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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.

* Associate Director for Library Services, Darling Law Library, Chapman University Dale E. Fowler School of Law. I wish to thank the Executive Board and Editors of the *Chapman Law Review* for superb editorial support and helpful comments, with special thanks to Jillian C. Friess, Alexis M. Fasig, and Bethany J. Ring. Thank you to LRI History LLC for gracious assistance with California legislative history reports, and the California State Archives for permission to quote from the oral histories of Lucy Killea and Diane Watson. Thank you also to Hugh and Hazel Darling Foundation Library Director and Professor of Law Linda Kawaguchi and my colleagues at the Darling Law Library for helpful feedback and support.

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,”⁷ “injurious, [and] detrimental to the moral influence,”⁸ and ultimately resulting in “chaos!”⁹ 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.¹⁰ 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.

⁵ See JILL NORGREN, BELVA LOCKWOOD: THE WOMAN WHO WOULD BE PRESIDENT 83 (2007).

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.

¹⁰ See Rankin, *Jeannette*, U.S. HOUSE REPRESENTATIVES, HIST., ART & ARCHIVES, [http://history.house.gov/People/Listing/R/RANKIN,-Jeannette-\(R000055\)/](http://history.house.gov/People/Listing/R/RANKIN,-Jeannette-(R000055)/) [<http://perma.cc/AT78-QXZL>] (last visited Apr. 4, 2020).

Has it resulted in “[j]ustice, liberty and equality for women,” as Elizabeth Cady Stanton predicted?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,¹² professional athletes,¹³ physicians,¹⁴ lawyers,¹⁵ scientists,¹⁶ advertising executives,¹⁷ coaches,¹⁸ in technology,¹⁹ in entertainment,²⁰ or any number of other

11 Letter from Elizabeth Cady Stanton, in Carpenter, *supra* note 1, at 25.

12 See Jena McGregor, *We Blew It: Forbes Named 99 Men and Only One Woman on Its List of ‘Most Innovative Leaders,’* WASH. POST (Sept. 10, 2019, 4:00 AM), <http://www.washingtonpost.com/business/2019/09/10/we-blew-it-forbes-named-men-only-one-woman-its-list-most-innovative-leaders/> [<http://perma.cc/P5LA-6MTJ>] (discussing the backlash in connection with Forbes 2019 list in which only one woman appeared, at number seventy-five).

13 See, e.g., Andrew Das, *U.S. Women’s Soccer Team Sues U.S. Soccer for Gender Discrimination*, N.Y. TIMES (Mar. 8, 2019), <http://www.nytimes.com/2019/03/08/sports/womens-soccer-team-lawsuit-gender-discrimination.html> [<http://perma.cc/9EEC-AKFT>] (reporting on the collective action lawsuit filed in March 2019 by twenty-eight athletes against the United States Soccer Federation); see also Plaintiffs’ Collective Action Complaint for Violations of the Equal Pay Act and Class Action Complaint for Violations of Title VII of the Civil Rights Act of 1964 at 1–2, *Morgan v. U.S. Soccer Fed’n, Inc.*, No. 2:19-CV-01717, 2019 WL 1199270 (C.D. Cal. Mar. 8, 2019).

14 See, e.g., Christina Mangurian et al., *What’s Holding Women in Medicine Back from Leadership*, HARV. BUS. REV. (Nov. 7, 2018), <http://hbr.org/2018/06/whats-holding-women-in-medicine-back-from-leadership> [<http://perma.cc/MC4C-VW8X>] (summarizing research on women physicians and reasons for gender disparities and suggesting solutions).

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).

17 See Tiffany Hsu, *#MeToo Clashes With ‘Bro Culture’ at Ad Agencies*, N.Y. TIMES (Dec. 22, 2019), <http://www.nytimes.com/2019/12/22/business/media/ad-industry-sexism.html> [<http://perma.cc/WH4D-ZB4L>] (reporting on issues and problems of diversity and equity at various advertising agencies).

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/QA7R-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).

19 See Cade Metz, *The Gender Gap in Computer Science Research Won’t Close for 100 Years*, N.Y. TIMES (June 21, 2019), <http://www.nytimes.com/2019/06/21/technology/gender-gap-tech-computer-science.html> [<http://perma.cc/4ZW2-BH99>] (discussing results from a research study that analyzed millions of papers in computer science published over a nearly fifty-year period and finding parity might be reached by 2137).

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,²¹ 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 Senate²²—are currently serving in the 116th Congress, representing just under twenty-five percent of voting members.²³ The California Legislature, with thirty-eight women in office, also has set a record in 2019.²⁴ 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,²⁵ and that their representation is

²⁰ See, e.g., Derek Thompson, *The Brutal Math of Gender Inequality in Hollywood*, ATLANTIC (Jan. 11, 2018), <http://www.theatlantic.com/business/archive/2018/01/the-brutal-math-of-gender-inequality-in-hollywood/550232/> [<http://perma.cc/D8HA-6A5C>] (reporting on a 2017 study finding low numbers of women working behind the camera in key roles).

²¹ For compiled overviews of relevant statutory authority, see, for example, KAREN KEESLING & SUZANNE CAVANAGH, CONG. RESEARCH SERV., 79-112 GOV, SELECTED WOMEN'S RIGHTS LEGISLATION ENACTED BETWEEN 1919-1978 (1979) (chronicling selected legislation from the sixty-sixth to the ninety-fifth Congresses); LESLIE W. GLADSTONE, CONG. RESEARCH SERV., RL30658, WOMEN'S ISSUES IN CONGRESS: SELECTED LEGISLATION 1832-1998 (2000) (providing a topical summary of federal legislation in areas such as civil rights, employment, pensions and social security, housing, taxes, crimes, and more); CAL. COMM'N ON THE STATUS OF WOMEN, LAWS AFFECTING WOMEN 1973-1998 (providing an annual compilation of California enactments from 1973-1998).

²² JENNIFER E. MANNING & IDA A. BRUDNICK, CONG. RESEARCH SERV., R43244, WOMEN IN CONGRESS: STATISTICS AND A BRIEF OVERVIEW 2 (2020) (noting that, in the House, 101 women are representatives and four are nonvoting members).

²³ *Id.* at 1.

²⁴ See Devin Lavelle, *Demographics in the California Legislature: 2019-2020 Session*, CAL. STATE LIBR., <http://public.tableau.com/views/LegislativeDemographics2019-20/UserView?:showVizHome=no> [<http://perma.cc/HH6M-WQYW>] (last visited Feb. 12, 2020). Of this number, fourteen women are serving in the Senate, and twenty-four are serving in the Assembly. *Id.*

²⁵ See KELLY DITTMAR, KIRA SANBONMATSU & SUSAN J. CARROLL, A SEAT AT THE TABLE 1, 9, 148-66 (2018) (presenting qualitative findings and insights of interviews with

important.²⁶ Yet the growth in numbers has been painfully slow.²⁷ The number of women legislators in California did not reach double digits until the 1979–1980 legislative session,²⁸ and it has been nearly fifteen years since Californians have seen representation mirroring today’s numbers.²⁹ 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.³⁰ For more than a century, the doors to elective office have opened—ever so slowly—to women of color,³¹ women veterans,³² single mothers,³³

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) (“[I]t 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).

²⁷ See LORI COX HAN & CAROLINE HELDMAN, WOMEN, POWER, AND POLITICS: THE FIGHT FOR GENDER EQUALITY IN THE UNITED STATES 139 (2018) (“[W]omen are still nowhere close to reaching parity with men as members of Congress or state legislatures.”); see also *Women in Elective Office 2020*, CTR. FOR AM. WOMEN & POL., <http://cawp.rutgers.edu/women-elective-office-2020> [<http://perma.cc/6KXP-V3HD>] (last visited Feb. 10, 2020) (calculating the percentages of women in elective office from 1971 through 2020 and reporting 23.7% in U.S. Congress, 28.9% in statewide elective office, and 29% in state legislatures in 2020); see also *Women in State Legislatures 2020*, CTR. FOR AM. WOMEN & POL., <http://cawp.rutgers.edu/women-state-legislature-2020> [<http://perma.cc/V5RJ-YAHS>] (last visited Feb. 10, 2020) (noting that California currently ranks eighteenth with 31.7%).

²⁸ Lavelle, *supra* note 24 (noting eleven women legislators in the 1979–1980 legislative session).

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.*

³¹ See, e.g., *Women of Color in Elective Office*, CTR. FOR AM. WOMEN & POL., <http://cawp.rutgers.edu/women-color-elective-office-2020> [<http://perma.cc/Y3HB-2X3Q>] (summarizing historical and current statistics on women of color serving in state and federal elective office); JOHN CORNELISON, CAL. RESEARCH BUREAU, CAL. STATE LIBRARY, S-15-003, WOMEN OF COLOR IN CALIFORNIA’S LEGISLATURE (2015), <http://library.ca.gov/Content/pdf/crb/reports/S-15-003.pdf> [<http://perma.cc/AT4R-LXQJ>] (summarizing trends from 1996–2015).

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 women³⁴ on the general election ballot were successful in their attempts to serve in public office: Esto Broughton, Grace Dorris, Elizabeth Hughes, and Anna Saylor were elected to the Assembly as California's first women legislators.³⁵ These first women would each serve several terms, beginning to carve the path to double-digit representation by women in the California legislature.³⁶

During this time period, manufacturing by still-burgeoning industries was redirected to support America's war efforts,³⁷ with expanding production attributed to the "war spirit."³⁸ Record numbers of women were entering the work force to "fill new positions,"³⁹ 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."⁴⁰ Americans also were facing another war at home: the influenza pandemic. With at least 100,000 cases

³² See, e.g., JENNIFER E. MANNING, CONG. RESEARCH SERV., R45583, MEMBERSHIP OF THE 116TH CONGRESS: A PROFILE 9 (2020) (reporting ten women veterans in the 116th Congress, seven in the House, and three in the Senate).

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.")

⁴⁰ U.S. DEP'T OF LABOR, FIRST ANNUAL REPORT OF THE DIRECTOR OF THE WOMAN IN INDUSTRY SERVICE FOR FISCAL YEAR ENDED JUNE 30, 1919, at 3 (1919); see also *Our History*, U.S. DEP'T LAB., http://www.dol.gov/wb/info_about_wb/interwb.htm [<http://perma.cc/E4KS-ZQMU>] (last visited Feb. 10, 2020) (noting that the Woman in Industry Service was the predecessor agency to the Women's Bureau under the Department of Labor).

reported in California in the fall of 1918,⁴¹ the death toll in Los Angeles alone over a four-month period was several thousand.⁴² This period also marked the beginning of prohibition, with ratification of the Eighteenth Amendment in 1919.⁴³ In California, the strength of its economy was rooted in the “spread of irrigation.”⁴⁴ 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.”⁴⁵ On the political front, a “partisan shift” was afoot, helping to pave the way for the first women candidates to reach elected office.⁴⁶

The forty-third session of the California State Assembly commenced on January 6, 1919.⁴⁷ 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.”⁴⁸ This included pursuing the agenda of the Women’s Legislative Council⁴⁹ on three policy priorities: community property issues, a state home for “delinquent women,”⁵⁰ and more funding for elementary schools.⁵¹ 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

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 ASSEMB. JOURNAL, 43rd Sess., at 36 (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 seat-elections.”).

47 ASSEMB. FINAL HISTORY, 43rd Sess. (Cal. 1919).

48 *Women Lawmakers Take Up Duties*, SACRAMENTO BEE, Jan. 6, 1919, at 10.

49 See GAYLE GULLETT, BECOMING CITIZENS: THE EMERGENCE AND DEVELOPMENT OF THE CALIFORNIA WOMEN’S MOVEMENT, 1880–1911, at 204–05 (Mari Jo Buhle et al. eds., 2000) (discussing the origins, objectives, and successes of the Women’s Legislative Council).

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. 281, 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.”⁵²

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

Elected to represent the 46th District was Assembly member Esto B. Broughton of the city of Modesto, the county seat of Stanislaus County.⁵⁴ A graduate of Berkeley Law in 1916,⁵⁵ she became a member of the California Bar in May 1916.⁵⁶ She was twenty-eight years old when she took office in 1919,⁵⁷ 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.”⁵⁸

Broughton’s initial policy interests included “irrigation problems and reclamation work.”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.⁶⁰ During the forty-third regular session, Broughton served on six committees⁶¹ and introduced eighteen Assembly Bills (“A.B.”).⁶² Five bills were approved by Governor Stephens, including acts addressing electrical power (A.B. 168)⁶³ and refunding of outstanding bond debts by irrigation districts (A.B. 207).⁶⁴ Another bill addressed compensation for county

⁵² ASSEMB. JOURNAL, 43rd Sess., at 38 (Cal. 1919).

⁵³ See ASSEMB. FINAL HISTORY, 43rd Sess., at 8–9 (Cal. 1919).

⁵⁴ *Id.* at 4.

⁵⁵ See William Benemann, *Ask the Archivist: Women in Sacramento*, BERKELEYLAW (Dec. 16, 2013), <http://www.law.berkeley.edu/article/women-in-sacramento/> [http://perma.cc/UU6U-7JND].

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.

⁵⁷ 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.*

⁵⁸ *Women Lawmakers Take Up Duties*, *supra* note 48, at 10.

⁵⁹ *Id.*

⁶⁰ See CAL. STATE BD. OF AGRIC., *supra* note 44, at 448–49.

⁶¹ See ASSEMB. FINAL HISTORY, 43rd Sess., at 14 (Cal. 1919) (serving on “Civil Service, Direct Legislation, Engrossment and Enrollment, Irrigation, Public Morals, [and] Ways and Means”).

⁶² See *id.* at 17, 26.

⁶³ See Act of May 21, 1919, ch. 370, 1919 Cal. Stat. 778 (“provid[ing] for the development of electrical power by irrigation districts”).

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).⁶⁵

The law of community property in California has a long history,⁶⁶ 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.⁶⁷ The *Sacramento Bee* vigorously opposed the “Broughton Bills” (A.B. 696 and 698) in an editorial.⁶⁸ 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.”⁶⁹ 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.”⁷⁰ 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.”⁷¹ 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).⁷² 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

⁶⁵ See Act of May 27, 1919, ch. 508, 1919 Cal. Stat. 1057 (“relating to compensation of officers . . . and creating office of county librarian . . .”).

⁶⁶ See, e.g., Susan Westerberg Prager, *The Persistence of Separate Property Concepts in California’s Community Property System, 1849–1975*, 24 UCLA L. REV. 1, 1 (1976) (providing an excellent history and analysis of community property reforms).

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 . . .” ASSEMB. 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.

⁶⁸ *Community Property Bills Bad for Husbands and Wives*, SACRAMENTO BEE, Mar. 24, 1919, at 16.

⁶⁹ *Id.*

⁷⁰ *Community Property Bills Passed by the Assembly Last Night*, SACRAMENTO BEE, Apr. 15, 1919, at 2.

⁷¹ A.M. Kidd, *The Proposed Community Property Bills*, 7 CALIF. L. REV. 166, 180 (1919) (discussing community property issues in the context of A.B. 696 and 698, and S.B. 470 and 471).

⁷² See ASSEMB. 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.”⁷³ 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.⁷⁴

Grace Dorris, from the city of Bakersfield in Fresno county, was elected to the 56th District.⁷⁵ Like Hughes and Saylor, Dorris was a teacher.⁷⁶ In 1908, she graduated with a Bachelor of Arts from Berkeley, and thereafter taught three languages to high school students.⁷⁷ She also was an avid supporter of women’s rights,⁷⁸ including improved conditions for working women.⁷⁹ Dorris served on six committees⁸⁰ in her first session, and introduced twenty-one bills, of which the governor approved four and pocketed four.⁸¹ A.B. 25 addressed compensation for county and township officers for counties of the eleventh class and jurors’ fees.⁸² 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)⁸³—an important measure due to the influenza epidemic, which caused the closure of public schools for extended time periods.⁸⁴ 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).⁸⁵ Dorris also introduced a bill “to create the office of public defender” in every county (A.B. 487).⁸⁶ 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.⁸⁷

⁷³ *Wife Can Will Her Interests*, L.A. TIMES, May 28, 1919, at 19.

⁷⁴ *See Senate Acts on Bills*, L.A. TIMES, Mar. 20, 1923, at 12.

⁷⁵ *See* ASSEMB. 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.

⁸⁰ *See* ASSEMB. FINAL HISTORY, 43rd Sess., at 14 (serving on “County Government, Education, Labor and Capital, Normal Schools, Oil Industries, [and] Public Health and Quarantine”).

⁸¹ *See id.* at 17, 26.

⁸² *See* Act of May 27, 1919, ch. 500, 1919 Cal. Stat. 1024 (amending Political Code relative to compensation and fees).

⁸³ *See* Act of May 9, 1919, ch. 257, 1919 Cal. Stat. 437 (providing “for the registration of minors”).

⁸⁴ *See* ASSEMB. JOURNAL, 43rd Sess., at 38 (Cal. 1919).

⁸⁵ Act of May 27, 1919, ch. 563, 1919 Cal. Stat. 1214 (amending Political Code “relating to the powers and duties of the state board of education”).

⁸⁶ ASSEMB. 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.⁸⁸ Like Saylor, “housewife” was her listed occupation,⁸⁹ but Hughes too had worked as a teacher, and her spouse was a prominent teacher and principal.⁹⁰ 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.”⁹¹ Her first session committee assignments did indeed include serving as Chair of the Education committee, along with serving on six other committees.⁹²

Anna Saylor, from the city of Berkeley, was elected to represent the 41st District located in Alameda County.⁹³ “Housewife” was her listed occupation,⁹⁴ but she was an experienced public school teacher, principal, and supervisor.⁹⁵ In her first session, she served as Chair of the Public Morals committee, and served on five others.⁹⁶ One of her primary legislative objectives was to eliminate illiteracy through increased elementary school funding.⁹⁷ She introduced twenty-one bills (ten approved by Governor Stephens),⁹⁸ 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)⁹⁹ with readers, books, and educational opportunities (A.B. 240 and 241),¹⁰⁰ along with appropriations for the school’s maintenance and repair (A.B. 247).¹⁰¹ 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.

⁹² See ASSEMB. FINAL HISTORY, 43rd Sess., at 15 (serving on “Agriculture, Conservation, Drainage, Swamp and Overflowed Lands, Elections, [and] Federal Relations”).

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, 26.

⁹⁹ See *History of CSB*, CAL. SCH. FOR BLIND, <http://www.csb-cde.ca.gov/about/history/> [<http://perma.cc/ZS7A-R7A3>] (last visited Feb. 8, 2020).

¹⁰⁰ See Act of May 22, 1919, ch. 382, 1919 Cal. Stat. 808 (providing readers for blind students and assisting deaf students); Act of May 22, 1919, ch. 383, 1919 Cal. Stat. 808 (appropriating money to purchase books for the blind).

¹⁰¹ See Act of May 22, 1919, ch. 384, 1919 Cal. Stat. 809 (“appropriating money for repairs, improvements and equipment”).

at San Quentin (A.B. 489),¹⁰² and another to provide temporary psychiatric care (A.B. 566),¹⁰³ but neither measure was successful.

Among the twelve Assembly Bills¹⁰⁴ that Hughes introduced in her first term, nearly all addressed education. Seven of the twelve bills were approved by Governor Stephens,¹⁰⁵ and several addressed appropriations for improvements to the Chico Normal School (now the California State University, Chico).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.”¹⁰⁷ Successful bills in support of the Chico Normal School included appropriations for water supply development (A.B. 476),¹⁰⁸ building improvements and repairs (A.B. 477),¹⁰⁹ and \$32,000 for the building of a trade school (A.B. 567).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).¹¹¹

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

¹⁰² See ASSEMB. FINAL HISTORY, 43rd Sess., at 165.

¹⁰³ See *id.* at 184.

¹⁰⁴ See *id.* at 18.

¹⁰⁵ See *id.* at 26.

¹⁰⁶ See *About Chico State*, CAL. STATE UNIV. CHICO, [http://www.csuchico.edu/about/\[http://perma.cc/P7PH-FG8K\]](http://www.csuchico.edu/about/[http://perma.cc/P7PH-FG8K]) (last visited Dec. 17, 2019) (describing its opening in 1889 and its name change in 1972).

¹⁰⁷ *Women Lawmakers Take Up Duties*, *supra* note 48, at 10.

¹⁰⁸ See Act of May 27, 1919, ch. 557, 1919 Cal. Stat. 1211 (“appropriating money for the development of water and equipment”).

¹⁰⁹ See Act of May 27, 1919, ch. 558, 1919 Cal. Stat. 1211 (“appropriating money for repairs to buildings and equipment”).

¹¹⁰ See Act of May 27, 1919, ch. 559, 1919 Cal. Stat. 1212 (“appropriating money to build a trade school unit”).

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).

¹¹² See ASSEMB. FINAL HISTORY, 43rd Sess., at 17–19, 26 (Cal. 1919); 1919 Cal. Stat. iii–viii.

¹¹³ See ASSEMB. FINAL HISTORY, 43rd Sess., at 17–19.

¹¹⁴ For bill introduction summary data for Broughton, Dorris, Hughes, and Saylor, see *infra* Appendix B.

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.¹¹⁵

Although California granted suffrage to women in 1911,¹¹⁶ 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.¹¹⁷ It was reported that a "lively debate" took place in the Assembly.¹¹⁸ Two no votes were recorded by Assembly members Carlton Greene and Robert Madison. Greene argued that the issue should be left to the

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.

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.

¹¹⁷ See ASSEMB. JOURNAL, 43rd Extra Sess., at 19 (Cal. 1919); S.J. Res. 1, 43rd Leg., Extra Sess. (Cal. 1919), 1921 Cal. Stat. lxxxii.

¹¹⁸ *Two Assemblymen Oppose Amendment*, SACRAMENTO BEE, Nov. 3, 1919, at 11.

states and was not a federal question, while Robert Madison opposed the “unnecessary call” of the legislature.¹¹⁹

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.¹²⁰

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.¹²¹

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.¹²² Another enacted measure involved establishing working conditions for women working in “any mill, workshop, packing, canning or mercantile establishment” (A.B. 601).¹²³ 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.¹²⁴ Similar protective legislation would become a hotspot for decades.¹²⁵ Broughton’s new committee assignment included serving as Chair of the Normal Schools committee.¹²⁶

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.*

¹²⁰ See VAN INGEN, *supra* note 30, at 33.

¹²¹ See ASSEMB. FINAL HISTORY, 44th Sess., at 50–64 (Cal. 1921).

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.

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).

¹²⁴ See *id.*

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.”).

¹²⁶ See ASSEMB. FINAL HISTORY, 44th Sess., 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

¹²⁷ See *Record of Members of the Assembly 1849–2019*, S. ARCHIVE, http://archive.senate.ca.gov/sites/archive.senate.ca.gov/files/assembly_service_and_officers_1849_2019_1.pdf [<http://perma.cc/L7PT-G45R>] (last visited Feb. 24, 2020).

¹²⁸ See ASSEMB. FINAL HISTORY, 44th Sess., at 21, 50–64.

¹²⁹ See Act of June 3, 1921, ch. 885, 1921 Cal. Stat. 1673.

¹³⁰ See Act of May 27, 1921, ch. 495, 1921 Cal. Stat. 756.

¹³¹ See ASSEMB. 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 ‘sentimentalists’ opposed to capital punishment in any form”¹³⁷ 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.”¹³⁸ Some Senators argued that the measure would place an extreme burden on prosecutors to determine the defendant’s age, “[i]f this bill became a law it would be utterly impossible to prove the age of a youthful looking person charged with murder. . . . [I]f [the defendant] swore that he was under 18 years, it would be impossible for the prosecution to prove otherwise.”¹³⁹ The bill as passed took this concern into account, shifting the burden of proving age to the defendant.¹⁴⁰

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)¹⁴¹ and the physics building (A.B. 792).¹⁴²

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.¹⁴³ A teacher of expression and music,¹⁴⁴ Miller would be elected nine times between 1922 and 1940.¹⁴⁵ Following the 1922 primary, she was quoted as saying, “I hardly need to

Perspective, 71 HASTINGS L.J. 197, 197 (2019) (arguing against the death penalty for adults twenty and under).

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, “[T]he 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.”¹⁴⁶ Cora Woodbridge, from the city of Roseville in Placer County, was elected to represent the 9th District.¹⁴⁷

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”¹⁴⁸ Nevertheless, the women collectively introduced 102 measures in the forty-fifth session, with twenty of the ninety-five bills ultimately approved by Governor Richardson.¹⁴⁹

In her first legislative session, Miller introduced seventeen measures, with two successful bills,¹⁵⁰ while Woodbridge successfully introduced five of nineteen bills in her first session.¹⁵¹

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.¹⁵² 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).¹⁵³

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.¹⁵⁴ 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

¹⁴⁶ *Pasadenan Wins Primary Fight*, L.A. TIMES, Sept. 1, 1922, at II12.

¹⁴⁷ See VAN INGEN, *supra* note 30, at 34–40 (describing Woodbridge’s three-term political career, and losing her seat in 1928 for reasons such as failing to push hydraulic mining legislation).

¹⁴⁸ ASSEMB. JOURNAL, 45th Sess., at 99 (Cal. 1923).

¹⁴⁹ See *id.* at 22–26, 34.

¹⁵⁰ See ASSEMB. FINAL HISTORY, 45th Sess., at 24, 53–60 (Cal. 1923); Act of Apr. 26, 1923, ch. 44, 1923 Cal. Stat. 80 (amending an act concerning retirement salaries of teachers); Act of June 15, 1923, ch. 383, 1923 Cal. Stat. 775 (authorizing payment of claim against the state for \$1,500.00).

¹⁵¹ See ASSEMB. FINAL HISTORY, 45th Sess., at 26, 53–60.

¹⁵² See *id.*

¹⁵³ See Act of May 15, 1923, ch. 158, 1923 Cal. Stat. 321 (amending Penal Code). Similar authority remained in effect until at least the early 1940s. See Act of Apr. 15, 1941, ch. 106, § 3324, 1941 Cal. Stat. 1080, 1115.

¹⁵⁴ See *infra* Appendix B.

quantity . . . [t]he legislator who introduces the fewest bills should be given the most credit by his constituents.”¹⁵⁵ 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.¹⁵⁶ Other bills introduced by Saylor addressed transportation for physically challenged children,¹⁵⁷ 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.¹⁵⁸

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.¹⁵⁹ 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.¹⁶⁰ Finally in 1966, two women of color—attorney Yvonne Brathwaite Burke and educational consultant March K. Fong Eu—were elected to the Assembly.¹⁶¹

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?”¹⁶²

—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.¹⁶³ 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.

¹⁵⁶ See Act of May 22, 1925, ch. 322, § 1, 1925 Cal. Stat. 541.

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.

Id.

¹⁵⁷ See *School Aid for Cripples Voted*, L.A. TIMES, Apr. 1, 1925, at 5.

¹⁵⁸ Act of May 22, 1925, ch. 325, 1925 Cal. Stat. 544–45 (amending Penal Code).

¹⁵⁹ See Lavelle, *supra* note 24 (1977–1978 Term count).

¹⁶⁰ See *id.*

¹⁶¹ See CORNELISON, *supra* note 31, at 1.

¹⁶² Jerry Gillam, *A Woman Senator—Profile of Victory*, L.A. TIMES, Nov. 15, 1976, at D16.

¹⁶³ See Jerry Gillam, *California Women Seek Major Election Victories*, L.A. TIMES, Oct. 17, 1976, at C1.

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 *Serrano*¹⁷¹ 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.

¹⁶⁵ See Lavelle, *supra* note 24 (1977–1978 Term count).

¹⁶⁶ See Gillam, *supra* note 162.

¹⁶⁷ See Mezey, *supra* note 26, at 264.

¹⁶⁸ Gillam, *supra* note 162.

¹⁶⁹ See ASSEMB. JOURNAL, 1977–1978 Reg. Sess., at 159–62 (Cal. 1978) (printing Governor Edmund G. Brown, Jr.'s Report to the Legislature).

¹⁷⁰ See CAL. CONST. art. XIII A, § 1 (West, Westlaw through ch. 870 of 2019 Reg. Sess.).

¹⁷¹ See *Serrano v. Priest*, 487 P.2d 1241, 1244 (Cal. 1971).

¹⁷² See CAL. DEP'T WATER RES., CALIFORNIA'S MOST SIGNIFICANT DROUGHTS: COMPARING HISTORICAL AND RECENT CONDITIONS i, 48 (2015), http://water.ca.gov/LegacyFiles/waterconditions/docs/California_Significant_Droughts_2015_small.pdf [<http://perma.cc/NP6C-ST4H>] (noting that the 1969–1977 drought was characterized as having "severe hydrology," ranking 1977 as the driest year in 114 years).

¹⁷³ See S. FINAL HISTORY, 1977–1978 Reg. Sess., at 1302–03, 1315, 1318–26, 1328–31 (Cal. 1978) (resulting in a seventy-three percent passage rate).

chaptered.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”),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),¹⁷⁶ to the protection of bees from pesticides (S.B. 1049),¹⁷⁷ and the labeling of honey (S.B. 2047).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.¹⁷⁹ Vuich was ultimately successful in this endeavor; the highways were opened to traffic in 1982.¹⁸⁰

California’s first woman senator of color, Diane Watson, was elected in 1978.¹⁸¹ 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),¹⁸² along with measures related to child support (S.B. 1032) and nutrition (S.B. 953).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.¹⁸⁴

Another measure was a critical piece of legislation for victims—both men and women—of sexual assault, S.B. 500.¹⁸⁵ The bill added section 1112 to the Penal Code, which read as passed, “The trial court shall not order any prosecuting witness,

¹⁷⁴ See *id.* at 1315, 1318–26, 1328–31.

¹⁷⁵ Bella Stumbo, *Rose Vuich—The Reluctant State Senator*, L.A. TIMES, Sept. 19, 1977, at D1.

¹⁷⁶ See Act of Sept. 6, 1978, ch. 589, 1978 Cal. Stat. 2017 (relating to agriculture); *Worms—An Official Farm Product?*, L.A. TIMES, June 5, 1978, at 2.

¹⁷⁷ See Act of Sept. 27, 1977, ch. 1096, 1977 Cal. Stat. 3509 (relating to bees).

¹⁷⁸ See Act of Sept. 6, 1978, ch. 587, 1978 Cal. Stat. 2012 (relating to honey).

¹⁷⁹ See Gillam, *supra* note 162.

¹⁸⁰ See S. Con. Res. 25, 1997 Reg. Sess., 1997 Cal. Stat. 6967, 6969 (relating to highways).

¹⁸¹ See CORNELISON, *supra* note 31.

¹⁸² See Act of Sept. 17, 1980, ch. 913, 1980 Cal. Stat. 2908 (codified as amended at CAL. GOV’T CODE §§ 4560–4563 (West, Westlaw through ch. 870 of 2019 Reg. Sess.)).

¹⁸³ See Act of Sept. 26, 1979, ch. 1030, 1979 Cal. Stat. 3546 (“relating to parent and child”); Act of Sept. 19, 1979, ch. 817, 1979 Cal. Stat. 2821 (“relating to health”).

¹⁸⁴ See S. FINAL HISTORY, S. 1979–1980 Reg. Sess., at 1279, 1292–1308 (Cal. 1980) (representing a fifty-five percent passage rate).

¹⁸⁵ See *id.* at 315 (co-authors Senator Robbins and Assembly members Bergeson and McVittie).

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.”¹⁸⁶ Prior to its enactment, court-ordered psychiatric examinations of sexual assault victims were allowed under a *Ballard v. Superior Court* motion.¹⁸⁷ 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.¹⁸⁸ The bill was opposed by various groups, including California Attorneys for Criminal Justice and the California Trial Lawyers Association.¹⁸⁹

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.¹⁹⁰

. . .

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.¹⁹¹

With the exception of an amendment (also introduced by Watson) in 1984,¹⁹² the language of section 1112 of the Penal Code remains unchanged.

¹⁸⁶ Act of Feb. 25, 1980, ch. 16, 1980 Cal. Stat. 63.

¹⁸⁷ See *Ballard v. Sup. Ct. of San Diego Cty.*, 410 P.2d 838, 849 (Cal. 1966); see also *Criminal Procedure*, 12 PAC. L.J. 331, 340 (1981).

¹⁸⁸ J.C. Bangle & L.A. Haage, Comment, *Psychiatric Examinations of Sexual Assault Victims: A Reevaluation*, 15 U.C. DAVIS L. REV. 973, 980–81, 981 nn. 41–42.

¹⁸⁹ See *Criminal Procedure*, *supra* note 187, at 340.

¹⁹⁰ Interview by Susan Douglass Yates with Diane Watson, Cal. State Senator 1975–1998, Cal. State Senate, in L.A., Cal., 315–16 (1999) (footnote omitted).

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.

¹⁹⁴ See *Acts Cited by Popular Name*, U.S. CODE, <http://uscode.house.gov/popularnames/popularnames.pdf> [<http://perma.cc/7NXX-4YKR>] (last visited Mar. 15, 2020) (providing a list of popular and statutory names).

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.”).

¹⁹⁶ DEP’T OF LABOR, SEVENTH ANNUAL REPORT OF THE SECRETARY OF LABOR FOR THE FISCAL YEAR ENDED JUNE 30, 1919, at 142 (1919), <http://hdl.handle.net/2027/hvd.hl0iw7> [<http://perma.cc/5HAT-6TBN>].

impacting women take up no space at all in the *United States Statutes at Large* or the *United States Code*.¹⁹⁷ Indeed, the substantive portion of the Nineteenth Amendment is all of twenty-seven words long.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.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,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.²⁰¹

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

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.

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.”).

¹⁹⁹ Bess M. Wilson, *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”).

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

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.²⁰² As passed, the 1911 act required very little of employers, but did impose penalties for non-compliance.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.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,"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.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,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.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.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."²¹⁰ Such protectionist legislation was criticized by women, who "have long taken the stand that there is only one fair basis for similar

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

²⁰³ See *id.* § 3.

²⁰⁴ See *id.* § 1.

²⁰⁵ *Id.* § 2.

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).

²⁰⁷ See ASSEMB. 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"); ASSEMB. 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.

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.").

²⁰⁹ See ASSEMB. FINAL HISTORY, 52nd Sess., at 628.

²¹⁰ Augusta Rosenberg, *Minimum Wage-Maximum Hour Legislation*, L.A. B. ASS'N BULL., Sept. 16, 1937, at 11, 13.

legislation and that is to place any minimum wage and maximum hour limitation upon the job, rather than upon the sex of the worker.”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.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.”²¹³ An early case citing to that statutory authority was *Chambers v. Davis*.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.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.”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.”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.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.²¹⁹

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

²¹¹ *Id.*

²¹² Act of Apr. 4, 1870, ch. DLXVII, § 1, 1869–1870 Cal. Stat. 865 (requiring the equalizing of salaries).

²¹³ THE SCHOOL CODE OF THE STATE OF CAL., 48th Reg. Sess. Leg. Supp., at 248 (Cal. 1929).

²¹⁴ See 22 P.2d 27, 30 (Cal. Dist. Ct. App. 1933).

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ See ASSEMB. FINAL HISTORY, 46th Sess., at 306 (Cal. 1925).

²¹⁹ *Id.*

A.B. 160 moved forward.²²⁰ A.B. 160 was first introduced by Assembly member Donald Grunsky and forty-five co-authors on January 6, 1949.²²¹ 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."²²² 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.²²³

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.²²⁴

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.²²⁵

There was some disappointment with the bill in its final form.²²⁶ 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

²²⁰ See ASSEMB. FINAL HISTORY, 1949 Reg. Sess., at 242, 419, 864 (Cal. 1949).

²²¹ See Assemb. B. 160, 1949 Reg. Sess. (Cal. 1949) (Jan. 6, 1949 bill introduction).

²²² Letter from Elisabeth Zeigler, Legislative Representative, Cal. Fed'n of Bus. & Prof'l Women's Clubs, Inc., to Earl Warren, Governor of Cal., at 1 (June 24, 1949) (regarding A.B. 160).

²²³ See ASSEMB. FINAL HISTORY, 56th Reg. Sess., at 296 (Cal. 1945) (introducing Assemb. B. 479 with co-author Assembly member Thomas, "[a]n act to add Section 1197.5 to the Labor Code, relating to wages for women").

²²⁴ Assemb. B. 160, 1949 Reg. Sess. (Cal. 1949).

²²⁵ See Letter from Elisabeth Zeigler to Earl Warren, *supra* note 222, at 1.

²²⁶ See *Equal Pay Bill is Headed for Conference*, SACRAMENTO BEE, June 11, 1949, at 4 ("[A]ssemblyman Glenn] Anderson contends the amendments inserted by the senate virtually wipe out the effectiveness of the legislation."); *Equal Pay for Equal Work Bill Goes to Governor*, SACRAMENTO BEE, June 17, 1949, at 3 ("Assemblyman Donald Grunsky of Santa Cruz County, author of the bill, A.B. 160, said the legislation is the best compromise which could be reached.").

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.”²²⁷

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.”²²⁸ 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.”²²⁹

With the Governor’s signature on July 2, 1949, California joined a handful of other states with existing equal pay laws.²³⁰

The law as passed consisted of four paragraphs. The first paragraph addressed wage rates for the same classification of work.²³¹ 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.”²³² This statement was followed by a list of exceptions “inherent in this type of legislation,”²³³ where pay variations were allowed, such as shift differences or restrictions on lifting or moving.²³⁴ The second paragraph allowed pay variations when already

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.*

²³⁰ See Letter from Elisabeth Zeigler to Earl Warren, *supra* note 222, at 2 (listing Michigan, Montana, New York, Illinois, Rhode Island, Massachusetts, Washington, and Pennsylvania).

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.²³⁵ 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."²³⁶ The third paragraph set forth a six-month statute of limitations within which a grievance may be brought.²³⁷ 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."²³⁸ 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.²³⁹ This would remain the law until amended in 1976.

Since its passage in 1949, to date, section 1197.5 has been amended eleven times.²⁴⁰ 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.²⁴¹ During the California Legislature's 2007–2008 term, Assembly member Julia Brownley (a member of Congress at the time of this writing)²⁴² introduced a wage discrimination measure to amend section 1197.5, specifically in connection with wage record requirements and the statutes of limitations.²⁴³ 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.

²³⁷ *See* 1949 Cal. Stat. 1541.

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.")

²⁴⁰ This section was amended in 1957, 1965, 1968, 1976, 1982, 1985, 2015, 2016 (twice), 2017, and 2018. *See* CAL. LAB. CODE § 1197.5 (West, Westlaw through ch.1 of 2020 Reg. Sess.).

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.

²⁴³ Assemb. B. 435, 2007–2008 Reg. Sess. (Cal. 2007) (with coauthors Berg, Jones, Kuehl, and Migden), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200720080AB435 [http://perma.cc/YM89-57U2].

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 inched-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.*

²⁴⁶ ASSEMB. JOURNAL, 2007–2008 Reg. Sess., at 3496 (Cal. 2008).

²⁴⁷ See California Equal Pay Act, ch. 546, 2015 Cal. Stat. 4605 (codified as amended at CAL. LAB. CODE § 1197.5(e)) (West, Westlaw through ch. 1 of 2020 Reg. Sess.). See *infra* Part II.B.

²⁴⁸ Act of June 20, 1968, ch. 325, § 1(a), 1968 Cal. Stat. 705 (codified as amended at CAL. LAB. CODE §§ 1197.5, 1199 (West, Westlaw through ch. 1 of 2020 Reg. Sess.)) (relating to the equal pay law).

²⁴⁹ See S. FINAL HISTORY, 1975–1976 Reg. Sess., at 509 (Cal. 1976) (with co-authors Alatorre, Greene, Presley, and Robbins).

Women.²⁵⁰ The amendments were intended to conform California's law with the Federal Equal Pay Act.²⁵¹

Prior to its enactment, existing law still allowed pay differentials for employees of the opposite sex "for rather vague and potentially unfairly discriminatory reasons"²⁵² 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."²⁵³ 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."²⁵⁴ 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.²⁵⁵

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,"²⁵⁶ "harassment of an employer by outside organizations or individuals,"²⁵⁷ and that its enactment might "discourage expansion of employment, contribute to the cost of doing business in California, and generally aggravate our

²⁵⁰ 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. (Aug. 23, 1976). The Commission on the Status of Women began as the Advisory Commission on the Status of Women with S.B. 675. See Act of July 15, 1965, ch. 1378, § 2, 1965 Cal. Stat. 3283, 2384. It was later amended to the Commission on the Status of Women. See Act of Sept. 4, 1973, ch. 382, § 2, 1973 Cal. Stat. 819; Act of Sept. 2, 1977, ch. 579, 1977 Cal. Stat. 1857. The commission was reformed and renamed in 2012 to the Commission on the Status of Women and Girls. See Act of June 27, 2012, ch. 46, § 13, 2012 Cal. Stat. 2070, 2091 (codified as amended at CAL. GOV'T CODE § 8241) (West, Westlaw through ch. 1 of 2020 Reg. Sess.).

²⁵¹ See Letter from Albert S. Rodda, Cal. State Senator, to Edmund G. Brown, Jr., Governor of Cal. (Aug. 20, 1976).

²⁵² *Id.*

²⁵³ Act of June 20, 1968, ch. 325, § 1(a), 1968 Cal. Stat. 705 (codified as amended at CAL. LAB. CODE §§ 1197.5, 1199) (Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to the equal pay law).

²⁵⁴ Act of Sept. 22, 1976, ch. 1184, § 3, 1976 Cal. Stat. 5288 (codified as amended at CAL. LAB. CODE §§ 1195.5, 1197.5) (relating to employment).

²⁵⁵ See Act of Sept. 22, 1976, ch. 1184, §§ 1, 3, 1976 Cal. Stat. 5288 (codified as amended at CAL. LAB. CODE §§ 1195.5, 1197.5) (Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to employment).

²⁵⁶ Letter from Robert T. Monagan, President, Cal. Mfrs. Ass'n, to Albert S. Rodda, Member of the Cal. Senate (Jan. 5, 1976).

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

²⁵⁸ Letter from Robert T. Monagan to Albert S. Rodda, *supra* note 256.

²⁵⁹ Letter from Arlene Black, Legislative Advocate, Am. Ass’n of Univ. Women, to George Zenovich, Senate Indus. Relations Comm. (Apr. 7, 1976) (writing on a similar measure, A.B. 2026).

²⁶⁰ Letter from Albert S. Rodda to Edmund G. Brown, Jr., *supra* note 251, at 3.

²⁶¹ See California Equal Pay Act, ch. 546, 2015 Cal. Stat. 4605 (codified as amended at CAL. LAB. CODE § 1197.5(e)) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to private employment). See also Hannah Fuetsch, *Chapter 546: Another Step to Ensure Equal Pay Doesn’t Wait Another Fifty Years*, 47 U. PAC. L. REV. 577, 598 (2016) (summarizing S.B. 358 and suggesting it will serve as an important awareness tool to move the issue forward).

²⁶² See Act of Sept. 30, 2016, ch. 866, 2016 Cal. Stat. 5845 (codified as amended at CAL. LAB. CODE §§ 1197.5, 1199.5) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to employment).

²⁶³ See Act of Oct. 12, 2017, ch. 688, 2017 Cal. Stat. 5138 (relating to employers); Act of July 18, 2018, ch. 127, 2018 Cal. Stat. 2255 (codified as amended at CAL. LABOR CODE §§ 432.3, 1197.5) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to employment).

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.

²⁶⁵ See U.S. BUREAU OF LABOR STATISTICS, No. 1083, HIGHLIGHTS OF WOMEN’S EARNINGS IN 2018, at 41 tbl.3 (2019), <http://www.bls.gov/opub/reports/womens-earnings/2018/pdf/home.pdf> [<http://perma.cc/JUZ2-S4YC>] (reporting 2018 annual averages by state).

1197.5 of the Labor Code the language “in the same establishment.”²⁶⁶ Legislators 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.”²⁶⁷ 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.”²⁶⁸ Consistent with several other states,²⁶⁹ S.B. 358 also replaced the language, “equal work,” with “substantially similar work.”²⁷⁰

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.”²⁷¹ 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.²⁷² 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 2015.²⁷³ 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).²⁷⁴

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 . . .”).

²⁶⁷ S.B. 1051, 1975–1976 Reg. Sess. (Cal. 1976) (Bill Analysis, Mar. 1, 1976).

²⁶⁸ Letter from Robert M. Shillito, President, Cal. Conference of Emp’r Ass’ns, to Albert S. Rodda, Member of the Cal. Senate (Mar. 1, 1976) (regarding S.B. 1051).

²⁶⁹ *See, e.g.*, 820 ILL. COMP. STAT. ANN. 112/10 (West 2019, Westlaw current through Pub. Acts 101-622) (deleting “equal skill, effort, and responsibility” for “substantially similar skill, effort, and responsibility”); Equal Pay for Equal Work Act, ch. 247, § 4, 2019 Colo. Sess. Laws 2411, 2413 (to be codified at COLO. REV. STAT. ANN. § 8-5-102(1)) (adding “substantially similar work”).

²⁷⁰ *California Equal Pay Act: Frequently Asked Questions*, CAL. DEP’T INDUS. RELATIONS (Mar. 2019), http://www.dir.ca.gov/dlse/California_Equal_Pay_Act.htm [<http://perma.cc/W867-JMR9>].

²⁷¹ California Equal Pay Act, ch. 546, § 1(c), 2015 Cal. Stat. 4605, 4606.

²⁷² PATRICIA K. HUBER, CAL. DEP’T INDUS. REL., 2018 RETALIATION COMPLAINT REPORT (2018), <http://www.dir.ca.gov/dlse/RCILegReport2018.pdf> [<http://perma.cc/N4VN-V9K9>].

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

²⁷⁵ See Assemb. B. 758, 2019–2020 Reg. Sess. (Cal. 2019).

²⁷⁶ H.R. 7, No. 53, 116th Cong. (2019).

²⁷⁷ See *id.*

²⁷⁸ See *id.*

²⁷⁹ S.B. 270, 116th Cong. (2019).

²⁸⁰ See 2020 WOMEN ON BOARDS GENDER DIVERSITY INDEX 6 (2019), http://2020wob.com/wpcontent/uploads/2019/10/2020WOB_Gender_Diversity_Index_Report_Oct2019.pdf [<http://perma.cc/YH7R-C6JX>].

²⁸¹ See *id.*

²⁸² See Act of Sept. 30, 2018, ch. 954, 2018 Cal. Stat. 6263 (codified at CAL. CORP. CODE §§ 301.3, 2115.5) (West, Westlaw through ch. 1 of 2020 Reg. Sess.) (relating to corporations).

end of 2019, certain corporations²⁸³ must have a minimum of one female on its board of directors.²⁸⁴ 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.²⁸⁵ This law also requires the Secretary of State (“SOS”) to publish progress reports at certain intervals,²⁸⁶ and authorizes the SOS to impose significant fines for violations, from \$100,000 to \$300,000.²⁸⁷

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.²⁸⁸ 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”²⁸⁹ 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.²⁹⁰

Research shows the extensive benefits that come with having women on boards.²⁹¹ Yet company pledges to increase their numbers have historically been ineffective.²⁹² Gender quotas to increase board participation by women have never been without

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(f)(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(c), 301.3(d).

²⁸⁷ *See id.* § 301.3(e)(1).

²⁸⁸ 805 ILL. COMP. STAT. ANN. 5/8.12(a) (West, Westlaw current through Pub. Acts 101-622).

²⁸⁹ *Id.* § 5/8.12(c)(3).

²⁹⁰ *Id.* § 5/8.12(c)(7).

²⁹¹ *See* Jie Chen et al., *Research: When Women Are on Boards, Male CEOs Are Less Overconfident*, HARV. BUS. REV. (Sept. 12, 2019), <http://hbr.org/2019/09/research-when-women-are-on-boards-male-ceos-are-less-overconfident> [<http://perma.cc/S6KR-LZFK>].

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,²⁹³ 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*.²⁹⁴ 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."²⁹⁵ The second lawsuit was filed in the United States District Court, Eastern District of California in November 2019, *Meland v. Padilla*.²⁹⁶ 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.²⁹⁷ 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."²⁹⁸ 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 1993.²⁹⁹ 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."³⁰⁰ When passed in 1993, legislative findings stated that

²⁹³ 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).

²⁹⁴ See Complaint for Declaratory and Injunctive Relief, *Crest v. Padilla*, No. 19STCV27561, 2019 WL 3771990 (L.A. Super. Ct. Aug. 6, 2019).

²⁹⁵ *Id.* at 4 para. 19.

²⁹⁶ See Complaint for Declaratory and Injunctive Relief, *Meland v. Padilla*, No. 2:19-cv-02288-JAM-AC, 2019 WL 6037825 (E.D. Cal. Nov. 13, 2019).

²⁹⁷ See *id.* at 2, 4.

²⁹⁸ *Id.* at 6 para. 40.

²⁹⁹ See S. FINAL HISTORY, 1993–1994 Reg. Sess., at 422 (Cal. 1994); Corporate Governance Parity Act, ch. 508, 1993 Cal. Stat. 2656 (relating to corporations).

³⁰⁰ S.B. 545, 1993–1994 Reg. Sess., at 1593 (Cal. 1993) (Bill Analysis Senate Floor Aug. 24, 1993).

“[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

³⁰¹ 1993 Cal. Stat. 2656 § 2.

³⁰² CAL. CORP. CODE § 318(a) (West, Westlaw through ch. 870 of 2019 Reg. Sess.).

³⁰³ *Id.* § 318(s).

³⁰⁴ See *Record of State Senators 1849–2019*, S. ARCHIVE, http://archive.senate.ca.gov/sites/archive.senate.ca.gov/files/rep/senators_and_officers_1849_2019.pdf [http://perma.cc/S3BW-2ZD2] (last visited Feb. 10, 2020); *Record of Members of the Assembly 1849–2019*, *supra* note 127.

³⁰⁵ Interview by Susan Douglass Yates with Lucy L. Killea, former Member of the Cal. Assembly and Cal. Senate, in San Diego, Cal. (2000).

³⁰⁶ See Assemb. B. 1491, 2009–2010 Reg. Sess. (Cal. 2009) (Bill Analysis Assemb. Comm. on Appropriations, Jan. 5, 2010).

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 Horvath 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

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).

³⁰⁹ *See* Assemb. B. 931, 2019–2020 Reg. Sess. (Cal. 2019), codified at CAL. GOV'T CODE § 54977 (West, Westlaw through ch. 1 of 2020 Reg. Sess.).

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.

42 U.S.C. § 287d(f)(1) (2012).

³¹¹ *See Sex and Gender-Specific Health Challenges Facing Women*, NAT'L INST. OF ALLERGY & INFECTIOUS DISEASES (July 14, 2016), <http://www.niaid.nih.gov/research/sex-specific-womens-health-challenges> [http://perma.cc/8GLA-2SPF].

Act of 1993.³¹² The act amended the Public Health Service Act to ensure that women and minority groups are included in all clinical research studies.³¹³ It also established the Office of Research on Women's Health to identify, promote, and encourage research on women's health.³¹⁴ 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."³¹⁵

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.³¹⁶ Recent statistics reveal that there are more than 3.8 million women living in the United States with a history of breast cancer.³¹⁷ 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.³¹⁸

An early law included the passage of the Breast and Cervical Cancer Mortality Prevention Act of 1990,³¹⁹ introduced by Representative Henry Waxman from California. The Act amended the Public Health Service Act³²⁰ and its purpose was to

³¹² See Pub. L. No. 103-43, 107 Stat. 122 (1993) (codified as amended at 42 U.S.C. § 287d (2012)).

³¹³ See *NIH Policy and Guidelines on The Inclusion of Women and Minorities as Subjects in Clinical Research*, NIH GRANTS & FUNDING, <http://grants.nih.gov/policy/inclusion/women-and-minorities/guidelines.htm> [<http://perma.cc/V835-U2PQ>] (last updated Dec. 6, 2017).

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.

³¹⁶ Karen M. Kedrowski & Marilyn Stine Sarow, *The Gendering of Cancer Policy*, in *WOMEN TRANSFORMING CONGRESS* 240, 241 (Ronald M. Peters, Jr. ed., 2002).

³¹⁷ Carol E. DeSantis et al., *Breast Cancer Statistics, 2019*, 69 *CAL. CANCER J. CLINICIANS* 438, 440 (2019).

³¹⁸ See AM. CANCER SOC'Y, *BREAST CANCER FACTS & FIGURES 2019–2020* 3 (2019), <http://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/breast-cancer-facts-and-figures/breast-cancer-facts-and-figures-2019-2020.pdf> [<http://perma.cc/63J6-BNSV>].

³¹⁹ See Pub. L. No. 101-354, 104 Stat. 409 (1990) (codified as amended at 42 U.S.C. §§ 201 note, 300k–300n-5 (2012)).

³²⁰ See Pub. L. No. 101-354, 104 Stat. 409. Other important laws on this topic have amended this Act, including the EARLY Act (Young Women's Breast Health Education and Awareness Requires Learning Young Act of 2009) and its Reauthorization in 2014. See Pub. L. No. 111-148, 124 Stat. 990 (2010) (codified as amended at 42 U.S.C. § 280m (2012)) (authorizing appropriations for education campaigns, prevention research, and grant support to organizations and institutions dealing specifically for young women fifteen through forty-four years of age diagnosed with breast cancer). A bill to reauthorize the EARLY Act was introduced in 2019. See S.B. 2424, 116th Cong. (2019).

establish state program grants for cancer screening and referral, particularly for low-income, uninsured, and underinsured women.³²¹ 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.³²² Millions of women have been screened through the program since its inception.³²³ Through 2013, an estimated 64,000 breast cancers and 3,500 cervical cancers were diagnosed through the program.³²⁴

Over the last two decades, \$90.6 million³²⁵ have been raised in support of breast cancer research through an innovative federal law: the Stamp Out Breast Cancer Act.³²⁶ The idea for a charitable stamp program originated with California breast cancer surgeon Dr. Ernie Bodai.³²⁷

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.³²⁸ As passed in 1997, the law allows postal consumers to purchase, voluntarily, a semipostal stamp.³²⁹ The Breast Cancer Research Stamp was the first charitable stamp in the history of the United States.³³⁰ The charitable amount is the difference between the

³²¹ 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/nbcedp/pdf/nbcedp-national-report-2003-2014-508.pdf> [<http://perma.cc/4JLN-46YJ>].

³²² See *About the Program*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/cancer/nbcedp/about.htm> [<http://perma.cc/UHW4-HPNF>] (last reviewed Oct. 18, 2019) (including all states, the District of Columbia, six U.S. territories, and thirteen tribes or tribal organizations).

³²³ *Id.*

³²⁴ See Paula Lantz & Jewel Mullen, *The National Breast and Cervical Cancer Early Detection Program: 25 Years of Public Health Service to Low-Income Women*, 26 CANCER CAUSES CONTROL 653, 654 (2015).

³²⁵ See *Semipostal Stamp Program*, U.S. POSTAL SERV., <http://about.usps.com/corporate-social-responsibility/semipostals.htm> [<http://perma.cc/WY8Q-LFQ6>] (last visited Feb. 11, 2020).

³²⁶ See Pub. L. No. 105-41, 111 Stat. 1119 (1997) (codified as amended at 39 U.S.C. § 414 (2012)).

³²⁷ See Ernie Bodai, *Stamp Act: The Story Behind the Breast Cancer Research Stamp*, 20 ONCOLOGY Jan./Feb. 2005, at 44; see also H.R. 1925, 114th Cong. (2015) (proposing a Congressional Medal Bill for Dr. Bodai).

³²⁸ See 143 CONG. REC. 15576 (1997) (statement of Sen. Dianne Feinstein).

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).

³³⁰ 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-FXJW>].

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.³³¹ 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.³³²

The program has been highly successful, with more than one billion Breast Cancer Research Stamps sold to date.³³³ Among the many bills sponsored by Senator Feinstein that have become law, four have amended the Act, extending its duration through December 31, 2019.³³⁴ 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 2027.³³⁵

Representative Speier has advocated for women's issues, including breast cancer research funding, throughout her legislative career.³³⁶ In 1991, Speier was the lead author of California A.B. 2005,³³⁷ enacted as the Health Research Fairness Act.³³⁸ 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."³³⁹

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).

³³² *See* 39 U.S.C. § 414 (2012).

³³³ *See Semipostal Stamp Program*, *supra* note 325.

³³⁴ Senator Feinstein's sponsorship efforts included the Breast Cancer Stamp Program Extension, which extended the Act for two years, through 2007. *See* Pub. L. No. 109-100, 119 Stat. 2170. Additional extensions included Pub. L. No. 110-150, 121 Stat. 1820 (extending through 2011) and Pub. L. No. 112-80, 125 Stat. 1297 (extending through 2015). The Breast Cancer Research Stamp Reauthorization Act of 2015 extended the Act for four years, through 2019. *See* Pub. L. No. 114-99, 129 Stat. 2201 (codified as amended at 39 U.S.C. § 414 (2012)).

³³⁵ *See* S. 1438, 116th Cong. (2019); H.R. 2689, 116th Cong. (2019).

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).

³³⁸ *See* Health Research Fairness Act, ch. 792, 1991 Cal. Stat. 3528 (codified at CAL. HEALTH & SAFETY CODE §§ 439.900–439.906) (West, Westlaw through ch. 1 of 2020 Reg. Sess.).

³³⁹ CAL. HEALTH & SAFETY CODE § 439.902.

In 1992, Speier was the lead Assembly author of California A.B. 2652,³⁴⁰ 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.³⁴¹ The fund appeared as a check-off beginning with 1992 tax returns, and was the fourth fund to receive a check-off designation.³⁴² 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 2025.³⁴³ In 2019, California taxpayers contributed \$421,355 to the fund.³⁴⁴

2. Mental Health

There are at least eighteen highly pivotal laws that served as turning points for women in the United States Military.³⁴⁵ With more than two million women veterans,³⁴⁶ 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;³⁴⁷ recent data estimates the number at 2.2 times the rate of non-veteran women.³⁴⁸

As an amendment to the Clay Hunt Suicide Prevention for American Veterans Act,³⁴⁹ Representative Julia Brownley and Senator Barbara Boxer sponsored the passage of the Female Veteran Suicide Prevention Act.³⁵⁰ First introduced by Brownley

³⁴⁰ See ASSEMB. FINAL HISTORY, 1991–1992 Sess., at 1803.

³⁴¹ See Act of Sept. 20, 1992, ch. 780, 1992 Cal. Stat. 3753, 3754 (codified as amended at CAL. REV. & TAX. CODE §§ 18791–18796) (West, Westlaw through ch. 1 of 2020 Reg. Sess.).

³⁴² The first California tax form check-offs were for Rare and Endangered Species (1983), Alzheimer's (1987), and Seniors (1990). See *Voluntary contribution funds*, STATE CAL. FRANCHISE TAX BOARD, <http://www.ftb.ca.gov/file/personal/voluntary-contribution-funds/current-vcf.html> [<http://perma.cc/TQY3-SVWZ>] (last visited Jan. 28, 2020).

³⁴³ See CAL. REV. & TAX. § 18796 (West, Westlaw through ch. 1 of 2020 Reg. Sess.).

³⁴⁴ See STATE OF CAL. FRANCHISE TAX BD., STATUS REPORT—VOLUNTARY CONTRIBUTIONS FUNDS 2 (2020), <http://www.ftb.ca.gov/file/personal/voluntary-contribution-funds/reports/breast-cancer-006.pdf> [<http://perma.cc/7WH5-6VFB>] (presenting contribution totals for 2014–19).

³⁴⁵ See KRISTY N. KAMARCK, CONG. RESEARCH SERV., R42075, WOMEN IN COMBAT: ISSUES FOR CONGRESS 35–36 (2016) (providing a timeline of major legislative and policy actions from 1901 through 2015).

³⁴⁶ See U.S. DEP'T OF VETERANS AFFAIRS, WOMEN VETERANS REPORT: THE PAST, PRESENT AND FUTURE OF WOMEN VETERANS 10 (Feb. 2017), http://www.va.gov/vetdata/docs/SpecialReports/Women_Veterans_2015_Final.pdf [<http://perma.cc/7L2M-MJLF>].

³⁴⁷ See H.R. REP. NO. 114-365, at 3 (2015).

³⁴⁸ See U.S. DEP'T OF VETERANS AFFAIRS, OFFICE OF MENTAL HEALTH & SUICIDE PREVENTION, 2019 NATIONAL VETERAN SUICIDE PREVENTION ANNUAL REPORT 16 (2019), http://www.mentalhealth.va.gov/docs/data-sheets/2019/2019_National_Veteran_Suicide_Prevention_Annual_Report_508.pdf [<http://perma.cc/W9UM-FGUD>].

³⁴⁹ See Pub. L. No. 114-2, 129 Stat. 30 (codified as amended at 38 U.S.C. § 1709B (2012)).

³⁵⁰ See Pub. L. No. 114-188, 130 Stat. 611 (codified as amended at 38 U.S.C. § 1709B).

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

³⁵¹ 162 CONG. REC. H630–631 (daily edition Feb. 9, 2016) (statement of Rep. Julia Brownley).

³⁵² See 38 U.S.C. § 1709B(a).

³⁵³ See 165 CONG. REC. H4632 (June 13, 2019) (statement of Rep. Julia Brownley).

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,³⁵⁵ 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.³⁵⁶

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.

* * *

congressional and gubernatorial seats. Susan J. Carroll, *Women in State Government: Still Too Few*, in *THE BOOK OF THE STATES* 448, 453–54 (2016).

³⁵⁵ One example is California statutory authority addressing the social sciences curriculum. Under section 51204.5 of the Education Code, current authority requires that such instruction “shall include the early history of California and a study of the role and contributions of both men and women.” CAL. EDUC. CODE § 51204.5 (Westlaw, Westlaw through ch 1. of 2020 Reg. Sess.). Tracing the history of the language reveals that the inclusion of women was added with a 1973 amendment. *See* Act of Sept. 25, 1973, ch. 764, 1973 Cal. Stat. 1374 (relating to courses of study). “Men” was added five years later, with a 1978 amendment. Act of Sept. 19, 1978, ch. 964, 1978 Cal. Stat. 2967 (relating to curriculum).

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 A³⁵⁷

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

Legislator (School of Law) Cal. Legis. Chamber: Session(s) / U.S. Congress	California Bar Admission
Broughton, Esto Bates (Berkeley) Assembly: 1919, 1921–25	1916
Sankary, Wanda Young (USC) Assembly: 1955–56	1951
Burke, Yvonne Brathwaite (USC) Assembly: 1967–72/U.S. Rep. 1973–79	1956
Bornstein, Julie I. (USC) Assembly: 1993–94	1974
Jackson, Hannah-Beth (Boston Univ.) Assembly: 1999–2004. Senate: 2013–19	1976
Speier, Karen Jacqueline (Jackie) (Hastings) Assembly: 1987–96. Senate: 1999–2006/U.S. Rep. 2008–Present	1976
Ducheny, Denise Moreno (Southwestern) Assembly: 1994–2000. Senate: 2003–10	1979
Kuehl, Sheila James (Harvard) Assembly: 1995–2000. Senate: 2001–04; 2005–08	1979
Caballero, Anna M. (UCLA) Assembly: 2007–10; 2017–18. Senate: 2019–Present	1980
Evans, Noreen (McGeorge) Assembly: 2005–10. Senate: 2011–14	1982
Gómez Reyes, Eloise (Loyola L.A.) Assembly: 2017–19	1982
Bowen, Debra (Univ. of Virginia) Assembly: 1993–98	1983
Corbett, Ellen M. (McGeorge) Assembly: 1999–2004. Senate: 2007–14	1987
Escutia, Martha (Georgetown)	1987

³⁵⁷ Compiled from Benemann, *supra* note 55; *State Fact Sheet—California*, *supra* note 354; Interview by Malca Chall with Wanda Sankary, at xvi (1977), <http://digitalassets.lib.berkeley.edu/rohoia/ucb/text/sodhousetostate00sankrich.pdf> [<http://perma.cc/FA7D-RVC9>] (last visited Feb. 24, 2020); *Record of Members of the Assembly 1849–2019*, *supra* note 127; *Record of Members of United States House of Representatives from California 1850–2020*, S. ARCHIVE, http://secretary.senate.ca.gov/sites/secretary.senate.ca.gov/files/US%20House%20of%20Representatives%201850_2020.pdf [<http://perma.cc/RY8W-788Q>] (last visited Apr. 7, 2020); *Record of State Senators 1849–2019*, *supra* note 304; *Look Up a Lawyer*, STATE B. CAL., <http://calbar.ca.gov/> [<http://perma.cc/R4VB-4LK7>].

Assembly: 1993–98. Senate: 1999–2006	
Gonzalez Fletcher, Lorena Sofia (UCLA) Assembly: 2013–19	1999
Huber, Alyson (Hastings) Assembly: 2009–12	1999
Baker, Catharine A. Bailey (Berkeley) Assembly: 2015–18	2000
Bauer-Kahan, Rebecca (Georgetown) Assembly: 2019	2004

Appendix B

Assembly Bills Introduced and Chaptered, 43rd–46th Legislative Sessions

Assembly Bills, 43rd Reg. Sess. (1919) ³⁵⁸			
Legislator	Bills Introduced	Bills Chaptered	Bills Passage Rate
Broughton	18	5	28 percent
Dorris	21	4	19 percent
Hughes	12	7	58 percent
Saylor	21	10	48 percent
Totals	72	26	36 percent
Assembly Bills, 44th Reg. Sess. (1921) ³⁵⁹			
Legislator	Bills Introduced	Bills Chaptered	Bills Passage Rate
Broughton	31	9	29 percent
Hughes	23	10	43 percent
Saylor	20	12	60 percent
Totals	74	31	42 percent
Assembly Bills, 45th Reg. Sess. (1923) ³⁶⁰			
Legislator	Bills Introduced	Bills Chaptered	Bills Passage Rate
Broughton	23	6	26 percent
Dorris	16 2 (with Woodbridge)	2	11 percent
Miller	16	2	12.5 percent
Saylor	21	4	19 percent
Woodbridge	17 2 (with Dorris)	6	35 percent
Totals	97 (includes two co-authored bills)	20	21 percent

³⁵⁸ ASSEMB. 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 ASSEMB. FINAL HISTORY, 44th Sess. (Cal. 1921); THE STATUTES OF CALIFORNIA PASSED AT THE REGULAR SESSION OF THE FORTY-FOURTH LEGISLATURE (1921).

³⁶⁰ ASSEMB. FINAL HISTORY, 45th Sess. (Cal. 1923); THE STATUTES OF CALIFORNIA PASSED AT THE REGULAR SESSION OF THE FORTY-FIFTH LEGISLATURE (1923).

Assembly Bills, 46th Reg. Sess. (1925) ³⁶¹			
Legislator	Bills Introduced	Bills Chaptered	Bills Passage Rate
Broughton	11 1 (with Woodbridge and others)	1 1	17 percent
Dorris	15 1 (with Miller)	1	6 percent
Miller	9 1 (with Dorris)	2	20 percent
Saylor	18	2	11 percent
Woodbridge	8 1 (with Broughton and others)	1 1	9 percent
Totals	65 (includes two co-authored bills)	9 (includes one co-authored bill)	14 percent

³⁶¹ ASSEMB. FINAL HISTORY, 46th Sess. (Cal. 1925); THE STATUTES OF CALIFORNIA PASSED AT THE REGULAR SESSION OF THE FORTY-SIXTH LEGISLATURE (1925).