can inspire you. But the real “sheroes” and heroes are right at home. I had four teachers that changed my life. I can remember them clearly. They helped me believe in myself. I think those are the people that all of you here should think about in your own lives. Who really is in the trenches with you? That’s the big difference. Women have been taught to be perfect and boys have been taught to be brave. Girls, we think we’re never good enough and we have to stop it. Boys, you don’t have to be brave all the time. You don’t have to be brave every second, and you don’t have to fix everything. I just think how we’re socialized is so important. The real true “sheroes” and heroes to me are local.

MS. KRAUSKOPF: I agree. It was the same thing for me. I have an older brother. He was my first role model. He taught me how to play basketball in the backyard. We hit tennis balls. I wanted to slice it like Billie Jean. My mom was also a tennis player, so we watched tennis all the time. I was a young girl growing up in Texas, and Billie Jean’s 1973 match was the big talk in our household. There weren’t many women to watch, obviously, so a lot of our role models at that time, if I’m just looking at sports, were guys. I didn’t know that basketball would take me where it’s taken me, but it was because of the opportunity I got through a scholarship, and then my career went from there. Of course, it’s easy to look back and see how all of the

27. See Olivier Knox, *Pat Summitt Gets Presidential Medal of Freedom After Retiring*, ABC NEWS (Apr. 19, 2012, 3:36 PM), <https://abcnews.go.com/Politics/OTUS/pat-summitt-presidential-medal-freedom-retiring/story?id=16177022> [<https://perma.cc/JX5U-J4TK>].

steps in my career are threaded together and one opportunity takes you to the next, which takes you to the next: the chance meeting of Val Ackerman when I was working for another company in Dallas and that she remembered me and wanted to add me to her staff in New York to start the WNBA. There are all these threads, but it all starts with that first opportunity and then you keep following your path.

I had other mentors along the way. Most of them were men and they were champions of women, champions of mine that saw something. They said, "You can do this. You're the next one." Mentors and role models can be both men and women, obviously.

MS. KLEIN: Billie Jean, you're the founder of the Women's Sports Foundation. I'd like you to tell us a little bit about the Women's Sports Foundation and what it does.

MS. KING: I founded the Women's Sports Foundation in 1974 with the \$5000 check I got for winning the Gillette Cavalcade Sports Woman of the Year. Tony Randall gave me the check, and I remember saying to him, "With this money we're going to start the Women's Sports Foundation." It stuttered along for a while because I had to go back and play tennis. Donna de Varona was our first president; she was a great swimmer. What we wanted to do was to encourage girls to be in sports because, the same way it is for boys and all of us, if you learn the culture of sports, it helps you in all aspects of your life. You don't have to be great; you don't have to be the best. Just experiencing the culture teaches us how to play the game of life, especially in business. Ninety-six percent of women in C-suites identify with being an athlete.²⁸ It really does help.

What we do is we give a lot of grants for different things—for travel and training. We give money to many organizations, including local organizations. With that \$5000 check, we've given out close to \$85 million to help others.

We also are the guardian angels of Title IX in the sports area. We work hand in hand with the National Women's Law Center. We have a hotline, and we get calls from girls saying they're being discriminated against. We usually turn them over to the National Women's Law Center and try to make sure they have the money to fight their cases.

I don't think a lot of people realized before 1972 that there were all these classroom quotas. That's why there weren't more women lawyers and doctors. I think Dr. Susan Love told the story. She's working hard to find a cure for breast cancer. She said she wanted to go to Harvard University. She had all the qualifications, but they said, "Sorry, we already have our 5 percent quota." And this was 1971. It's just amazing that we had to worry about that. Everyone thinks Title IX is just about sports. But it's about education

28. See Abigail Hess, *If You Want to Be a CEO Later, Play Sports Now*, CNBC (Jan. 11, 2017, 11:55 AM), <https://www.cnbc.com/2017/01/11/want-to-be-a-ceo-later-play-sports-now.html> [<https://perma.cc/K9QK-Q733>].

and a lot of things. You can just imagine the impact it's had on all the graduating classes since its passage. You're probably a product of it, Linda.

MS. KLEIN: Absolutely. I graduated from the last law school to embrace coeducation in the United States.

I'd like to ask Ms. Neuwirth: we only need one more state to ratify the ERA, but it's not clear that that would amend the Constitution. Can you tell us why and discuss the legal battle that will likely ensue when the thirty-eighth state approves it?

MS. NEUWIRTH: Absolutely. Well, I do want to say, first, that obviously the culture has changed so much. We see in this panel how young women and men have been given different role models than they once had. I can't help but pay tribute to my mother, Gloria Neuwirth, who's here, because she graduated from Yale Law School in the 1950s. She interviewed for a job and was told, "You're pretty, but we can't hire a woman." If it happens today, it's certainly not said out loud. We've just changed so much. And these are the women we have to thank that we now have a different culture. It really includes a different kind of man, as well as a different kind of woman. I often use the example of Bobby Riggs. I don't think we have those men that come out there with the pig and they're proudly proclaiming their male chauvinism. We've moved on—at least I'd like to think so. Let's make it that way.

The ERA is closer than it's ever been to getting into the Constitution, and that's due to one of these "sheroes," Nevada state Senator Pat Spearman, who kicked off this new wave of momentum. Lots of people have been working on ERA ratification since 1982 but she managed to, almost single-handedly, get the Nevada Legislature to vote to ratify the ERA in 2017.²⁹ That was like an earthquake in the ERA movement, followed by 2018, when Illinois was inspired to do the same thing.³⁰ Now we're up to thirty-seven states that have voted to ratify the ERA. Remember the Constitution requires thirty-eight. Everyone believes the thirty-eighth state will be Virginia.³¹ This year we were hoping it would happen and it fell short by one vote.³² It just couldn't get to the floor. Everyone knew if it got to the floor, there were enough votes

29. See Pamela K. Johnson, *5 Visionaries of the Equal Rights Amendment*, AARP (Mar. 4, 2020), <https://www.aarp.org/politics-society/history/info-2020/women-leaders-era.html> [<https://perma.cc/4KT3-M38P>].

30. Chappell, *supra* note 5.

31. Virginia voted to ratify the ERA on January 15, 2020, several months after this panel was held in October 2019. Timothy Williams, *Virginia Approves the E.R.A., Becoming the 38th State to Back It*, N.Y. TIMES (Jan. 16, 2020) <https://www.nytimes.com/2020/01/15/us/era-virginia-vote.html> [<https://perma.cc/8VE6-FVRK>] ("Virginia's decision does not seal the amendment's addition to the United States Constitution. A deadline for three-quarters, or 38, of the 50 states to approve the E.R.A. expired in 1982, so the future of the measure is uncertain, and experts said the issue would likely be tied up in the courts and in the political sphere for years.").

32. See Maureen Groppe & Ledyard King, *Virginia Becomes 38th State to Pass ERA for Women, Likely Setting Up Issue for Courts*, USA TODAY (Jan. 15, 2020, 4:35 PM), <https://www.usatoday.com/story/news/politics/2020/01/15/virginia-passes-era-38th-state-amendment-women/4477813002/> [<https://perma.cc/6FGX-GYAA4>].

to pass it. But one person, one man, stopped that bill from getting to the floor. There's an election coming [in November 2019] and we strongly believe that it will enable the legislature to take it up again and it will pass in January 2020. Then what? The year 2020 marks the one hundredth anniversary of suffrage, so it's very fitting that we will finally get all the other equal rights in the Constitution.

There is this problem of the time limit, which expired in 1982. It's a legal morass, but the bottom line is we have another male senator, a hero from Maryland, Ben Cardin, who, together with Representative Jackie Speier in the U.S. House of Representatives, has introduced legislation to remove the deadline.³³ There are enough votes in the House to pass the legislation. The first hearing on the ERA in thirty-six years happened in April,³⁴ and we're just waiting to see if they can put that through a vote in the House. We're lobbying very hard in the U.S. Senate where we have Senator Lisa Murkowski, a Republican who is cosponsoring the bill with Senator Ben Cardin. We also have Senator Susan Collins, so we probably just need two more Republican senators to have enough votes in the Senate. It's been very hard to get that support.

If the deadline isn't removed, there will probably be a lot of litigation. There are some theories that the deadline is not necessary.³⁵ Very briefly, there is one Supreme Court case that says Congress is allowed to put a time limit on amendments,³⁶ but there's really no precedent that tells you whether you can change that time limit, extend that time limit, or remove that time limit.

There's also a more radical theory that says the time limit itself is unconstitutional because, if you're a strict constructionist and you read Article V of the Constitution, what it says is two-thirds of Congress and three-quarters of the states are needed.³⁷ We've got that in January if Virginia votes for ratification. Some people do believe that the time limit should not even be regarded and that at that point we'll have the ERA. It will be a really interesting January and we really need your help. Please go to ERAcoalition.org, please call your senators, in particular, and also your

33. H.R.J. Res. 79, 116th Cong. (2019) (as passed by House, Feb. 13, 2020). On February 13, 2020, the House passed House Joint Resolution 79, sending the resolution to the Senate for consideration. See Eleanor Mueller & Alice Miranda Ollstein, *House Passes Bill to Revive Equal Rights Amendment*, POLITICO (Feb. 13, 2020, 11:48 AM), <https://www.politico.com/news/2020/02/13/house-passes-bill-to-revive-equal-rights-amendment-114865> [<https://perma.cc/U2F8-5NKG>].

34. See Jacqueline Thomsen, *Congress Holds First Equal Rights Amendment Hearing in 36 Years Amid Ratification Push*, THE HILL (Apr. 30, 2019, 4:15 PM), <https://thehill.com/homenews/house/441430-lawmakers-hear-testimony-on-equal-rights-amendment-amid-push-for-ratification> [<https://perma.cc/MGF4-H8ZV>].

35. See, e.g., Allison L. Held et al., *The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly Before the States*, 3 WM. & MARY J. WOMEN & L. 113, 128–31 (1997).

36. *Dillon v. Gloss*, 256 U.S. 368, 374 (1921).

37. Neuwirth, *supra* note 12, at 159.

representatives. This is the moment. There's no reason not to do this; it's long overdue. It will make a huge difference in the lives of women.

MS. KLEIN: Wow, we are inspired. Let's thank our panel.