Resolutions of the Bar of the Supreme Court of the United States In Gratitude and Appreciation for the Life, Work, and Service of Justice Ruth Bader Ginsburg

March 17, 2023

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 twenty-seven 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 forty 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 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 fifty-six 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 thirteen 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 Char-

ter 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.

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 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.

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.[1] 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*,[2] 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

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[1] Kenneth M. Davidson, Ruth Bader Ginsburg, and Herma Hill Kay, Cases and Materials on Sex-Based Discrimination (1974).

[2] 469 F. 2d 466 (CA10 1972), cert. denied, 412 U.S. 906 (1973).

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 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*,[3] leading to the first Supreme Court decision ever 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."[4]

In 1973, Ginsburg presented her first oral argument to the Court in *Frontiero* v. *Richardson*,[5] 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 eight-to-one, 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 fundamental constitutional principle in a host of cases, including, among many oth-

[3] 404 U.S. 71 (1971).
[4] Brief for Appellant at 21, *Reed* v. *Reed*, 404 U.S. 71 (1971) (No. 70–430).
[5] 411 U.S. 677 (1973).

ers, a challenge to the automatic discharge of pregnant Air Force officers,[6] the routine exemption of women from jury pools,[7] the denial of equal social security benefits to men and women caregivers,[8] the denial of unemployment benefits to pregnant women,[9] the denial of equal social security benefits to male surviving spouses,[10] and the limitation of assignments available to women in the Navy.[11] 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 only when partners truly share parenting responsibilities would society witness true gender equality.[12]

In addition, Ginsburg and the WRP played a role in securing the 1972 passage of Title IX,[13] which promised women equal opportunities in education. Later, WRP helped usher passage of the Pregnancy

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[6] *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).

[7] *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).

[8] *Weinberger* v. *Wiesenfeld*, 420 U.S. 636 (1975).

[9] *Turner* v. *Department of Employment Security*, 423 U.S. 44 (1975) (*per curiam*).

[10] *Califano* v. *Goldfarb*, 430 U.S. 199 (1977).

[11] *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.

[12] 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).

[13] 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).

Discrimination Act of 1978[14] in response to two Supreme Court decisions that declined to recognize pregnancy discrimination as gender-based discrimination.[15] 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*,[16] 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.[17] 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

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[14] Pub. L. No. 95–555, 92 Stat. 2076 (codified at 42 U.S.C. § 2000e(k)).
[15] See *Geduldig* v. *Aiello*, 417 U.S. 484 (1974); *Gen. Elec. Co.* v. *Gilbert*, 429 U.S. 125 (1976).
[16] 655 F. 2d 1159 (CADC 1981) (en banc), rev'd, 456 U.S. 798 (1982).
[17] *Id.*, at 1161, 1170.

why would the Fourth Amendment protect people who could afford one type of bag but not another? Her opinion for the court drove home the point by recognizing the Fourth Amendment interests of persons living "with their few belongings stuffed into paper shopping bags."[18]

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*,[19] 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."[20]

Judge Ginsburg's most high-profile opinion on the Court of Appeals may have been her dissent in *In re Sealed Case*.[21] The majority in that case struck down the independent counsel sections of the Ethics in Government Act of 1978.[22] 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."[23] She systematically refuted each of the challengers' attacks on the statute, showing that the provision was "a measure faithful to

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[18] *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.

[19] 656 F. 2d 820 (CADC 1981), rev'd sub nom. *Allen* v. *Wright*, 468 U.S. 737 (1984).

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

[21] 838 F. 2d 476 (CADC 1988), rev'd sub nom. *Morrison* v. *Olson*, 487 U.S. 654 (1988).

[22] 28 U.S.C. §§ 49, 591 *et seq.* (1982 ed., Supp. V).

[23] 838 F. 2d, at 518, 518 (Ginsburg, J., dissenting).

the eighteenth century blueprint, yet fitting for our time."[24] The Supreme Court vindicated her opinion, reversing the panel decision and upholding the independent counsel in an opinion echoing much of her reasoning.[25]

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."[26]

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 others, I owe so much to the entry this Nation afforded to people yearning to breathe free."[27]

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."[28] She also explained that Supreme Court Justices "do

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[24] *Id.*, at 536.
[25] *Morrison*, 487 U.S. 654.
[26] Ruth Bader Ginsburg, Speaking in a Judicial Voice, 67 N.Y.U. L. Rev. 1185, 1186 (1992).
[27] 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").
[28] *Id.*, at 50 (stating that she "stands on the shoulders" of trailblazers like Susan B. Anthony, Elizabeth Cady Stanton, and Harriet Tubman).

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."[29]

On August 3, 1993, the Senate voted 96-3 to confirm Ruth Bader Ginsburg to serve as the 107th 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."[30]

Over the next twenty-seven 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."[31] 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,"[32] 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.[33]

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[29] *Ibid.*
[30] Joan Biskupic, Senate, 96-3, Approves Ginsburg as 107th Supreme Court Justice, N.Y. Times, Aug. 4, 1993.
[31] 518 U.S. 515, 557 (1996).
[32] Hearings, *supra*, at 50–51 (referencing Judge Learned Hand's Spirit of Liberty).
[33] 518 U.S. 515 (1996).

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 more" during 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."[34] 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."[35] 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."[36] True gender equality meant the freedom to realize one's full potential, unencumbered by historical gender stereotypes or expectations.[37]

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*,[38] 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*

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[34] *Id.*, at 531.
[35] *Id.*, at 532.
[36] *Id.*, at 550.
[37] 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).
[38] 550 U.S. 124 (2007).

Southeastern Pa. v. *Casey*,[39] Justice Ginsburg emphasized that the ability of women "to realize their full potential . . . is intimately connected to 'their ability to control their reproductive lives.'"[40] 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."[41] 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 Government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choices."[42]

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.

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[39] 505 U.S. 833 (1992).

[40] 550 U.S., at 171 (Ginsburg, J., dissenting) (quoting *Casey*, 505 U.S., at 869).

[41] *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.

[42] 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 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").

Pennsylvania.[43] There, she once again discussed the centrality of reproductive choice to women's equality, finding fault with the majority's decision to limit yet furth 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."[44]

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*,[45] 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."[46] In her view, the majority had undervalued the concrete interest of historically disadvantaged racial groups in overcoming racial oppression and achieving genuine equality.[47]

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[43] 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).

[44] 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.).

[45] 539 U.S. 244 (2003).

[46] *Id.*, at 301 (Ginsburg, J., dissenting).

[47] 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. *Pena*, 515 U.S. 200, 274 (1995) (Ginsburg, J., dissenting) (quoting U.S. Const., amend. XIV, § 5). See

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."[48] 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."[49] 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.[50]

Justice Ginsburg viewed matters of church and state as raising similar questions about equal citizenship stature. In *American Legion* v. *American Humanist Association*,[51] 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.[52] 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.[53] "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."[54] Here again, her analysis was animated

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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").

[48] 541 U.S. 509, 536 (2004) (Ginsburg, J., concurring).

[49] *Ibid*.

[50] See also *Olmstead* v. *Zimring*, 527 U.S. 581 (1999) (Ginsburg, J., for the Court) (offering similar observations in another Americans with Disabilities Act case).

[51] 139 S. Ct. 2067 (2019).

[52] *Id.*, at 2103 (Ginsburg, J., dissenting).

[53] *Id.*, at 2104.

[54] *Ibid*.

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.'"[55]

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*.[56] In that case, the Court struck down as unconstitutional the preclearance requirements of the Voting Rights Act of 1965 ("VRA").[57] In so doing, Justice 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."[58]

Emphasizing "the right to vote" is "'preservative of all rights,'"[59] 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."[60] 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.[61] It followed, in

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[55] *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)).
[56] 570 U.S. 529 (2013).
[57] 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)).
[58] *Id.*, at 562 (Ginsburg, J., dissenting).
[59] *Id.*, at 566 (quoting *Yick Wo* v. *Hopkins*, 118 U.S. 356, 370 (1886)).
[60] 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),
[61] 570 U.S., at 566 (Ginsburg, J., dissenting).

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."[62]

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."[63]

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."[64]

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.[65] Writing for the Court in *Arizona State*

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[62] 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.

[63] *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.)).

[64] 570 U.S., at 590 (Ginsburg, J., dissenting).

[65] 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)

Legislature v. *Arizona Independent Redistricting Commission*,[66] 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 voters should choose their representatives, not the other way around."[67] Doing so, she reasoned, was consistent with the Constitution's Elections Clause,[68] 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*.[69]

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.*[70] There, the Court held that Lilly Ledbetter's long-running gender-based pay discrimination claims were untimely, ruling that such

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(Ginsburg, J., dissenting) (arguing in favor of measures to ensure that "tens of thousands of Wisconsin citizens can vote safely in the midst of a pandemic").

[66] 576 U.S. 787 (2015).

[67] *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.).

[68] U.S. Const. art. I, § 4.

[69] 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") (cleaned up) (international quotation marks and citation omitted).

[70] 550 U.S. 618 (2007).

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 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."[71]

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."[72] Likewise, she observed, "[c]omparative pay information . . . is often hidden from the employee's view."[73] Finally, Justice Ginsburg noted that "the 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.[74] 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.[75]

Justice Ginsburg's dissent in *Burwell* v. *Hobby Lobby Stores, Inc.*,[76] is in a similar vein. There, the Court held that the Religious Freedom Restoration Act[77] 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

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[71] 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).

[72] 550 U.S., at 645 (Ginsburg, J., dissenting).

[73] *Ibid*.

[74] *Ibid*.

[75] 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.).

[76] 573 U.S. 682 (2014).

[77] Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb *et seq*.

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."[78]

Similarly, in *Safford Unified School District #1* v. *Redding*,[79] Justice Ginsburg wrote separately to describe in vivid terms the nature of a "humiliating strip-down search" of a thirteen-year-old schoolgirl conducted by school officials.[80] 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."[81] 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.

Justice Ginsburg was particularly aware of the special leverage that collective litigation offers parties where there is an imbalance of

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[78] 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").
[79] 557 U.S. 364 (2009).
[80] *Id.*, at 381 (Ginsburg, J., concurring in part and dissenting in part).
[81] *Id.*, at 382.

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."[82] 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.[83] 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.[84]

Justice Ginsburg predicated additional dissents in the class action context on similar concerns.[85] 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.'"[86]

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[82] 564 U.S. 338, 344 (2011).

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

[84] *Id.*, at 376 (Ginsburg, J., concurring in part and dissenting in part).

[85] 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).

[86] *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*,

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*[87] and *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*.[88] *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 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.[89]

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."[90] 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

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Inc. v. *Varela*, 139 S. Ct. 1407, 1420 (2019) (Ginsburg, J., dissenting) (arguing against precluding class arbitration by wronged employees and consumers).

[87] 564 U.S. 873 (2011).

[88] 564 U.S. 915 (2011).

[89] *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)).

[90] *Id.*, at 919; see also *Daimler AG* v. *Bauman*, 571 U.S. 117 (2014).

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.[91] 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."[92] 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."[93] 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."[94]

Justice Ginsburg also worried about the undermining of government accountability that results when courts afford excessive deference to government officials through official immunity doctrines. In *District of Columbia* v. *Wesby*,[95] 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

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[91] See *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).
[92] 1 Cranch 137, 163 (1803) (internal quotation marks omitted).
[93] *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).
[94] *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).
[95] 138 S. Ct. 577 (2018).

in favor of police unaccountability to the detriment of Fourth Amendment protection."[96] This same belief in the importance of providing meaningful remedies for constitutionally problematic law enforcement conduct led her to dissent in *Connick* v. *Thompson*.[97] 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.[98]

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.[99] And in the Fourth Amendment context, she dissented from rulings recognizing a broad exception to the warrant requirement for exigent circumstances,[100] and authored a majority opinion holding that an anonymous tip, without more, could not authorize police officers to stop and frisk a suspect.[101] 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[102] and permitting federal judges to consider the racially-biased effects of the then-operative 100:1 powder-to-crack cocaine ratio.[103]

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[96] *Id.*, at 593 (Ginsburg, J., concurring in the judgment in part).
[97] 563 U.S. 51 (2011).
[98] *Id.*, at 79 (Ginsburg, J., dissenting).
[99] See *Bullcoming* v. *New Mexico*, 564 U.S. 647 (2011).
[100] *Kentucky* v. *King*, 563 U.S. 452, 473 (2011) (Ginsburg, J., dissenting); *Fernandez* v. *California*, 134 S. Ct. 1126, 1138 (2014) (Ginsburg, J., dissenting).
[101] *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").
[102] *Cunningham* v. *California*, 549 U.S. 270 (2007); *Ring* v. *Arizona*, 536 U.S. 584 (2002).
[103] *Kimbrough* v. *United States*, 552 U.S. 85 (2007).

In the death penalty context, Justice Ginsburg authored opinions implementing the Court's recognition that the Eighth Amendment bars execution of the intellectually disabled[104] and affording habeas corpus relief where a capital defendant was abandoned by counsel.[105] Harkening back to her time as an advocate, she also retained concerns over the disproportional racial application of capital punishment.[106] 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.[107] She later explained her vote as predicated upon "evidence that has grown in quantity and quality" demonstrating the death penalty's unfairness, including numerous exonerations, the poor quality of legal representation, and racial and geographic disparities.[108]

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.[109] An example is found in her opinion for the Court in

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[104] *Moore* v. *Texas*, 137 S. Ct. 1039 (2017).

[105] *Maples* v. *Thomas*, 565 U.S. 266 (2012).

[106] 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 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).

[107] *Glossip* v. *Gross* 576 U.S. 863, 908 (2015) (Breyer, J., dissenting).

[108] Samantha Lachman & Ashley Alman, Ruth Bader Ginsburg Reflects on a Polarizing Term One Month Out, Huffington Post, July 29, 2015.

[109] 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's purpose and accorded with precedent); *Empire Healthchoice Assurance, Inc.* v. *McVeigh*, 547 U.S. 677, 683, 696 (2006) (positing

Bank Markazi v. *Peterson*.[110] There, Justice Ginsburg affirmed the validity of the Iran Threat Reduction and Syria Human Rights Act of 2012,[111] 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.[112] In such circumstances, she wrote, Congress does "not offend separation of powers principles . . . protecting the role of the independent Judiciary within the constitutional design."[113] Her separate opinion in *Patchak* v. *Zinke*,[114] again cited the importance of judicial restraint and respect for congressional authority. There, she wrote simply: "What Congress grants, it may retract."[115]

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. 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 firsthand as they labored alongside her over countless drafts until, at long last, she signed off on an opinion as "just right."

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that federal courts "have no warrant to expand Congress' jurisdictional grant 'by judicial decree'").

[110] 578 U.S. 212 (2016).

[111] 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.).

[112] See 578 U.S., at 215.

[113] *Id.*, at 234, 236.

[114] 138 S. Ct. 897 (2018).

[115] *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.").

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.[116] 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.[117] 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.'"[118] 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.[119]

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.[120] 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.[121] When Justice

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[116] 570 U.S. 297 (2013).
[117] *Id.*, at 337 (Ginsburg, J., dissenting).
[118] *Id.*, at 336.
[119] *Fisher* v. *Univ. of Texas*, 479 U.S. 365, 388 (2016).
[120] 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).
[121] *Vorchheimer* v. *School Dist. of Philadelphia*, 430 U.S. 703 (1977).

Ginsburg later authored the Court's opinion in the VMI case,[122] 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."[123]

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 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 employee for damages for violations of the Family and Medical Leave Act.[124]

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

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[122] 518 U.S. 515 (1996).

[123] Ruth Bader Ginsburg, Gillian E. Metzger & Abbe Gluck, A Conversation with Justice Ruth Bader Ginsburg, 25 Colum. J. Gender & L. 6, 12–13 (2013).

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

without bias."[125] 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."[126]

Justice Ruth Bader Ginsburg bore witness over her lifetime to generations of progress in the continuous march toward equality.[127] 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.'"[128] 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."[129]

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

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[125] Opening Statement, Hearings before the Committee on the Judiciary, United States Senate (July 20, 1993).

[126] Ginsburg, Speaking in a Judicial Voice, *supra*, at 1191.

[127] 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.

[128] *Id.*, at 260 (quoting Alexis de Tocqueville) (alterations in original).

[129] 570 U.S., at 581 (Ginsburg, J., dissenting).

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,[130] 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.

[130] 35 U.S. (10 Pet.) vii, viii (1836).