

# The Catalyst

The newsletter of the Illinois State Bar Association's Standing Committee on Women and the Law

## Is the Equal Rights Amendment Part of the U.S. Constitution?

BY CINDY BUYS

*"The United States Constitution now declares, once and for all, that equality of rights under the law shall not be denied or abridged on account of sex."<sup>1</sup>*

That is the opening sentence of the complaint filed by the states of Virginia, Illinois, and Nevada seeking to have their ratifications of the Equal Rights Amendment (ERA) published by the Archivist of the United States and the ERA declared the 28<sup>th</sup> Amendment to the U.S.

Constitution. These are the three states to most recently ratify the ERA in 2020, 2018, and 2017, respectively.

These states take the position that when Virginia became the 38<sup>th</sup> state to ratify the ERA on January 27, 2020, the process set forth in Article V of the U.S. Constitution was complete and the ERA became part of the U.S. Constitution. Article V states in relevant part:

*Continued on next page*

## Four Members of Women & the Law Accepted to Leadership Academy

BY DEANNA HOYT

The inaugural class of the ISBA Leadership Academy had their first two meetings in December 2019 and January 2020. The Women & the Law Committee has four members participating: Kelly Giruado of Butler Giruado & Meister PC, out of Morton; Deanna Hoyt of Schlesinger & Strauss, LLC, out of Libertyville; Jessica

Marshall of Anderson & Boback LLC, out of Chicago; and Emily Rapp of Magnuson Rapp Law LLC, out of Geneva.

In December the group met at the ISBA Midyear Meeting at the Westin O'Hare in Rosemont. The group started with an exercise lead by Nelson Velazquez, who

*Continued on page 3*

**Is the Equal Rights Amendment Part of the U.S. Constitution?**

1

**Four Members of Women & the Law Accepted to Leadership Academy**

1

**ISBA Member Fiona McEntee Publishes Children's Book on Immigration**

3

**There Is No Home for Me Here: The Erasure of African American Women and Their Role in the Suffrage Movement**

4

## Is the Equal Rights Amendment Part of the U.S. Constitution?

CONTINUED FROM PAGE 1

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Convention in three fourths thereof, as the one or the other Mode of Ratification may be proposed by Congress.

Both Houses of Congress approved the joint resolution containing the ERA between 1971 and 1972 and submitted it to the states for ratification. However, the joint resolution provided that states had seven years to ratify the ERA. Only 35 states ratified the ERA within that time period, falling three states short of the necessary three-fourths of the states.

Virginia, Illinois, and Nevada make several arguments in support of their position that their recent ratifications are valid and the ERA should be considered part of the U.S. Constitution. First, they argue that the seven-year deadline in the joint resolution is part of the preamble to the proposed amendment, not part of the text of the amendment itself.<sup>2</sup> Second, Article V does not empower Congress to dictate when a state may consider or ratify a proposed amendment.<sup>3</sup> Article V only gives Congress the power to propose amendments and to choose between the two modes of ratification set forth in Article V. Article V itself contains no time limit for ratification. Other amendments, such as the 27<sup>th</sup> Amendment, have taken much longer to gain the necessary state ratifications.<sup>4</sup> Thus, the deadline contained in the preamble of the joint resolution does not strip the states of the power of ratification.

In addition to arguing that the deadline for ratification has passed, opponents of the ERA argue that because a few states attempted to rescind their prior ratifications of the ERA, the necessary number of ratifications does not exist. Virginia, Illinois,

and Nevada assert that ratification is a “one-time event” and efforts to rescind prior ratifications are constitutionally unauthorized and without legal effect. Article V makes no mention of authority to rescind or withdraw a ratification later. And when two states attempted to rescind their ratification of the Fourteenth Amendment to the U.S. Constitution in 1868, those attempted rescissions were given no effect and the Fourteenth Amendment became part of the Constitution.

Accordingly, Virginia, Illinois, and Nevada seek to have the court to declare that the ERA is valid and part of the U.S. Constitution in accordance with Article V. They further ask the court to direct the Archivist to execute his statutory duties under 1 U.S.C. §106b to “cause the [ERA] to be published, with his certificate, specifying that . . . the [ERA] has become valid, to all intents and purposes, as part of the Constitution of the United States” as its 28<sup>th</sup> Amendment.

States opposing the adoption of the ERA have also sued to prevent its inclusion in the Constitution.<sup>5</sup> It is not clear whether the ultimate responsibility to resolve these legal issues lies with Congress or the courts. In a prior case, the U.S. Supreme Court suggested that many of these issues are political questions better left to Congress.<sup>6</sup> Stay tuned. ■

*Cindy G. Buys is the interim dean and professor of law at the Southern Illinois University School of Law where she teaches U.S. Constitutional Law, among other subjects. She is the vice chair of the Women and the Law Committee of the ISBA, as well as a member and past chair of the ISBA's International and Immigration Law Section Council.*

1. *Commonwealth of Virginia, State of Illinois, and State of Nevada v. David S. Ferriero*, U.S. District Court for the District of Columbia, January 30, 2020.

2. This fact distinguishes the ERA from the 18<sup>th</sup> Amendment where the ratification deadline was included in the text of the amendment itself. See *Dillon v. Gloss*, 256 U.S. 368 (1921).

3. If, however, Congress can impose a deadline, it is also possible that Congress could extend that deadline.

4. The 27<sup>th</sup> Amendment regarding congressional pay was proposed with the original Bill of Rights, but three fourths of the states did not ratify it until 1992, more than 200 years later.

5. Alabama, Louisiana, and South Dakota filed a lawsuit in U.S. District Court for the Northern District of Alabama, Western Division on December 17, 2019 seeking a declaratory judgment that the ERA cannot be ratified.

6. *Coleman v. Miller*, 307 U.S. 433 (1939).

## The Catalyst

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## Four Members of Women & the Law Accepted to Leadership Academy

CONTINUED FROM PAGE 1

made the group do improve. Everyone was hesitant at first but then warmed up. Then there were other presentations about how to get involved in ISBA leadership positions. Our own Sarah Toney presented with John Locallo and Daniel Saeedi on how to get a role of importance in bar associations. After the presentations the group went to the Midyear Meeting opening reception and then out to dinner at Carlucci to get to know each other in a less formal setting.

In January the group met at the ISBA Chicago Regional office for two days of presentations. The January weekend's theme

was continuing professional development. There were workshops on managing difficult conversations and mindfulness. Other presentations were on climbing the leadership ladder and being a leader in the legal community. Charles Northrup, ISBA general counsel, also gave presentations on the issues of fiduciary duties and ethics that come into play when you are in roles of leadership in the ISBA. Friday night the group went to Punch Bowl Social for another informal opportunity to get to know each other.

The next session will be in February at the ISBA Chicago Regional Office and then the group will go to a Blackhawks game as their informal opportunity to continue building their personal relationships with each other. ■

# ISBA Member Fiona McEntee Publishes Children's Book on Immigration

BY EMILY N. MASALSKI

I recently had the opportunity to interview ISBA member, Fiona McEntee, about her path to publishing her first children's book *Our American Dream*. Her book will be available in November 2019.

**Emily:** Why did you decide to write this book?

**Fiona:** As an immigrant, immigration lawyer, and mom of two young children, I wrote *Our American Dream* to help explain the importance of a diverse and welcoming America.

I think it's important that children know that we all have our own different version of the American dream, and no one dream is more important than another.

"Immigrants come from countries far, to dream their dreams beneath American stars Let's see who's here in this great place, what dreams we share in the United States."

**Emily:** Did you always dream of becoming an author?

**Fiona:** No, not always—but earlier this year, I knew it was something I had to do.

I read to my kids Rose (6) and Perry (3 and a half) all the time and, given my

line of work, I try to add in social justice books to our rotation. I quickly discovered that there are not many children's books on immigration and really, those that are available are based on immigration many years ago like stories through Ellis Island.

I decided to change this and I wrote *Our American Dream* to discuss modern day immigration issues in a way that is age appropriate for children. Also, as you know, immigration issues are all over the media and I know parents are struggling with how to explain these to children.

*Our American Dream* is the first in my series of books on immigrants and immigration as I believe the need to share these stories with our children has never been greater.

**Emily:** In terms of research, did you meet with anyone while you worked to develop your manuscript?

**Fiona:** *Our American Dream* highlights different immigrant stories and it is directly inspired by my real-life clients, family, and friends.

When I started writing the script, I knew

exactly what immigration stories I wanted to include. I drew direct inspiration from the Dreamers, my artist client Yulia, my sister-in-law Faith who was adopted as a baby from the Philippines, the families at the border, some tech entrepreneur clients, and many more.

**Emily:** What was the process that you followed to find a publisher?

**Fiona:** I started my research on the publishing industry on Google, of course! I found a great blog post by Sucheta Rawal, a children's book author who had published three books through this independent publisher – Mascot Books. I contacted her directly and she made an intro to Mascot Books. As it turns out, the founder is a recovering lawyer and also an immigrant from Nepal! From our initial conversation, I was convinced that I had found my publisher. I've had a wonderful experience with Mascot Books and my editor there, Nina, is just fabulous.

**Emily:** How did you go about finding an illustrator?

**Fiona:** I had a pretty clear vision of the

illustration style I wanted for *Our American Dream*. I shared an inspiration board of styles I liked with Mascot Books. Based on this, they sent a handful of different portfolios to me. When I saw *Srimalie's*, I knew I had found our illustrator. Her work is incredible and I'm so thrilled that we found her.

**Emily:** Where is the book available for purchase?

**Fiona:** You can sign up for pre-release information at [www.ouramericandreambooks.com](http://www.ouramericandreambooks.com) and *Our American Dream* will be available for purchase online in early November 2019. It will also be available on Amazon and other major retailers like Barnes & Noble in early 2020.

**Emily:** Are you going to go on a book tour? If so, where can we find you?

**Fiona:** Yes, absolutely! I will be doing lots of promotional events and book signings.

My goal is to get this book into as many

homes and schools as possible so that children all over the U.S. can learn about the amazing contributions immigrants make, and continue to make. A portion of the proceeds are being donated to two immigration non-profits - FWD.us *I Stand With Immigrants* Initiative and to the American Immigration Council. Thanks for the support!

More information about Fiona McEntee's book is available at [www.ouramericandreambooks.com](http://www.ouramericandreambooks.com) and you can follow her on Twitter/Instagram @USVisaLawyer. ■

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Cover of *Our American Dream*

# There Is No Home for Me Here: The Erasure of African American Women and Their Role in the Suffrage Movement

BY SHARON L. EISEMAN

## A Basic Truth Revealed

Recently, an assumption of mine as to the women who were most prominent in and instrumental to the success of the Suffrage Movement was 'upended' simply by my reading of a few articles I chanced upon. The revelation for me, as a white woman, was discovering that some of the most ardent heroines of the movement, which eventually culminated in passage of the Nineteenth Amendment in 1920, were part of a strong contingent of African American women. These women sometimes acted on their own and sometimes in collaboration with others in their community, but, it seems, rarely if ever in collaboration with the white women with whom so many of us are familiar. More significantly, if the information in these

articles is reliable (it seems to have been carefully researched), those black women who advocated for women's right to vote during the various phases of the Movement were often stonewalled by the white suffragists.<sup>7</sup>

An interesting circumstance of the era is that women of color, who faced greater and very different challenges than the white suffragists, received recognition from a few bold African-American men such as Frederick Douglas who lobbied earlier for passage of the 15<sup>th</sup> Amendment to the U.S. Constitution, a change which, when the amendment passed in 1870, ended racial status as a basis for denial of the right to vote. But, of course, that Amendment left African American women out of the picture,

a strange but not unexpected anomaly. Moreover, it was 50 more years before our legislators passed the 19<sup>th</sup> Amendment.

Much of what I learned is from an opinion piece authored by Brent Staples that appeared in the *New York Times*' July 28, 2018 publication under the title "How the Suffrage Movement Betrayed Black Women," and a series of seven essays called "Suffrage in America: The 15<sup>th</sup> and 19<sup>th</sup> Amendments" written by Megan Bailey and others and published in 2018 and 2019<sup>8</sup> by the National Park Service as part of its ongoing coverage of how social movements "get started." Shortly following Staples's first paragraph in his opinion, he notes the "toxic legacy" that "looms large" in cities across the U. S. (yes, today!) due to the complete dismissal



of black women by the white suffragist leaders. Of most relevance in the NPS Series is “Essay #4: Between Two Worlds: Black Women and the Fight for Voting Rights.” Early in that essay, the author notes that: “Black men and white women usually led civil rights organizations and set the agenda” while “many people didn’t listen to [black women]” despite their hard work advocating for women’s right to vote. As you read further, you may better understand why repercussions flow even today from these intentional efforts to sideline the black women suffragists, a phenomenon that began more than a century ago and lasted for many decades. This division between these two groups of women fighting for their voices to be heard through their votes, including pertinent history before and following the passage of the 19<sup>th</sup> Amendment, is carefully documented in “Divided Sisters: Bridging the Gap Between Black and White Women” by Midge Wilson and Kathy Russell, first published in 1995, which offers a means to better understand the factors that led to the racial division within the shared gender of these racially different women and that may still be influencing how their interracial relationships have fared.

## How Faulty Impressions Take Root and Blur or Bury the Truth

Who comes to your mind when you hear the terms ‘suffragist’ or ‘suffragette’? For me it has been, until now, the very vocal Elizabeth Cady Stanton and Susan B. Anthony, and I recall stories found over the years, accompanied by photos, of the courageous, mostly white suffragists in prison after their arrests for acts of civil disobedience such as picketing during their campaign for equality in voting, along with accounts of their being tortured by prison guards and force-fed when they went on hunger strikes. Another one of the women activists in that group was Alice Paul. We are also familiar with Stanton and her colleague Lucretia Mott from their organizing of the much earlier effort to engage the public and government officials about women’s rights in general: the 1848 Seneca Falls Convention in New York (sometimes referred to as the ‘Myth’ of

Seneca Falls).

What isn’t well known is that the publicly visible leaders of the movement, a group of women who were educated, middle class white women with money, were the ones who set the national agenda for women’s rights advocacy. By virtue of their demographic, the crafters of that agenda, including Stanton and Anthony, did not address experiences of working women or women of color, who faced race and class-based discrimination in addition to gender discrimination, prejudice, harassment, negative stereotypes, and unequal access to jobs, housing, and education—which affected almost every aspect of their lives. As Staples notes, and as is also recognized in the NPS Essay #4, Stanton and Anthony, in their six-volume work “History of Women’s Suffrage,” for which project there were other co-producers, stayed true to the particular white feminist narrative expressed in the national agenda and thus featured only white suffragists while ignoring women of color—both black and Native American—who were instrumental in advancing the movement toward its positive outcome.

Such exclusion seems somewhat of a mystery, given that Anthony and her family were active in the antislavery movement in the mid-nineteenth century, meeting at their farm with like-minded Quakers and, on occasion, with Frederick Douglass. Lucy Stone, the first woman known to have kept her maiden name following her marriage, was another white abolitionist and fervent advocate for women’s equality across racial lines, despite facing criticism for undermining support for African American rights by “linking them” to women’s rights. Yet her work didn’t instigate collaboration between white and black women. And although Stanton advocated publicly for women’s suffrage regardless of race, her actions spoke louder when one considers both the impact of the history of women’s suffrage and that there appears to have been little to no effort by the white suffragists to reach across the racial divide to embrace or collaborate with their black counterparts.

Although the exclusion of women of color from the equation as observed and

understood by the majority white public was a product of the complicity of many white women, Staples relies upon a group of respected historians of the suffrage era in concluding that Stanton bears the most responsibility for denying black women a seat at the table with those white women who were advocating for a constitutional amendment that would grant and protect **women’s** right to vote. After all, she was identified as the principal philosopher of the voting rights campaign early in its existence. Of significance is that, per Staples, you would learn almost nothing about the black women voting rights advocates by reading Stanton’s book despite the generalized nature of its title, which is one of the factors that leads him to his assessment of Stanton’s set of assumptions and principles as an ‘acquiescence’ to a form of white supremacy. This observation, in conjunction with the knowledge that Stanton characterized African-American men as ‘Sambos’ and incipient rapists in the period following the war, may help explain why Stanton and her colleagues have in more recent times been exposed as racists by serious researchers in ‘search’ of the truth about those historic figures we tend to admire or, alternatively, ignore—until the light is shed on the truth, as was done in the recent film “Hidden Figures.”

## So Where Were the African American Women During the Suffrage Movement?

As you read this, surely you have questions, but here is the most pressing question that came to my mind while doing this research: Where were the black women and what were they doing in the mid to late nineteenth and into the twentieth centuries that would have paralleled, complemented, or enhanced the advocacy of the white women suffragists? Before we explore that arena as it existed in the nineteenth century, the reader should have a fuller context in which to assess the role of African American women in this segment of our history as a nation. To be sure, those women had a double hurdle to overcome that arose from their double burden as they experienced it then. Think about it: At what table did they belong or would they

have had the most effective presence even assuming they would be welcome **and** want to sit there: the table where one would find

African American men who were fighting against the kind of racial injustice that kept them, as blacks and recently enslaved, from entering the voting booths, **or** the table where the white women were planning their speeches and marches, and fasting during their imprisonment for engaging in acts of civil disobedience? Thus, it appears that black women advocates for voting rights had to contend with resistance from both men of color and white women—who themselves were struggling to assert their independence from male dominance that was the cultural norm (as its reinterpreted influence remains today).

THEY DEFINITELY WERE THERE, MAKING THEIR OWN KIND OF DIFFERENCE!

As it turned out, a number of very strong and vocal black women, barred from access to the suffragist's elite club, formed their own unions and planned their own actions that had an intended and valuable effect. And don't we all know how that works: If you are denied access to a special place or group and you have something relevant to offer and great ideas to explore and implement, what is your best option? START YOUR OWN D\*MN CLUB and prove them all WRONG! Thanks to historic accounts, we know about the work of the following black women among many who lobbied fervently for the cause.

Many of you are familiar with the name Ida B. Wells, if for no other reason than a few iconic Chicago sites carry her name, one being a long ago demolished public housing development of which we aren't especially proud, and the other 'Congress Parkway' in the south loop which was just re-named as Ida B. Wells Drive in recognition of her civil rights advocacy—supposedly Chicago's first ever naming of a downtown public street for a woman of color. Why do we/should we know and also honor her? First, in 1913 she founded the Alpha Suffrage Club of Chicago which was the first of its kind focusing specifically on suffrage and related issues of concern to African American women—and men.

A journalist by vocation, Wells was also a persistent activist and abolitionist who embarked on a life-long crusade against lynching which continued into the 1890s long after the emancipation of African Americans. Although Wells's activism in that area and her reporting on those horrific crimes exposed her to constant danger, she persisted nonetheless.

As another example of a black woman activist, I offer you Josephine St. Pierre Ruffin who became the leader of the Club Movement Among Colored Women. For most of her adult life, Ruffin was an activist, creating her own newspaper, *Women's Era*, to spread more broadly the message about women's rights; joining forces with Julia Ward Howe and Lucy Stone to form the American Woman Suffrage Association; organizing the National Federation of Afro-American Women in 1895; and convening the First National Conference of Colored Women of America in Boston which later merged with another 'colored' women's league and became a national association to which Mary Church Terrell was elected president. This path Ruffin pursued to engage and empower her community of women was, perhaps, motivated or at least reinforced by the refusal of the General Federation of Women's Clubs—whose membership was predominantly southern white women—to accept her credentials when she showed up at its meeting in Milwaukee in 1900 because the membership of one of the three organizations she represented was black. Instead, they offered to allow her to attend, but only as a representative of the two white groups. When she refused that condition, she was excluded from the meeting—the final insult in a set of actions that became known as "The Ruffin Incident". Ruffin also helped form the NAACP in 1896. Through that organization, and in collaboration with other groups of black women, she focused on the broader issue of civil rights equal to those granted to white men. Ruffin embraced and dedicated her life to NAACP's motto of "Lifting As We Climb."

Not only was Mary Terrell the president of the group Ruffin co-founded, but around that time, Terrell founded the National Association of Colored Women's Clubs

which focused on achieving women's suffrage and improving education. The NACWC also fought to end Jim Crow laws which had become so entrenched throughout the South—and which many whites in the northern U.S. relied upon as justification for maintaining racial discrimination. Terrell, and her colleague Harriet Tubman, were known then and are now remembered for their clear understanding that any rights and opportunities black women desired to claim were affected, complicated, and even restrained by the circumstance of their being both WOMEN and BLACK. Despite such a challenge, they kept the wheels turning because they recognized that the educating of black women would enhance their credibility.

Sadly, even after ratification of the Nineteenth Amendment in 1920, many states, incensed about African Americans having access to the polls, enacted and assiduously enforced laws restricting rights of individuals in that demographic. It wasn't until passage in 1965 of the Voting Rights Act that true racial and gender equality were legally achieved. Even so, in 2019 we still must worry about and take action to prevent insidious efforts in states across the country to disenfranchise minorities. Yet without the courage and persistence of all the women—and men like Frederick Douglas—the right to vote might be in even greater danger.

YES, this is the LAST PARAGRAPH!

Nearing the end of my article, I submit the following: As we approach the centennial of the 19<sup>th</sup> Amendment, let's take time to finally pay homage to the unsung heroines of the suffrage movement: African American women like abolitionist **Ida B. Wells**, civil rights leaders **Mary Church Terrell** and **Harriet Tubman**, **Josephine Ruffin** who demanded equality of treatment with her white counterparts, the indefatigable **Sojourner Truth** who bravely sought freedom for herself and her children and lobbied for needs of African Americans, including for land grants from the federal government for former enslaved people (which effort failed), and **many other black women** who fought fervently though in different ways to obtain the right

for women to have access to the polls. They did so together and on their own, in the face of unique challenges, without forming alliances either with white women along gender lines or black men based upon race, although, as noted earlier, some black men recognized two essentials among their female counterparts that we must acknowledge and also urge the Centennial organizers to do so as well: **these women deserved a voice, and their voices would—and did—contribute something necessary and meaningful to the cause.** And so, with a better understanding of how we got to this stage in our relationships with black women and men, we must double down on our efforts to promote greater diversity and inclusion among all of us in our profession

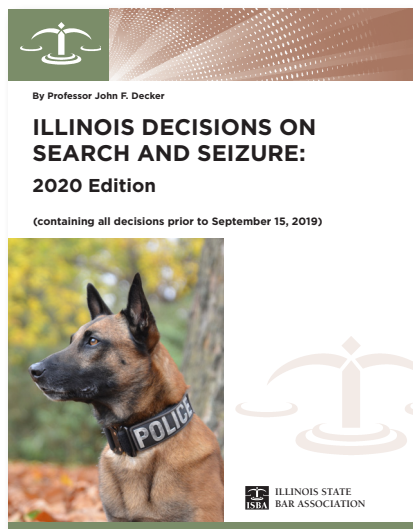
and in our communities, as well as the elimination of racial and gender biases wherever they occur. Maybe one day, the “divided sisters” can become true sisters. ■

*With gratitude to Melissa Burkholder for the gift of this TITLE for my piece!!*

1. It seems that the preferred name is “suffragists” as the word “suffragettes,” which likely originated in England, was also intended, with its “ette” ending which suggests the diminutive, to belittle and demean women who advocated for their gender’s right to vote.
2. It appears that the series of essays (also called chapters) continues to be updated on the NPS website ([www.nps.gov/articles/series](http://www.nps.gov/articles/series)) and additional authors are participating in writing them. To find additional material on the suffrage movement, once you’re on the website, click on Menu, then Learn & Explore, then Explore by Topic, then find American People and Government and click on Women’s History and have a fine time in your exploration! One well-researched feature is: ‘20 Suffragists To Know’ for 2020.

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