

*In Memoriam*  
HONORABLE  
RUTH BADER GINSBURG



# *In Memoriam*

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RUTH BADER GINSBURG

Proceedings of the BAR and OFFICERS of the  
SUPREME COURT OF THE UNITED STATES

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Proceedings Before the  
SUPREME COURT OF THE UNITED STATES

Washington, D.C.

March 17, 2023





HONORABLE RUTH BADER GINSBURG



# **Announcement of the Death of Justice Ruth Bader Ginsburg**

## **SUPREME COURT OF THE UNITED STATES**

**Monday, October 5, 2020**

PRESENT: CHIEF JUSTICE ROBERTS, JUSTICE THOMAS, JUSTICE BREYER, JUSTICE ALITO, JUSTICE SOTOMAYOR, JUSTICE KAGAN, JUSTICE GORSUCH, AND JUSTICE KAVANAUGH.

The Chief Justice said:

I note that memorial drapery has been erected on the door of our courtroom and on the Bench to signify mourning for Justice Ruth Bader Ginsburg, who died on September 18, 2020. Justice Ginsburg was born in Brooklyn, New York, March 15, 1933. She received her B.A. from Cornell University and married Martin D. Ginsburg shortly after graduation. They briefly lived in Oklahoma, where Marty was stationed when called to active duty in the Army. They both pursued a career in law. She attended Harvard Law School and received her LL.B. from Columbia Law School in 1959, tied for first in her class.

Justice Ginsburg served as a law clerk to the Honorable Edmund L. Palmieri, judge of the United States District Court for the Southern District of New York, from 1959 to 1961. From 1961 to 1963, she was a research associate and then associate director of the Columbia Law School Project on International Procedure.

Justice Ginsburg was a professor of law at Rutgers University School of Law from 1963 to 1972, and Columbia Law School from 1972 to 1980. In 1971, she was instrumental in launching the Women's Rights Project of the American Civil Liberties Union. She argued six significant gender discrimination cases in this Court, winning five.

President Carter appointed Justice Ginsburg to the United States Court of Appeals for the District of Columbia Circuit, and she served there as a circuit judge from 1980 to 1993. President Clinton appointed her to this Court in 1993. She was the second woman appointed to the Court and served more than 27 years. During her time on the Court, she authored 483 majority, concurring, and dissenting opinions.

Justice Ginsburg's contributions as advocate, jurist, and citizen are immeasurable. We at the Court will remember her as a dear friend and treasured colleague.

Justice Ginsburg is survived by her two children: Jane Carol Ginsburg and James Steven Ginsburg; four grandchildren; two step-grandchildren; and one great-grandchild. We extend our condolences to her children, extended family, and countless admirers.

At an appropriate time in the spring, the traditional memorial observance of the Court and Bar will be held in our courtroom.

**Proceedings of the Bar and Officers of the  
SUPREME COURT OF THE UNITED STATES  
Friday, March 17, 2023**

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The Bar of the Supreme Court of the United States and the Officers of the Court met in the Upper Great Hall in the Supreme Court Building at 1:45 in the afternoon.

The meeting was called to order by Solicitor General Elizabeth B. Prelogar.

**Remarks  
of  
SOLICITOR GENERAL PRELOGAR**

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Good afternoon, members of the Ginsburg family, members of the Court, members of the Bar, and friends.

This meeting of the Bar of the Supreme Court of the United States has been called to honor the memory of Justice Ruther Bader Ginsburg, who served as an Associate Justice of the Supreme Court from 1993 until 2020.

In addition to her time on the Court, Justice Ginsburg served as a judge on the United States Court of Appeals for the D.C. Circuit, as the first tenured female professor at Columbia Law School, and as founder and director of the Women's Rights Project at the ACLU.

She was a visionary as an advocate who championed equal citizenship for all persons, and as a judge who fought every day to fulfill this nation's promise. She was a person of principle, graced with a brilliant mind, quick wit, tireless nature, and courageous soul. She was a devoted wife, mother, grandmother, and great-grandmother, a cherished colleague, an inspiring teacher, and a historic figure in American law.

She revered the rule of law and the Constitution. The Court and this country are forever honored by her service.

I want to express my appreciation to Judge Paul Watford and Hajin Kim, who co-chaired the Arrangements Committee for this meeting, and to the members of that Committee, Justice Rachel Wainer Apter, Judge John Owens, and Amanda Tyler. I also want to express my gratitude to Judge John Owens and Amanda Tyler, who co-chaired the Resolutions Committee, and to the members of that committee: Payvand Ahdout, Jennifer Clark, Kelsi Brown Corkran, Beatrice Franklin, Abbe Gluck, Justice Goodwin Liu, Michael Klarman, Amy Marshak, Deborah Jones Merritt, Trevor Morrison, and Daniel Rubens. The meeting today will be chaired by Judge Owens, and Scott Harris will be the secretary.



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I had the incredible honor of clerking for Justice Ginsburg, so before I turn the podium over, I wanted to share a few reflections on three roles that defined the Justice's life and career as a lawyer, a mentor, and a fighter.

Perhaps the most natural place for me to begin is with Justice Ginsburg's role as an advocate. It's natural not only because I'm speaking on behalf of the Supreme Court Bar, but also because Justice Ginsburg is the person who moved my admission to this Bar and was one of the first people who encouraged me to apply for a job in the SG's Office. Although I didn't get to argue before her as Solicitor General, I like to think that she'd be happy that I'm able to speak about her today in that capacity.

Justice Ginsburg's accomplishments as an advocate are extraordinary, the stuff of legend. She argued six cases in this Court between 1972 and 1978, at a time when few women were arguing in any court, much less this one. And she made those cases count, winning five of them and establishing the principle of gender equality as constitutional law, often through her ingenious strategy of bringing sex discrimination cases on behalf of men.

One of her big cases, litigated in the Tenth Circuit alongside her husband, Marty, was *Moritz v. Commissioner*. It involved a tax code provision that allowed single women but not single men to deduct the costs of caring for an elderly dependent. The case is memorably depicted in the movie "On the Basis of Sex," but I'll always remember hearing the story firsthand at a dinner that the Ginsburgs hosted for us clerks during our clerkship year. As they told it, Marty learned about the case through his tax practice and ran into Justice Ginsburg's room to tell her that she needed to read the lower court decision. She said, "Marty, you know I don't read tax cases."

He said, "Well, you need to read this one."

At the oral argument, they divided the argument time, and Marty went first. He told us that as he was delivering his argument, she started tugging on his sleeve because he was going on too long.

Without missing a beat, the Justice quipped, "You were cutting into my time."

Of course, they won the case. When the Solicitor General sought review in this Court, he attached an appendix listing all of the federal statutes that would be called into question by the Tenth Circuit's decision because they classified based on sex. Justice Ginsburg later described the appendix as a treasure trove.

It turned into a sort of target list as she took aim at many of these statutes in the years ahead. So, whatever else I do as Solicitor General, I won't be filing any appendices like that.

Although Justice Ginsburg's advocacy transformed an entire area of constitutional law, she never focused only on abstract legal principles. Decades later, she still remembered every client and the injustices that brought them to court. Stephen Weisenfeld, for example, lost his wife Paula during childbirth, but he wasn't eligible for the Social Security benefits that a similarly situated widow would have received. Justice Ginsburg won his case unanimously in the Supreme Court, but she didn't stop there. She kept in touch with the Weisenfelds for the rest of her life, and almost 30

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years later after the Court's decision, when the little boy at the center of the case got married, Justice Ginsburg officiated the wedding.

That enduring commitment to people animated the second of Justice Ginsburg's roles that I wanted to highlight, her role as a mentor. First, Justice Ginsburg recognized the importance of her own mentors. In the brief she filed in the landmark case *Reed v. Reed*, she insisted on including in the signature block some of the lawyers and scholars whose work had inspired her. As she put it, she stood on their shoulders and should give them credit.

And here at the Court, she mentored her law clerks in countless ways. She insisted on mastering the facts of every case, reminding us that the Court's cases are about real people with real problems.

Clerking for her was also a master class in legal writing. She edited opinions by hand, so we would triple-space the drafts to leave plenty of room for her notes, and she had no trouble filling that space with red ink. If she wanted to reorganize the draft, she would literally cut out a paragraph and tape it somewhere else on the paper. So it was an old-school cut-and-paste. And then, when she finished, she would call the law clerk into her office and go over the revisions one by one to explain her thinking. It was an amazing opportunity to learn about the craft of legal writing from an extraordinary writer.

She modeled her incredible work ethic in many other ways. She was a famous night owl who would often stay up half the night poring over a draft line by line. The story was that she and Justice Kennedy, a well-known early bird, would pass each other going in opposite directions in the garage.

For all of her devotion to her work, Justice Ginsburg also reminded us that there's more to life. She took us to the opera and patiently explained what was going on when I confessed at intermission that I had no idea what was happening on stage. She was a fitness enthusiast who lifted weights and did pushups well into her 80s, often while wearing a Super Diva sweatshirt. And perhaps thanks to Marty, she appreciated good food, especially sweets.

One of my favorite memories came at the annual Supreme Court Christmas recess party, where I spotted the Justice across the room, making a beeline for the chocolate fountain. But she didn't pick up a strawberry or a piece of cake to dip. Instead, she put her spoon directly under the chocolate flow and ate it straight.

As with so many other things, the Justice knew exactly what she wanted and didn't waste time with filler.

The final aspect of Justice Ginsburg's legacy that I want to touch on is her fighting spirit. She was almost certainly the physically smallest person ever to serve on this Court, but I doubt that anyone has ever punched further above their weight.

She faced profound adversity in every phase of her life. Her mother died the day before her high school graduation. Marty was diagnosed with cancer early in their marriage. She endured discrimination based on sex and pregnancy and religion. She faced multiple bouts with cancer. And she overcame again and again, demonstrating a resilience, fearlessness, and independence matched by few others. She was the

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epitome of unrelenting grace. And she was unyielding in fighting for the things she believed in.

When she was preparing for her Supreme Court confirmation hearings, a White House staffer wrote a memo describing her “disdain for the confirmation process.” The memo added that Judge Ginsburg views the White House’s interests and her interests as being at odds with each other. “She sees us as having a stake in presenting her as a moderate and in getting along well with the Senate. She sees her interests as being herself, preserving her dignity, and promoting her independence.” I’ll add only that Justice Ginsburg was confirmed 96-3.

I witnessed one of Justice Ginsburg’s most difficult battles up close during my clerkship. That was the year that Marty was again diagnosed with cancer. The Justice lovingly cared for him, juggling his medical appointments and hospitalization with her work at the Court.

The morning after he passed away was the final decision day of the Term, and Justice Ginsburg had a majority opinion in one of the leading cases. The grief was so evident in Court as Justice Ginsburg delivered her opinion.

As usual, her voice wasn’t particularly loud or particularly fast, but it was steady and sure, confident in her decision in the case and in her knowledge that by coming to Court to hand down the decision, she was doing what Marty would have wanted.

Justice Ginsburg’s fight ended in September 2020, following yet another hard-fought battle with cancer. I stood guard with her other former clerks as she lay in repose at the Court. Because of the pandemic, her casket was placed outside the Court at the top of the front steps rather than in the usual indoor location, and as I thought about it, I decided that it was fitting that she was outside, accessible to the public.

Her life was a quintessentially American story. She was born to a family of immigrants and grew up with modest means. She faced profound adversity and discrimination. Yet, through her intellect, hard work, and force of will, she not only reached the top of her profession, she reshaped it.

She broke barriers for those who came after her, and she inspired multiple generations. So many people came to pay their final respects as she lay in repose, as I walked to the Court down East Capitol Street, the line of mourners stretched for block after block after block, almost all the way to Lincoln Park.

There were all kinds of people, young and old, women and men, parents with their small children. Some cried. Some kneeled and prayed. And many of them looked from her flag-draped casket up the majestic columns of this Court to the words inscribed in marble on the facade, words that inspired Justice Ginsburg throughout her career and that she brought to life for generations to come: Equal Justice Under Law.

May her memory be a blessing.

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### Remarks of THE HONORABLE JOHN B. OWENS

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Good afternoon, everyone. Madam Solicitor General, Mr. Chief Justice, Associate Justices, members of the Ginsburg family, Mr. Attorney General, and members of the Supreme Court Bar, it is a great honor to be with you here today to remember Justice Ginsburg. And I want to thank you, Solicitor General, for your opening remarks.

Now, when I speak with high school and college and law students, they usually look pretty bored. They don't really ask any questions about me. I was a federal prosecutor for 10 years. I'm a federal judge. But, when they find out I clerked for Justice Ginsburg, wow, now they're interested. What did she teach you? What was she like? Tell us about her.

Where do you start? How do you describe who Justice Ginsburg was? You could spend hours on her childhood in which she overcame incredible family tragedy to rise to the top. You could talk about her college and law school career, where she had a baby, her husband had cancer, and she finished first in her class. You could explore her career as a law professor, where she learned Swedish to better understand the American civil procedure system. Or you could delve into her efforts as a litigator, which were just detailed, where she was a first ballot Hall of Famer. I haven't even talked about the D.C. Circuit yet. I haven't talked about this Court yet.

Simply put, this is hard sometimes for younger people to understand, you can't Wikipedia-ize the life and career of Justice Ginsburg. She was one of the most extraordinary people to ever walk into this building and, frankly, on the face of this earth. And today we're going to do our best to highlight what made her so special.

So what do I tell the students? They always want to talk about the dissents, but I stress to them Justice Ginsburg was a winner. She understood how to persuade people. She was a big-time winner. And she understood that patience and calmness was much more effective than yelling or demeaning someone who might not initially agree with you.

I tell them that her love for civil procedure was genuine and intense. This surprises many law students. I describe when she received the assignment in *Baker v. General Motors*, which was honestly a somewhat obscure civil procedure case, she was so excited. So excited.

If you could imagine, Justice Kagan, if the Jets, Mets, and Knicks all won the title in the same year. Not going to happen, but that's what it was like for Justice Ginsburg.

I also tell them it's important to follow your passions, even if they are civil procedure and opera. But what I always come back to, no matter how many times I've spoken with students, is her mental toughness. She is the toughest person I've ever met.

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And I don't mean rough or uncivilized. I mean, she had the gloves, the purse, the outfits. We all know that. I mean, I've never met someone who was so determined to make it, to never let anything or anyone stop her, and to never ever make excuses for why you didn't get something done. Just get it done. And I doubt that anyone in this room — and, Justice Thomas, you've served here for a long time — I don't think you ever heard her make an excuse about work. Never happened.

We all know she had plenty of excuses, a lot of good excuses, as to why she couldn't get to do something, but she always had the will to fight through whatever the barrier was in front of her.

Now I used to box, so I spent a lot of time around tough guys. And boxers are tough guys. But, honestly, none of them had the mental toughness that she did.

You know, she taught me early on, if you want to win a case, you could not be the second-most prepared person in the room. Number two is not going to cut it. She was always number one when it came to being prepared, and I cannot imagine a better lesson for young lawyers.

Now sometimes students will ask, well, why was she so tough, so determined, and why didn't she just give up after everything that happened to her? Well, look, I'm sure her life circumstances made her feel like she couldn't give up because, if she stepped out for a second, the game would pass her by.

But I also think it's more than that. I think it's the Justice's love of this country that compelled her to never quit. Justice Ginsburg loved the United States. She said many times that only in America could someone from her background rise to the level that she did.

She once told me in effect that there never would have been a Notorious RBG if there wasn't the Good Old USA. And she passionately believed that while America's pendulum might swing wildly at some times, it eventually will settle into a more stable rhythm, and she wanted everyone to have the same opportunities that she did to enjoy the American dream.

And so, when students ask me about her judicial philosophy, I struggle at times to put it into a few words, but I like to say that her philosophy is that the United States is the greatest country in world history, may not be perfect, but it is, and that the Constitution, especially the Fourteenth Amendment in her view, was designed so everyone can take full advantage of it. And that's why I think she fought so hard for so long and busted through all those roadblocks that stood in her way.

So we will now hear from some fellow clerks about what made her so special. My colleague, the Honorable Paul Watford of the Ninth Circuit, the Honorable Justice Rachel Wainer Apter of the Supreme Court of New Jersey, Professor Amanda Tyler of Berkeley, and Professor Hajin Kim from Chicago.

And Professor Kim will then move the adoption of the resolutions to be presented to the Court. And as Justice Ginsburg law clerks, we promise to be concise and stay on schedule.

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### Remarks of THE HONORABLE PAUL WATFORD

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It's an honor to be here this afternoon and to have been asked to provide some brief remarks paying tribute to Justice Ginsburg, whose impact on the shape of our society is probably too profound to measure.

I'd like to focus my remarks on the Justice's role as an advocate for equality, women's equality most importantly, but equality for other marginalized groups as well, during the years that she spent litigating cases before this Court and during her four decades of distinguished service as a federal judge.

A common thread runs through the briefs she filed in this Court, beginning with the influential brief in *Reed v. Reed*. The legal principle she sought to vindicate there and in the cases that followed in the 1970s was a simple but essential one: the desire to be judged on one's individual merits, not on the basis of overbroad generalizations or stereotypes.

The Idaho statute at issue in *Reed v. Reed* was a poster child for laws of the latter sort. It mandated that as between individuals equally entitled to administer a decedent's estate, males must be preferred to females. As Justice Ginsburg wrote in her brief seeking to invalidate that statute, the law was based on the unfounded assumption that, in general, men are better equipped to act as an administrator than are women.

What Justice Ginsburg objected to in *Reed* was not, of course, the notion that in a particular case a man might prove to be better qualified to administer an estate than a woman seeking the same appointment, and thus could be selected on the basis of his personal abilities. It was the notion that the state could do away with any inquiry into the individual merits of the competing applicants and simply presume conclusively that the male applicant was better qualified.

She urged the Court to view discriminatory classifications of this sort, in which gender bears no necessary relationship to ability, as no less suspect than discriminatory classifications based on race or religion. She wrote: "Surely this Court would find offensive to the Constitution . . . and to common sense . . . a fiduciary selection statute that preferred whites to blacks or Christians to Jews. A statute preferring men to women should fare no better."

Given her pivotal role as an advocate for women's equality, it seemed entirely fitting when, nearly 25 years later, Justice Ginsburg authored the majority opinion in the VMI case, captioned *United States v. Virginia*. Her opinion for the Court vindicated the same principle she had successfully championed as a lawyer, the right simply to be judged on one's individual merits.

There, in the VMI case, Virginia excluded women from the opportunity to attend VMI based in part on the assumption that the adversative method the school used to

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train its cadets was inherently unsuited to educating women. But the expert testimony established that while many women would not want to be educated in a VMI-type environment, just like many men would not either, some women would prefer that option and would be capable of all of the individual activities required of VMI cadets. Those women, Justice Ginsburg wrote, could not be categorically excluded in total disregard of their individual merit from the unique opportunities for military training and civilian leadership development that VMI afforded.

Justice Ginsburg's impact extended beyond the principle of formal equality enshrined in *Reed v. Reed* and the VMI decision. She also showed by example that when members of marginalized groups gain access to institutions, they bring with them useful insight and perspective that can advance the cause of equality.

Two examples that come to mind stem from the period in which Justice Ginsburg was the lone woman on the Court. First, dissenting in *Ledbetter v. Goodyear Tire & Rubber Co.*, a case interpreting the statute of limitations applicable to pay discrimination claims, Justice Ginsburg observed that women working in male-dominated fields might be averse to making waves over a small discrepancy in pay that later compounds into a large discrepancy. Although that practical consideration did not carry the day at the Court, Congress later amended Title VII in a way that accounted for Justice Ginsburg's concern.

Two years later, the Court was called upon to decide whether the strip search of a 13-year-old girl at school was reasonable in *Safford Unified School District v. Redding*. Justice Ginsburg voiced the view that a strip search might be particularly intrusive for a girl of that age, a perspective she found absent in some of the questions asked during oral argument. The majority opinion ultimately found the search unreasonable, citing a previous holding that the permissible scope of a search depends on the age and sex of the student.

In these two instances, Justice Ginsburg brought a sensitivity to real-world gender dynamics into the law, further securing the promises of equality.

Justice Ginsburg's work as an advocate and a judge helped transform our society into one in which all people can more fully utilize their skills and talents unencumbered by, as she put it in VMI, artificial constraints on an individual's opportunity. Her influence on the Court serves as a forceful example of the benefits that follow when opportunities are available to all.

I think it's fair to view the Justice as a transformative legal figure akin to Justice Thurgood Marshall, although she tended to resist those comparisons despite the obvious similarities between their roles as advocates for equality, first as lawyers and then as members of this Court.

Justice Ginsburg resisted those comparisons not because she failed to recognize the significance of her own contributions but because, she said, her work as a lawyer for women's rights never exposed her to the kind of life-threatening danger Justice Marshall faced when pursuing his work, particularly in the Deep South.

What seems to me remarkable in retrospect — and I think you'll hear others today echo this view — is just how humble Justice Ginsburg was in the face of all that she

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achieved over the course of her career. For example, I cannot recall a single instance during the year I clerked for her or in any of the conversations we had during the many years that followed in which she even brought up her victories as a litigator or her role as a leader of the women’s rights movement during the 1970s.

Nevertheless, despite her innate modesty, the Justice did seem to enjoy the fame that came toward the end of her career when she was crowned “the Notorious RBG.” Any incongruity between her innate modesty and her joy in seeing her life and career garner so much attention is easily explained, I think. What the Justice seemed most taken with was not that her story would reveal to the world her greatness, but that it would reveal to others like her their potential for greatness.

That she became such a powerful role model and inspiration for others must be, I imagine, one of the things from which she drew the greatest satisfaction in an extraordinarily rich and fulfilling life.

During her confirmation hearing in 1993, Justice Ginsburg said to members of the Senate Judiciary Committee: “In my lifetime, I expect to see three, four, and perhaps even more women on the High Court bench, women not shaped from the same mold, but of different complexions.” She did largely see that vision come to pass. Today, the Court reflects that ideal to an even greater extent, due in no small measure to the trail Justice Ginsburg helped blaze.

### Remarks of THE HONORABLE RACHEL WAINER APTER

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Good afternoon, everyone. I’m honored to be with you here today.

When Rabbi Lauren Holtzblatt eulogized Justice Ginsburg from this lectern, she compared her to a modern-day prophet, with the vision to see beyond the world as it was and the courage, strength, and steadfastness to build a more just world within her own lifetime.

As an advocate, Justice Ginsburg persuaded this Court to enshrine equal citizenship for women into the United States Constitution. As a judge and then a justice, she protected and defended the rule of law. And, as the Notorious RBG, she became a Supreme Court celebrity, with her face emblazoned on T-shirts, tote bags, and even tattoos. The Justice was also an incredible boss, mentor, and friend.

I want to speak about four things that made the Justice extraordinary that did not get as much play in the RBG memes.

First, Justice Ginsburg took language, both written and spoken, extraordinarily seriously. The Justice fundamentally believed in the equal dignity of all people, as she put it, equal opportunity for all to aspire, achieve, participate in, and contribute to our national life.



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She brought many around to this vision, largely with words. In both her briefs and opinions, she used carefully chosen words to help lawyers, members of the public, and even her colleagues understand that which they may otherwise have been unable to see, whether it was a complicated point of civil procedure, which the Justice so loved, or the idea that stereotypes undermine all of us.

When we handed in draft opinions to the Justice, as General Prelogar mentioned, we did so in 14-point font, triple-spaced. With her red pencil, she would scrutinize each word, revising until it was perfect. But the Justice's edits were not confined to opinions. She once even edited a Post-It note that I had placed on a cert petition.

After I drafted an article about what the Justice had taught me about balancing work and parenting, I e-mailed it to her to read. Two days later, I received this response: "Dear Rachel, your comment is excellent. I've marked a few suggestions for you to consider. But it's fine as is."

Attached was a scanned copy of the draft that I had sent, but printed out in 14-point font, triple-spaced, with edits written in the Justice's famous red pencil. I, of course, immediately incorporated all of them.

The Justice was the same in her everyday speech. She paused to think before speaking, never resorting to like, um, uh, or oops. She also had an incredible memory. When entering her office, we always had a notebook in hand just in case.

Once, I walked in expecting a brief conversation. Instead, after several of her signature pauses, the Justice dictated a full page court order, including a citation to a case from the 1980s, with no notes, no revisions, and no detours midstream. She asked me to check the citation, but, of course, she had it correctly.

Second, the Justice worked tirelessly. The Justice recognized that each case before the Court was significant not only to the litigants but to every person who would be affected by the Court's decision.

She painstakingly reviewed facts and analyzed legal arguments, dedicated to truth and precision. But she also focused on how the law operates in the real world, and how it impacts the lives of real people. That's what kept her up until all hours of the night, sometimes leaving telltale red marks on the page if she nodded off while editing at 2 a.m. Nothing was more important to the Justice than the work of this Court, and she expressed that reverence through her superhuman work ethic.

Third, the Justice was humble. Although she was a national hero before she even became a judge, I never heard the Justice tout her own accomplishments. Instead, she credited those who came before her.

As General Prelogar mentioned, in her first brief to this Court as an advocate, Justice Ginsburg listed as her co-counsel Dr. Pauly Murray and Dorothy Kenyon, two civil rights lawyers who worked at the intersection of discrimination based on race and gender. Although neither had actually worked with the Justice on the case, she sought to illustrate that it was because of their pathmarking work that she was able to argue that gender discrimination violated the United States Constitution.

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Incidentally, “pathmarking” was one of the Justice’s favorite words and likely one that she coined.

And in her remarks upon her nomination to this Court, Justice Ginsburg called her mother the bravest and strongest person I have known and said, “I pray that I may be all that she would have been had she lived in an age when women could aspire and achieve.”

Fourth, the Justice was endlessly generous. She made others feel brighter in her presence. As law clerks, we felt this generosity in small kindnesses and grander gestures. She celebrated our birthdays with champagne and fancy pastries. She took us to the opera and spent time with our parents and spouses and children.

In the years following my clerkship, whenever I returned to visit the Justice, she would sit with me, sometimes for an hour or more, even towards the end of the Court’s Term, as if there was nowhere else that she needed to be.

When I brought my two daughters to visit, who were then 8 and 10 years old, she showed them the same kindness.

Alongside her vision, courage, strength, and persistence, the Justice brought these attributes to bear in striving for a more just and equal world. Through her attention to language and tireless work ethic, her humility and generosity, she coaxed others to join her in creating it.

May her memory be a blessing.

### Remarks of AMANDA L. TYLER

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It is a tremendous honor to be with all of you here today to celebrate the great life of Justice Ruth Bader Ginsburg.

Justice Ginsburg has been described as a prophet, an American hero, a rock of righteousness, and a national treasure. She was all of those things and so much more.

A Brooklynite born and bred, as she introduced herself at her confirmation hearings, Justice Ginsburg was a first-generation American on her father’s side and barely second-generation on her mother’s.

She liked to say, “What has become of me could happen only in America. Like so many others, I owe so much to the entry this nation afforded to people yearning to breathe free.”

That gratitude fueled her deep love of this country and spearheaded a life of public service. Begin with Justice Ginsburg’s time as an advocate before this Court, when she changed the course of American history by successfully promoting gender equality as a fundamental constitutional principle.

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Forty years of service as a federal judge followed, including 27 years on this Court. Throughout, Justice Ginsburg left an indelible mark on the law while playing a crucial role in what she celebrated as the prime part of the history of the Constitution, namely, the extension of constitutional rights and protections to people once ignored or excluded.

Serving on this Court, Justice Ginsburg amassed a record that represents the best qualities a judge can have: lawyerly precision; an abiding dedication to procedural integrity; a commitment to opening up access to the justice system to ensure, as she liked to say, that the least shall be heard and considered side by side with the greatest; recognition of the importance of government accountability under law; and an acute appreciation of how the Court's work intersects with the lived experiences of persons from all walks of life.

Central to Justice Ginsburg's legacy are the votes and opinions in which she advanced the principle that real equality means, as she wrote in her 1996 opinion for the Court in the VMI case, allowing all persons to achieve their full human potential.

The law was not some abstract notion to Justice Ginsburg. In her hands, it was a vehicle for progress and for making people's lives better.

To be sure, the Justice found herself sometimes in the minority during her time on this Court, and when that was the case, she recorded her position for posterity, embodying the dissenter's hope that one day her opinions would hold sway.

Here, as elsewhere, Justice Ginsburg played the long game. Along the way, she gave us the gift of her precise prose that could, just as her college professor, Nabokov, taught her, paint pictures with words.

Case in point, her dissent in *Shelby County v. Holder*, in which she wrote that "Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet."

To serve as Justice Ginsburg's law clerk was a privilege beyond measure, one that led all of her clerks to appreciate what Gloria Steinem has said of our boss. Her heart was as great as her mind.

During our clerkships and in the years that followed, the Justice taught us countless lessons about the law and about life. We learned the importance of humility and engaging with different viewpoints. She liked to quote Judge Learned Hand for the proposition that the spirit of liberty is not too sure that it is right and so seeks to understand the minds of those with whom it disagrees. These were more than just words to Justice Ginsburg. Case in point, her great friendship with Justice Scalia.

Through her legendary work effort and exacting standards moreover, the Justice brought out the very best in her clerks, revealing to us our own potential. I can recall sitting down with her — this is going to be a familiar story in these speeches — to go over literally every single word in an opinion to make sure that each one was accomplishing something.

## IN MEMORIAM

And that attention to detail never waned. In the last year of her life, I had the great honor of working with her on a book project. Even in her final weeks, and while hospitalized, she was still marking up my drafts so much I could barely read the typescript underneath.

More embarrassing yet, here we go again, she also sent back corrections on my cover letters to her.

Justice Ginsburg modeled for her law clerks the importance also of lifting up others and paying it forward, which she did for us on countless occasions to advance our careers.

And the Justice always made sure that we all knew that in every aspect of our lives, she was in our corner rooting for us, whether celebrating our successes and important life moments or supporting us with her wise counsel during the most trying of times.

Through her example, Justice Ginsburg likewise taught us the importance of leading a well-rounded life. For her, this included, among other things, her great love of the arts, most especially opera. A good life, she taught us, also includes plenty of laughter. The Justice possessed a great sense of humor. How could she not? After all, she married her beloved Marty, who regularly called chambers to request an audience with Her Highness.

Able to land a joke and bring the house down in her own right, Justice Ginsburg also taught us the importance of never taking ourselves too seriously. Along these lines, I recall fondly a visit to chambers a few years ago when she welcomed me into her office and ushered me around behind her desk because she wanted to play a movie trailer for me on her computer. After it finished, she turned to me, shaking her head, and said: “Just what the world needs, another documentary about RBG.”

Justice Ginsburg also taught us the centrality of family to a life well lived. Her family was everything to her, and one of the greatest privileges of clerking for her while Marty was still alive was witnessing their grand love affair and seeing all that a marriage and true partnership could be.

Finally, her law clerks saw firsthand just how much Justice Ginsburg loved this country, the rule of law, and the Constitution. Over the course of her lifetime, she had witnessed generations of progress in the continuous march toward equality. Right up until the end, she remained steadfast in continuing the work toward achieving the more perfect Union to which the Constitution aspires. She likewise remained ever-optimistic for the future of this nation.

In the time since her passing, I have reflected often on our last conversation. It was just a few weeks before she died and during the height of the COVID-19 pandemic. I recall talking with her about Marty, who remained as ever at the center of her universe. And I recall she asked about my children. She was curious if they would return to school in the fall of 2020 in-person or online. She then expressed deep concern for children everywhere, who were being so profoundly affected by the ongoing pandemic. That was Justice Ginsburg, always thinking about others and always thinking about the future.

## HONORABLE RUTH BADER GINSBURG

I kept coming back to that conversation as I ushered our book project across the finish line. After her passing, I took the liberty of adding a handful of images beyond those she and I had assembled. These included images of her law clerk family standing on the steps of this Court to honor her service, tell her how much we loved her, and thank her for changing our lives. I added as well an image of her lying in state at the Capitol, still making history even in death as the first woman and first Jewish person ever to be so honored.

I took the liberty of adding one more image. It is of a child dressed in a Supergirl costume saluting the Justice as she lay in repose just outside the doors of this Great Hall. I love the image. For one, it underscores how Justice Ginsburg's legacy is woven into the fabric of this country's soul, something those of us who were here during those solemn days witnessed in the droves of mourners who came to pay their respects to her.

I also love the image, and I believe Justice Ginsburg would have loved it too, because in that little girl one sees the embodiment of the Justice's unwavering optimism and hope for the future.

### Remarks of HAJIN KIM

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It is an honor to be here. Justice Ginsburg was a superhuman and an inspiration. I clerked for the Justice in the 2016-2017 Term. Life since then has made me appreciate the Justice and her wisdom all the more.

Her law school years read a little like the horrible first part of a fairy tale written by an author who wanted to hit you over the head with how hard life was for the main character. Beyond the burden of overt gender discrimination, the Justice also had on her plate, as Judge Owens described, a beloved husband ill with cancer whose notes and papers she typed, and a then two-year-old daughter who, no matter how well behaved, surely did not consistently lighten the load. I always found that story incredible, but it hits so much harder after dealing and experiencing a real-live two-year-old.

The Justice was superhuman. Yet still more incredible than the mere fact of her survival — and she did not just survive, she thrived, graduating at the top of her class — was her attitude. Rather than complain that she had fewer working hours than the rest of her classmates and certainly fewer hours of rest, she was grateful, she said. Each part of her full life gave her respite from the other.

The Justice was an inspiration. Many law professors, if forced to choose between spending an hour on research or on teaching prep, would often choose their research, present company, of course, excluded. Justice Ginsburg was, as we all know, reshaping the very landscape of constitutional law in an ambitious and critically important

## IN MEMORIAM

project that has made our nation more equal and more just. Yet, she always emphasized the importance of her students, of her teaching too. She chose to call herself a law teacher, not professor.

She also showed us all by example how to approach disagreement and friendship with grace and a strong belief that good people could hold diverging and, from one's perspective, terrible opinions.

As an advocate, the Justice did not view the nine men considering whether sex discrimination to be unconstitutional as potential villains if they disagreed. Rather, if they did not understand the problem, it was her role to explain, to teach them, and so she did.

That same perspective is what allowed her famous and longstanding friendship with Justice Scalia to flourish. They both had the remarkable ability to separate their love for a person from their dislike of their views, and that friendship and deep mutual respect helped them both sharpen their battling opinions.

Justice Scalia, Justice Ginsburg reports, gave her an advance look at his VMI dissent so that she would have more time to respond. Even in opposition, they each wanted the other to be their best.

Now, in all the stories, Justice Scalia and Marty get all the credit for being the funny ones, casting Justice Ginsburg in the role of appreciative audience. But, as Professor Tyler mentioned, the Justice had a delightful sense of humor all her own.

When a staff member confessed admiration for a particular football player, the Justice responded with a small smile, "Ah, he is handsome, yes?" She brought pompoms to conference on a case about cheerleader uniforms.

The Justice got and gave great joy from life. Sweets gave her so much joy, in fact, that she had to keep them in the room far away from her in Kim and Lauren's office.

The Justice shared her joy and good humor and even her candy with those around her. The Term I clerked, the Justice had a small but thrilling role in the opera *The Daughter of the Regiment*. She invited us to attend the dress rehearsal. The Justice owned the stage. I cannot do this justice, but you have to imagine Justice Ginsburg doing this. Upon her entry, she announced: "I am the Duchess of Krackenthorp."

And she didn't stop there. Justice Ginsburg had license to write the lines of her performance. She talked about how the best Krackenthorpians had open but not empty minds and were willing to listen and learn, and that the most valorous of them had thus unsurprisingly been women.

The Justice was superhuman. We all know that. As a legal thinker and advocate, jurist, and teacher, she was an inspiration. But, above all else, Justice Ginsburg was a wonderful human. She was a terrible singer and, apparently, driver, but hilarious stage performer.

She cared deeply about those before her — her clerks, her staff, her family, her friends, this great nation. She approached life with an open and far-from-empty mind and was willing to listen and learn as well as teach and explain.

## HONORABLE RUTH BADER GINSBURG

It is an understatement to say that it was our great good fortune to have Justice Ginsburg in our lives and in our nation.

The Committee on Resolutions has prepared resolutions summarizing and honoring Justice Ginsburg's immense contributions to this nation and its laws. Together with the Committee co-chairs, Judge Owens and Professor Tyler, I have the honor to move their adoption.

Chairman:

Thank you, Professor Kim. We do have a motion. Is there a second?

Voice:

Second.

Chairman:

Thank you. The resolutions are now before us for adoption. If adopted, they will be presented to the Court by the Solicitor General. I now put the resolutions to a vote.

All in favor of adopting the resolutions, please signify by saying aye.

(A chorus of ayes.)

Any opposed?

(No response.)

Hearing no opposition, I declare the resolutions adopted. And I want to thank Professor Tyler for taking the laboring oar in putting these together.

Now this completes our work here. I just want to say in closing that since I clerked for the Justice, hard to believe, 25 years ago, over the years, I always made it a point to visit Chambers while I was in Washington, D.C.

Now the excuse that I always gave was, oh, I need to give See's Candy to the law clerks. That wasn't the reason why I was coming by. I was coming by to visit the Justice and see how she was doing.

And I remember one time I was here to deliver See's Candy, and Judge Watford was here with me, and we were told, no, she's not available right now, but meet her in the gym, which is different than the gym where we worked out. They have a special gym now for the Justices. And we went there, and literally, she did the workout in front of us and talked to us, asked how we were doing, doing the pushups and the whole thing. It was a good day.

But, look, that's part of life. That's changed now, and I can't make those visits and none of us can. But, thankfully, her wisdom and way of doing things will never leave me, the law clerks, the Court, or our nation.

Now, before we proceed to the Court session, I would like to thank Counselor to the Chief Justice, the Honorable Robert Dow, Marshal Gail Curley, Clerk Scott Harris, Kim McKenzie, and all their staff for helping us with this memorial. Thank you very much.

**IN MEMORIAM**

(Whereupon, at 2:37 p.m., the special meeting of the Supreme Court Bar concluded.)



**Proceedings of the Bar and Officers of the  
SUPREME COURT OF THE UNITED STATES  
Friday, March 17, 2023  
3:00 p.m.**

PRESENT: CHIEF JUSTICE ROBERTS, JUSTICE THOMAS, JUSTICE ALITO, JUSTICE SOTOMAYOR, JUSTICE KAGAN, JUSTICE GORSUCH, JUSTICE KAVANAUGH, JUSTICE BARRETT, AND JUSTICE JACKSON.

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The Chief Justice said:

The Court is in Special Session this afternoon to receive the resolutions of the Bar of the Supreme Court in tribute to Justice Ruth Bader Ginsburg. The Court recognizes the Solicitor General.

The Solicitor General said:

Mr. Chief Justice, and may it please the Court:

At a meeting today of the Bar of this Court, Resolutions memorializing our deep respect and affection for Justice Ginsburg were adopted unanimously.

## **RESOLUTIONS**

Today the Bar of the Supreme Court of the United States gathers to pay tribute to Ruth Bader Ginsburg, a pathmarking advocate and jurist who served the nation for 27 years as an Associate Justice of this Court, from June 1993 to September 2020.

A Brooklynite, born and bred, Justice Ginsburg was a first-generation American on her father's side, and barely a second-generation on her mother's. She dedicated much of her life to making real the United States Constitution's promise of equality under the law and striving to achieve that founding document's aspiration that we build a "more perfect Union." As an advocate for gender equality in the 1970s, she helped transform the legal and social landscape of this country for the better, combatting discrimination and more generally laboring to open opportunities for all persons to achieve their full human potential. She continued to advance this principle during her 40 years of service as a federal judge, first on the United States Court of Appeals for the District of Columbia Circuit and then on the Supreme Court of the United States. All told, she authored over 1,100 opinions, each a model of her characteristic dedication to decency, accuracy, clarity, and efficiency. Justice Ginsburg deeply loved this country, the rule of law, and the Constitution. And she was a profoundly dedicated public servant in no small measure because she appreciated just how important her role was in ensuring that our Constitution belongs to everyone.

As the first Jewish female justice on the Supreme Court, Justice Ginsburg often commented on how her life's work aligned with the way in which the "demand for justice runs through the entirety of the Jewish tradition." She frequently observed

## IN MEMORIAM

that a critical legacy of World War II was to strengthen our national resolve to fight racism and intolerance both at home and abroad. And she displayed on the walls of her chambers an artistic rendering of the Torah's command, "justice, justice thou shalt pursue," a charge that inspired Justice Ginsburg in everything she did.

Justice Ginsburg also had a marriage for the ages, one that modeled for the world her vision of gender equality. Married 56 years to Martin D. Ginsburg, who preceded her in death in 2010, she described their union as a "partnership nonpareil." Together, they had two children, Jane and James, and proudly witnessed their family grow with the birth of grandchildren and great-grandchildren. The Ginsburgs rest together at Arlington National Cemetery.

### I

Joan Ruth Bader was born on March 15, 1933, the second daughter to Nathan and Celia Bader. Nathan had immigrated to the United States at age 13 from Odessa, and Celia had been born shortly after her family's immigration to the United States from Poland. The Bader family lived on the first floor of a rented house in a working-class neighborhood in Brooklyn, New York, among Irish, Italian, and Jewish immigrant families.

Starting in kindergarten, the future Justice began to go by her middle name because there were too many other Joans in her class at Brooklyn Elementary Public School No. 238. From her early days, she was heavily influenced by her mother, who, Ginsburg later recounted, taught her two key lessons: "One was to 'be a lady,' and that meant conduct yourself civilly, don't let emotions like anger or envy get in your way. And the other was to be independent, which was an unusual message for mothers of that time to be giving their daughters." Celia Bader regularly read to her daughter and took her on weekly outings to the public library, which Ginsburg later fondly recalled as being above a Chinese restaurant. There, she developed a love of reading and particularly enjoyed books with strong female role models who displayed courage and a sense of adventure.

Experiences during Ginsburg's young life shaped the person and lawyer she would later become. Her parents instilled in her a love for the arts — particularly opera — that she would carry with her all her life. She took inspiration from the humanity and bravery of Jewish women role models about whom her mother taught her. She also came to believe in the promise of law and embody the optimism that came in the wake of World War II, writing an editorial at age thirteen for P.S. 238's *Highway Herald* about the world's "great documents," including the Ten Commandments, the Magna Carta, the English Bill of Rights, the Declaration of Independence, and the newly adopted Charter of the United Nations. Although perhaps not evident to a girl growing up at a time when women lawyers were not yet welcome at the bar, her interests portended a future career in the law.

During her childhood, Ginsburg encountered anti-Semitism and learned hard lessons about the importance of dismantling discrimination in this country. She also experienced great tragedy. Her sister Marilyn died of meningitis before Ginsburg's second birthday. And Ginsburg lost her mother to cancer two days before graduating from high school.

## HONORABLE RUTH BADER GINSBURG

Ginsburg enrolled at Cornell University to study government. There, she studied under Vladimir Nabokov, who taught her how to use “words to paint pictures,” and Robert Cushman, who inspired her with stories of how lawyers stood up for the First Amendment during the McCarthy era. It was then that Ginsburg began to think that being a lawyer “was a pretty nifty thing.” It was also at Cornell, on a blind date in 1950, that she met Martin (“Marty”) Ginsburg. (Marty later recounted that the date was not blind on his side.) Ginsburg liked to say that Marty was “the first boy I ever dated who cared that I had a brain.” Following Ginsburg’s graduation from Cornell and Marty’s completion of his first year at Harvard Law School, the two married in 1954. What followed was a grand love affair and life partnership.

Soon after their wedding, the Ginsburgs moved to Fort Sill, Oklahoma, where Marty served in the United States Army. There, the couple welcomed daughter Jane in 1955. Ginsburg, meanwhile, worked at the local Social Security office, where she was denied a promotion when she became pregnant, an experience that would inform her later work pursuing both litigation and legislation combatting pregnancy discrimination.

In 1956, the couple moved to Cambridge, Massachusetts, for Marty to continue and Ginsburg to begin studies at Harvard Law School. One of nine women in a class of over 500 students, Ginsburg was entering a profession in which women then accounted for less than three percent of its ranks. Despite being asked by the Harvard Law School Dean Erwin Griswold to justify taking a man’s place at the school, Ginsburg excelled in law school, garnering top grades and becoming one of two women selected for the *Harvard Law Review*. To hear her tell it, studying law while mother to a young child proved an advantage. As she later explained, “each part of my life provided respite from the other and gave me a sense of proportion that classmates trained only on law studies lacked.”

During Marty’s final year and Ginsburg’s second year of law school, Marty was diagnosed with a very serious cancer. With what would become her characteristic superhuman work ethic, Ginsburg managed to support Marty during his treatments, run their household and care for Jane, keep up with her own studies, and coordinate Marty’s classmates to take notes for him, which she typed every night.

When Marty recovered and graduated in 1958, the Ginsburgs moved to New York City where a job awaited him. (Marty would later return the favor, moving to Washington, D.C., when, as he said it, his wife “got a good job there.”) For her final year of law school, Justice Ginsburg transferred to Columbia Law School.

Ginsburg graduated tied for first in her Columbia Law School class in 1959. (Harvard had refused to award her a degree; Columbia did not hesitate.) Nonetheless, she struggled to find a job given that she had three strikes against her: she was a woman, a mother, and Jewish. It took the intervention of one of her mentors, Columbia Law Professor Gerald Gunther, to secure her a clerkship with Judge Edmund Palmieri on the United States District Court for the Southern District of New York. Judge Palmieri hired Ginsburg only because Gunther promised to provide a male replacement should Ginsburg not work out and threatened to recommend no more Columbia graduates if the judge refused to give Ginsburg a chance. Judge Palmieri later referred to Ginsburg as one of his all-time best law clerks.

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In 1961, Ginsburg joined Columbia Law School's Project on International Procedure as a research associate. There, she focused on Swedish civil procedure, ultimately publishing a book on the subject. Ginsburg and Jane lived in Sweden for several months. During this time, she learned Swedish and came to appreciate Sweden's progressive social policies that advanced gender equality and enabled parents to combine work and family.

In 1963, Ginsburg joined the faculty of the Rutgers School of Law, part of the State University of New Jersey. Although the Equal Pay Act became law that same year, she was paid less than her male counterparts because, as the dean explained to her, she had a husband with a good job; male faculty had to provide for their families. Teaching on a year-to-year contract, Ginsburg later hid her pregnancy with son James, born in 1965, until she had the next year's contract in hand.

Professor Ginsburg taught Civil Procedure, Conflicts of Law, and Constitutional Law. When some of her female students asked for a seminar on women and the law, she spent a month reading every court decision and law review article she could find on the topic — “not a very taxing undertaking,” as she later described it — and initiated a course. Ginsburg and two co-authors then assembled one of the nation's first casebooks on the subject.<sup>1</sup> Meanwhile, in 1972, following the extension of Title VII's prohibition of gender discrimination in employment to educational institutions, Columbia Law School hired Ginsburg to become its first tenured female faculty member.

That same year, Ginsburg helped found the Women's Rights Project (“WRP”) at the American Civil Liberties Union (“ACLU”). She would later also serve as one of the ACLU's four General Counsels. As head of WRP, she argued six gender-discrimination cases at the Supreme Court of the United States in the 1970s and wrote or co-authored numerous briefs in additional cases. Ginsburg's work at the WRP followed on the heels of her having handled with Marty what would be the first of many cases in which she would present courts with male plaintiffs to underscore how gender-based classifications hold back all persons — not just women. In *Moritz v. Commissioner of Internal Revenue*,<sup>2</sup> the two successfully challenged as violative of the Fifth Amendment's equal protection component a federal tax law that disallowed a caregiver deduction to a never-married man when a female in the same circumstances could have claimed the deduction. In response to their victory in the case, Congress amended the law, leading the Supreme Court to deny review of the case. Meanwhile, the Solicitor General had appended to his petition for certiorari in the case a list of every federal law that included classifications based on gender. Ginsburg and her colleagues now had a road map for all the laws that they would seek to change, whether through litigation or legislation.

Ginsburg's work with WRP began in earnest when she served as principal drafter of the ACLU brief in *Reed v. Reed*,<sup>3</sup> leading to the first Supreme Court decision ever

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<sup>1</sup> Kenneth M. Davidson, Ruth Bader Ginsburg, and Herma Hill Kay, *Cases and Materials on Sex-Based Discrimination* (1974).

<sup>2</sup> 469 F. 2d 466 (CA10 1972), cert. denied, 412 U.S. 906 (1973).

<sup>3</sup> 404 U.S. 71 (1971).

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to invalidate a gender-based classification. Ginsburg included the names of feminists Dorothy Kenyon and Pauli Murray on her brief as symbolic acknowledgement of the intellectual debt owed to them. Here and in the cases that followed, Ginsburg argued that gender classifications put women, not on a “pedestal,” but all too often, “upon closer inspection,” in a “cage.”<sup>4</sup>

In 1973, Ginsburg presented her first oral argument to the Court in *Frontiero v. Richardson*,<sup>5</sup> representing Sharon Frontiero, an Air Force officer who challenged the military’s policy of automatically providing certain dependency benefits to military wives but not military husbands. Speaking for over ten minutes uninterrupted, Ginsburg’s oral argument was a masterclass performance. Frontiero prevailed by a margin of 8-1, but Ginsburg fell one vote short of convincing the Court to hold that gender-based classifications should receive the same level of strict scrutiny as race-based classifications.

All the same, Ginsburg’s track record before the federal courts during the 1970s was nothing short of historic. In addition to *Moritz*, *Reed*, and *Frontiero*, Ginsburg pursued successful litigation promoting the equal citizenship stature of women and men as a fundamental constitutional principle in a host of cases, including, among many others, a challenge to the automatic discharge of pregnant Air Force officers,<sup>6</sup> the routine exemption of women from jury pools,<sup>7</sup> the denial of equal social security benefits to men and women caregivers,<sup>8</sup> the denial of unemployment benefits to pregnant women,<sup>9</sup> the denial of equal social security benefits to male surviving spouses,<sup>10</sup> and the limitation of assignments available to women in the Navy.<sup>11</sup> One of her favorite clients during this period was Stephen Wiesenfeld, who, in the wake of the tragic loss of his wife in childbirth, wished to stay home with the help of social security benefits to raise his son, but had been denied benefits where a widow would have received them. In Wiesenfeld’s case, Ginsburg saw the embodiment of the ideal that

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<sup>4</sup> Brief for Appellant at 21, *Reed v. Reed*, 404 U.S. 71 (1971) (No. 70–430).

<sup>5</sup> 411 U.S. 677 (1973).

<sup>6</sup> *Struck v. Secretary of Defense*, cert. granted, 409 U.S. 947, judgment vacated, 409 U.S. 1071 (1972). During this same period, Justice Ginsburg represented a Black woman, Nial Ruth Cox, who had been subjected to forced sterilization as part of a state eugenics program tied to public assistance. The case helped usher an end to the program along with state reparations. See *Cox v. Stanton*, 381 F. Supp. 349 (EDNC 1974), rev’d, 529 F. 2d 47 (CA4 1975).

<sup>7</sup> *Healy v. Edwards*, 363 F. Supp. 1110 (EDLA 1973), vacated for determination of mootness, 421 U.S. 772 (1975); see also *Duren v. Missouri*, 439 U.S. 357 (1979) (same).

<sup>8</sup> *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975).

<sup>9</sup> *Turner v. Department of Employment Security*, 423 U.S. 44 (1975) (*per curiam*).

<sup>10</sup> *Califano v. Goldfarb*, 430 U.S. 199 (1977).

<sup>11</sup> *Owens v. Brown*, 455 F. Supp. 291 (DC 1978). Ginsburg also supported a lawsuit by female cleaning staff at Columbia — mostly low-wage women of color — who had been fired by the University because of seniority rules that imposed what amounted to a blanket preference for male workers.

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only when partners truly share parenting responsibilities would society witness true gender equality.<sup>12</sup>

In addition, Ginsburg and the WRP played a role in securing the 1972 passage of Title IX,<sup>13</sup> which promised women equal opportunities in education. Later, WRP helped usher passage of the Pregnancy Discrimination Act of 1978<sup>14</sup> in response to two Supreme Court decisions that declined to recognize pregnancy discrimination as gender-based discrimination.<sup>15</sup> Ginsburg also authored numerous journal articles, wrote newspapers to encourage accurate coverage of WRP's work, and supported student law review editors as they wrote about recent gender discrimination cases and developments. And Ginsburg traveled throughout the country, testifying before state legislatures in support of the Equal Rights Amendment and speaking to audiences to raise awareness of WRP's important work.

By the end of the 1970s, Ginsburg's work with WRP had dramatically advanced the constitutional and social landscape in the United States. She was now ready to serve the country in a new role.

## II

On April 14, 1980, President Jimmy Carter nominated Ruth Bader Ginsburg to the Court of Appeals for the District of Columbia Circuit. The Senate confirmed her nomination two months later. Judge Ginsburg quickly made her judicial mark, authoring the majority opinion for the first case she heard as part of an *en banc* court. The case, *United States v. Ross*,<sup>16</sup> challenged the warrantless search of a paper bag seized from the trunk of a car. Supreme Court precedent at that time forbade warrantless searches of suitcases stowed in a trunk but said nothing of the status of other containers.

Writing for seven members of the court, Judge Ginsburg concluded that “the Fourth Amendment protects all persons,” including “those without the means” to purchase locked luggage.<sup>17</sup> The opinion signaled her care for the disadvantaged as well as her ability to make abstract legal issues concrete. Judge Ginsburg secured the majority assignment in part because she brought an array of bags with her to the judges' conference. How, she asked her colleagues, would they distinguish among the bags for Fourth Amendment purposes? And why would the Fourth Amendment protect people who could afford one type of bag but not another? Her opinion for the

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<sup>12</sup> The child, Jason Paul Wiesenfeld, eventually graduated from Columbia Law School. Justice Ginsburg remained close with the family for the rest of her life. See Stephen Wiesenfeld, *My Journey with RBG*, 121 Colum. L. Rev. 563 (2021).

<sup>13</sup> Title IX of the Education Amendments of 1972, Pub. L. No. 92–318, 86 Stat. 373 (codified as amended at 20 U.S.C. §§ 1681-88).

<sup>14</sup> Pub. L. No. 95–555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k)).

<sup>15</sup> See *Geduldig v. Aiello*, 417 U.S. 484 (1974); *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125 (1976).

<sup>16</sup> 655 F. 2d 1159 (CADC 1981) (*en banc*), *rev'd*, 456 U.S. 798 (1982).

<sup>17</sup> *Id.*, at 1161, 1170.

## HONORABLE RUTH BADER GINSBURG

court drove home the point by recognizing the Fourth Amendment interests of persons living “with their few belongings stuffed into paper shopping bags.”<sup>18</sup>

Judge Ginsburg also wrote the majority opinion in a case that engaged two of her primary jurisprudential concerns: racial equity and access to the courts. In *Wright v. Regan*,<sup>19</sup> the parents of Black schoolchildren filed a class action claiming inaction by the Internal Revenue Service was allowing racially discriminatory private schools to maintain tax-exempt status. Rejecting an argument that the parents lacked standing, Judge Ginsburg concluded that the courts should be open to the parents’ claim. In so doing, she upheld “the right of black citizens to insist that their government ‘steer clear’ of aiding schools . . . that practice race discrimination” while emphasizing “the centrality of that right in our contemporary (post-Civil War) constitutional order.”<sup>20</sup>

Judge Ginsburg’s most high-profile opinion on the Court of Appeals may have been her dissent in *In re Sealed Case*.<sup>21</sup> The majority in that case struck down the independent counsel sections of the Ethics in Government Act of 1978.<sup>22</sup> In dissent, Judge Ginsburg lauded the statute for “striv[ing] to maintain the structural design that is the genius of our Constitution — the system of mutual checks and balances.”<sup>23</sup> She systematically refuted each of the challengers’ attacks on the statute, showing that the provision was “a measure faithful to the eighteenth century blueprint, yet fitting for our time.”<sup>24</sup> The Supreme Court vindicated her opinion, reversing the panel decision and upholding the independent counsel in an opinion echoing much of her reasoning.<sup>25</sup>

Here and elsewhere, Judge Ginsburg established herself as a respected and careful jurist. Her opinions likewise reflected her belief that “the effective judge . . . strives to persuade, and not to pontificate.”<sup>26</sup>

### III

Following the retirement of Justice Byron White, President Bill Clinton nominated Ruth Bader Ginsburg to be an Associate Justice of the Supreme Court on June 22, 1993. At her confirmation hearings before the Senate Judiciary Committee, Judge Ginsburg proudly introduced herself as the child of immigrants. “Neither of my parents had the means to attend college,” she said, “but both taught me to love learning, to care about people, and to work hard for whatever I wanted or believed in.” She continued: “What has become of me could happen only in America. Like so many

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<sup>18</sup> *Id.*, at 1170 n.30 (quoting *The Washington Post*, Dec. 15, 1980, at C1, col. 3). The Supreme Court reversed, although it agreed with Judge Ginsburg that the Fourth Amendment does not distinguish among containers. The Court instead expanded the automobile exception to approve the search. *Ross*, 456 U.S. 798.

<sup>19</sup> 656 F. 2d 820 (CA DC 1981), rev’d sub nom. *Allen v. Wright*, 468 U.S. 737 (1984).

<sup>20</sup> 656 F. 2d, at 832. Reversing, the Supreme Court narrowed the concept of standing from that found in precedent relied upon by Judge Ginsburg.

<sup>21</sup> 838 F. 2d 476 (CA DC 1988), rev’d sub nom. *Morrison v. Olson*, 487 U.S. 654 (1988).

<sup>22</sup> 28 U.S.C. §§ 49, 591 *et seq.* (1982 ed., Supp. V).

<sup>23</sup> 838 F. 2d, at 518, 518 (Ginsburg, J., dissenting).

<sup>24</sup> *Id.*, at 536.

<sup>25</sup> *Morrison*, 487 U.S. 654.

<sup>26</sup> Ruth Bader Ginsburg, *Speaking in a Judicial Voice*, 67 N.Y.U. L. Rev. 1185, 1186 (1992).

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others, I owe so much to the entry this nation afforded to people yearning to breathe free.”<sup>27</sup>

As only the second woman ever nominated to serve on the Supreme Court, Judge Ginsburg recognized that she “surely would not be in this room today . . . without the determined efforts of men and women who kept dreams of equal citizenship alive in days when few would listen.”<sup>28</sup> She also explained that Supreme Court Justices “do not guard constitutional rights alone. Courts share that profound responsibility with Congress, the President, the States, and the People.” “Constant realization of a more perfect Union, the Constitution’s aspiration,” she observed, “requires the widest, broadest, deepest participation on matters of government and government policy.”<sup>29</sup>

On August 3, 1993, the Senate voted 96-3 to confirm Ruth Bader Ginsburg to serve as the 107<sup>th</sup> Justice of the Supreme Court, and she took the oath on August 10, 1993. Hers was, by one account, “one of the most harmonious court confirmations in recent history.”<sup>30</sup>

Over the next 27 years, Justice Ginsburg left an indelible mark on the law in countless ways. Throughout, she celebrated, as she wrote in her opinion for the Court in *United States v. Virginia*, that “[a] prime part of the history of our Constitution . . . is the story of the extension of constitutional rights and protections to people once ignored or excluded.”<sup>31</sup> More generally, Justice Ginsburg amassed a record that represents the best qualities a judge can have: lawyerly precision, an appreciation for the importance of procedural integrity, a commitment to opening up access to the justice system so as to ensure that “the least shall be heard and considered side by side with the greatest,”<sup>32</sup> a recognition of the importance of governmental accountability under law, and an unwavering dedication to make every effort to understand how the Court’s work intersected with the lived experiences of all persons.

Central to Justice Ginsburg’s legacy are the opinions throughout her tenure on the Court in which she remained committed to the idea that all persons should be afforded what she called “equal citizenship stature” under the Constitution. Her landmark 1996 opinion for the Court in *United States v. Virginia* is a standard-bearer in this regard.<sup>33</sup> The Court there confronted a challenge to the Virginia Military Institute’s (“VMI”) refusal to admit women cadets. Justice Ginsburg situated VMI’s practices within the country’s “long and unfortunate history of sex discrimination.” That history, she observed, included “a century plus three decades and more” during

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<sup>27</sup> S. HRG. 103–482, Hearings Before the Committee on the Judiciary of the United States Senate, 103rd Cong., 1st Sess., *The Nomination of Ruth Bader Ginsburg to be Associate Justice of the Supreme Court of the United States*, July 20–23, 1993, 46 (U.S. Government Printing Office, 1994) (hereinafter “Hearings”).

<sup>28</sup> *Id.*, at 50 (stating that she “stands on the shoulders” of trailblazers like Susan B. Anthony, Elizabeth Cady Stanton, and Harriet Tubman).

<sup>29</sup> *Ibid.*

<sup>30</sup> Joan Biskupic, *Senate, 96-3, Approves Ginsburg as 107th Supreme Court Justice*, N.Y. Times, Aug. 4, 1993.

<sup>31</sup> 518 U.S. 515, 557 (1996).

<sup>32</sup> Hearings, *supra*, at 50–51 (referencing Judge Learned Hand’s *Spirit of Liberty*).

<sup>33</sup> 518 U.S. 515 (1996).



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which “women did not count among voters composing ‘We the People,’” and an additional “half century [during which] government . . . could withhold from women opportunities accorded men so long as any ‘basis in reason’ could be conceived for the discrimination.”<sup>34</sup> With the Court at long last having come to view discrimination on the basis of gender as constitutionally suspect in the 1970s, she observed, women finally enjoyed “full citizenship stature” and the “equal opportunity to aspire, achieve, participate in and contribute to society based on their individual talents and capacities.”<sup>35</sup> Thus, Justice Ginsburg wrote, “generalizations about ‘the way women are,’ estimates of what is appropriate for *most women*, no longer justify denying opportunity to women whose talent and capacity place them outside the average description.”<sup>36</sup> True gender equality meant the freedom to realize one’s full potential, unencumbered by historical gender stereotypes or expectations.<sup>37</sup>

An abiding belief that the Constitution’s promise of equality should enable each person to chart their own life course also informed Justice Ginsburg’s jurisprudence on reproductive rights. In *Gonzales v. Carhart*,<sup>38</sup> she dissented from the Court’s decision upholding a nationwide ban on an abortion procedure deemed necessary in certain cases by the American College of Obstetricians and Gynecologists. Relying on the Court’s earlier decision in *Planned Parenthood of Southeastern Pa. v. Casey*,<sup>39</sup> Justice Ginsburg emphasized that the ability of women “to realize their full potential . . . is intimately connected to ‘their ability to control their reproductive lives.’”<sup>40</sup> Thus, she argued, “legal challenges to undue restrictions on abortion procedures do not seek to vindicate some generalized notion of privacy; rather, they center on a woman’s autonomy to determine her life’s course, and thus to enjoy equal citizenship stature.”<sup>41</sup> Here and elsewhere, Justice Ginsburg remained steadfast in her belief stated during her 1993 confirmation proceedings that “[t]he decision whether or not to bear a child is central to a woman’s life, to her well-being and dignity,” and that “[w]hen

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<sup>34</sup> *Id.*, at 531.

<sup>35</sup> *Id.*, at 532.

<sup>36</sup> *Id.*, at 550.

<sup>37</sup> The same principle animated Justice Ginsburg’s many votes in support of equal citizenship stature for those who had been the subject of discrimination based on gender identity and/or sexual orientation. See, e.g., *United States v. Windsor*, 570 U.S. 744 (2013) (holding the Defense of Marriage Act unconstitutional); *Obergefell v. Hodges*, 576 U.S. 644 (2015) (holding that the Fourteenth Amendment requires states to license and recognize marriages between persons of the same sex).

<sup>38</sup> 550 U.S. 124 (2007).

<sup>39</sup> 505 U.S. 833 (1992).

<sup>40</sup> 550 U.S., at 171 (Ginsburg, J., dissenting) (quoting *Casey*, 505 U.S., at 869).

<sup>41</sup> *Ibid.* Justice Ginsburg took particular exception with the majority’s reliance on “an antiabortion shibboleth for which it concededly has no reliable evidence: Women who have abortions come to regret their choices, and consequently suffer from [s]evere depression and loss of esteem.” *Id.*, at 183 (quoting majority opinion). As she explained, “[t]his way of thinking reflects ancient notions about women’s place in the family and under the Constitution — ideas that have long since been discredited.” *Id.*, at 185.

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Government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choices.”<sup>42</sup>

Justice Ginsburg reiterated this longstanding view in numerous opinions during her tenure on the Court, including her final opinion, a dissent in *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*.<sup>43</sup> There, she once again discussed the centrality of reproductive choice to women’s equality, finding fault with the majority’s decision to limit yet further the reach of the Affordable Care Act’s contraceptive mandate and leave potentially half a million women workers, as she put it, to “fend for themselves.”<sup>44</sup>

On issues of race-based equality, Justice Ginsburg’s approach likewise proceeded from an attentiveness to this Nation’s particular history of racial inequality and discrimination, and the relationship between that history and ability of persons to enjoy the benefits of full citizenship. In *Gratz v. Bollinger*,<sup>45</sup> for example, Justice Ginsburg dissented from the Court’s decision striking down the University of Michigan’s consideration of race in its undergraduate student admissions process. Justice Ginsburg thought the majority’s application of strict scrutiny unwarranted, positing: “In implementing [the Equal Protection Clause’s] equality instruction, as I see it, government decisionmakers may properly distinguish between policies of exclusion and inclusion. . . . Actions designed to burden groups long denied full citizenship stature are not sensibly ranked with measures taken to hasten the day when entrenched discrimination and its aftereffects have been extirpated.”<sup>46</sup> In her view, the majority had undervalued the concrete interest of historically disadvantaged racial groups in overcoming racial oppression and achieving genuine equality.<sup>47</sup>

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<sup>42</sup> Hearings, *supra*, at 207. Before joining the Court, then-Judge Ginsburg criticized certain aspects of the Court’s decision in *Roe v. Wade*, 410 U.S. 113 (1973). In so doing, however, she was unreserved in affirming her belief that reproductive freedom is imperative for “a woman’s autonomous charge of her full life’s course” and “ability to stand in relation to man, society, and the state as an independent, self-sustaining, equal citizen.” Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. Rev. 375, 383 (1985); see also Ginsburg, *Speaking in a Judicial Voice*, *supra*, at 1199, 1202 (invoking *Casey*’s recognition of the “intimate connection between a woman’s ‘ability to control [her] reproductive life’ and her ‘ability . . . to participate equally in the economic and social life of the Nation” and noting that regulation of a woman’s reproductive choices can present “a paradigm case of discrimination on the basis of sex”).

<sup>43</sup> 140 S. Ct. 2367 (2020) (Ginsburg, J., dissenting); see also *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 741–43, 761–63 (2014) (Ginsburg, J., dissenting) (dissenting from the Court’s earlier narrowing of the same mandate).

<sup>44</sup> 140 S. Ct., at 2400; see also Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111–148, 124 Stat. 119 (codified in scattered sections of 21, 25, 26, 29, and 42 U.S.C.).

<sup>45</sup> 539 U.S. 244 (2003).

<sup>46</sup> *Id.*, at 301 (Ginsburg, J., dissenting).

<sup>47</sup> In keeping with this idea, Justice Ginsburg believed Congress, in exercising its Fourteenth Amendment authority to “enforce” equal protection through “appropriate legislation” could take measures to address historical and ongoing patterns of race discrimination and “conclude that a carefully designed affirmative action program may help to realize, finally, the ‘equal protection of the laws’ the Fourteenth Amendment has promised since 1868.” *Adarand v. Peña*, 515 U.S. 200, 274 (1995) (Ginsburg, J., dissenting) (quoting U.S. Const., amend. XIV, § 5). See

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A similar context-sensitive, formality-eschewing approach is evident in Justice Ginsburg’s assessment of legislative efforts to promote equality. An example may be found in her opinions interpreting the Americans with Disabilities Act. In *Tennessee v. Lane*, Justice Ginsburg described the Act as “a measure expected to advance equal-citizenship stature for persons with disabilities.”<sup>48</sup> Congress, she wrote, appreciated that “including individuals with disabilities among people who count in composing ‘We the People’ . . . would sometimes require not blindfolded equality, but responsiveness to difference; not indifference, but accommodation.”<sup>49</sup> It followed, Justice Ginsburg believed, that the law sometimes required accommodating difference to better secure equal stature for those otherwise at risk of marginalization or exclusion.<sup>50</sup>

Justice Ginsburg viewed matters of church and state as raising similar questions about equal citizenship stature. In *American Legion v. American Humanist Association*,<sup>51</sup> for example, she dissented from the Court’s holding that a thirty-two-foot high cross on public land, erected to honor soldiers who had died in World War I, was compatible with the First Amendment’s Establishment Clause.<sup>52</sup> Justice Ginsburg disagreed with the Court’s determination that the cross, “the foremost symbol of the Christian faith,” is “transform[ed] into a secular symbol” when used as a war memorial.<sup>53</sup> “Just as a Star of David is not suitable to honor Christians who died serving their country,” she reasoned, “so a cross is not suitable to honor those of other faiths who died defending their nation.”<sup>54</sup> Here again, her analysis was animated by a concern with inequality and exclusion. “To non-Christians, nearly 30% of the population of the United States . . . , the State’s choice to display the cross on public buildings or spaces conveys a message of exclusion: It tells them they ‘are outsiders, not full members of the political community.’”<sup>55</sup>

Building on these same principles, Justice Ginsburg’s jurisprudence in the electoral context consistently stressed the importance of the judiciary’s role in protecting the equal citizenship stature of voters. Nowhere was this more evident than in her dissent, joined by three Justices, to the Court’s 2013 decision in *Shelby County v. Holder*.<sup>56</sup> In that case, the Court struck down as unconstitutional the preclearance requirements of the Voting Rights Act of 1965 (“VRA”).<sup>57</sup> In so doing, Justice

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also *ibid.* (observing that “[b]ias both conscious and unconscious, reflecting traditional and unexamined habits of thought, keeps up barriers that must come down if equal opportunity and nondiscrimination are ever genuinely to become this country’s law and practice”).

<sup>48</sup> 541 U.S. 509, 536 (2004) (Ginsburg, J., concurring).

<sup>49</sup> *Ibid.*

<sup>50</sup> See also *Olmstead v. L.C.*, 527 U.S. 581 (1999) (Ginsburg, J., for the Court) (offering similar observations in another Americans with Disabilities Act case).

<sup>51</sup> 139 S. Ct. 2067 (2019).

<sup>52</sup> *Id.*, at 2103 (Ginsburg, J., dissenting).

<sup>53</sup> *Id.*, at 2104.

<sup>54</sup> *Ibid.*

<sup>55</sup> *Id.*, at 2106 (quoting *County of Allegheny v. American Civil Liberties Union*, 492 U.S. 573, 625 (O’Connor, J., concurring in part and concurring in judgment)).

<sup>56</sup> 570 U.S. 529 (2013).

<sup>57</sup> Voting Rights Act of 1965, Pub. L. No. 89-110, §§ 4, 5, 79 Stat. 437 (codified as amended at 52 U.S.C. § 10303 (2012)).

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Ginsburg believed, the Court had undermined “one of the most consequential, efficacious, and amply justified exercises of federal legislative power in our Nation’s history.”<sup>58</sup>

Emphasizing “the right to vote” is “preservative of all rights,”<sup>59</sup> Justice Ginsburg offered a painstaking account of the evidentiary record supporting the importance of the VRA and its role in protecting expansive ballot access by ridding “all vestiges of discrimination against the exercise of the franchise by minority citizens.”<sup>60</sup> She pointed to the text of the Fourteenth and Fifteenth Amendments granting Congress enforcement powers, concluding “substantial deference” was owed to Congress’ judgment in this realm.<sup>61</sup> It followed, in her view, that Congress was well within its powers to leave the VRA preclearance framework in place both to combat discriminatory voting practices still in place and “guard against backsliding.”<sup>62</sup>

Her dissent in *Shelby County* reflects many of Justice Ginsburg’s hallmark characteristics as a judge. There, she consulted both constitutional text and precedent, while also taking account of both the “letter” and “spirit” of relevant constitutional principles. Justice Ginsburg also accounted for historical context and purpose. Thus, here, she emphasized “the transformative effect the Fifteenth Amendment aimed to achieve.”<sup>63</sup>

More generally, as her *Shelby County* dissent reveals, Justice Ginsburg was always careful to avoid rhetoric that might outstrip the substance or precision of her position, allowing for the strength of her own arguments to determine their persuasive force. Case in point, her memorable and incisive summary of her position in the case: Throwing out core provisions of the VRA “when it has worked and is continuing to work to stop discriminatory changes,” she wrote, “is like throwing away your umbrella in a rainstorm because you are not getting wet.”<sup>64</sup>

In other cases implicating the democratic process, Justice Ginsburg consistently ruled in favor of bolstering the democratic process by ensuring that exercise of the franchise would be unencumbered from outside interference.<sup>65</sup> Writing for the Court

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<sup>58</sup> *Id.*, at 562 (Ginsburg, J., dissenting).

<sup>59</sup> *Id.*, at 566 (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)).

<sup>60</sup> In announcing her dissent from the bench, Justice Ginsburg summarized the remaining barriers to “minority voting clout” detailed in her opinion this way: “There were many, they were shocking, and they were recent.” Oral Dissent of Justice Ginsburg, *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013) (No. 12–96), reproduced in Ruth Bader Ginsburg & Amanda L. Tyler, Justice, Justice Thou Shalt Pursue: A Life’s Work Fighting for a More Perfect Union 171 (2021).

<sup>61</sup> 570 U.S., at 566 (Ginsburg, J., dissenting).

<sup>62</sup> As Justice Ginsburg vividly explained, “Just as buildings in California have a greater need to be earthquake-proofed, places where there is greater racial polarization in voting have a greater need for prophylactic measures to prevent purposeful race discrimination.” *Id.*, at 578.

<sup>63</sup> *Id.*, at 567; see also *Eldred v. Ashcroft*, 537 U.S. 186, 199–204 (2003) (consulting “[t]ext, history, and precedent” in Copyright Clause case); *id.*, at 200 (observing that “[t]o comprehend the scope of Congress’ power” in interpreting constitutional provisions, “a page of history is worth a volume of logic”) (quoting *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921) (Holmes, J.)).

<sup>64</sup> 570 U.S., at 590 (Ginsburg, J., dissenting).

<sup>65</sup> One of Justice Ginsburg’s last opinions falls into this category. See *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1208, 1211 (2020) (Ginsburg, J., dissenting) (arguing

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in *Arizona State Legislature v. Arizona Independent Redistricting Commission*,<sup>66</sup> she upheld assignment of drawing redistricting maps to an independent commission insulated from partisan politics. By amending their state constitution to provide for such a process, Justice Ginsburg wrote, “Arizona voters sought to restore the core principle . . . that the voters should choose their representatives, not the other way around.”<sup>67</sup> Doing so, she reasoned, was consistent with the Constitution’s Elections Clause,<sup>68</sup> and the states’ prerogative to define for themselves their lawmaking processes. The related concern of ensuring that “representatives serve all residents, not just those eligible or registered to vote” similarly informed Justice Ginsburg’s opinion for the Court in *Evenwel v. Abbott*.<sup>69</sup>

Throughout her tenure on the Court, Justice Ginsburg consistently took care to consider how the law operated on the ground. This often required shining a light on those realities when she believed the Court disregarded them in reaching its decisions. A classic example is Justice Ginsburg’s dissent in *Ledbetter v. Goodyear Tire & Rubber Co.*<sup>70</sup> There, the Court held that Lilly Ledbetter’s long-running gender-based pay discrimination claims were untimely, ruling that such claims must be brought within 180 days of each separate pay decision. Justice Ginsburg’s dissent objected to the Court’s unduly cramped reading of Title VII as out of step with how pay discrimination works in the real world. As she phrased it in announcing her dissent from the bench, “the Court does not comprehend, or is indifferent to, the insidious way in which women can be victims of pay discrimination.”<sup>71</sup>

As Justice Ginsburg explained in her opinion, unlike other adverse employment actions like discriminatory denial of promotion or hiring, “[p]ay disparities often occur . . . in small increments” and “cause to suspect that discrimination is at work develops only over time.”<sup>72</sup> Likewise, she observed, “[c]omparative pay information . . . is often hidden from the employee’s view.”<sup>73</sup> Finally, Justice Ginsburg noted that “the

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in favor of measures to ensure that “tens of thousands of Wisconsin citizens can vote safely in the midst of a pandemic”).

<sup>66</sup> 576 U.S. 787 (2015).

<sup>67</sup> *Id.*, at 824 (internal quotation marks and citations omitted); see also *id.*, at 813 (referencing “the animating principle of our Constitution that the people themselves are the originating source of all the powers of government”). This same idea explains Justice Ginsburg’s votes in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), see *id.*, at 393 (Stevens, J., concurring in part and dissenting in part) (joined by Ginsburg, Breyer, and Sotomayor, JJ.), and *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), see *id.*, at 2508 (Kagan, J., dissenting) (joined by Ginsburg, Breyer, and Sotomayor, JJ.).

<sup>68</sup> U.S. Const. art. I, § 4.

<sup>69</sup> 578 U.S. 54, 74 (2016); see *id.*, at 72 (holding that states may draw districting lines based on total population because “equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives”) (international quotation marks and citation omitted).

<sup>70</sup> 550 U.S. 618 (2007).

<sup>71</sup> Oral Dissent of Justice Ginsburg, *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007) (No. 05–1074), reproduced in Ginsburg & Tyler, *supra*, at 143; see 42 U.S.C. § 2000e–2(a)(1) (prohibiting sex discrimination in employment).

<sup>72</sup> 550 U.S., at 645 (Ginsburg, J., dissenting).

<sup>73</sup> *Ibid.*

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employee, trying to succeed in a nontraditional environment,” may be “averse to making waves” by complaining about suspected discrimination with anything short of overwhelming evidence.<sup>74</sup> Although Justice Ginsburg’s account of the realities of pay discrimination did not convince a majority of her colleagues, it did spur Congress to amend Title VII to adopt her position and protect employees facing similar circumstances going forward.<sup>75</sup>

Justice Ginsburg’s dissent in *Burwell v. Hobby Lobby Stores, Inc.*,<sup>76</sup> is in a similar vein. There, the Court held that the Religious Freedom Restoration Act<sup>77</sup> entitled for-profit corporations to refuse on religious grounds to comply with the Affordable Care Act’s contraceptive coverage mandate applicable to employers. Highlighting the compelling governmental interests at stake in the case she believed the majority had overlooked, Justice Ginsburg noted that contraception coverage “enables women to avoid the health problems unintended pregnancies may visit on them and their children”; “helps safeguard the health of women for whom pregnancy may be hazardous, even life threatening”; and “secures benefits wholly unrelated to pregnancy, preventing certain cancers, menstrual disorders, and pelvic pain.”<sup>78</sup>

Similarly, in *Safford Unified School District #1 v. Redding*,<sup>79</sup> Justice Ginsburg wrote separately to describe in vivid terms the nature of a “humiliating stripdown search” of a thirteen-year-old schoolgirl conducted by school officials.<sup>80</sup> Agreeing with the Court that the search violated the Fourth Amendment, Justice Ginsburg went on to argue that school officials should not enjoy qualified immunity for their “[a]buse of authority.”<sup>81</sup> In so doing, Justice Ginsburg’s opinion gave voice to the real-world impact of the mistreatment of the student, drawing attention to the abusive power dynamic in the situation while urging the Court majority to reckon with those realities.

## IV

Justice Ginsburg proudly served as the Court’s resident expert on matters of procedure. She once said, “I would love to write all of the procedure decisions at the Supreme Court, but none of us are allowed to be specialists.” All the same, her numerous opinions on the subject implicated every aspect of the field, speaking to the *Erie* doctrine, jurisdiction, aggregate litigation, claim preclusion, and much more. The resounding themes found throughout her procedure opinions emphasized systemic integrity and the importance of ensuring fair access to court, especially for the less powerfully situated.

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<sup>74</sup> *Ibid.*

<sup>75</sup> See Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111–2, 123 Stat. 5 (codified as amended in scattered sections of 29 U.S.C. and 42 U.S.C.).

<sup>76</sup> 573 U.S. 682 (2014).

<sup>77</sup> Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb *et seq.*

<sup>78</sup> 573 U.S., at 761 (Ginsburg, J., dissenting); see also *id.*, at 762 (observing that the cost of obtaining certain contraceptives at issue “is nearly equivalent to a month’s full-time pay for workers earning the minimum wage”).

<sup>79</sup> 557 U.S. 364 (2009).

<sup>80</sup> *Id.*, at 381 (Ginsburg, J., concurring in part and dissenting in part).

<sup>81</sup> *Id.*, at 382.

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Justice Ginsburg was particularly aware of the special leverage that collective litigation offers parties where there is an imbalance of power. In many such cases, she combined this awareness with a recognition of the realities of how individuals experience discrimination on the ground. In the class action context, she consistently opposed the Court's increasingly restrictive approach to class certification under Rule 23 of the Federal Rules of Civil Procedure. In *Wal-Mart Stores v. Dukes*, an employment discrimination class action brought by 1.5 million current and former female Wal-Mart employees, the Court heard their argument that, among other things, the company's policy of giving discretion to local managers over pay and promotions was "exercised disproportionately in favor of men."<sup>82</sup> Disagreeing with the majority, Justice Ginsburg contended that the question whether a subjective, discretionary promotion system was discriminatory was common to the class and therefore counseled in favor of class certification. To illustrate the power of subconscious bias and how "subjective decisionmaking can be a vehicle for discrimination," she invoked one of her favorite examples: how it took blind auditions to open symphony orchestra positions to women.<sup>83</sup> Observing that Rule 23(a)'s threshold inquiry for certification was intended to be "easily satisfied," she rejected the majority's adoption of a burdensome inquiry that turned deserving litigants away at the courthouse doors.<sup>84</sup>

Justice Ginsburg predicated additional dissents in the class action context on similar concerns.<sup>85</sup> She likewise took pains to highlight "the labor market imbalance" that gave rise to federal labor laws, along with "the destructive consequences of diminishing the right of employees 'to band together in confronting an employer.'"<sup>86</sup>

Those same concerns regarding access to justice, combined with a sensitivity to the evolving needs of the modern national economy, informed Justice Ginsburg's approach to matters of territorial jurisdiction. She offered her own methodology as to how to approach such questions in a pair of cases argued the same day: *McIntyre Machinery, Ltd. v. Nicastro*<sup>87</sup> and *Goodyear Dunlop Tires Operations, S.A. v. Brown*.<sup>88</sup> *McIntyre* concerned an injury that took place in New Jersey caused by a machine imported from the United Kingdom. Parting company with the majority, Justice Ginsburg would have upheld jurisdiction over the foreign manufacturer at the place of injury, notwithstanding the fact its marketing strategy had targeted the

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<sup>82</sup> 564 U.S. 338, 344 (2011).

<sup>83</sup> *Wal-Mart Stores*, 564 U.S., at 373 n.6 (Ginsburg, J., concurring in part and dissenting in part).

<sup>84</sup> *Id.*, at 376 (Ginsburg, J., concurring in part and dissenting in part).

<sup>85</sup> See, e.g., *Comcast Corp. v. Behrend*, 569 U.S. 27, 41 (2013) (Ginsburg and Breyer, JJ., dissenting) (disagreeing that a showing of damages be provable on a class-wide basis as a prerequisite to certification).

<sup>86</sup> *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612, 1633 (2018) (Ginsburg, J., dissenting) (arguing that the collective action protections of the National Labor Relations Act precluded enforcement of an employment agreement that mandated individual arbitration to resolve employer-related disputes); see also *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1420 (2019) (Ginsburg, J., dissenting) (arguing against precluding class arbitration by wronged employees and consumers).

<sup>87</sup> 564 U.S. 873 (2011).

<sup>88</sup> 564 U.S. 915 (2011).

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United States as a whole instead of the particular State. Pointing out that the Court’s ruling could leave the injured party without a domestic forum, she accused the Court of “turn[ing] the clock back to the days” when manufacturers could avoid litigation by simply using an independent distributor, while grounding her opinion in practical, common-sense understandings of modern marketing arrangements.<sup>89</sup>

In *Goodyear*, by contrast, Justice Ginsburg wrote for the Court and brought much-needed clarity to the doctrine of general jurisdiction. Her opinion also illustrates how her devotion to procedural integrity cared as much about the rights of defendants as plaintiffs. Because a finding of general jurisdiction subjects a defendant to suit for any act committed anywhere, Justice Ginsburg recognized how a broad rule could reach a host of corporations who today “do business” in many places. Accordingly, she led her colleagues on a multi-case process of revising, clarifying, and modernizing the standard, resulting in a rule that subjects companies to general jurisdiction only in those few places where they would be considered “essentially at home.”<sup>90</sup> In her opinions, one sees how Justice Ginsburg viewed the relationship between specific and general jurisdiction as a carefully calibrated balance. More generally, they reflect the care with which she approached foundational matters of procedure — with fairness always as the cornerstone.

Another core principle found in Justice Ginsburg’s jurisprudence is the importance of providing for meaningful judicial redress in the face of government wrongdoing. Good examples are her many opinions in cases involving *Bivens* actions seeking implied damages remedies for constitutional violations committed by federal officers.<sup>91</sup> Providing damages remedies in such situations, she believed, reflected the venerable principle articulated by Chief Justice Marshall in *Marbury v. Madison* that “[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.”<sup>92</sup> This led her to dissent frequently from the Court’s increasing trend to deny a *Bivens* remedy when faced with new facts or contexts. In these opinions, Justice Ginsburg counseled against “shy[ing] away from the effort to ensure that bedrock constitutional rights do not become merely precatory.”<sup>93</sup> As she wrote in one of her last opinions, too often, to redress constitutional injuries suffered at the hands of federal officials, “it is *Bivens* or nothing.”<sup>94</sup>

Justice Ginsburg also worried about the undermining of government accountability that results when courts afford excessive deference to government

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<sup>89</sup> *Id.*, at 894 (Ginsburg, J., dissenting) (quoting Russell J. Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. D. L. Rev. 531, 555 (1995)).

<sup>90</sup> *Id.*, at 919; see also *Daimler AG v. Bauman*, 571 U.S. 117 (2014).

<sup>91</sup> See *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

<sup>92</sup> 1 Cranch 137, 163 (1803) (internal quotation marks omitted).

<sup>93</sup> *Wilkie v. Robbins*, 551 U.S. 537, 574 (2007) (Ginsburg, J., concurring in part and dissenting in part) (internal quotation marks omitted); see also *Minneci v. Pollard*, 565 U.S. 118, 132 (2012) (Ginsburg, J., dissenting).

<sup>94</sup> *Hernandez v. Mesa*, 140 S. Ct. 735, 753 (2020) (Ginsburg, J., dissenting) (arguing that the Court should recognize a *Bivens* remedy where a federal border patrol agent shot and killed a Mexican teenager who was playing with his friends in a culvert on the U.S.-Mexico border).



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officials through official immunity doctrines. In *District of Columbia v. Wesby*,<sup>95</sup> for example, she wrote separately to observe that in disregarding arbitrary or pretextual conduct by police officers, “[t]he Court’s jurisprudence . . . sets the balance too heavily in favor of police unaccountability to the detriment of Fourth Amendment protection.”<sup>96</sup> This same belief in the importance of providing meaningful remedies for constitutionally problematic law enforcement conduct led her to dissent in *Connick v. Thompson*.<sup>97</sup> Parting company with the majority, Justice Ginsburg would have held that the “conceded, long-concealed prosecutorial transgressions” in a wrongful conviction case “were neither isolated nor atypical,” and therefore could support a civil remedy for the eighteen years that the respondent was wrongfully incarcerated.<sup>98</sup>

In keeping with these decisions, Justice Ginsburg’s criminal-law jurisprudence reflects a deep commitment to procedural fairness and ensuring that government actors play by the rules. For example, she was at the vanguard of the Court’s expansion of the Sixth Amendment right to confront a criminal defendant’s accuser.<sup>99</sup> And in the Fourth Amendment context, she dissented from rulings recognizing a broad exception to the warrant requirement for exigent circumstances,<sup>100</sup> and authored a majority opinion holding that an anonymous tip, without more, could not authorize police officers to stop and frisk a suspect.<sup>101</sup> She was also responsible for several important decisions in the sentencing context, including opinions reinforcing the jury’s constitutional role in finding facts that can trigger sentencing enhancements<sup>102</sup> and permitting federal judges to consider the racially-biased effects of the then-operative 100:1 powder-to-crack cocaine ratio.<sup>103</sup>

In the death penalty context, Justice Ginsburg authored opinions implementing the Court’s recognition that the Eighth Amendment bars execution of the intellectually disabled<sup>104</sup> and affording habeas corpus relief where a capital defendant was abandoned by counsel.<sup>105</sup> Harkening back to her time as an advocate, she also retained concerns over the disproportional racial application of capital punishment.<sup>106</sup>

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<sup>95</sup> 138 S. Ct. 577 (2018).

<sup>96</sup> *Id.*, at 593 (Ginsburg, J., concurring in the judgment in part).

<sup>97</sup> 563 U.S. 51 (2011).

<sup>98</sup> *Id.*, at 79 (Ginsburg, J., dissenting).

<sup>99</sup> See *Bullcoming v. New Mexico*, 564 U.S. 647 (2011).

<sup>100</sup> *Kentucky v. King*, 563 U.S. 452, 473 (2011) (Ginsburg, J., dissenting); *Fernandez v. California*, 134 S. Ct. 1126, 1138 (2014) (Ginsburg, J., dissenting).

<sup>101</sup> *Florida v. J.L.*, 529 U.S. 266 (2000). Justice Ginsburg also joined Justice Sotomayor’s dissent in *Utah v. Strieff*, a case that implicated similar issues. 579 U.S. 232, 245 (2016) (Sotomayor, J., dissenting) (joined by Ginsburg, J.) (arguing in favor of excluding evidence secured by a police officer following an unconstitutional stop, lest “[t]wo wrongs . . . make a right”).

<sup>102</sup> *Cunningham v. California*, 549 U.S. 270 (2007); *Ring v. Arizona*, 536 U.S. 584 (2002).

<sup>103</sup> *Kimbrough v. United States*, 552 U.S. 85 (2007).

<sup>104</sup> *Moore v. Texas*, 137 S. Ct. 1039 (2017).

<sup>105</sup> *Maples v. Thomas*, 565 U.S. 266 (2012).

<sup>106</sup> See Brief for the American Civil Liberties Union et al. as Amici Curiae Supporting Respondent at 6, *Coker v. Georgia*, 433 U.S. 584 (1977) (No. 75-5444) (arguing the death penalty is unconstitutional in the context of rape in part because of its racially disproportionate application). This concern explains, among others, Justice Ginsburg’s vote to join the Court’s

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And, near the end of her tenure on the bench, Justice Ginsburg joined Justice Breyer in urging reconsideration of the constitutionality of the death penalty.<sup>107</sup> She later explained her vote as predicated upon “evidence that has grown in quantity and in quality” demonstrating the death penalty’s unfairness, including numerous exonerations, the poor quality of legal representation, and racial and geographic disparities.<sup>108</sup>

Another of Justice Ginsburg’s bedrock judicial principles sought to discern and honor congressional purpose as part of her respect for the separation of powers. She followed this principle where it led, even if it sometimes meant restricting the judiciary’s role to hear and decide cases.<sup>109</sup> An example is found in her opinion for the Court in *Bank Markazi v. Peterson*.<sup>110</sup> There, Justice Ginsburg affirmed the validity of the Iran Threat Reduction and Syria Human Rights Act of 2012,<sup>111</sup> which designated certain assets eligible for post-judgment execution in certain pending cases brought by victims of terrorism. Although the dissent believed the statute improperly mandated a particular result in those cases, Justice Ginsburg disagreed. She ruled that the legislation fell squarely within Congress’s authority, long acknowledged in the Court’s precedents, to amend underlying law subject to its plenary control.<sup>112</sup> In such circumstances, she wrote, Congress does “not offend separation of powers principles . . . protecting the role of the independent Judiciary within the constitutional design.”<sup>113</sup> Her separate opinion in *Patchak v. Zinke*<sup>114</sup> again cited the importance of judicial restraint and respect for congressional authority. There, she wrote simply: “What Congress grants, it may retract.”<sup>115</sup>

As these many examples reveal, in drafting her opinions, Justice Ginsburg was uncompromising in her efforts to ensure the integrity of the Court’s decision-making.

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opinion in *Buck v. Davis*, reopening a federal habeas judgment denying relief to a state prisoner who “may have been sentenced to death in part because of his race.” 580 U.S. 100, 123 (2017).

<sup>107</sup> *Glossip v. Gross* 576 U.S. 863, 908 (2015) (Breyer, J., dissenting).

<sup>108</sup> Samantha Lachman & Ashley Alman, *Ruth Bader Ginsburg Reflects on a Polarizing Term One Month Out*, Huffington Post, July 29, 2015.

<sup>109</sup> Justice Ginsburg often upheld federal courts jurisdiction in accordance with congressional purpose. See, e.g., *Caterpillar Inc. v. Lewis*, 519 U.S. 61 (1996); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344 (1999); *Jefferson County, Ala. v. Acker*, 527 U.S. 423 (1999); *Hamer v. Neighborhood Housing Servs. of Chicago*, 138 S. Ct. 13 (2017). But not always. See, e.g., *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 579 (2005) (Ginsburg, J., dissenting) (arguing in favor of a “narrower construction” of 28 U.S.C. § 1367 she believed better advanced Congress’ purpose and accorded with precedent); *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 683, 696 (2006) (positing that federal courts “have no warrant to expand Congress’ jurisdictional grant ‘by judicial decree’”).

<sup>110</sup> 578 U.S. 212 (2016).

<sup>111</sup> Iran Threat Reduction and Syria Human Rights Act of 2012, Pub. L. No. 112-158, 126 Stat. 1214 (codified in scattered sections of 22 U.S.C.).

<sup>112</sup> See 578 U.S., at 215.

<sup>113</sup> *Id.*, at 234, 236.

<sup>114</sup> 138 S. Ct. 897 (2018).

<sup>115</sup> *Id.*, at 912 (Ginsburg, J., concurring in judgment) (“That is undoubtedly true of the Legislature’s authority to forgo or retain the Government’s sovereign immunity from suit. The Court need venture no further to decide this case.”).

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She viewed the distortion of law or fact as anathema to the Court's foundational duties. Accuracy in language meant less room for misunderstandings to develop in the law. Together, these considerations informed Justice Ginsburg's precise prose and legendary attention to detail that her clerks witnessed first-hand as they labored alongside her over countless drafts until, at long last, she signed off on an opinion as "just right."

### V

Justice Ginsburg took a long view of progress while remaining steadfast in her optimism for the future. This meant prioritizing long-term success over short-term compromise. Her dissent in the 2013 case of *Fisher v. University of Texas* exemplifies her approach.<sup>116</sup> There, the Court first considered the constitutionality of the University of Texas's affirmative action program, vacating and remanding a decision upholding the same. Justice Ginsburg was the lone dissenter, writing that the Court should have deferred to the University's robust efforts ensuring its admissions system was narrowly tailored to address the University's historic problems recruiting diverse students.<sup>117</sup> Although she could have joined her colleagues to extend the life of the case, she believed it was important to voice the position that government actors "need not be blind to . . . the legacy of 'centuries of law-sanctioned inequality.'"<sup>118</sup> Three years later, the case returned to the Court, and Justice Ginsburg found herself part of a 4-3 majority upholding the University's admissions process on the basis of much of her earlier reasoning.<sup>119</sup>

Justice Ginsburg long appreciated the lesson of staying the course. In 1975, Susan Vorchheimer challenged her exclusion from an all-boy's elite public high school as unlawful gender discrimination. Joining the case at the Supreme Court stage, Ginsburg and her WRP colleagues urged an incremental approach that would not threaten all forms of single-sex education.<sup>120</sup> In the face of disagreement over strategy, local counsel effectively dismissed the WRP team. The result: affirmance by an equally divided Court of the Third Circuit opinion upholding the school's all-male population.<sup>121</sup> When Justice Ginsburg later authored the Court's opinion in the VMI case,<sup>122</sup> she led the Court in rejecting the idea that states could exclude girls and women from elite educational opportunities. Reflecting on the intersection of *Vorchheimer* with the VMI case, Justice Ginsburg observed that it "was a case that took [her] twenty years to win."<sup>123</sup>

More generally, Justice Ginsburg was a committed optimist, especially about the Constitution and the Court. Part of that optimism stemmed from her belief that people

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<sup>116</sup> 570 U.S. 297 (2013).

<sup>117</sup> *Id.*, at 337 (Ginsburg, J., dissenting).

<sup>118</sup> *Id.*, at 336.

<sup>119</sup> *Fisher v. Univ. of Texas*, 479 U.S. 365, 388 (2016).

<sup>120</sup> See Serena Mayeri, *The Strange Career of Jane Crow: Sex Segregation and the Transformation of Anti-Discrimination Discourse*, 18 Yale J.L. & Hum. 187, 259-260 (2006).

<sup>121</sup> *Vorchheimer v. School Dist. of Philadelphia*, 430 U.S. 703 (1977).

<sup>122</sup> 518 U.S. 515 (1996).

<sup>123</sup> Ruth Bader Ginsburg, Gillian E. Metzger & Abbe Gluck, *A Conversation with Justice Ruth Bader Ginsburg*, 25 Colum. J. Gender & L. 6, 12-13 (2013).

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of different ideological views could share the same faith in the Constitution and the Court's role in safeguarding its principles. This is one of the ways, for example, she explained her famous friendship with Justice Scalia. It is no surprise she loved how their shared reverence for the Constitution and the Court was captured in the final duet of the *Scalia/Ginsburg* opera written about them, aptly titled, "We are different, We are one."

Another aspect of Justice Ginsburg's optimism derived from seeing her own colleagues evolve in their views. On this point, she often mentioned Chief Justice Rehnquist's record on gender discrimination. Although he was the lone dissenter from then-advocate Ginsburg's 1973 victory in *Frontiero*, he joined the judgment in the VMI case and wrote for the Court in *Nevada v. Hibbs*, upholding the right of state employees to sue their employer for damages for violations of the Family and Medical Leave Act.<sup>124</sup>

Justice Ginsburg also believed that collegiality was essential to the Court's mission and success. She wrote her majority opinions to reflect the consensus of her colleagues, and she treated dissenting colleagues with respect, always with an eye to the next case. Along the way, she was ever mindful of Judge Learned Hand's admonition she had quoted at her confirmation hearings — the spirit of liberty "is not too sure that it is right, and so seeks to understand the minds of other men and women and to weigh the interests of others alongside its own without bias."<sup>125</sup> To the end, she subscribed to the view that "[r]ule of law virtues of consistency, predictability, clarity, and stability may be slighted when a court routinely fails to act as a collegial body."<sup>126</sup>

Justice Ruth Bader Ginsburg bore witness over her lifetime to generations of progress in the continuous march toward equality.<sup>127</sup> This both fueled her love of country and optimism for the future. She liked to say that "[t]he greatness of America lies not in being more enlightened than . . . other nation[s], but rather in her ability to repair her faults."<sup>128</sup> Maintaining clear-eyed hopefulness throughout her days, Justice Ginsburg stressed the importance of remaining committed to progress and building the "more perfect Union" to which the Constitution aspires. As she teaches in her *Shelby County* dissent, invoking the words of Martin Luther King, Jr.: "The arc of the moral universe is long,' . . . but 'it bends toward justice'" *if* — she added in her own words — "there [is] a steadfast national commitment to see the task through to completion."<sup>129</sup>

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<sup>124</sup> 538 U.S. 721 (2003). See Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 *et seq.*

<sup>125</sup> Opening Statement, Hearings before the Committee on the Judiciary, United States Senate (July 20, 1993).

<sup>126</sup> Ginsburg, *Speaking in a Judicial Voice*, *supra*, at 1191.

<sup>127</sup> Justice Ginsburg once said: "As testament to our nation's promise, the daughter and granddaughter of immigrants sits on the highest Court in the land. . . . What is the difference between a bookkeeper in New York City's garment district and a Supreme Court Justice? One generation, my life bears witness. . . ." Remarks at a Naturalization Ceremony (Dec. 14, 2018), reproduced in Ginsburg & Tyler, *supra*, at 259.

<sup>128</sup> *Id.*, at 260 (quoting Alexis de Tocqueville) (alterations in original).

<sup>129</sup> 570 U.S., at 581 (Ginsburg, J., dissenting).

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Ruth Bader Ginsburg will be remembered by posterity as one of our country's great heroes. Her achievements in securing women's rights changed the course of American history. Her unfailing commitment to truth, justice, and equality inspired millions of people across the world. Her great dissents mark a path for future ages.

Those of us who were lucky enough to know Justice Ginsburg will remember her brilliance, her deep devotion to her family and friends, her enduring love for Marty, her passion for opera, her quiet humor, her deep affection for her law clerks and the pride she took in their successes, her unparalleled work ethic, her tireless attention to getting every detail "just right," her courage in battling cancer, her great love of this country and this Court, and above all, her abiding goodness.

### VI

Carrying on our tradition dating to the days of Chief Justice Marshall,<sup>130</sup> it is accordingly:

RESOLVED, that we, the Bar of the Supreme Court of the United States, express our great admiration and respect for Justice Ruth Bader Ginsburg, our deep sense of loss upon her death, our appreciation for her contributions to the law, the Court, and the Nation, and our gratitude for her example of a life well lived; and it is further

RESOLVED that the Solicitor General be asked to present these resolutions to the Court and that the Attorney General be asked to move that they be inscribed on the Court's permanent records.

The Chief Justice said:

Thank you, General Prelogar. The Court recognizes the Attorney General of the United States.

The Attorney General said:

Mr. Chief Justice, and may it please the Court:

The Bar of the Court met today to honor the life and legacy of Ruth Bader Ginsburg, Associate Justice of the Supreme Court from 1993 to 2020.

Justice Ginsburg was brilliant, courageous, and principled. She believed deeply in the capacity of the law to fulfill our country's fundamental promise of equality. And she believed deeply in our Constitution. As she wrote in her opinion for the Court in *United States v. Virginia*, she believed in its story of the extension of constitutional rights and protections to people once ignored or excluded.

I first caught a glimpse of Ruth Bader Ginsburg in this courtroom in 1978 when she came here to argue *Duren v. Missouri*. The Court's law clerks were crowded into the wings of the courtroom to hear her. Our Justices had told us that she was the best advocate we would hear that Term, and she did not disappoint. She won the case 8-1.

As it turned out, that would be the last argument she made before the Court. Two years later, she was appointed to the D.C. Circuit, and 13 years after that, she was appointed to the Supreme Court.

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<sup>130</sup> 35 U.S. (10 Pet.) vii, viii (1836).

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But it had been an amazing run as a litigator. Like Thurgood Marshall on behalf of equal rights for Black Americans, Ruth Bader Ginsburg was a chief tactician in the campaign for equal rights for women. Beginning in 1971, she filed more than 20 Supreme Court briefs challenging legislative distinctions between the sexes, including distinctions that disadvantaged men, in order to establish the principle of equal treatment. She argued six cases before this Court, losing only one.

Just to describe some of those cases is to recall how different the world was then. In *Duren*, the Court struck down a Missouri law that made jury duty optional for women, and only for women. In *Weinberger v. Wiesenfeld*, the Court struck down a provision that permitted a deceased man's Social Security benefits to be paid to his widow, but did not permit a deceased woman's benefits to be paid to her widower. And in one of the first cases she argued and briefed, *Reed v. Reed*, the Court unanimously struck down a state probate statute that said "males must be preferred to females" in appointing estate administrators.

But if we think the 1970s were different, you should hear just a snippet of Justice Ginsburg's own description of what it was like in 1956 when she was one of only nine women in a Harvard Law School class of more than 500. "Women were not admitted to faculty club dining tables. One could invite one's father but not one's wife or mother to the Law Review banquet. And the old periodical room at Lamont Library was closed to women."

In 1958, the Justice's husband, Marty, whom all of us who knew him loved, graduated from Harvard a year ahead of the Justice and received a job offer in New York. Justice Ginsburg asked the then dean to let her finish the requirements for her Harvard degree at Columbia. Famously, and to Harvard's everlasting regret, the dean denied her request. So the Justice transferred to Columbia anyway, served as an editor for the Law Review, and tied for first in her class.

But, in those days, even that was not enough. A Supreme Court Justice turned her down for a clerkship, telling the dean of the Columbia Law School that he "just wasn't ready to hire a woman." Nor could she find a job in a corporate law firm. But as the Justice noted in 2009, that wasn't all bad. If she had gotten the job, she said, she would have been a retired law firm partner instead of a Justice of the Supreme Court of the United States.

I do not need to tell anyone in this room how different the world would have been had that happened. During the Justice's 27 years on the Court, she influenced every area of the law, from issues that made the headlines, like equal justice for women, to highly complex questions of civil procedure without which our court system could not function.

Everyone knows what an intellectual force she was on the Court. Every lawyer who appeared before her knows how incisive her questioning was at oral argument, and everyone who reads her concise and elegant opinions can see her commitment to, in her own words, get it right and keep it tight.

Justice Ginsburg was not only one of the country's brightest legal minds, she was also a beacon of civility and collegiality. She revered the role of the federal judiciary and this Court in particular in upholding the rule of law.

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She understood the necessity of an independent judiciary to our democracy. Essential to the rule of law in any land, she said, is an independent judiciary: judges not under the thumb of other branches of government, and therefore equipped to administer the law impartially. She strived to be that kind of judge, and she succeeded.

Justice Ginsburg was also an enormously caring person. In her personal life, she supported Marty during his battle with cancer, and then fought her own. And in her professional life, she was an extraordinary mentor to her law clerks. Justice Ginsburg's impact on this Court and on our country will be felt for generations to come. She is and always will be deeply missed.

May her memory be a blessing.

Mr. Chief Justice, on behalf of the lawyers of this nation and, in particular, the members of this Court's Bar, I respectfully request that the resolutions presented to you in honor of Ruth Bader Ginsburg be accepted by the Court and that, together with the chronicle of these proceedings, they be ordered kept for all time in the records of this Court.

The Chief Justice said:

Your motion is granted, and the resolutions and chronicle will be made part of the permanent record of the Court.

Thank you, General Garland and General Prelogar, for your presentations in memory of Justice Ruth Bader Ginsburg.

We also extend our appreciation to Judge John Owens and Amanda Tyler and members of the Committee on Resolutions and to Co-Chairs Judge Paul Watford and Hajin Kim and members of the Arrangements Committee.

This Court's tradition of a Bar memorial dates back nearly two centuries to Chief Justice John Marshall's passing in 1835. Today is the first time a woman serving as Solicitor General of the United States, a former law clerk to Justice Ginsburg no less, is presenting memorial resolutions to the Court. Today is the first time that four seats on the bench are held by women as we receive those resolutions. As far as tributes to Justice Ginsburg go, these facts are a good place to start.

Although this memorial tradition runs to Chief Justice John Marshall, a Bar memorial for Justice Ginsburg harkens back in other ways to the one held in this building for Justice Thurgood Marshall 30 years ago. Perhaps in a league with him and no one else, Ruth Bader Ginsburg had already used the law to change our country profoundly for the better as an advocate prior to becoming a member of this Court.

The Solicitor General mentioned Justice Ginsburg's first appearance at the lectern was 50 years ago in *Frontiero v. Richardson*. Her 10-minute *amicus* allotment was uninterrupted by the Justices, maybe because her dear friend, Antonin Scalia, was some years from joining the Court.

Instead of a lawyer appearing before this Court and others, Justice Ginsburg might have preferred a career as an opera star. When asked, she did not disavow such an interest, simply noting that there was the catch that she could not sing.

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So she instead served as the impresaria of the Court's musicales, a tradition she presided over beginning in 2002, attracting renowned artists to perform in the East Conference Room, giving us all respite and helping to bring us together.

But this courtroom was her stage. In the six cases she argued here, of which she won five, she articulated an enduring vision of the equality of women and men as a constitutional principle.

In 1980, she was appointed to the U.S. Court of Appeals for the D.C. Circuit. She wrote more than 700 opinions as a circuit judge, earning a reputation as a careful, prudent jurist.

In 1993, President William Clinton appointed then Judge Ginsburg to be the 107<sup>th</sup> member of this Court. The transition was seamless. Justice Ginsburg's first opinion of the Court issued on December 13, 1993, a mere two months and one day after argument in a complicated retirement benefits case. She earned her reputation for speed straight out of the gate.

In the October Term 2007, Justice Ginsburg and I tied, each of us releasing an opinion on December 4. Coming off the bench, I made sure Ruth recognized that fact. But she shook her head and said no. Under our usual protocol, she pointed out, she had announced her opinion from the bench first. So she remained the champion.

Justice Ginsburg was rightly proud that she never slowed down and never sacrificed precision, clarity, or technical excellence. She was our resident expert in civil procedure and federal courts, which was just fine with the rest of us.

Justice Ginsburg's encyclopedic knowledge of all things opera was not matched with much familiarity concerning more plebeian pastimes. At one musicale, we surprised her by having her meet Cal Ripken — the Iron Woman meets the Iron Man, two courageous leaders who worked through any challenge without missing a step. The audience thought it was great. The point was, I think, lost on the Justice, who did, however, find it interesting that Ripken was married to a Maryland state judge.

Now, to be fair, I'm sure the Justice was surprised, if not shocked, that I did not recognize many of the opera stars she would discuss at lunch.

Justice Ginsburg inspired artists and young women around the world, to be sure, but Justices and lawyers in our system as well. That aspect of her influence was purposeful, guided by a belief that the adversarial court system operates in service of the rule of law that helps people who disagree to live together.

Fight for the things that you care about, she would say, but do it in a way that will lead others to join you. Her voice was soft, and the cadence of her speech was measured. You had to listen to her carefully, which I think was the point.

Justice Ginsburg and her remarkable husband, Martin Ginsburg, enlivened the Court's family. He was not only a distinguished Georgetown law professor and outstanding conversationalist but also a master baker who sent cakes for her colleagues' birthdays.

She would craft direct, efficient written greetings, such as, "It's your birthday, so Marty baked a cake."



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Now as time wore on, Justice Ginsburg somehow developed a new public persona, the Notorious RBG, a rock star, a cultural icon. Little girls started showing up on Halloween dressed as RBG. It was an easy costume: any kind of black robe, black-rimmed glasses, and a white jabot or other style of collar. RBG products flooded the market. My favorite was a small candy tin with Ruth's picture on it beneath the word "Judge Mints."

Now, to be clear, Ruth absolutely loved every minute of it.

On the bench, she was often in dissent, but it would be a mistake to think of her as anything other than relentlessly optimistic in the long run. She happily cited our nation's motto, *E pluribus unum*, out of many, one. It is the main aspiration, she would say. It was her hope for our country and our world.

Asked just a few years before her passing how she would like to be remembered, she said, someone who used whatever talent she had to do her work to the very best of her ability and to help repair tears in our society to make things a little better through the use of whatever ability she has.

Justice Ginsburg was a woman of conviction, courage, and quiet compassion. Small in stature, she stands as a giant in the history of this Court. Soft in speech, her voice will ring out from the pages of the U.S. Reports for generations to come.

(Whereupon, at 3:22 p.m., the Special Session was concluded.)

