Laws by Women, Laws About Women: A Retrospective Survey of Laws by California State and Federal Legislators

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Sherry L. Leysen*

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I. INTRODUCTION

In 1895, nearly fifteen years before the ratification of the Nineteenth Amendment to the United States Constitution, the Los Angeles Times invited “famous thinkers” to consider and respond to an important question.1 The Times correspondent introduced the question as follows:

The “New Woman” is rapidly coming to the front in the United States. She already votes in many localities, and within the past year she has made herself felt in many of the States upon the public school boards.

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1 Frank G. Carpenter, If Women Came to Congress, L.A. TIMES, Nov. 10, 1895, at 25.
The question will soon come as to whether she ought to have a place in the halls of Congress at Washington. This question has already been discussed, and during the past few weeks I have sent requests for an expression as to the effect of such an innovation to a number of our prominent statesmen, and also to the leading women of the United States. My question was:

“If women came to Congress, what would be the result?” It was accompanied by a reply postal card, and the answers were necessarily short.2

The views of thirty-two people were printed, with many supportive opinions expressed.3 Susan B. Anthony remarked that “justice, not bargain and sale, will decide legislation. May the good time come speedily!”4 Belva A. Lockwood, who years prior had become the first woman to practice before the U.S. Supreme Court,5 wrote that a woman “would go there by the votes of the people, and would therefore be likely to be a wise woman . . . and would probably say the right thing in the right place, and vote the right way.”6 But the notion of women holding elected office at the national level was not without harsh criticism, with some lamenting it “would be the deterioration of Congress,” “injurious, [and] detrimental to the moral influence,”7 and ultimately resulting in “chaos!”8 Following the publication of this piece, it would take nearly two decades for a woman to be elected to the United States Congress—Jeannette Rankin—and to the California legislature.9 Now, a century later, what is the result of women having an active role as legislators in our democracy?

2 Id.
3 See id. It seems that the banishment of tobacco smoke was a very popular reason to support women in Congress. E.g., Letter from Henry W. Blair, in Carpenter, supra note 1, at 25 (“Congress would become a genuine good-government club, and the problem of the ventilation of the hall of the House of Representatives would be solved without expense to the country by the exclusion of the use of tobacco in all its forms.”); Letter from Elijah A. Morse, in Carpenter, supra note 1, at 25 (“For one thing, the dirty, vile, poisonous tobacco smoke and spit would have to leave the House . . . [t]obacco kills the men who use it as well as those who have to breathe it.”).
4 Letter from Susan B. Anthony, in Carpenter, supra note 1, at 25.
6 Letter from Belva A. Lockwood, in Carpenter, supra note 1, at 25.
7 Letter from Thomas Dun English, in Carpenter, supra note 1, at 25 (“[F]rom my experience in legislation I should say the result would be the deterioration of Congress, and the moral degradation of such of the gentler sex as become members.”).
8 Letter from Patrick Walsh, in Carpenter, supra note 1, at 25 (“Women do not need to go to Congress to have their rights protected. I cannot imagine anything that would be more injurious, more detrimental to the moral influence and solid status of woman . . . unto the low and demoralizing plane of politics.”).
9 Letter from James H. Kyle, in Carpenter, supra note 1, at 25.
Has it resulted in “[j]ustice, liberty and equality for women,” as Elizabeth Cady Stanton predicted?\(^\text{11}\)

It is easy to become discouraged by the seemingly constant bombardment of contemporary headlines drawing attention to the status of women. Gender disparities and inequities continue to exist for women, particularly in the workplace. Whether working as entrepreneurs,\(^\text{12}\) professional athletes,\(^\text{13}\) physicians,\(^\text{14}\) lawyers,\(^\text{15}\) scientists,\(^\text{16}\) advertising executives,\(^\text{17}\) coaches,\(^\text{18}\) in technology,\(^\text{19}\) in entertainment,\(^\text{20}\) or any number of other

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\(^{11}\) Letter from Elizabeth Cady Stanton, in Carpenter, supra note 1, at 25.


\(^{15}\) See, e.g., ROBERTA D. LIEBENBERG & STEPHANIE A. SCHARF, WALKING OUT THE DOOR: THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE 17–20 (2019) (reporting on statistics showing the low percentages of women lawyers that are law firm equity partners or that hold law firm leadership positions, and recommending best practices to increase gender diversity, advancement, and retention of experienced women lawyers).

\(^{16}\) See e.g., Andrew Jacobs, Another Obstacle for Women in Science: Men Get More Federal Grant Money, N.Y. TIMES (Mar. 5, 2019), http://www.nytimes.com/2019/03/05/science/women-scientists-grants.html [http://perma.cc/7EX6-BM26] (describing results from a research study finding that, among the top fifty institutions receiving National Institutes of Health grant money, the median award to women versus men was $94,000 and $135,000, respectively).


\(^{18}\) See Carol Hutchins, Edniesha Curry & Meredith Flaherty, Where Are All the Women Coaches?, N.Y. TIMES (Dec. 31, 2019), http://www.nytimes.com/2019/12/31/opinion/Women-coaching-sports-title-ix.html [http://perma.cc/QA7K-P6NP] (noting that, before the passage of Title IX, ninety percent of women’s teams at the college level were coached by women; now that figure is forty percent for women’s teams, and three percent for men’s teams).

professions, collectively women are still struggling to reach the hoped-for equality. Yet we should not lose sight of the progress made. This Article attempts to briefly survey the law’s role in that progress. Its intention is not to provide a comprehensive overview, nor is it a study of voting records, nor a commentary on partisan politics. Rather, its intent is to shine a light on a small selection of work by federal and state legislators that have strived to move things forward. Part I discusses the advancement of statutory authority by women, highlighting bill introduction or sponsorship and select legislative records of the first women elected to the California State Assembly and Senate. Part II highlights a selection of laws about women in three policy areas: employment, corporate governance, and health—particularly those supported by California state and federal legislators.

II. LAWS BY WOMEN

At the time of this writing, record numbers of women are serving as legislators. One hundred thirty women—one hundred one in the House, and twenty-six in the Senate—are currently serving in the 116th Congress, representing just under twenty-five percent of voting members. The California Legislature, with thirty-eight women in office, also has set a record in 2019. But reaching these numbers at the federal and state levels has not been easy. Research indicates that women in public office successfully advance policy priorities, often for issues concerning women, children, and families, and that their representation is...
important. Yet the growth in numbers has been painfully slow. The number of women legislators in California did not reach double digits until the 1979–1980 legislative session, and it has been nearly fifteen years since Californians have seen representation mirroring today’s numbers. Perhaps most surprising, these low numbers are not due to a historical lack of candidates. Compiled statistics show that between 1912 and 1970, only eighteen women were elected to a California state office, even though there were 520 candidates running for state and national office in primary elections. For more than a century, the doors to elective office have opened—even so slowly—to women of color, women veterans, single mothers,

eighty-three women that served in the 114th Congress and discussing their approach to policy issues impacting women and children; Sue Thomas, The Impact of Women on State Legislative Policies, 53 J. POL. 958, 974 (1991) (discussing findings from a research study of twelve state legislatures and concluding that “[women] are more likely than men to introduce and successfully steer legislation through the political process that addresses issues of women, children, and the family.”); cf. TRACY L. OSBORN, HOW WOMEN REPRESENT WOMEN: POLITICAL PARTIES, GENDER, AND REPRESENTATION IN THE STATE LEGISLATURES 7 (2012) (“[T]he pursuit of women’s policy in the states is an inherently partisan endeavor based in both the effect of partisan identity on women’s issues and partisan legislative structure.”).

26 See Susan Gluck Mezey, Increasing the Number of Women in Office: Does It Matter?, in THE YEAR OF THE WOMAN: MYTHS AND REALITIES 267 (Elizabeth Adell Cook et al. eds., 1994) (“Although many men champion women’s issues . . . research shows that women are better champions.”); MICHELE L. SWERS, THE DIFFERENCE WOMEN MAKE 128 (2002) (“It is critical for women and minorities to have a seat at the table when legislators negotiate the final deals on public policy.”); MANNING & BRUDNICK, supra note 22, at 16 n.27 (collecting scholarship on the effectiveness of women legislators).


29 Id. (noting thirty-seven women legislators in the 2005–2006 legislative session).

30 LINDA VAN INGEN, GENDERED POLITICS: CAMPAIGN STRATEGIES OF CALIFORNIA WOMEN CANDIDATES, 1912–1970, app. at 207–09 (Pam Parry & David R. Davies eds., 2017). Fourteen of these women were elected to the Assembly. Id. Among the remaining four, one was elected as the California Secretary of Treasury, and three served in Congress (two by special election to replace their spouses). Id.

and others with unique backgrounds and experiences, all of whom are bringing to elective office a great level of diversity in interests, objectives, and expertise.

A. The First Women of the California Assembly

The legacy of women in the California state legislature began in 1918, when four of twelve women on the general election ballot were successful in their attempts to serve in public office: Este Broughton, Grace Dorris, Elizabeth Hughes, and Anna Saylor were elected to the Assembly as California’s first women legislators. These first women would each serve several terms, beginning to carve the path to double-digit representation by women in the California legislature.

During this time period, manufacturing by still-burgeoning industries was redirected to support America’s war efforts, with expanding production attributed to the “war spirit.” Record numbers of women were entering the work force to “fill new positions,” leading to the creation of a new policy-making body in 1918 within the Department of Labor, Woman in Industry Service— their purpose was “to safeguard the interests of women workers and to make their service effective for the national good” whether “in peace or in war.” Americans also were facing another war at home: the influenza pandemic. With at least 100,000 cases

33 See, e.g., VAN INGEN, supra note 30, at 46–47 (discussing the challenges faced by single mother and widow Mae Ellen Nolan, the first woman from California to serve in the House of Representatives following the death of her husband who previously held the seat).
34 California Turns Cold Shoulder on Women Candidates, SACRAMENTO BEE, Nov. 9, 1918 (“California is perfectly willing that her daughters should vote, but she is somewhat dubious about the advisability of putting them in office, as shown by Tuesday’s election, in which only four out of twelve women candidates were elected.”).
35 See H.R. 122, 2017–2018 Reg. Sess. (Cal. 2018) (recognizing “August 27, 2018, as the 100th anniversary of the election of the first four women to the California State Assembly”).
36 See Lavelle, supra note 24 (graphing the number of women legislators from 1919–1920 through 2019–2020).
37 See Half Billion Dollars of War Orders to Motors, WALL ST. J., Jan. 1, 1918, at 1 (detailing the automobile industry’s contributions to “war products”).
38 City’s Growth in Year Greatest in History, L.A. TIMES, Feb. 21, 1918, at 118 (“All lines of industry in this city are shown to have caught the war spirit during the year and to have increased production and enlarged their activities in every direction.”).
39 Women by Thousands Fill Men’s Positions, L.A. TIMES, Sept. 17, 1918, at 16 (“Women by thousands are responding to the appeal to take the place of men entering the army and to fill new positions created by industrial expansion.”).
reported in California in the fall of 1918, the death toll in Los Angeles alone over a four-month period was several thousand. This period also marked the beginning of prohibition, with ratification of the Eighteenth Amendment in 1919. In California, the strength of its economy was rooted in the “spread of irrigation.” Expanding hydroelectric power in the state was a priority, and with the state’s “unfailing supply of raw materials and its easy access by cheap water transportation to the great markets of the world,” California was expected to be “one of the greatest manufacturing states in the Union.” On the political front, a “partisan shift” was afoot, helping to pave the way for the first women candidates to reach elected office.

The forty-third session of the California State Assembly commenced on January 6, 1919. The press reported on the women’s arrival to the state capitol, noting that the “fair legislators” were “com[ing] to Sacramento with some definite ideas as to what they want done in the way of law making.” This included pursuing the agenda of the Women’s Legislative Council on three policy priorities: community property issues, a state home for “delinquent women,” and more funding for elementary schools. A few days into the legislative session, the women were welcomed by Governor William D. Stephens in his first biennial message, in which he stated, “Many of our best laws

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41 See State Board Reports Influenza Subsiding, L.A. TIMES, Nov. 3, 1918, at 15.
42 See Here are Exact Facts About the Influenza, L.A. TIMES, Feb. 9, 1919, pt. II at 6.
43 See U.S. CONST. amend. XVIII (repealed 1933). California’s ratification of the Eighteenth Amendment was filed with the Secretary of State on January 15, 1919. S.J. Res. 4, 43rd Sess., 1919 Cal. Stat. 1363.
44 CAL. STATE BD. OF AGRIC., STATISTICAL REPORT OF THE CALIFORNIA STATE BOARD OF AGRICULTURE FOR THE YEAR 1918, at 1 (1919) (“The spread of irrigation and of intensive cultivation . . . have made California what it is today.”).
45 ASSEMBLY JOURNAL, 43rd Sess., at 96 (Cal. 1919) (printing the first biennial message of Governor Stephens).
46 VAN INGEN, supra note 30, at 13 (“A partisan shift occurred in the state that helped change the fortunes of women candidates: the Republican Party healed its rift with progressives and began supporting women in winnable, open sent-elections.”).
47 ASSEMBLY, FINAL HISTORY, 43rd Sess. (Cal. 1919).
48 Women Lawmakers Take Up Duties, SACRAMENTO BEE, Jan. 6, 1919, at 10.
50 Act of May 3, 1919, ch. 165, 1919 Cal. Stat. 246. In 1919, Senator William Kehoe successfully introduced legislation for a home for “delinquent women,” the California industrial farm. S.B. 291, 43rd Sess. (Cal. 1919). The law, which committed women for terms of six months to five years for prostitution and related offenses, was challenged unsuccessfully in In re Carey. 207 P. 271, 273 (Cal. Dist. Ct. App. 1922). There, Betty Carey, who was charged with soliciting prostitution in San Francisco and ordered detained at the industrial farm, challenged her detention on various grounds. See id. at 271. The court found that detention under the statute was neither a punishment nor a penalty, but “wholly for purposes of assistance and reformation.” Id. at 273.
51 See Women Lawmakers Take Up Duties, supra note 48, at 10.
are directly due to the fact that women have the ballot. Now that they not only vote but as well directly assist in making the laws we may be certain that there will be still further improvement in our laws and in our institutions.\textsuperscript{52}

The four women were assigned to sit next to one another in the Assembly Chamber, in seat numbers forty-one through forty-four.\textsuperscript{53}

Elected to represent the 46th District was Assembly member Esto B. Broughton of the city of Modesto, the county seat of Stanislaus County.\textsuperscript{54} A graduate of Berkeley Law in 1916,\textsuperscript{55} she became a member of the California Bar in May 1916.\textsuperscript{56} She was twenty-eight years old when she took office in 1919,\textsuperscript{57} becoming the first woman lawyer to serve in the California Legislature. Broughton was quoted as saying, “I am now in the Legislature, and while I have my opinions, my mind is open to conviction in all matters. I shall not be a busybody on the floor of the Assembly.”\textsuperscript{58}

Broughton’s initial policy interests included “irrigation problems and reclamation work.”\textsuperscript{59} Around the time of her election, the population of Modesto was approximately 7,200 people, and with more than 1,900 farms in the county requiring irrigation, the region contributed heavily to the production of numerous crops essential for the economy, including peaches, nectarines, and figs.\textsuperscript{60} During the forty-third regular session, Broughton served on six committees\textsuperscript{61} and introduced eighteen Assembly Bills (“A.B.”).\textsuperscript{62} Five bills were approved by Governor Stephens, including acts addressing electrical power (A.B. 168)\textsuperscript{63} and refunding of outstanding bond debts by irrigation districts (A.B. 207).\textsuperscript{64} Another bill addressed compensation for county

\textsuperscript{52} \textit{Assemb. Journal}, 43rd Sess., at 38 (Cal. 1919).
\textsuperscript{53} See \textit{Assemb. Final History}, 43rd Sess., at 8–9 (Cal. 1919).
\textsuperscript{54} Id. at 4.
\textsuperscript{56} There have been an estimated eighteen women elected to the California legislature that also are, or were, members of the California State Bar. See infra Appendix A.
\textsuperscript{57} \textit{Van Ingen}, supra note 30, at 22. In her first primary, she ran against two other candidates, winning with forty-nine percent of the vote. See id.
\textsuperscript{58} \textit{Women Lawmakers Take Up Duties}, supra note 48, at 10.
\textsuperscript{59} Id.
\textsuperscript{60} See \textit{Cal. State Bd. of Agric.}, supra note 44, at 448–49.
\textsuperscript{62} See id. at 17, 26.
\textsuperscript{64} See Act of May 25, 1919, ch. 489, 1919 Cal. Stat. 1004 (“authoriz[ing] irrigation districts to refund outstanding bonded indebtedness”).
officers, and created the office of county librarian, for counties of the twenty-fifth class (A.B. 603).  

The law of community property in California has a long history, and the first women legislators were in the thick of early reform attempts. In 1919, Broughton introduced three bills that addressed community property issues (A.B. 696, 697, 698), with A.B. 696 and 698 receiving quite a bit of attention. The Sacramento Bee vigorously opposed the “Broughton Bills” (A.B. 696 and 698) in an editorial. The piece warned that A.B. 696 would make a wife “practically a legal partner, with unrestricted power to hamper or ruin [her husband’s] business . . . however incapable, meddlesome or mischievous she might be.” The press reported that while Assembly opposition to the bills “did not lack vigor,” there was some support, with one member of the Assembly quoted as saying, “Deal with the women now . . . or they will deal with you later. They deserve this right; it is theirs.” Scholarly commentary on these bills and others gave dire warnings that “[i]f the proposed legislation passes it will be necessary for a man to be as careful in choosing a wife as in selecting a business partner.” All three bills were ultimately unsuccessful, with two of the three pocketed by Governor Stephens (A.B. 697 and 698) and one left in committee (A.B. 696). In his veto message, Stephens was quoted as saying, “I feel that the women of California believe that it is necessary and proper that the husband remain as the manager of the active business of the marital partnership . . . the best interests of . . .  

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67 A.B. 696 proposed to amend and repeal sections of the Civil Code (1401 and 1402) “relating to the disposition, succession, administration, and distribution of community property on the death of the husband or wife . . . .” ASSEMBL. FINAL HISTORY, 43rd Sess., at 216 (Cal. 1919). A.B. 697 proposed “to amend section 1723 of the Code of Civil Procedure relating to the disposition of life estates or homesteads, or community property, on owner’s death, in certain cases.” Id. A.B. 698 proposed to amend and repeal sections of the Civil Code (164 and 167) “relating to community property.” Id. at 217.  
69 Id.  
70 Community Property Bills Passed by the Assembly Last Night, SACRAMENTO BEE, Apr. 15, 1919, at 2.  
72 See ASSEMBL. FINAL HISTORY, 43rd Sess., at 216. One community property bill that addressed testamentary disposition of community property (S.B. 471, introduced by Senator Thompson) was signed by the Governor. S. FINAL HISTORY, 43rd Sess., at 145 (Cal. 1919), Act of May 27, 1919, ch. 611, 1919 Cal. Stat. 1274.
business and commercial life demands that the husband should be the manager.”

The first of many reforms to California’s community property laws would take place a few years later in 1923 with Senate Bill (“S.B.”) 228, introduced by Senator Herbert Jones with the support of the California Federation of Women’s Clubs.

Grace Dorris, from the city of Bakersfield in Fresno county, was elected to the 56th District. Like Hughes and Saylor, Dorris was a teacher. In 1908, she graduated with a Bachelor of Arts from Berkeley, and thereafter taught three languages to high school students. She also was an avid supporter of women’s rights, including improved conditions for working women. Dorris served on six committees in her first session, and introduced twenty-one bills, of which the governor approved four and pocketed four. A.B. 25 addressed compensation for county and township officers for counties of the eleventh class and jurors’ fees. Several bills concerned education. She successfully introduced a school census bill to require school districts to appoint a registrar of minors and to prepare accompanying reports of registration (A.B. 671)—an important measure due to the influenza epidemic, which caused the closure of public schools for extended time periods. A fruitful measure amending the Political Code addressed “the powers and duties of the state board of education” concerning the granting of teaching credentials (A.B. 867). Dorris also introduced a bill “to create the office of public defender” in every county (A.B. 487). It was tabled by the Committee on the Judiciary, with the press reporting it was opposed by some counties that did not want it implemented throughout the state.

75 See ASSEMBL. FINAL HISTORY, 43rd Sess., at 4.
76 Id.
77 See VAN INGEN, supra note 30, at 20.
78 See id. at 21.
79 See Women Lawmakers Take Up Duties, supra note 48, at 10.
81 See id. at 17, 26.
83 See Act of May 9, 1919, ch. 257, 1919 Cal. Stat. 437 (providing “for the registration of minors”).
84 See ASSEMBL. JOURNAL, 43rd Sess., at 38 (Cal. 1919).
86 ASSEMBL. FINAL HISTORY, 43rd Sess., at 165 (Cal. 1919).
87 See Public Defender Bill to Die in Committee, SACRAMENTO BEE, Apr. 1, 1919, at 9.
Elizabeth Hughes, from the city of Oroville in Butte county, was elected to represent the 7th District. Like Saylor, “housewife” was her listed occupation, but Hughes too had worked as a teacher, and her spouse was a prominent teacher and principal. She also was regarded as tenacious. In connection with committee assignments, the press reported at the time that “[s]he wants that Chairmanship [of the Committee on Education] and she wants it badly. She is going to get it if she can, and she has told the Administration forces she will be satisfied with nothing less.” Her first session committee assignments did indeed include serving as Chair of the Education committee, along with serving on six other committees.

Anna Saylor, from the city of Berkeley, was elected to represent the 41st District located in Alameda County. “Housewife” was her listed occupation, but she was an experienced public school teacher, principal, and supervisor. In her first session, she served as Chair of the Public Morals committee, and served on five others. One of her primary legislative objectives was to eliminate illiteracy through increased elementary school funding. She introduced twenty-one bills (ten approved by Governor Stephens), nearly all of which addressed education. Several approved bills appropriated funds to assist students and graduates of the California School for the Deaf and the Blind (now the California School for the Blind) with readers, books, and educational opportunities (A.B. 240 and 241), along with appropriations for the school’s maintenance and repair (A.B. 247). Saylor also introduced mental health measures, one for the establishment of a department of psychiatry and sociology

88 See ASSEMB. FINAL HISTORY, 43rd Sess., at 4.
89 Id.
90 See VAN INGEN, supra note 30, at 16.
91 Women Lawmakers Take Up Duties, supra note 48, at 10.
93 See id. at 5.
94 Id.
95 See VAN INGEN, supra note 30, at 15.
96 See ASSEMB. FINAL HISTORY, 43rd Sess., at 16 (serving on “Constitutional Amendments, Education, Hospital and Asylums, Prisons and Reformatories, Public Charities and Corrections”).
97 See Women Lawmakers Take Up Duties, supra note 48, at 10.
98 See ASSEMB. FINAL HISTORY, 43rd Sess., at 19, 28.
at San Quentin (A.B. 489),\textsuperscript{102} and another to provide temporary psychiatric care (A.B. 566),\textsuperscript{103} but neither measure was successful.

Among the twelve Assembly Bills\textsuperscript{104} that Hughes introduced in her first term, nearly all addressed education. Seven of the twelve bills were approved by Governor Stephens,\textsuperscript{105} and several addressed appropriations for improvements to the Chico Normal School (now the California State University, Chico).\textsuperscript{106} Hughes believed that the school was "pre-eminently the one to develop the primary education feature for rural schools, for it serves a rural territory."\textsuperscript{107} Successful bills in support of the Chico Normal School included appropriations for water supply development (A.B. 476),\textsuperscript{108} building improvements and repairs (A.B. 477),\textsuperscript{109} and $32,000 for the building of a trade school (A.B. 567).\textsuperscript{110} Other measures addressed the educational rights of students, including providing part-time education in civics and vocations for students under eighteen, and citizenship for students under twenty-one (A.B. 516).\textsuperscript{111}

During the seventy-seven days that the Assembly was in its regular session, the four women introduced a total of seventy-seven measures.\textsuperscript{112} These included seventy-two bills proposing new acts or amending existing laws, along with three Concurrent Resolutions and two Joint Resolutions.\textsuperscript{113} Among their introductions, Governor Stephens approved a total of twenty-six bills, and two resolutions were filed with the Secretary of State.\textsuperscript{114}

When the regular session of the forty-third Assembly adjourned on April 22, 1919, Assembly member Cromble Allen of the 57th district offered the following resolution, which was read and, on motion, adopted:

\footnotesize{\begin{itemize}
\item \textsuperscript{102} See ASSEMB. FINAL HISTORY, 43rd Sess., at 165.
\item \textsuperscript{103} See id. at 184.
\item \textsuperscript{104} See id. at 18.
\item \textsuperscript{105} See id. at 26.
\item \textsuperscript{107} Women Lawmakers Take Up Duties, supra note 48, at 10.
\item \textsuperscript{108} See Act of May 27, 1919, ch. 557, 1919 Cal. Stat. 1211 ("appropriating money for the development of water and equipment").
\item \textsuperscript{109} See Act of May 27, 1919, ch. 558, 1919 Cal. Stat. 1211 ("appropriating money for repairs to buildings and equipment").
\item \textsuperscript{110} See Act of May 27, 1919, ch. 559, 1919 Cal. Stat. 1212 ("appropriating money to build a trade school unit").
\item \textsuperscript{111} See Act of May 27, 1919, ch. 506, 1919 Cal. Stat. 1047 (requiring certain high schools districts to provide part-time educational opportunities and other purposes).
\item \textsuperscript{112} See ASSEMB. FINAL HISTORY, 43rd Sess., at 17–19, 26 (Cal. 1919); 1919 Cal. Stat. iii–viii.
\item \textsuperscript{113} See ASSEMB. FINAL HISTORY, 43rd Sess., at 17–19.
\item \textsuperscript{114} For bill introduction summary data for Broughton, Dorris, Hughes, and Saylor, see infra Appendix B.
\end{itemize}}
Whereas, For the first time in the history of California the electors of the Golden State elected women to serve in the Legislature at the general election last November, and
Whereas, as a result of that election
Miss Esto Broughton of Modesto,
Mrs. Grace Dorris of Bakersfield,
Mrs. Elizabeth Hughes of Oroville,
Mrs. Anna L. Saylor of Berkeley,
were elected to seats in the Assembly; and
Whereas, Miss Broughton, Mrs. Dorris, Mrs. Hughes and Mrs. Saylor have served in this forty-third session of the California Legislature with distinction to themselves and credit to their constituents, now, therefore, be it

Resolved, by the men of the Assembly of the forty-third session of the California Legislature. That we hereby express our appreciation of the honor of being associated with these women in this legislative session and that we congratulate the womanhood of California upon having chosen such representative members of their sex to serve in the Legislature, and be it further

Resolved. That a copy of this resolution be printed in the Journal, and the Chief Clerk directed to have a copy suitably inscribed for each of the four women members of the forty-third session of the Assembly.\cite{115}

Although California granted suffrage to women in 1911,\cite{116} toward the end of the women’s first year in office, Governor Stephens convened an extraordinary session of the forty-third California legislature to consider and ratify the Nineteenth Amendment to the U.S. Constitution, at which time Senate Joint Resolution No. 1 was adopted by the Senate and the Assembly and filed with the Secretary of State.\cite{117} It was reported that a “lively debate” took place in the Assembly.\cite{118} Two no votes were recorded by Assembly members Carlton Greene and Robert Madison. Greene argued that the issue should be left to the

\begin{footnotes}
\footnotenum{115} ASSEMB. JOURNAL, 43rd Sess., at 2123–24 (Cal. 1919). Although the resolution was likely well-intentioned, at least one commentator has critiqued the resolution as “reinforc[ing] the notion that women voted for women” rather than “welcom[ing] women as equals.” VAN INGEN, supra note 30, at 24.
\footnotenum{116} See California Wins! Suffragists Celebrate Victory, 42 WOMAN’S J. 1, 321 (1911) (“This is in one sense, the greatest victory in the history of the movement, since it enfranchises more women than any of the preceding ones, California having a much larger number of women citizens than any one of the other suffrage states.”). Senate Constitutional Amendment No. 8 was approved by voters at a specific election on October 10, 1911. See id. at 321, 323.
\footnotenum{117} See ASSEMB. JOURNAL, 43rd Extra Sess., at 19 (Cal. 1919); S.J. Res. 1, 43rd Leg., Extra Sess. (Cal. 1919), 1921 Cal. Stat. lxxxi.
\footnotenum{118} Two Assemblymen Oppose Amendment, SACRAMENTO BEE, Nov. 3, 1919, at 11.
\end{footnotes}
states and was not a federal question, while Robert Madison opposed the “unnecessary call” of the legislature.\footnote{119 Id.; ASSEMB. JOURNAL, 43rd Extra Sess., at 20. One no vote was by Robert Madison representing the 13th District, who stated “I did so, not with any idea of expressing myself as being opposed to the equal right of suffrage for women” but because it was “an unnecessary call of the Legislature” resulting in “an unnecessary expense by which the people of the State of California gained nothing.” Id.}

When the forty-fourth session of the Assembly commenced on January 3, 1921, the Assembly was less one woman: Grace Dorris. In the 1920 election, Dorris faced three challengers; she was ultimately outspent and lost the seat.\footnote{120 See VAN INGEN, supra note 30, at 33.}

Broughton, Hughes, and Saylor were reelected and continued to pursue their policy objectives, introducing seventy-nine measures (two with others), of which thirty-one bills were approved by the Governor and two resolutions were filed with the Secretary of State.\footnote{121 See ASSEMB. FINAL HISTORY, 44th Sess., at 50–64 (Cal. 1921).}

In 1921, Broughton introduced thirty-one bills, of which nine were approved by the Governor, along with one successful Joint Resolution co-authored with Assembly member F.J. Cummings concerning the dairy industry.\footnote{122 See id. at 20, 34. The dairy industry measure was intended to address “a grave menace” due to the importation of butter “in enormous quantities into our local markets.” ASSEMB. J. RES. No. 16, Jan. 28, 1921, ch. 21, 1921 Cal. Stat. 2036.}

Another enacted measure involved establishing working conditions for women working in “any mill, workshop, packing, canning or mercantile establishment” (A.B. 601).\footnote{123 Act of June 3, 1921, ch. 903, 1921 Cal. Stat. 1699 (regulating the moving of certain boxes, baskets, and other receptacles where women are employed).} Employers who required women to lift or move items weighing seventy-five pounds or more without a pulley or other moving device were fined fifty dollars per day.\footnote{124 See id.} Similar protective legislation would become a hotspot for decades.\footnote{125 See, e.g., NANCY WOLOCH, A CLASS BY HERSELF: PROTECTIVE LAWS FOR WOMEN WORKERS, 1890s–1990s 1 (2015) (“The Progressive Era left in its wake scores of state protective laws that treated women as a separate class, that confirmed and perpetuated a gendered division of labor, and that remained in place for decades to come.”); Arlene Van Breems, Working Women Caught in State, Federal Law Bind, L.A. TIMES, Nov. 12, 1969, at H1 (“California’s more than 50-year-old protective laws for women are causing a quandary for the Legislature.”); Arlene Van Breems, Amended Fair Employment Bill Angers Women, L.A. TIMES, June 12, 1970, at G1 (quoting the legislative advocate for the Federation of Business and Professional Women’s clubs, “We want equal job opportunity but we, as women, don’t get it by wiping out those protective laws.”).}

Broughton’s new committee assignment included serving as Chair of the Normal Schools committee.\footnote{126 See id. at 14.}
The forty-fourth session would be Hughes’ second and final term.\(^{127}\) She continued as Chair of the Education committee. During the forty-fourth session, Hughes authored twenty-three bills, of which ten were approved by the Governor.\(^{128}\) Hughes continued to shepherd significant education bills. A.B. 705 amended sections of the educational rights act addressing compulsory attendance and permits,\(^{129}\) while A.B. 709 provided for the organization and funding of junior college districts.\(^{130}\)

Saylor continued as Chair of the Public Morals committee.\(^{131}\) During the forty-fourth session, Saylor introduced twenty bills, twelve of which were approved by the Governor.\(^{132}\) Unsuccessful in shepherding two mental health bills through in the last session, she again introduced a bill to create the Department of Psychiatry and Sociology at San Quentin (A.B. 797).\(^{133}\) This bill was among several measures put forth by Assembly members addressing prisons and prisoner rights (including a proposed measure to allow a prisoner “to disguise himself” upon release by allowing the growth of hair),\(^{134}\) but it again proved to be unsuccessful, failing to pass from committee.

However, Saylor was successful in introducing a measure that was highly controversial, an amendment to section 190 of the Penal Code to eliminate the death penalty for minors. A.B. 1282 raised the ire of legislators and the public, with letters to the editor of the Sacramento Bee opining that it “may compliment the kindness of [Saylor’s] heart but it is at the expense of good judgment” and that “written in womanly mercy, would not if enacted touch the heart nor stop the bullet of a single youthful murderer.”\(^{135}\)

As introduced, Saylor advocated for the measure to apply to those twenty-one years of age and under, which was later amended to eighteen.\(^{136}\) When the bill was considered in the

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\(^{128}\) See ASSEMBL. FINAL HISTORY, 44th Sess., at 21, 50–64.


\(^{130}\) See Act of May 27, 1921, ch. 495, 1921 Cal. Stat. 756.

\(^{131}\) See ASSEMBL. FINAL HISTORY, 44th Sess., at 14.

\(^{132}\) See id. at 22, 50–64.

\(^{133}\) See id. at 270.

\(^{134}\) Many Improvements at Reformatories, State Prisons and Hospitals Planned; More Legislation Proposed for Humanitarian Treatment of Prisoners, Including Psychiatry Department, SACRAMENTO BEE, Feb. 1, 1921, at 13.

\(^{135}\) Misguided Sentiment Suggests a Weakening of Law, SACRAMENTO BEE, Mar. 9, 1921, at 13.

\(^{136}\) See Assembly Passes Bill to Prevent Hanging Youths, SACRAMENTO BEE, Mar. 24, 1921, at 1. For a contemporary discussion of capital punishment for young adults aged eighteen to twenty-one, see Zoe Jordan, Note, The Roper Extension: A California
Senate, the issue was framed as a measure “inspired by the ‘sentamentalists’ opposed to capital punishment in any form . . . ”. The press coverage of Saylor’s bill was especially harsh, referring to the abolishment of “hanging for youthful slayers . . . no matter how heinous the crime.” Some Senators argued that the measure would place an extreme burden on prosecutors to determine the defendant’s age, “[if] this bill became a law it would be utterly impossible to prove the age of a youthful looking person charged with murder . . . [if] the defendant] swore that he was under 18 years, it would be impossible for the prosecution to prove otherwise.”

Saylor’s other successful introductions continued to advance education, both for capital improvements and to advance student learning. For example, appropriations at the University of California included significant construction funds for the school of education (A.B. 791) and the physics building (A.B. 792).

Incumbents Broughton and Saylor, along with former colleague Dorris, kept their seats in the 1922 election, and were joined by two more women: Eleanor Miller and Cora Woodbridge. Miller from the city of Pasadena was elected to represent the 67th District. A teacher of expression and music, Miller would be elected nine times between 1922 and 1940. Following the 1922 primary, she was quoted as saying, “I hardly need to...”

137 Bill to Save Young Slayers Passes Senate, SACRAMENTO BEE, Apr. 26, 1921, at 12.
138 Assembly Passes Bill to Prevent Hanging Youths, supra note 136.
139 Bill to Save Young Slayers Passes Senate, supra note 137.
140 See Act of May 13, 1921, ch. 105, 1921 Cal. Stat. 98 (an act amending the Penal Code relating to punishment for murder). The relevant language read, “[The death penalty shall not be imposed or inflicted upon any person for murder committed before such person shall have reached the age of eighteen years; provided, further, that the burden of proof as to the age of said person shall be upon the defendant.” Id. A version of that language is currently codified at CAL. PENAL CODE § 190.5(a) (West, Westlaw through ch. 870 of 2019 Reg. Sess.), which states, “Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.”
141 See Act of June 3, 1921, ch. 681, 1921 Cal. Stat. 1154 (appropriating $100,000 for construction and equipment).
142 See Act of June 3, 1921, ch. 682, 1921 Cal. Stat. 1154 (appropriating $500,000 for construction and equipment).
143 ASSEMB. FINAL HISTORY, 45th Sess., at 5 (Cal. 1923).
144 See VAN INGEN, supra note 30, at 41 (describing Miller’s educational background and the founding of the Eleanor Miller School of Expression).
145 See Pasadena Assemblywoman Ends Service After 20 Years, L.A. TIMES, June 16, 1941, at 1A.
say, I think, that I shall be for those laws that are for the welfare of women and children, but I realize that these are not the only measures that should engage the attention of a woman in the Assembly.”

Cora Woodbridge, from the city of Roseville in Placer County, was elected to represent the 9th District.

At the start of the forty-fifth legislative session, Governor Friend Richardson admonished the legislature to keep bill introductions to a minimum, stating, “The value of your work will depend upon its merit, and not upon volume” and hoping that “the statute book of 1923 will be the smallest in size . . .” Nevertheless, the women collectively introduced 102 measures in the forty-fifth session, with twenty of the ninety-five bills ultimately approved by Governor Richardson.

In her first legislative session, Miller introduced seventeen measures, with two successful bills, while Woodbridge successfully introduced five of nineteen bills in her first session.

Among the twenty-four measures introduced by Saylor, nineteen addressed education (administrators, teachers, students, and school buildings), prison conditions, and the treatment of those with mental illness. Among the enacted introductions was an important measure permitting women prisoners at San Quentin to earn money from the sale of their needlework, to be paid upon release (A.B. 185).

All five would lead successful reelection campaigns in 1924 and serve together in the forty-sixth legislative session in 1925. Collectively, the five women would introduce just sixty-three bills (A.B. 789 and 1109 were cosponsored), of which only eight were approved by Governor Richardson. The small number of bills put forth was likely due to Richardson’s directive. As in the prior session, Richardson warned the legislature, “Your work as legislators will be judged by its quality and not by its
quantity...[t]he legislator who introduces the fewest bills should be given the most credit by his constituents.” Only two approved bills were of any consequence. Saylor successfully introduced a measure where a woman’s estate could be sold or mortgaged for her care. Other bills introduced by Saylor addressed transportation for physically challenged children, but none were successful. Miller introduced ten bills (one with Dorris), of which two were approved by the Governor; one measure (A.B. 1285) provided criminal penalties for a father’s failure (“who wilfully omits”) to provide food, clothing, shelter, medical attention, or other care for his child.

At the close of the forty-sixth legislative session, it would be more than fifty years before more than five women would serve together again. And while women did have a seat at the legislative table between the forty-third legislative session in 1919 and the legislature of 1966, for nearly five decades only white women held these seats. Finally in 1966, two women of color—attorney Yvonne Brathwaite Burke and educational consultant March K. Fong Eu—were elected to the Assembly.

B. The First Women of the California Senate

“I was in the race to win—all the way. Why do people always ask how he lost instead of why I won?”

—Senator Rose Ann Vuich upon her successful election to the California State Senate in 1976

In the year that Rose Ann Vuich was elected as California’s first woman senator, twenty-seven women ran for seats. In addition to Vuich’s successful Senate bid, three women were

155 ASSEMB. JOURNAL, 46th Sess., at 27 (Cal. 1925). Richardson’s message discussed problems with drought and illness, noting the impact of “extraordinary situations...which caused the people of the state great loss” including “[a]n unusually dry year,... a deficiency of water power for electric energy caused by the dry year, and an epidemic...unfortunately called a ‘plague.’” Id. at 25.
157 If the husband is unable to provide suitably for the care or support of a wife over whose estate a guardian has been appointed by reason of incompetency, the expense of providing such care... may... be charged against... such estate, the guardian may sell or mortgage estate of the ward as provided in this code.
158 Id.
159 See School Aid for Cripples Voted, L.A. TIMES, Apr. 1, 1925, at 5.
162 See id.
163 See CORNELISON, supra note 31, at 1.
elected to the Assembly in 1976: Carol Hallett, Marilyn Ryan, and Maxine Waters.¹⁶⁴ This would bring the total number of women serving in the legislature in 1977 to six, the highest number since 1925.¹⁶⁵

Never considered to be the seat’s frontrunner, Vuich won the 15th District Senate seat by 2,628 votes over her opponent, Ernest Mobley, a ten-year member of the California State Assembly.¹⁶⁶ Vuich did not run on a platform of strictly women’s issues. Research studies published around the time that Vuich was elected revealed that many “women were not anxious to identify themselves as women’s candidates and did not confer a higher priority on women’s issues than men once in office.”¹⁶⁷ In an interview following her election, she shared her sentiments:

I am not a part of the women’s liberation movement . . . but if a woman is as qualified as a man she should receive the same pay for the same job. A woman shouldn’t be hired, however, just because she is a woman if she isn’t qualified to do the job.

I intend to represent women to the best of my knowledge and beliefs, but I do not intend to be in there just as a women’s libber representing only the women.¹⁶⁸

When Vuich took office in 1977, California was wrestling with four state priorities:¹⁶⁹ achieving property tax relief (Proposition 13¹⁷⁰ would not be approved by voters until the following year), implementing the Serrano¹⁷¹ decision, establishing conservation (particularly, water conservation as a result of some of the most severe drought conditions in the state’s history),¹⁷² and tackling criminal justice reform.

During the 1977–1978 session, Vuich was the lead author on thirty Senate Bills, one Senate Constitutional Amendment, two Senate Concurrent Resolutions, and one Senate Joint Resolution.¹⁷³ Twenty-two of the thirty Senate Bills were

¹⁶⁴ See Record of Members of the Assembly 1849–2019, supra note 127.
¹⁶⁶ See Gillam, supra note 162.
¹⁶⁷ See Mezey, supra note 26, at 264.
¹⁶⁸ Gillam, supra note 162.
¹⁷⁰ See CAL. CONST. art. XIII A, § 1 (West, Westlaw through ch. 870 of 2019 Reg. Sess.).
chaptered.\textsuperscript{174} Having spent nearly all of her life on a farm in Dinuba (which included responsibility for “240 acres of citrus, grapes, other fruits and olives”),\textsuperscript{175} Vuich was a committed advocate for agriculture throughout her political career. Many of the measures that she introduced and that became chaptered laws addressed farming interests. These successful measures included everything from establishing vermiculture (earthworms) as a branch of the agricultural industry (S.B. 1818),\textsuperscript{176} to the protection of bees from pesticides (S.B. 1049),\textsuperscript{177} and the labeling of honey (S.B. 2047).\textsuperscript{178} One of Vuich’s main campaign issues in 1976 was the failure of the incumbent to secure funding to complete a highway through Fresno.\textsuperscript{179} Vuich was ultimately successful in this endeavor; the highways were opened to traffic in 1982.\textsuperscript{180}

California’s first woman senator of color, Diane Watson, was elected in 1978.\textsuperscript{181} Having worked as an educator and a school psychologist, measures concerning women, children, families, and education were a high priority. For example, in her first term she was the lead author on a measure to provide child care facilities for state employees within state buildings (S.B. 764),\textsuperscript{182} along with measures related to child support (S.B. 1032) and nutrition (S.B. 953).\textsuperscript{183} At the very start of her long political career, she was the lead author on forty-four Senate bills, one Senate Concurrent Resolution, and one Senate Joint Resolution in the 1979–1980 regular session, of which twenty-four bills were enacted.\textsuperscript{184}

Another measure was a critical piece of legislation for victims—both men and women—of sexual assault, S.B. 500.\textsuperscript{185} The bill added section 1112 to the Penal Code, which read as passed, “The trial court shall not order any prosecuting witness,

\begin{itemize}
\item \textsuperscript{174} See id. at 1315, 1318–26, 1328–31.
\item \textsuperscript{177} See Act of Sept. 27, 1977, ch. 1096, 1977 Cal. Stat. 3509 (relating to bees).
\item \textsuperscript{179} See Gillam, supra note 162.
\item \textsuperscript{181} See CORNELISON, supra note 31.
\item \textsuperscript{185} See id. at 315 (co-authors Senator Robbins and Assembly members Bergeson and McVittie).
\end{itemize}
complaining witness, or any other witness, or victim in any sexual assault prosecution to submit to a psychiatric or psychological examination for the purpose of assessing his or her credibility.”

Prior to its enactment, court-ordered psychiatric examinations of sexual assault victims were allowed under a Ballard v. Superior Court motion. Research around the time the bill was considered revealed the Ballard motion’s “uneven application,” with some counties granting the motion more often than others. The bill was opposed by various groups, including California Attorneys for Criminal Justice and the California Trial Lawyers Association.

Reflecting on key pieces of legislation, including the authority above, and her tenure, Watson shared:

Well one of them that really stands out was the Ballard motion bill...made by a defense attorney to require a psychiatric examination of a rape victim [or] sexual assault victim. It was the only crime where the victim was required to take a psychiatric examination. It was biased against women. It took me three years to get that bill passed—you talk about the complexities.

It was very difficult in the beginning for a woman. It was a struggle. The abuse that I had to endure because I was trying to do this along with the threats and the accusations these guys made gave me an even greater resolve. I found it to be really a boys’ club. Those were the kinds of battles I went through simply because I was a woman.

With the exception of an amendment (also introduced by Watson) in 1984, the language of section 1112 of the Penal Code remains unchanged.

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191 Id. at 318.
192 See Act of Sept. 12, 1984, ch. 1101, 1984 Cal. Stat. 3726 (amending the Penal Code “relating to evidence”). S.B. 856 further amended the language of Penal Code section 1112 to add, “Notwithstanding the provisions of subdivision (d) of Section 28 of Article I of the California Constitution . . . .” The amendment to Penal Code section 1112 was effective immediately because “[m]any pending cases demonstrate a need for reaffirmation of evidence rules relating to sex crimes.” Id. Section 28(d) was part of the Victims’ Bill of Rights initiative (Proposition 8) and considered to be its “most far-reaching provision.” Miguel A. Méndez, The Victims’ Bill of Right—Thirty Years Under Proposition 8, 25 STAN. L. & POL’Y REV. 379, 380 (2014).
The legacy of the first women cannot be understated. From the forty-third to the forty-sixth legislative sessions, women introduced or carried an estimated 325 measures. Of these, eighty-five Assembly Bills were approved by the Governor, and another nine were filed with the Secretary of State, representing a passage rate of nearly thirty percent.\(^{193}\) Their work touched agricultural interests, the flow of water and irrigation, public employee positions and compensation, appropriations for schools, the rights and interests of children and students, concerns for people suffering from mental health and drug addiction, rights and protections for workers, conditions for the incarcerated, concerns of veterans, and more.

III. LAWS ABOUT WOMEN

There are powerful laws drafted with the intent to improve the lives of women. At both the federal and state level, these laws push—some quietly, some forcefully—to move societal issues forward. While some laws have never made headlines and others have failed to meet hoped-for expectations, they nevertheless address—or attempt to address—extremely serious and complicated issues.

At the federal level, there are currently less than fifty Acts of Congress with the words “female” or “women” appearing in their title.\(^{194}\) Rather, many laws about women do not even mention, use, or define the words “woman” or “women” in their short title or statutory text. As but one example, California’s Constitution and legislative enactments have used the language “on the basis of sex,” “based on sex,” or “on account of sex,”\(^{195}\) to address discrimination since the Nineteenth century. In the year that the first four women in California began their term in office, 1919, “on the basis of sex” was discussed by the Woman in Industry Service in its contribution to the Department of Labor’s annual report, which recommended that “[w]ages should be established on the basis of occupation and not on the basis of sex.”\(^{196}\) And, of course, the length of the statutory text makes no difference; some of the most important constitutional and statutory laws

\(^{193}\) Data compiled from Assembly Final Histories and the Statutes of California from the forty-third through the forty-sixth legislative sessions.


\(^{195}\) See, e.g., CAL. CONST. Art. I, § 8 (1879) (“No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.”).

impacting women take up no space at all in the United States Statutes at Large or the United States Code.\textsuperscript{197} Indeed, the substantive portion of the Nineteenth Amendment is all of twenty-seven words long.\textsuperscript{198}

This Part highlights a small snapshot of meaningful state and federal laws about women and some of the legislators that helped shepherd them through. While these policy areas are often framed as women’s issues, they are much more than that: they are legislative attempts to achieve fairness, correct prior injustices, raise awareness, and reach balance.

A. Women and Employment

We believe it is the right of every woman to be gainfully employed if she so desires . . . in order to improve the economic status of herself and her dependents. . . . We believe that it is the job that counts and not the sex nor marital status of the worker.\textsuperscript{199}

—Laura M. Lorraine, State President, California Federation of Business and Professional Women’s Clubs, 1947

The quote above could have appeared in today’s headlines. California legislators have attempted to statutorily enforce gender pay equity for decades. Before the successful introduction and passage of A.B. 160 in 1949, which added section 1197.5 to the California Labor Code for the first time,\textsuperscript{200} there were numerous other legislative attempts over at least a thirty-year period to improve or regulate the employment of women. These bills typically attempted to address issues of minimum compensation, regulate working hours (maximum daily and weekly hours; rest periods), or mandate minimum working conditions.\textsuperscript{201}

Many of these early bills proposed further amendments to an act of March 22, 1911, an early law addressing working

\textsuperscript{197} The Equal Pay Act of 1963, Pub. L. No. 88–38, 77 Stat. 56, takes up less than two pages of the Statutes at Large, while the Education Amendments of 1972, Pub. L. No. 92–318, 86 Stat. 235, take up 147 pages of the Statutes at Large. Title IX appears on just three of those pages.

\textsuperscript{198} U.S. CONST. amend. XIX (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.”).

\textsuperscript{199} Bess M. Wilson, \textit{Women Urged to Defend Status as Job Holders}, L.A. TIMES, Nov. 16, 1947, at 3 (reporting on Lorraine’s speech “to 300 members of the Los Angeles District Federation”).

\textsuperscript{200} See CAL. LAB. CODE § 1197.5 (West, Westlaw through ch. 870 of 2019 Reg. Sess.).

\textsuperscript{201} See, e.g., ASSEMB. FINAL HISTORY, 46th Sess., at 102 (Cal. 1925) (A.B. 157 (Woodbridge) failed in committee); ASSEMB. FINAL HISTORY, 45th Sess., at 86–87, 200 (Cal. 1923) (A.B. 88 (Woodbridge) failed through pocket veto and A.B. 559 (Saylor) failed in committee).
women.\textsuperscript{202} As passed, the 1911 act required very little of employers, but did impose penalties for non-compliance.\textsuperscript{203} For certain places of employment, the act limited a woman’s hours of employment to no more than eight hours a day, or forty-eight hours in one week.\textsuperscript{204} The second section of the act, requiring an employer to provide female employees with “suitable seats” to use “when they are not engaged in the active duties of their employment,”\textsuperscript{205} appeared in the statutes at least as early as 1889 in connection with a sanitation and health enactment for employees working in factories, workshops, and the like.\textsuperscript{206}

While the intent of many of these early bills was to expand women’s rights, others tried to limit it. For example, several tried to prohibit the employment of married women in government jobs,\textsuperscript{207} part of a “back to the home” movement to prevent so-called “pin-money” women from maintaining jobs that could be held by men and single women.\textsuperscript{208} Others, such as A.B. 2435 introduced in 1937, attempted to limit the work week to forty hours for women employees, but not male employees.\textsuperscript{209} The bill was met with significant opposition. It was reported that “wave after wave of protest poured into Sacramento. Much, but not all, of it came from business and professional women.”\textsuperscript{210} Such protectionist legislation was criticized by women, who “have long taken the stand that there is only one fair basis for similar

\textsuperscript{202} See Act of Mar. 22, 1911, ch. 258, 1911 Cal. Stat. 437 ("limiting the hours of labor of females" and for other purposes).

\textsuperscript{203} See id. § 3.

\textsuperscript{204} See id. § 1.

\textsuperscript{205} Id. § 2.

\textsuperscript{206} See Act of Feb. 6, 1889, ch. V, 1889 Cal. Stat. 3 (providing for sanitary conditions of factories and workshops and preserving the health of employees).

\textsuperscript{207} See ASSEMBL. FINAL HISTORY, 52nd Sess., at 698 (Cal. 1937) (proposing in A.B. 2811 "to prohibit the employment by the State, or any political subdivision thereof, or any municipal corporation, or any other publicly supported municipal corporation, of any married woman whose husband is earning $1,500 per year, and to require information from all persons employed whose spouses are also employed, and from their employers, concerning their employment"); ASSEMBL. FINAL HISTORY, 49th Sess., at 501 (Cal. 1931) (proposing in A.B. 1630 "to prohibit the employment of married women by the state, county, city and county or city government"); see also Married Woman’s Right to Hold Job Defended, L.A. TIMES, Nov. 10, 1939, at A13.

\textsuperscript{208} See, e.g., Aim Stressed by Woman, L.A. TIMES, July 13, 1939, at 5 (quoting from a speech by Dr. Viva Boothe at a presentation of the National Federation of Business and Professional’s Clubs, “The epidemic of legislation against married women working is only a symptom of a more fundamental problem. It is an indication of the struggle of people—men and women—for jobs and money.”); Hope Ridings Miller, Wives Shouldn’t Work, Unanimous Opinion of Anthropologist, Club Woman, Economist, Wash. Post, May 21, 1934, at 12 (“Working wives—those individuals whose activity never constituted a problem so long as they limited their energy to spinning, weaving, candle-making, and baking now constitute a far-reaching problem.”).

\textsuperscript{209} See ASSEMBL. FINAL HISTORY, 52nd Sess., at 628.

legislation and that is to place any minimum wage and maximum hour limitation upon the job, rather than upon the sex of the worker.\textsuperscript{211}

Equal salaries for men and women were legislatively mandated in California at least as early as 1870 in a very specific scenario: teaching. A portion of that law stated:

The Board of Education of the [San Francisco] city and county are hereby authorized and required to equalize the salaries of the male and female teachers employed by them in said public schools, allowing and paying to female teachers the same amount of money per month for their services as male teachers are allowed and paid for similar services in the same grades and classes of the department.\textsuperscript{212}

Equal compensation for teachers also was addressed in section 5.730 of the 1929 California School Code, which stated, “Females employed as teachers in the public schools of this state shall, in all cases, receive the same compensation as is allowed male teachers for like services, when holding the same grade certificates.”\textsuperscript{213} An early case citing to that statutory authority was \textit{Chambers v. Davis}.\textsuperscript{214} There, Mrs. Chambers and Mr. Wood were the only two teachers classified as “instructors of ‘physical education and hygiene’” at Madera Union High School.\textsuperscript{215} Until 1932, both instructors received $1,960 a year, the sum of which was reduced, in disproportionate amounts, “[o]n account of the depression.”\textsuperscript{216} The court found that the school board’s action constituted discrimination in violation of section 5.730, and that there was “no excuse for allowing the man $1,760 a year, and reducing the woman’s salary to $1,200.”\textsuperscript{217}

There were other attempts at equal pay legislation over the years. For example, in 1925, A.B. 1017 was introduced by Byron J. Walters, by request.\textsuperscript{218} This bill proposed “[a]n act prohibiting discriminations between men and women employed by public authority and performing equivalent service,” but it failed to progress from committee.\textsuperscript{219}

There were three equal pay bills introduced in the Assembly in 1949: A.B. 949 and A.B. 3086 were set aside and

\begin{footnotesize}
\begin{enumerate}
\item Id.
\item Act of Apr. 4, 1870, ch. DLXVII, § 1, 1869–1870 Cal. Stat. 865 (requiring the equalizing of salaries).
\item \textsc{The School Code of the State of Cal.}, 48th Reg. Sess. Leg. Supp., at 248 (Cal. 1929).
\item See 22 P.2d 27, 30 (Cal. Dist. Ct. App. 1933).
\item Id.
\item Id.
\item Id.
\item \textsc{See Assemb. Final History, 46th Sess.}, at 306 (Cal. 1925).
\item Id.
\end{enumerate}
\end{footnotesize}
A.B. 160 moved forward. A.B. 160 was first introduced by Assembly member Donald Grunsky and forty-five co-authors on January 6, 1949. The bill was introduced at the request of the California Federation of Business and Professional Women's Clubs to address the "common knowledge that in many fields of employment California women are paid less than men for the same work simply because they are women." Although the lone woman in the California legislature at the time, Assembly member Kathryn Niehouse, was not listed as a co-author, she had introduced legislation to amend the relevant Labor Code in the past.

A.B. 160 as introduced was straightforward:

In the payment of wages or salaries to employees with the same qualifications engaged in the same work, an employer shall not discriminate against any employee on the basis of sex. A differential in pay between employees made pursuant to a seniority or merit increase system, or which is based on a factor other than sex, is not discrimination within the meaning of this section. Wage differentials provided for in a valid collective bargaining agreement between an employer and a bona fide labor organization are not a violation of this section.

The language above would undergo significant changes, with further Assembly, Senate, and Conference Committee amendments, such that very little of the original Assembly bill language survived. The legislative representative from both the California Federation of Business and Professional Women's Clubs and employers participated in the Conference Committee.

There was some disappointment with the bill in its final form. In a letter to the Governor from C.J. Haggerty, representing the California State Federation of Labor Legislative Committee, Haggerty acknowledged that although the bill was “a
step forward in legislating standards to remove a discrimination based solely upon sex,” during the legislative process, it was “impaired almost to the vanishing point” causing Haggerty to “reluctantly request [the Governor’s] favorable action on it.”

In a letter to the Governor on the bill, Paul Scharrenberg, the Director of the Department of Industrial Relations, included a comment from Rena Brewster, Division Chief, which stated, “Equal pay bill passed by Legislature was work of joint conference of representatives of union labor, employers association, and business and professional women who sponsored it... Am of opinion it should be approved.” Scharrenberg recommended approval, “even though realizing that this legislation will be most difficult to enforce and will probably give mental anguish to Mrs. Brewster and her staff.”

With the Governor’s signature on July 2, 1949, California joined a handful of other states with existing equal pay laws.

The law as passed consisted of four paragraphs. The first paragraph addressed wage rates for the same classification of work. The relevant equal pay language stated, “No employer shall pay any female in his employ at wage rates less than the rates paid to male employees in the same establishment for the same quantity and quality of the same classification of work.” This statement was followed by a list of exceptions “inherent in this type of legislation,” where pay variations were allowed, such as shift differences or restrictions on lifting or moving. The second paragraph allowed pay variations when already

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227 Letter from C.J. Haggerty, Exec. Sec’y & Legislative Representative, to Earl Warren, Governor of Cal. (June 23, 1949) (regarding A.B. 160).
228 Letter from Paul Scharrenberg, Dir. of Indus. Relations, to Beach Vasey, Legislative Sec’y, Governor’s Office (June 22, 1949).
229 Id.
231 See California Equal Pay Act, ch. 804, 1949 Cal. Stat. 1541 (“relating to the prohibition of discrimination on the basis of sex by employers in the payment of wages or salaries”) (codified as amended at CAL. LAB. CODE § 1197.5 (West, Westlaw through ch.1 of 2020 Reg. Sess.)).
232 Id.
233 Letter from Elisabeth Zeigler to Earl Warren, supra note 222, at 2. See also David Freeman Engstrom, “Not Merely There to Help the Men”: Equal Pay Laws, Collective Rights, and the Making of the Modern Class Action, 70 STAN. L. REV. 1, 52 (2018) (“In states like California, the list of exceptions could quickly mushroom during legislative jockeying.”).
234 See 1949 Cal. Stat. 1541. “[D]ifference in the shift or time of day worked, hours of work, interruptions of work for rest periods or restrictions or prohibitions on lifting or moving objects in excess of specified weight.” Id.
established by a labor organization contract. The California Federation of Business and Professional Women’s Clubs were opposed to the exception, but ultimately accepted it, noting in correspondence to the Governor’s office that it “was essential to the passage of the bill.” The third paragraph set forth a six-month statute of limitations within which a grievance may be brought. The California Federation of Business and Professional Women’s Clubs found the language in paragraph three to be “fair,” noting that “[e]mployees harboring grievances against their employers for long periods of time . . . would endanger their relationship. If an employee has a grievance, she should do something about it promptly.” The fourth paragraph placed the burden on the plaintiff to establish that the pay differentiation was based on the fact of gender, and other differences or factors. This would remain the law until amended in 1976.

Since its passage in 1949, to date, section 1197.5 has been amended eleven times. This is in addition to numerous unsuccessful attempts to strengthen the law. Among other changes, in 1965, A.B. 1683 added a new recordkeeping provision which required employers to maintain wage records for two years. During the California Legislature’s 2007–2008 term, Assembly member Julia Brownley (a member of Congress at the time of this writing) introduced a wage discrimination measure to amend section 1197.5, specifically in connection with wage record requirements and the statutes of limitations. As enrolled, the legislation would have extended the amount of time

235 See id. (“A variation in rates of pay as between the sexes is not prohibited where the variation is provided by contract between the employer and a bona fide labor organization recognized as a bargaining agent of the employees.”).
236 Letter from Elisabeth Zeigler to Earl Warren, supra note 222, at 2.
238 Letter from Elisabeth Zeigler to Earl Warren, supra note 222, at 2.
239 See 1949 Cal. Stat. 1541 (“The burden of proof shall be upon the person bringing the claim to establish that the differentiation in rate of pay is based upon the factor of sex and not upon other differences, factor or factors.”).
241 See Act of July 6, 1965, ch. 825, 1965 Cal. Stat. 2417, 2418 (relating to equal pay for women). As passed, the section read: “(d) Every employer of male and female employees shall maintain records of the wages and wage rates, job classifications and other terms and conditions of employment of the persons employed by him. All such records shall be kept on file for a period of two years.” Id. at 2418.
242 Before she was elected in 2012 to the 113th Congress, Brownley served three terms in the California Assembly.
employers were required to maintain wage and job classification records from two years to five, and extended the statute of limitations for an employee civil action alleging sex-based wage discrimination with and without willful employer misconduct, from three to five years, and two to four years, respectively. 244

While supporters of the Brownley bill emphasized that “women are often unaware that they are being discriminated against in respect to their wages and may lose the opportunity to file a civil action or may be limited to inadequate recovery because of the statutory period,” those in opposition focused on “concern that employers will be exposed to an extended timeframe of unpredictable liability” leading “to an increased cost of doing business in California.” 245 In his veto message, Governor Arnold Schwarzenegger acknowledged the bill’s intent “to eradicate the historical trend of women earning less than men for doing the same work,” yet remained concerned that it would “encourage frivolous litigation against employers and have little impact on the fight against gender pay inequity.” 246 The recordkeeping requirement first proposed by Brownley would eventually be inch ed-up from two years to three with the passage of S.B. 358 in 2015. 247

In 1968, an amendment to eliminate gender-specific language from the law was successfully introduced by Senator Donald Grunsky (lead author of the 1949 legislation) and approved by Governor Ronald Reagan. As enacted, the language was changed to, “No employer shall pay any individual in his employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for the same quantity and quality of the same classification of work.” 248

Some of the most significant changes to 1197.5 were signed into law by Governor Brown in 1976 with S.B. 1051, introduced in 1975 by Senator Albert S. Rodda. 249 The legislation was sponsored by the then-named Commission on the Status of

244 Id.
245 Id.
Women. The amendments were intended to conform California’s law with the Federal Equal Pay Act.

Prior to its enactment, existing law still allowed pay differentials for employees of the opposite sex “for rather vague and potentially unfairly discriminatory reasons” to be based on “seniority, length of service, ability, skill, difference in duties or services performed, whether regularly or occasionally, difference in the shift or time of day worked, hours of work, or restrictions or prohibitions on lifting or moving objects in excess of specified weight.” Following its passage, only the factor of seniority remained, along with the addition of merit, quantity or quality of production, or a “bona fide factor other than sex.” Two important changes included the complete elimination of the statutory language that placed the burden on the plaintiff to prove that the pay differential was based on sex, and an extension of the statute of limitations status from 180 days to two years, whether or not the employee had knowledge.

The bill was met with unease from various organizations. Concerns included that employers could be subject to “harassment by any individual choosing to file a complaint however groundless,” “harassment of an employer by outside organizations or individuals,” and that its enactment might “discourage expansion of employment, contribute to the cost of doing business in California, and generally aggravate our

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252 Id.


257 Letter from Richard L. Dugally, Reg'l Manager, Governmental Affairs, Ford Motor Co., to Albert S. Rodda, Member of the Cal. Senate (July 3, 1975).
existing problems of inflation and unemployment.” 258 Others found proposed changes to be “long overdue” and necessary to “eliminate an insidious inequity in the law.” 259 In the end, opposition was withdrawn, and the bill moved forward with “the support of business, labor, and organizations concerned with the status of women.” 260

The law, as passed in 1976, remained relatively unchanged substantively, until recently. Over the last few years, several measures have further strengthened California’s equal pay laws. These include S.B. 358 (the California Equal Pay Act), introduced by Senator Hannah-Beth Jackson, 261 and S.B. 1063, introduced by Senator Isadore Hall, which further expanded the protections of 1197.5 to include race and ethnicity. 262 A.B. 168 and 2282, introduced by Assembly member Susan Eggman, added and clarified section 432.3 of the Labor Code to further address salary history and disclosure. 263

California now has more than seventy years of pay equality legislation behind it, but to what effect? When the 1976 amendments were considered, women were reportedly earning forty-nine cents for every dollar earned by a man. 264 Recent statistics indicate that women’s earnings in California were 88.3% of men’s earnings based on 2018 annual averages—the highest percentage in the country. 265 These numbers are encouraging, but alas, still not equal.

But change at the legislative level takes time and persistence. For example, the 2015 S.B. 358 successfully deleted from section

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258 Letter from Robert T. Monagan to Albert S. Rodda, supra note 256.
264 See Letter from Anita Miller, Chairperson & Pamela Faust, Exec. Dir., Comm’n on the Status of Women, to Edmund G. Brown, Jr., Governor of Cal., supra note 250.
1197.5 of the Labor Code the language “in the same establishment.” Legislator attempted to delete this language in 1976 with S.B. 1051. In the Bill Analysis for S.B. 1051 in 1976, it was referred to as “a restrictive clause,” and that, “employers who maintain several branches or locations of their business within the same geographical area are paying different wage rates to individuals performing similar work at different locations in that geographic area. Removal of this clause would prevent further abuse of the provision.” Yet, keeping the clause was important to industry at the time, reasoning that deleting it “would create havoc in many industries which have establishments in various areas of the state, both rural and urban.” Consistent with several other states, S.B. 358 also replaced the language, “equal work,” with “substantially similar work.”

Legislative findings for S.B. 358 noted that, even though California’s law was “virtually identical” to federal law, the state’s “provisions are rarely utilized” because of the statutory barriers “to establish[ing] a successful claim.” Recent information from the California Department of Industrial Relations (“DIR”) indicates that the recent amendments to section 1197.5 have resulted in “a dramatic and ongoing increase in the number of claims” under that section. The DIR reported that 184 wage discrimination or retaliation claims were filed and accepted for its investigation in 2018, as compared to only six claims in 2015. Among the 184, sixty-two claims alleged sex-based wage discrimination under section 1197.5(a), with another thirty-nine claims alleged for sex-based and race or ethnicity discrimination under section 1197.5(a) and (b).

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266 California Equal Pay Act, ch. 546, 2015 Cal. Stat. 4605; see also CAL. LABOR CODE § 1197.5(a) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) (“No employer shall pay any individual in the employer's employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work . . . .”).
273 See id. at 2 n.2.
274 See id. at Exhibit A.
As long as a wage gap exists, history shows us that strong legislatures will continue to improve and attempt to perfect the statutory authority surrounding wages. At the time of this writing, California Assembly member Wendy Carrillo introduced A.B. 758 to further amend section 1197.5. An important feature of the bill is to add more inclusive definitions for the terms “sex,” “gender,” and “gender expression,” so as to align it with existing definitions in California’s Fair Employment and Housing Act.\(^{275}\) It is currently held in committee.

At the federal level, the Paycheck Fairness Act has been introduced in multiple congresses, and it is currently under consideration again in the 116th Congress. The bill “addresses wage discrimination on the basis of sex” and would amend the Fair Labor Standards Act of 1938.\(^{276}\) At the time of this writing, the bill had passed the House and was placed on the Senate Legislative Calendar.\(^{277}\) The House bill currently has 239 co-sponsors, including forty-six from California.\(^{278}\) The Senate bill currently has forty-six co-sponsors, including California Senators Feinstein and Harris.\(^{279}\)

B. Women and Governance

Two hundred and thirty-six.

In the state of California, that is the most recent number of “Winning Companies”—companies on the Russell 3000 Index that have been identified as having exceeded the goal of having at least twenty percent of corporate board seats held by women.\(^{280}\) In its most recent report, 2020 Women on Boards suggested that the increase in the number of Winning Companies from 168 in 2018 to 236 in 2019 could be attributed to California’s recent and historic legislation.\(^{281}\)

S.B. 826 is another groundbreaking piece of legislation carried by California Senator Hannah-Beth Jackson.\(^{282}\) Signed into law on September 30, 2018, the measure requires that by the

\(^{277}\) See id.
\(^{278}\) See id.
\(^{281}\) See id.
end of 2019, certain corporations must have a minimum of one female on its board of directors. For certain corporations with five or six directors, by the end of 2021, the minimum number of female directors must be two and three, respectively. This law also requires the Secretary of State (“SOS”) to publish progress reports at certain intervals, and authorizes the SOS to impose significant fines for violations, from $100,000 to $300,000.

To date, no other state has legislatively mandated a minimum number of women on corporate boards, or required a registry to facilitate corporate board opportunities for women. In August 2019, Illinois passed a measure to “gather more data and study this issue” so that “effective policy changes may be implemented to eliminate [the] disparity of wages and underrepresentation of women and minority groups on corporate boards.” The law requires that, no later than January 1, 2021, new information must be included in the annual reports of certain corporation, such as the “self-identified gender of each member of its board of directors” and the “policies and practices for promoting diversity, equity, and inclusion among its board of directors and executive officers,” but stops short of requiring minimums.

Research shows the extensive benefits that come with having women on boards. Yet company pledges to increase their numbers have historically been ineffective. Gender quotas to increase board participation by women have never been without

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283 The statute applies to “a publicly held domestic or foreign corporation whose principal executive offices, according to the corporation’s SEC 10-K form, are located in California” and defines “[p]ublicly held corporation” to mean “a corporation with outstanding shares listed on a major United States stock exchange.” CORP. §§ 301.3(a), 301.3(c)(1).

284 “Female” is defined as “an individual who self-identifies her gender as a woman, without regard to the individual’s designated sex at birth.” Id.

285 See id. § 301.3(b).

286 See id. §§ 301.3(a), 301.3(d).

287 See id. § 301.3(e)(1).


289 Id. § 5/8.12(e)(3).

290 Id. § 5/8.12(e)(7).


292 See Jennifer S. Fan, Innovating Inclusion: The Impact of Women on Private Company Boards, 46 FLA. ST. U. L. REV. 345, 393 (2019) (discussing efforts to increase diversity and remarking that “pledges are a good place to start, but they do not have the binding effect of law and are only as strong as the commitment of those who signed on to them”).
controversy, and California’s enactment is no exception. Litigation has commenced against the measure.

The first lawsuit was filed in Los Angeles Superior Court in August 2019, Crest v. Padilla. Plaintiffs are taxpayers alleging violation of Article I, section 31 of the California Constitution, contending illegal expenditures of taxpayer funds or resources due to the law’s “quota system for female representation on corporate boards” and its “express gender classifications.” The second lawsuit was filed in the United States District Court, Eastern District of California in November 2019, Meland v. Padilla. The plaintiff, Creighton Meland, Jr., is a shareholder of a company headquartered in Hawthorne, California and incorporated in Delaware—OSI Systems, Inc.—which has seven men and no women on its board. Referring to the measure as a “Woman Quota” throughout its complaint, the complaint states, “The Woman Quota relies on a variety of improper gender stereotypes, such as the belief that women board members bring a particular ‘working style’ which will impact corporate governance.” Both lawsuits are pending at the time of this writing.

This legislation was not the first time that California attempted to shine a light on issues of gender equity at the corporate level. In 1993, Senator Lucy Killea successfully introduced S.B. 545, the Corporate Governance Parity Act of 1993. At the time the measure was debated, data indicated that “[w]omen comprised only 5.7 percent of corporate board of directors at large companies in 1992” and “only 15 percent of 1,000 companies surveyed had more than one female director in 1992.” When passed in 1993, legislative findings stated that

See id. at 394–95 (discussing usage of quotas outside of the United States and commenting on mixed results); see also Diana C. Nicholls Mutter, Crashing the Boards: A Comparative Analysis of the Boxing Out of Women on Boards in the United States and Canada, 12 J. BUS., ENTREPRENEURSHIP & L. 1, 37–40 (2019) (discussing those in favor of and opposed to quotas in connection with S.B. 826); Ben Taylor, Why California Senate Bill 826 and Gender Quotas are Unconstitutional: Shareholder Activism as a Better Path to Gender Equality in the Boardroom, 18 FLA. ST. U. BUS. REV. 117, 117–19 (2019) (predicting that S.B. 826 would fail to become law, and providing an analysis of two constitutional grounds supporting this prediction).


See id. at 4 para. 19.


See id. at 2. 4.

Id. at 6 para. 40.


“[m]en continue to outnumber women on the boards of directors of the nation’s largest corporations by a ratio of 24 to one and over 60 percent of those boards of directors have no minority members,” and that its purpose was “to promote gender, racial, and ethnic parity in corporate governance by facilitating recruitment of qualified women and minorities to serve on corporate boards of directors.” 301 As codified, the law required that the SOS “develop and maintain a registry of distinguished women and minorities who are available to serve on corporate boards of directors.” 302 The law also required the SOS to periodically report on the effectiveness of the registry in so far as it “has helped women and minorities progress toward achieving parity in corporate board appointments or elections.” 303

Senator Killea served in the California State Assembly from 1983 to 1989, and in the California State Senate from 1989 to 1996.  304 In an oral history, Killea later shared that the legislation arose from her work on the Senate Commission on Corporate Governance:

It bothered me that on the commission there were so few women so I tried to get a couple of women. And we did. But it was one of the men who came up with the idea. What you need to do is you ought to look into promoting some kind of way to get women on more corporate boards. . . . So what we ended up with was a bill to set up a registry—and there was a lot of discussion on this—where women or minorities could submit their resumes and the desire they have for representation on corporate boards or non profit boards because sometimes that’s the only way women can . . . get into the system. 305

Despite its valiant intentions, the registry encountered barriers to its implementation and never reached its full potential. Legislation introduced in 2010 by Assembly member Manuel Perez revealed that in 1999, California State University Fullerton (“CSUF”) accepted responsibility for the registry, and dedicated considerable efforts to getting it off the ground (including a $50,000 budget commitment, appointing an advisory board, and extensive outreach and marketing to garner support). 306

302 CAL. CORP. CODE § 318(a) (West, Westlaw through ch. 870 of 2019 Reg. Sess.).
303 Id. § 318(a).
305 Interview by Susan Douglass Yates with Lucy L. Killea, former Member of the Cal. Assembly and Cal. Senate, in San Diego, Cal. (2000).
Yet, with only fifty-nine registrants and no funding, CSUF ceased operating the registry in 2002.307 Despite the law remaining on the books, practically, the registry appears abandoned.308

Most recently, Assembly member Boerner Horvat successfully introduced A.B. 931 in an effort to increase gender diversity on certain local boards and commissions. The mandate applies to cities with a population of 50,000 or more people, but will not require compliance until 2030.309

C. Women and Health

1. Physical Health

The physical and mental health of women has not always been a legislative policy priority. But over the last few decades, women’s health issues and conditions have increasingly become the subject of legislative authority, particularly for diseases where early detection and treatment can make all the difference in improving rates of mortality.310

There are a number of diseases that are not unique to women, but disproportionately impact them, including infectious diseases such as HIV/AIDS, and autoimmune diseases.311 To address clinical research inequities in health research funding, Congress enacted the National Institutes of Health Revitalization

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307 See id.
308 See id. “It should be noted that, because the registry cannot practically be self-supporting, reestablishing and operating the registry will require a state subsidy. The Legislature may thus wish to reconsider the efficacy of this approach for fostering diversity on corporate boards and whether other approaches should be explored.” Id. at 2 (statement by Rep. Kevin De Leon, Chair, Assemb. Comm. on Appropriations).
310 There are different statutory definitions of women’s health. CAL. HEALTH & SAFETY CODE § 439.901(h) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) defines “women’s health issues” as “diseases or conditions that are unique to women, are more prevalent or more serious in women, or for which specific risk factors or interventions differ for women.” Under the provisions of the National Institutes of Health Revitalization Act of 1993, “women’s health conditions” is defined as “all diseases, disorders, and conditions (including with respect to mental health)” that are
(A) unique to, more serious, or more prevalent in women; (B) for which the factors of medical risk or types of medical intervention are different for women, or for which it is unknown whether such factors or types are different for women; or (C) with respect to which there has been insufficient clinical research involving women as subjects or insufficient clinical data on women.
Act of 1993. The act amended the Public Health Service Act to ensure that women and minority groups are included in all clinical research studies. It also established the Office of Research on Women’s Health to identify, promote, and encourage research on women’s health. Research grants funded by the National Institutes of Health (“NIH”) must comply with specific NIH Policy and Guidelines to “determine whether the intervention or therapy being studied affects women or men or members of minority groups and their subpopulations differently.”

One disease in particular that has received increased legislative attention—and government funding—is cancer. The rise of research funding for cancers is attributed to women “transform[ing] the congressional agenda” by advocating for increased appropriations and earmarking of research funds for specific diseases. Recent statistics reveal that there are more than 3.8 million women living in the United States with a history of breast cancer. While the disease does not discriminate by gender, women are overwhelmingly its victims. More than 41,000 women, and 500 men, will likely have their lives cut short in 2019 from this disease.

An early law included the passage of the Breast and Cervical Cancer Mortality Prevention Act of 1990 introduced by Representative Henry Waxman from California. The Act amended the Public Health Service Act and its purpose was to

314 See 42 U.S.C. § 287d.
315 NIH Policy and Guidelines on The Inclusion of Women and Minorities as Subjects in Clinical Research, supra note 313.
establish state program grants for cancer screening and referral, particularly for low-income, uninsured, and underinsured women.\footnote{See Pub. L. No. 101-354, 104 Stat. 409 (1990); see also NAT'L BREAST & CERVICAL CANCER EARLY DETECTION PROGRAM, SUMMARIZING THE SECOND DECADE OF PROGRESS TOWARDS BREAST AND CERVICAL CANCER CONTROL 6 (2019), http://www.cdc.gov/cancer/nbccedp/pdf/nbcceedp-national-report-2003-2014-508.pdf [http://perma.cc/4JLN-46VJ].} The grants are administered by the Centers for Disease Control and Prevention through the National Breast and Cervical Cancer Early Detection Program. Nationwide, there are now seventy grantees.\footnote{See About the Program, CTRS. FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/cancer/nbcceedp/about.htm [http://perma.cc/UHW4-LFQ6] (last reviewed Oct. 18, 2019) (including all states, the District of Columbia, six U.S. territories, and thirteen tribes or tribal organizations).} Millions of women have been screened through the program since its inception.\footnote{See Id.} Through 2013, an estimated 64,000 breast cancers and 3,500 cervical cancers were diagnosed through the program.\footnote{See Id.}


There were five original sponsors of the bill, including Representatives Susan Molinari and Vic Fazio, and Senators Alfonse D’Amato, Lauch Faircloth, and Dianne Feinstein.\footnote{See id.} As passed in 1997, the law allows postal consumers to purchase, voluntarily, a semipostal stamp.\footnote{See id.} The Breast Cancer Research Stamp was the first charitable stamp in the history of the United States.\footnote{The Stamp Out Cancer Act was the first time Congress approved a semipostal stamp. See 143 CONG. REC. 15576 (statement of Sen. Dianne Feinstein). Thereafter, Congress approved the Semipostal Authorization Act, Pub. L. No. 106-253, which authorizes the Postal Service to issue and sell additional semipostal postage stamps. See Mark Saunders, U.S. POSTAL SERVICE TO ISSUE SEMIPOSTAL STAMPS, U.S. POSTAL SERV. (Oct. 2, 2017), http://about.usps.com/news/national-releases/2017/pr17_057.pdf [http://perma.cc/6L92-PXJW].} The charitable amount is the difference between the


323 Id.


329 See id. Semipostal stamps are defined as “stamps that are sold for a price that exceeds the postage value of the stamp.” 39 C.F.R. § 551.2 (2019).

cost of the semipostal stamp (currently sixty-five cents for the Breast Cancer Research Stamp) and the cost of the first-class mail rate, less postal service costs. Of the amounts available for breast cancer research, seventy percent are distributed to the NIH, and thirty percent to the Department of Defense’s Medical Research Program.

The program has been highly successful, with more than one billion Breast Cancer Research Stamps sold to date. Among the many bills sponsored by Senator Feinstein that have become law, four have amended the Act, extending its duration through December 31, 2019. California’s members continue to be its strongest advocates, with Senator Feinstein and Representative Jackie Speier introducing the Breast Cancer Stamp Reauthorization Act of 2019 to extend the semipostal stamp through 2027.

Representative Speier has advocated for women’s issues, including breast cancer research funding, throughout her legislative career. In 1991, Speier was the lead author of California A.B. 2005, enacted as the Health Research Fairness Act. The Act mandates that the Regents of the University of California adopt a policy of health research inclusion of women and minorities consistent with NIH policy (which at the time was the “NIH/ADHMA Policy Concerning Inclusion of Women in Study Populations”), “so that women and members of minority groups are appropriately included as subjects of health research projects carried out by state agencies or University of California researchers.”

Thus far, the Postal Service issued the Alzheimer’s Semipostal Stamp in 2017 and is expected to release the Post Traumatic Stress Disorder Stamp next. See id.

331 See 143 CONG. REC. 15576 (statement of Sen. Dianne Feinstein).
333 See Semipostal Stamp Program, supra note 325.
336 Prior to Speier’s election to Congress, Speier served as a California Assembly member during the 1987–1996 sessions, and as a California State Senator from 1999–2006. See Record of Members of the Assembly 1849–2019, supra note 127; Record of State Senators 1849–2019, supra note 304.
337 See ASSEMB. FINAL HISTORY, 1991–1992 Sess., at 1388 (Cal. 1991). There were eighteen co-authors (fourteen Assembly members and four Senators).
339 CAL. HEALTH & SAFETY CODE § 439.902.
In 1992, Speier was the lead Assembly author of California A.B. 2652, which created a voluntary check-off for taxpayers wishing to designate excess tax funds to a breast cancer research fund on the state tax return form. The fund appeared as a check-off beginning with 1992 tax returns, and was the fourth fund to receive a check-off designation. More recent legislation by Assembly member Hertzberg (S.B. 440) renamed the fund the California Breast Cancer Research Voluntary Tax Contribution Fund and extended its operation through 2025. In 2019, California taxpayers contributed $421,355 to the fund.

2. Mental Health

There are at least eighteen highly pivotal laws that served as turning points for women in the United States Military. With more than two million women veterans, greater attention and resources must be allocated to their physical and mental health. Research within the last ten years has revealed an alarming number of women veterans taking their own lives. In 2012, the suicide rate was reported at six times the rate of non-veteran women; recent data estimates the number at 2.2 times the rate of non-veteran women.

As an amendment to the Clay Hunt Suicide Prevention for American Veterans Act, Representative Julia Brownley and Senator Barbara Boxer sponsored the passage of the Female Veteran Suicide Prevention Act. First introduced by Brownley

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343 See CAL. REV. & TAX. § 18796 (West, Westlaw through ch. 1 of 2020 Reg. Sess.).
in 2015, the urgency and necessity for the measure was apparent. In her remarks, Brownley highlighted research findings that suicide among women veterans followed a “different pattern” as compared to men, requiring more accurate metrics and information, and that “[w]e don’t know whether the reasons are related to the high rate of military sexual assault, gender-specific experiences on the battlefield, or factors that distinguish differing personal backgrounds, which is exactly the point. Without looking more closely at the root causes, we cannot hope to find better solutions.”351

This important piece of legislation mandates the Secretary of Veterans Affairs to identify mental health and suicide prevention programs and metrics that are most effective, and that have the highest satisfaction rates among women veterans.352 Currently serving as chair of the Women’s Veterans Take Force, Brownley continues to take an active role in advocating for women veterans. In remarks to the House this year, she acknowledged California’s Women Veterans Day and recognized the state’s 145,000 women veterans.353

IV. CONCLUSION

Once the first four women successfully made it through the doors of the California Assembly Chamber on January 6, 1919, they solidified a place in state and federal legislative chambers for generations to follow. At both the state and federal level, women’s collective contributions to statutory authority are vast and have touched upon every conceivable policy area. And women have endured a lot in the process. Although there were many times over the last century when women occupied only one seat at the table, hopefully those times are well behind us.

As we think about laws by women, we also have to think about supporting the women who are willing to pursue elected office, and as a society that values diversity and inclusion, work to maintain and increase these numbers to ensure both participation and representation.354 As we think about laws for

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354 To date, there have been forty-four women from California (three U.S. Senators and forty-one U.S. Representatives) representing California constituents in Congress. See State Fact Sheet—California, CTR. FOR AM. WOMEN & POL., http://cawp.rutgers.edu/state_fact_sheets/ca [http://perma.cc/7XE6-ZVH8] (last visited Feb. 9, 2020). One reason to increase numbers at the state level is to build a “political pipeline” to help ensure that there are “politically experienced women with the visibility and contacts necessary” for
women, we also can imagine how the powerful language of statutory authority can reflect a greater level of progress, diversity, and inclusion. Over time, the inclusion of words of gender in statutory language has been fluid and constantly evolving, yet we can be much more responsive and sensitive to changing societal and cultural norms going forward. In contemporary times, the influence of technology will surely require further thinking and legislative evolution when drafting laws about, or intended for, women.

If we asked now the question with which we started—if women came to Congress, what would be the result?—we would answer with a definitive: we are just getting started.

* * *


356 With the current technological revolution, legislatures may need to consider that words such as “women,” “men,” and “gender,” will need to be further modified or defined with the word “human.” Indeed, products such as “Siri” and “Alexa” have raised issues that the first legislators did not have to consider. See Kimberly A. Houser, Can AI Solve the Diversity Problem in the Tech Industry? Mitigating Noise and Bias in Employment Decision-Making, 22 STAN. TECH. L. REV. 290, 297–98 (2019) (“An especially discouraging fact is that a recent LivePerson survey of 1,000 people showed that while half of the respondents could name a famous male tech leader, only 4% could name a female tech leader and one-quarter of them named Siri and Alexa—who are virtual assistants, not actual people.”).
## Appendix A 357

Women Legislators (Cal. Assemb., Senate, & U.S. Rep.) and California Bar Members

<table>
<thead>
<tr>
<th>Legislator (School of Law)</th>
<th>Cal. Legis. Chamber; Session(s) / U.S. Congress</th>
<th>California Bar Admission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broughton, Esto Bates (Berkeley) Assembly: 1919, 1921–25</td>
<td>1916</td>
<td></td>
</tr>
<tr>
<td>Sankary, Wanda Young (USC) Assembly: 1955–56</td>
<td>1951</td>
<td></td>
</tr>
<tr>
<td>Bowen, Debra (Univ. of Virginia) Assembly: 1993–98</td>
<td>1983</td>
<td></td>
</tr>
<tr>
<td>Escutia, Martha (Georgetown)</td>
<td>1987</td>
<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Gonzalez Fletcher, Lorena Sofia (UCLA)</td>
<td>1999</td>
</tr>
<tr>
<td>Huber, Alyson (Hastings)</td>
<td>1999</td>
</tr>
<tr>
<td>Baker, Catharine A. Bailey (Berkeley)</td>
<td>2000</td>
</tr>
<tr>
<td>Bauer-Kahan, Rebecca (Georgetown)</td>
<td>2004</td>
</tr>
</tbody>
</table>
Appendix B
Assembly Bills Introduced and Chaptered, 43rd–46th Legislative Sessions

<table>
<thead>
<tr>
<th>Assembly Bills, 43rd Reg. Sess. (1919)³⁵⁸</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislator</td>
</tr>
<tr>
<td>-------------</td>
</tr>
<tr>
<td>Broughton</td>
</tr>
<tr>
<td>Dorris</td>
</tr>
<tr>
<td>Hughes</td>
</tr>
<tr>
<td>Saylor</td>
</tr>
<tr>
<td>Totals</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assembly Bills, 44th Reg. Sess. (1921)³⁵⁹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislator</td>
</tr>
<tr>
<td>-------------</td>
</tr>
<tr>
<td>Broughton</td>
</tr>
<tr>
<td>Hughes</td>
</tr>
<tr>
<td>Saylor</td>
</tr>
<tr>
<td>Totals</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assembly Bills, 45th Reg. Sess. (1923)³⁶⁰</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislator</td>
</tr>
<tr>
<td>-------------</td>
</tr>
<tr>
<td>Broughton</td>
</tr>
<tr>
<td>Dorris</td>
</tr>
<tr>
<td>Miller</td>
</tr>
<tr>
<td>Saylor</td>
</tr>
<tr>
<td>Woodbridge</td>
</tr>
<tr>
<td>Totals</td>
</tr>
</tbody>
</table>

³⁵⁸ Assem. Final History, 43rd Sess. (Cal. 1919); The Statutes of California and Amendments to the Codes Passed at the Forty-Third Session of the Legislature (1919).
³⁵⁹ Assem. Final History, 44th Sess. (Cal. 1921); The Statutes of California Passed at the Regular Session of the Forty-Fourth Legislature (1921).
³⁶⁰ Assem. Final History, 45th Sess. (Cal. 1923); The Statutes of California Passed at the Regular Session of the Forty-Fifth Legislature (1923).
<table>
<thead>
<tr>
<th>Legislator</th>
<th>Bills Introduced</th>
<th>Bills Chaptered</th>
<th>Bills Passage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broughton</td>
<td>11</td>
<td>1</td>
<td>17 percent</td>
</tr>
<tr>
<td></td>
<td>1 (with Woodbridge and others)</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Dorris</td>
<td>15</td>
<td>1</td>
<td>6 percent</td>
</tr>
<tr>
<td></td>
<td>1 (with Miller)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miller</td>
<td>9</td>
<td>2</td>
<td>20 percent</td>
</tr>
<tr>
<td></td>
<td>1 (with Dorris)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saylor</td>
<td>18</td>
<td>2</td>
<td>11 percent</td>
</tr>
<tr>
<td>Woodbridge</td>
<td>8</td>
<td>1</td>
<td>9 percent</td>
</tr>
<tr>
<td></td>
<td>1 (with Broughton and others)</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Totals</td>
<td>65 (includes two co-authored bills)</td>
<td>9 (includes one co-authored bill)</td>
<td>14 percent</td>
</tr>
</tbody>
</table>