THE WHEEL OF FEMINISM

This is the new last chapter of my book, "Not One of the Boys: Living Life as a Feminist," originally published by Alfred A. Knopf in 2000 with a different last chapter and then in digital and audio formats in late 2022.

At the turn of the millennium in 2000 just before this book was first published, I was concerned that there was a "vacuum of vision" and that the women's movement did not act cohesively on most issues that we all seemed concerned with. In this new last chapter, written in 2022, I describe changes in the two decades since 2000, changes the women's movement has brought about and changes in my own perspective. As I was finishing the book 22 years ago, I was diagnosed with breast cancer.

It was the Friday before Memorial Day weekend in June 1999, when I noticed a flattening of my right nipple. When it didn't change by Tuesday after the holiday, I went for a mammogram. It was "abnormal." So, armed with the report I was sent off to find a breast surgeon. Each of my two favorite gynecologists whom I called from the radiology office's parking lot had a different suggestion. I met that night with a male surgeon. He seemed clear that if the lump was malignant he would perform a full

mastectomy; he thought the “cosmetic results” might be more pleasing than keeping my own breast minus a nipple.

The next day I saw a female surgeon. Pat Wolfson who looked more like a soccer mom (which she was) than a surgeon. She looked, prodded and sent me off right then to St. John’s Hospital for a fine-needle biopsy. As soon as we arrived, Joanne and I were sent into a small room that seemed more suited for storage than medical care. Waiting for me were a nurse, an administrator and a young doctor who advised me that it would be best if he did the biopsy without using a local painkiller, like Novocain or lidocaine, because they might dilute the results. So, before I could catch my breath, he stuck a long thin needle right into the center of my nipple; I couldn’t see Joanne who had sunk down to the floor. She later told me that she couldn’t stand to see me in so much pain. She also couldn’t believe I wasn’t screaming. The nurse who’d been standing beside me was holding my hand. I had determined not to squeeze too tightly, knowing from my Lamaze class 25 years earlier that my job was to keep my body relaxed and try to forget my breast—a largely unsuccessful attempt at a kind of out-of-body experience.

A few minutes after the painful ordeal, the young doctor returned, ashen-faced, and announced that the tumor contained malignant cells. Then he left the room, shutting the door behind him, at which point Joanne and I both burst into tears, hugging each other for dear life. Almost immediately, the phone in the hall outside our little room rang, and it was Dr. Wolfson. Sounding reassuring, sympathetic and professional, she started to tell me what we would do next, including scheduling my surgery for the following week. But after a few minutes she asked if she could speak to Joanne. That’s when I realized she could tell I wasn’t really taking in what she was saying. And then a sweet white-haired woman came out from behind a desk and offered me an ice pack. Joanne, a former Catholic, later informed me that the woman was a nun.

My brain stayed blurred. But I managed to call Alexis. I'd already told her that my mammogram was abnormal, but now I had to tell her the really bad news. She seemed to take it calmly, concerned only that I was in the best professional hands. Early the next morning, when Marc called, I realized that Alexis had called him at 3 a.m. During our next chat, she said she wanted to come down right away, take a few days off from her law firm job in San Francisco. I reassured her that I was okay but she insisted, and, when she arrived two days before my surgery, I was, of course, delighted to have her with me. We went to the Huntington Gardens in Pasadena; for once she wanted to do whatever I wanted.

On the day of the surgery, Alexis, Joanne and I trooped off to the hospital. I was scheduled to stay overnight but was dismayed to learn that all they had was a semi-private room. I have always had trouble sleeping. This would be awful. I gave Alexis a look. She knew what I wanted and disappeared. About 15 minutes later, the head nurse came in and said they had just found a private room but it didn't have a view. I grinned at Alexis as I told the nurse that was just fine.

After the surgery, I learned that I had a moderately aggressive-looking 1.5 cm tumor, and, it seemed, one positive node. The next day, the doctor called, greeting me with the words "two positive nodes!" I told her that sounded bad and she responded, "Well, two out of 17 (the total number she had removed) is a whole lot better than two out of four."

Alexis and Joanne both agreed that they needed each other throughout that ordeal. Joanne told me that our friend Lily Tomlin had called about 6 p.m. to find out if I was out of surgery yet. Then Joanne called Vicky Wilson while I was in the recovery room and left a message about the cancer having spread to at least one node. Vicky later told Joanne that as she listened to the message she

burst into tears, partly because she felt helpless being so far away. When I heard about the reactions of all the people Joanne had talked to, I was moved.

About 5 p.m. the day after my surgery, I was released to start healing at home and to get ready for the next big thing, chemotherapy. Now I had to choose a medical oncologist. As I was dealing with that dilemma, flowers began to arrive from all over even though I had called practically none of my friends. Word had spread. The house looked beautiful, and I was happy to get Marc's next call as soon as we walked in.

All the female doctors I respected told me the one oncologist they really trusted was Marilou Terpenning. She was affiliated with St. John's Hospital in Santa Monica, and she had taught at UCLA. So, armed with a tape recorder, as we had been instructed, Joanne and I arrived. Usually, I've been able to follow medical jargon, but this was almost impossible. Dr. Terpenning seemed confident that the proper course of treatment for me was Adriamycin and Cytoxan(A-C) that would be administered intravenously in six cycles over an 18-week period. But all the many books I'd now read emphasized how important it was to get at least three different opinions. The next doctor, affiliated with Cedars Sinai, thought I needed only four cycles and then, without a pause, volunteered that he would take some vaginal skin and make it into an areola and nipple.

That was such a turn-off that I decided it would be Dr. Terpenning, no more questions asked. Joanne and I spent a relatively peaceful weekend in anticipation of my starting chemo the following Thursday.

But on Monday morning, I got a call from a big deal UCLA oncologist. Dr. Rosen had a cancellation. "How would I like to

come in that afternoon?" So, off we went, armed again with our tape recorder. My actual appointment was preceded by one with a young female doctor, who shook my hand far too vigorously given my recent surgery. Dr. Rosen seemed sure that the correct treatment for me was not what Dr. Terpenning had suggested. He wanted me to enter a UCLA clinical trial that was studying neupogen that's given to boost white blood cells during chemo. And I should have Taxotere—a stronger chemo than Cytoxan, He would use it on his own wife.

By this time, I was hopelessly confused. So I talked with Dr. Terpenning's suggested way to go. I asked Dr. Rosen to call Dr. Terpenning and figure out if they could come to some sort of agreement. When I next spoke to Dr. Terpenning she said she disagreed with Dr. Rosen. I didn't need chemo as strong as Taxotere with its significant side effects. And she would schedule me to start the following Monday at UCLA. As she continued to explain, I started crying which I rarely do. I just couldn't handle the confusion. Dr. Terpenning then kindly observed that I'm the kind of person who needs to understand things intellectually, that she's the same way and that if she ever needed a lawyer she would call on me. But for now, I should just realize that no amount of explaining could bring me up to her speed. Translated, that meant trust her. And I did; I had to.

Later, when I told her about the Cedars doctor's suggestion that he would cut part of my vaginal skin and shape it into a nipple and areola, Dr. Terpenning sighed, "Are they still doing that?" She noted that although the male doctors in the field aren't exactly sexist, they are paternalistic; they think that women want perfect-looking nipples. She also revealed that, as a young feminist back in the early 1970s, she'd been part of the Boston Women's Health Collective. A feminist! That cemented my decision that she would be my doctor.

On June 24, 1999, I started my first round of chemotherapy. During my second chemo session, as the nurse was pumping it into my hand, Adriamycin leaked out of the vein, and I had the worst pain I have ever experienced. I protested, but not loudly enough. To this day, my hand has not recovered. I actually thought about a malpractice lawsuit, but then I realized that was crazy. My doctor remained essential to so many women's lives. I had to have a shunt surgically installed in my chest through which the next weeks' drugs would pass.

My hair started to fall out a few weeks in, exactly when they told me it would, and Lily, who had worn many over her years on stage and screen, took me wig shopping.

Lily and Jane arrived at our house to help me get comfortable with the wig.

By now I finally had enough space both to feel depressed and, totally irrationally, as though I were the only one in the world with breast cancer. Marc cheered me up by calling again to check now on how the chemo was going. Joanne signed up for the three-day 55-mile Avon Breast Cancer walk from Santa Barbara to Malibu. I was glad that she could be doing something for herself, as well as the cause, after the eighteen-and-one-half weeks she'd been tethered to me.

By the fourth cycle of chemo I was experiencing horrible hot flashes, so bad that Dr. Terpenning put me on medication for them. Herbs are fine for normal menopausal symptoms she advised, but I needed more now. And then came the fifth which was by far the worst. I felt sicker than I had during any of the earlier cycles and was scared that the sixth (and last) cycle would be unbearable. But the nurse said the fifth is always the worst. While I was cheered that fuzz was growing back on my head, I worried that it would fall out anyway because the sixth would deliver more chemo. In fact, happily it didn't.

Joanne and I—Fall 1999

Now my focus was on the radiation treatment that would begin two weeks after the end of chemo. I had been tattooed earlier—a painful process, because I had to lie without moving in one uncomfortable position in a metal bed-like container in a freezing cold room for over an hour, while physicists created vectors so the beams would go to the right places. They then tattooed small black dots to pinpoint the areas to be assaulted for the next weeks.

My first male doctor in this ordeal was a kindly radiation oncologist with a sense of humor. After a few weeks of treatment, when he saw that a section of my skin was getting way too burned, he told the technicians to let that area take a break. That made me worry that I wouldn't get enough radiation if he shortchanged that part, but he reassured me it was fine.

Finally, I was finished, after 33 days of radiation. I had been warned that there would be fatigue from the radiation and there was. Now, with winter approaching and my head getting really

cold, I had to wear the wig that, despite Lily's and Jane's encouragement, I really hated.

After all I went through and despite my only recently finding out that I was "triple negative,"—an aggressive kind of breast cancer—my prognosis was good. Dr. Terpenning, who "hates recurrences," would see me every three months for a few years. Then the visits would taper off and, except for annual checkups, this whole episode would ideally be behind me.

As I was recovering, I realized that pink ribbons should be handed out at awards shows just as red ones for AIDs were. In fact, Evelyn Lauder, who shared her company's creams with me during radiation, had just begun a pink ribbon campaign through her foundation in New York. Two decades later, I was delighted when I met Dr. Susan Love and her spouse Dr. Helen Cooksey. Susan, a surgeon, had led the breast cancer movement for many years and now, on the *New York Times* journey through the Mediterranean, she described to her co-voyagers new breast cancer technologies and treatments.

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While I was in law school, there were protests at big state universities and marches and all sorts of attention being paid to anti-war activities. And though those protests were colorful, often loud and probably did help bring about the end of the Vietnam War, they did not bring about the revolution in society many of the self-dubbed "new leftists" expected. Others were also protesting the Vietnam War, resisting the draft, writing articles and petitioning their members of Congress. Some of the men I knew in the late '60s and early '70s also wanted to shed typical male stereotypes. Those efforts, in the long run, may be what really sparked change. My husband, Marc Fasteau, who in those days

used “Feigen” as a middle name wrote a book, “The Male Machine,” published in 1974, in which he made a cogent argument for shedding male stereotypes, not just for the benefit of women but for men, too. Those efforts keep paying off; yesterday, I saw two Black men in the park on an outing with their baby daughter, no mom in sight. Around our neighborhood, there are as many fathers dealing with kids as there are mothers. Maybe it’s just the pandemic but it looks more like a permanent adjustment.

Today we no longer hear criticisms of women like Ruth or me, accusations that we were mere “equalist” feminists, not radical enough. Ruth has become an icon to millions of women who realize her value to all people, let alone to the cause of women’s rights. Back on April 16, 1976, in a letter I wrote to lesbian activist Rita Mae Brown, I was exploring factions within the women’s movement:

What is this new crap being slung around in our little movement about the gulf between “cultural” and “radical” feminists.... Redstockings...may at least have a point—it being, presumably, that the former concentrate to the detriment of the revolution on personal changes (e.g. lifestyle, sex-roles, etc.) instead of on overthrowing patriarchy. How, I’d like to know, are we supposed to overthrow patriarchy? I’m dying for the answer, and all they seem to do is criticize whatever anybody else who calls herself a feminist is doing.

I actually agree with Redstockings’ goal of rethinking sex-role stereotypes because without that little would have changed. In addition to challenging the usual pink and blue stereotypes, as early as 2013 they objected to the admittance into feminist conferences of people who were born male and still presented as male, though they were claiming to be transwomen.

In fact, activists like me who wanted equal treatment with men, as well as other social changes, did achieve for society probably more than some feminist who claimed to be even more "radical" and who loudly proclaimed their feminist victories for years. One of the real victories of the feminist movement was the Supreme Court decision in *Roe v. Wade*[1] allowing women the right to choose to end unwanted pregnancies, a victory the radical right bitched about for years and finally succeeding in achieving a majority of reactionaries on the Court thanks to Trumps.

The way Roe was decided created not a few constitutional problems, several of which came into harsh light on December 1, 2021, when the Supreme Court heard the by now infamous Mississippi case of *Dobbs v. Jackson* that would prohibit abortions after fifteen weeks. During the hearing Justice Sotomayor agreed with her liberal colleagues that if the Court accepts Mississippi's tinkering and overrules *Roe* that relied on viability of the fetus as the demarcation line for obtaining abortions it would be making a grievous mistake. She suggested that the Court would not survive the stench if the Court were to uphold the Mississippi law. Putting aside the long-observed doctrine of *stare decisis* and the opprobrium attached to undoing long held constitutional rights, it also seems obvious to me that once there's another liberal majority on the Court—and there just has to be—another case will come along and *Roe* or something like it will become the supreme law of the land again. It will be a ping pong match.

Before this case, I worried that the decision in *Roe* reads more like a piece of legislation than a brief statement that women must have equal rights with men when it comes to the control of our bodies. Ruth said for years that *Roe* opened up a can of worms, focusing on privacy and liberty. It should have simply said that women must have the same degree of control over their bodies that men have over theirs: equal rights and protection. A Sunday New York Times editorial[2] just days before the hearing in the Mississippi

case got it precisely right: “A concerted political campaign” for abortion and reproductive rights needs to “focus on women’s equality and bodily autonomy. It needs to encompass not just the right to end a pregnancy but also the right not to get pregnant in the first place by having easy access to contraception.” The Supreme Court hearing on Dec. 1st provided no solace.

We can definitely claim major victories for women in politics and government, law and medicine, sports, employment and education where quotas on the admission of women seem to have lifted. This includes paying attention to women’s sports as much or more than men’s sports, as the recent Olympics have shown. I will say, though, that none of us feminists have succeeded on one important front. We still do not, in this country, have universal 24-hour child care for working parents, a problem that affects far more women (for truly sexist reasons) than men. There needs to be work done, the sooner the better, so parents who want or need to work, whether outside or inside the home, are able to do so without sacrificing their children in the process. We still have to wait to see if any of Biden’s trillion plus dollar plans pay for more than just one year of pre-kindergarten. Meanwhile, I was cheered to read about Vice President Kamala Harris’s meetings with leaders of major corporations about this.

One significant victory for women that helped knock down sex stereotypes came with the decision by the Supreme Court that the previously all-male military academy, the Virginia Military Institute (“VMI”), could no longer remain for men only.

As I said in chapter ten, Justice Ginsburg’s majority opinion in that case was the culmination of our sex discrimination work, finally setting the new—and highest—standard by which sex classifications should be judged. Now there has to be an “exceedingly persuasive” reason for any distinctions based on sex to stay on the books. It brought tears to my eyes to watch on

television the first class of women to graduate from VMI. It brought even more tears to witness years later their applause for Ruth during a speech that was shown in the Oscar-nominated, Emmy-award-winning documentary "RBG." As Justice Ginsburg clarified, she personally would not have wanted to attend a military academy but there are women who very much do, and they must be admitted equally with men to that state-sponsored school.

Much of the attention she received after the VMI case came from the burning dissents Justice Ginsburg wrote. About ten years after VMI by which time the Court had a majority of Republican appointees, the Supreme Court decided, in Gonzales v. Carhart[3], a 5–4 case, to uphold Congress' Partial-Birth Abortion Ban Act of 2003, outlawing a widely recognized late-term abortion procedure. Justice Anthony Kennedy, who would go on to become a hero of liberals for his decisions upholding the rights of gays and lesbians, wrote the disappointing majority opinion. Voicing her disagreement, Justice Ginsburg wrote that the majority ruling tolerates, indeed applauds, federal intervention to ban nationwide a procedure found necessary and proper … by the American College of Obstetricians and Gynecologists…. In candor, the Act, and the Court's defense of it, cannot be understood as anything other than an effort to chip away at a right declared again and again by this Court—and with increasing comprehension of its centrality to women's lives. [4]

She added that with this decision the Court "deprives women of the right to make an autonomous choice, even at the expense of their safety. This way of thinking reflects ancient notions about

women's place in the family and under the Constitution—ideas that have long since been discredited."[5]

Six years later, in 2013, came the voting rights case, *Shelby County v. Holder*[6]. In perhaps Justice Ginsburg's most famous dissent, she criticized Chief Justice John Roberts' 5–4 ruling that struck down a key section of the Voting Rights Act, freeing mostly Southern states from having to clear voting changes with the federal government. In finding the act unconstitutional and ending the preclearance requirement for the covered states and counties, Chief Justice Roberts wrote for the majority that the "blight of racial discrimination in voting" that had "infected the electoral process in parts of our country for nearly a century," and which the act was designed to address, had been ameliorated by 2013.

Justice Ginsburg disagreed completely:

The sad irony of today's decision lies in [the Court's] utter failure to grasp why the (law) has proven effective.... Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.[7]

It is this *Shelby* case dissent that launched Ruth Bader Ginsburg on the road to world-wide icon status, leading to the "Notorious RBG" moniker that quickly morphed into a celebration of her legal career and legacy and, notably, the award-winning documentary about her, entitled "RBG."

The next year in 2014, the Supreme Court ruled, in *Burwell v. Hobby Lobby*[8], that for-profit companies cannot be required by the government to pay for specific types of contraceptive—such as methods of birth control and emergency contraception—for their

employees because doing so would violate the religious beliefs of the company's owners.[9] In her dissent, Justice Ginsburg wrote that the Court had "ventured into a minefield....The exemption sought by Hobby Lobby ... would...deny legions of women who do not hold their employers' beliefs access to contraceptive coverage."

She continued: "Any decision to use contraceptives ... will be the woman's autonomous choice, informed by the physician she consults." Justice Ginsburg also mentioned the unaffordable price of different kinds of birth control to many women. "It bears note ... that the cost of an IUD is nearly equivalent to a month's full-time pay for workers earning the minimum wage."[10]

Even though she had long been afflicted with cancer that started in her pancreas, I was devastated to hear of Ruth's death when a good friend, Meredith Baxter, called me with the news as I was driving home from physical therapy on September 18, 2020. So, her *Hobby Lobby* case dissent resonated with me particularly upon the rapid appointment of Amy Cony Barrett to succeed Justice Ginsburg on the high court, amid notices in the press about her membership in the ultra-religious group, People of Praise. Its position that women are to take direction, including how to vote, from their husbands is ominous. Eerily, six years before her death, Justice Ginsburg raised the question: "What would happen if an entity evaded Title VII's requirements by saying that its religion dictated that men dominate women." Indeed! In a conversation that was published that year in the *Minnesota Law Review*, she said: "There is a sect that believes women should be subservient to men. [I]n particular, a woman should not work without . . . her husband's permission. Must there be an exemption from Title VII for an employer who holds that belief?"[11] she asked. I don't just wonder if this will become an issue for the present Court; I actively believe Amy Coney Barrett might buy into this theory of women's subservience. She certainly does not believe that women should have control (choice) over

their own bodies, given her votes in the abortion cases so far. It should be noted that Justice Barrett has given birth to seven children and her advice to other women who get pregnant is to have the babies and just leave them in the hospital after they're born.

In a 2020 case in which the Justices struck down the Affordable Care Act's contraceptive mandate[12] Justice Ginsburg upbraided the Court for "(leaving) women workers to fend for themselves." This time, the court cleared the way for the Trump administration to expand exemptions for employers who have religious or moral objections so they wouldn't have to comply with the Affordable Care Act's contraceptive mandate. Justice Ginsburg's response was:

Today, for the first time, the Court casts totally aside countervailing rights and interests in its zeal to secure religious rights to the nth degree…. This court leaves women workers … to seek contraceptive coverage from sources other than their employer's insurer, and, absent another available source of funding, to pay for contraceptive services out of their own pockets.[13]

She added that the government had acknowledged that the existing rules would cause thousands of women—"between 70,500 and 126,400 women of childbearing age"—to lose coverage.[14]

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So, as we've seen, religion has played a large role in affecting women's access to contraception. It also has affected the rights of the LGBTQ+ community just to be. In fact, we should be able both to appreciate the moment we're in now and also hold various

"liberals'" feet to the fire when they get sanctimonious about their records involving rights of LGBTQ+ people.

The history of the treatment of gays and lesbians in the U.S. Armed Forces reads like a textbook in how not to treat a minority group. Before 1992, gays and lesbians were completely prohibited from serving in the military. As I mentioned in Chapter 5, in 1993, President Bill Clinton signed into law the policy known as "Don't Ask, Don't Tell" ("DADT"). (The same Bill Clinton who had been a law professor in Arkansas earlier in his career.) That law was said to be a "compromise" between those who wanted to end the longstanding ban on gays serving in the U.S. military and those who felt that having openly gay troops would hurt morale and wreak havoc within military ranks.

This thoroughly unconstitutional policy allowed gay and lesbian service members to remain in the armed forces as long as they didn't tell anyone what their sexual orientation was. At the same time no one in the military was supposed to ask any service member about her/his sexual orientation. This law raised crucially important constitutional issues: equal rights, freedom of speech and association, as well as the right to privacy:

* Equality of rights is guaranteed to gays and lesbians under the 5th amendment of the U.S. constitution, as is the right to life, liberty and property under the due process clause of the same amendment.

* Freedom of speech would not exist if a service member was prohibited from telling anyone that s/he was lesbian or gay or in a same-sex relationship.

* Freedom of association and assembly, guaranteed by the first amendment, was denied when one could not be seen openly with

one's significant other or with a group of LGBTQ friends. Imagine the scenario of a young married lesbian couple deciding that they both want to join the Marines. Under DADT, they would not have been able to tell anyone that they were married, let alone lesbians. That would keep them from joining the Marines. If they had to follow DADT, they would be required to lie about possibly the most important part of their young lives. They might even have had to share quarters with strangers, not each other, since Marines do not get private quarters or a choice of who your bunkmates will be.

* There is no right to privacy if one could be discharged because some third party snooped into that person's private life. Such a third party could be someone not in the military who then told an officer that the person is gay or lesbian. Privacy would be invaded if someone asked and is told whose arms (in a photo, for example) are around that Marine.

* The insinuation, if not outright statement, that gay men, especially, would come on to their straight roommates is defamatory and a perpetuation of the stereotype that gays and lesbians try to convert others to their "lifestyle" or that they are sexual predators.

* The fact that Congress actually passed this law is an obvious example of how LGBTQ+ people were accorded no protection as they just went about living their lives, harming no one. Wasn't this the sort of government intrusion Republicans in Congress claim so much to abhor?

It was no small victory when the head of the Joint Chiefs of Staff declared himself to be against DADT. The judicial branch had already started to come to the rescue. Virginia Phillips, a federal district judge in Los Angeles, on October 12, 2010, in a case

brought by the Log Cabin Republicans, ruled that DADT was unconstitutional and went so far as to order the military to stop enforcing DADT the day her decision was handed down. DADT not only discriminated in violation of the 5th amendment's equal protection and due process clauses, she said, but it was a shocking assault on 1st amendment freedom of speech and assembly rights. Judge Phillips agreed to stay her decision for a few days. Then the Obama administration, despite Obama's vow that DADT would end "on his watch," appealed to the 9th circuit federal court of appeals (this from the same Obama who had taught Constitutional Law at the University of Chicago) and that court ruled that the decision must be stayed until they got into the "merits" of the law. Next, apparently not wanting to lose any time, the Obama Justice Department, in November 2010, asked the Supreme Court to let the military continue to bar openly gay and lesbian people under the DADT policy, arguing that a change in the law should come from Congress, not the courts. The Supreme Court ordered that the stay remain in effect until the appeal to the 9th Circuit was heard and decided.

From the legislative branch, a powerful cadre of Republicans, including John McCain, who had recently been touted as a hero of the left, vowed to filibuster the Pentagon's spending bill unless a measure repealing the "Don't Ask; Don't Tell" policy was stripped out of the bill. McCain had clout as the ranking Republican on the Senate Armed Services Committee. Next three Senators on November 10, 2010, including Kristen Gillibrand (another "liberal"), apparently thinking they were doing right by gays and lesbians, issued a joint statement calling for an ''orderly" repeal of the policy, to be carried out only after President Obama, the Defense Secretary and the chairman of the Joint Chiefs of Staff certified that ending the ban was "consistent with the standards of military readiness, military effectiveness, unit cohesion and recruiting and retention of the armed forces."

There was much more to the conversation surrounding this new controversy: The Commandant of the Marines, General James Amos, had strong objections to eliminating DADT: "There is nothing more intimate than young men and young women—and when you talk of infantry, we're talking our young men—laying (*sic)* out, sleeping alongside of one another and sharing death, fear and loss of brothers (*sic*)." The New York Times pointed out that General Amos was quickly rebuked for his comments by Admiral Mike Mullen, chairman of the Joint Chiefs of Staff.

Finally, on September 20, 2011, after tens of thousands of letters, emails and calls from supporters of lesbian and gay rights groups, victory was achieved and DADT, then on the books for eighteen years, was repealed in full. Service members previously discharged for their LGBTQ+ status were offered re-enrollment

The obvious reason for the repeal was that there had been absolutely no justification (except "animus") for having kept gays and lesbians from serving their country for so long. Today, gays and lesbians serve; no one seems to have suffered as a result, and we can all hold our heads higher as Americans. It should be noted that now the Radical Right, in its zeal for culture wars, has shifted its focus to oppose the right of trans people to serve in the military.

While all this was going on I had a friend and partner in a production company we were trying to get off the ground. Lindsay Thomas Keough was a retired Navy SEAL commander, a middle-aged white guy, a Republican, a Catholic and a bank president in Colorado. When I told him I wanted to make a movie about the purge of lesbians from the Parris Island Marine Corps base, he was not only supportive he was enthusiastic about our adding it to the top of our slate of movies. He said the policy towards gays and lesbians was "awful, an embarrassment, in fact, to our country." Today, the years later, I have a script for that movie, called "Witch-

hunt," written by Joanne, but it remains unmade, as do many of our projects about strong women.

The next battle was for each of us to be allowed the right to marry whomever we choose and for the federal government to recognize those marriages. As I wrote in a Wow.com blog in February, 2012,

This continuing discrimination [against gays and lesbians' right to marry] is as much a blight on our nation and the consciences of its proponents as DADT was for all those years that succeeded the outright ban on service by a minority group. This is a group that does not deserve the kind of outright hostility it still suffers.

In the same year—2000—that the first edition of this book was published, California's Prop 22 passed, banning same-sex marriages in that state. Though Joanne and I had become domestic partners shortly after we met in 1992, it just wasn't legally or socially the same as being able to marry. But it wasn't a huge issue yet for us, our inferior status long ingrained.

Finally, in November 2003 the Supreme Judicial Court of Massachusetts established that same-sex couples in Massachusetts did have the constitutional right to marry and that anything less, such as domestic partnerships or civil unions, would confer impermissible second-class status[15]. The idea that an equal protection analysis might be used to strike down laws that prohibit same-sex marriage found support in that case, in which the highest court in Massachusetts relied in part on cases allowing women the right to terminate pregnancies, as well as on the landmark case, *Lawrence v. Texas**[16]**, in which* the Supreme Court ruled two months earlier that homosexuals are entitled both to liberty and privacy and, therefore, have the right to engage in consensual sex however they choose without the state's interference.

Goodridge marked an undeniable advance for the constitutional rights of LGBTQ+ citizens to marry in Massachusetts, but what about the rest of us who didn't live in Massachusetts? It was clear to me that this contentious issue would eventually reach the U.S. Supreme Court.

As background, in 1973 the Supreme Court in *Roe v. Wade* had enunciated a right to privacy, founded in the Fourteenth Amendment's guarantee of personal liberty, that would allow women to terminate unwanted pregnancies.[17] But it did not hold that women's right to choose abortion was based on the equal protection clause. Almost twenty years later, in *Planned Parenthood of Southeastern Pennsylvania v. Casey* [18] the Court reaffirmed a person's right to be free from unwarranted governmental intrusion into matters like procreation, fundamentally affecting that person. Today, especially after the hearing in the Mississippi abortion case, it's not clear whether we will continue to have this right!

It's worth noting Justice Scalia's hysteria-filled dissent in *Lawrence:*

State laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity.... Every single one of these laws is called into question by today's decision; the Court makes no effort to cabin the scope of its decision to exclude them from its holding. [19]

Justice Sandra Day O'Connor's concurrence in *Lawrence,* however, gave reason for hope. In it she provided an encouraging indication of how the Supreme Court could someday use an equal protection analysis to sanction same-sex marriage. Expressing disapproval of laws that treat lesbians and gays as less disserving than heterosexuals, she reasoned that "[w]hen a law

exhibits such a desire to harm a politically unpopular group, we have applied a more searching form of …review to strike down such laws under the Equal Protection Clause."[20] Justice O'Connor quoted from one of Justice Robert H. Jackson's most important statements that was relevant to the right of same-sex couples to marry:

The framers of the Constitution knew, and we should not forget today, that there is no more effective practical guaranty against arbitrary and unreasonable government than to require that the principles of law which officials would impose upon a minority be imposed generally. Conversely, nothing opens the door to arbitrary action so effectively as to allow those officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected.[21]

Justice O'Connor was really relying on an equal protection guarantee: if heterosexuals can engage in what has been called sodomy, homosexuals should also be allowed to engage in the same behavior. The Supreme Judicial Court of Massachusetts had similarly employed an equal protection analysis in *Goodridge*.[22] BUT lest we get wistful and start to miss Justice O'Connor and her pronouncements, we should think again as we saw her big step back in that same concurring opinion, going out of her way to rationalize prohibiting such marriages:

Texas cannot assert any legitimate state interest here, such as national security or preserving the traditional institution of marriage. Unlike the moral disapproval of same-sex relations—the asserted state interest in this case—other reasons exist to promote the institution of marriage [as it now is] beyond mere moral disapproval of an excluded group.[23]

By the time of their decision in 2003 in *Lawrence, n*one of the Justices seemed ready to take on same-sex marriage, an issue that, indeed, was not before the Court—yet.[24] However, shortly thereafter and despite using the words "liberty" and "due process," [25]the *Goodridge* Court in Massachusetts had determined the case on equal protection grounds, arguing that "central to personal freedom and security is the assurance that the laws will apply equally to persons in similar situations."[26] That court recognized the logical impossibility of justifying only certain persons' having the freedom to marry. In fact, I was hoping back in 2003 that Massachusetts' bold pronouncement about equal protection in establishing the right to same-sex marriages would persuade the Supreme Court that to provide fully the protections found in the federal Equal Protection Clause, the right of same-sex marriage would have to be recognized in every state in this country, nationwide.

As a reference point, according to the Gallup poll conducted during the time frame of the *Goodridge* and *Lawrence* cases (2003–4), as of October 2020 approval of same-sex marriage crossed the political divide, with majorities of Democrats (80 percent) and independents (76 percent) supporting same-sex marriage, along with 50 percent of Republicans. This comes from a poll conducted by the Public Religion Research Institute (PRRI) in partnership with the Brookings Institution.

Persistent optimist that I was back in 2003, I somehow felt sure that the U.S. Supreme Court would resolve the issue of same-sex marriage even before a majority of citizens approved of it. It has never been acceptable for the majority to dictate the rights of the minority, especially by way of curtailing rights that the majority enjoys. This principle was most notably invoked in *Brown v. Board of Education,**[27]*** the landmark case saying that state laws establishing racial segregation in public schools are

unconstitutional, even if the segregated schools are otherwise equal in quality.

Of course, I was concerned about the use of morality to condemn same-sex marriage. At the turn of the millennium, I still believed that the conservative Justices cared about individual liberty like freedom of speech and that their real bugaboo was big government intruding into the lives of the people. That was before they showed their true colors in *Bush v. Gore*.[28] My belief that individual liberty would prevail would have made even more sense before the radical right took over the Republican party, attempting to impose its twisted "Christian" morality on the rest of us. It is that same "morality" that had me worried that some Democrats like Bill Clinton, responsible for DOMA, might bend to the whims of public opinion.[29] Even California's two liberal senators, Barbara Boxer and Dianne Feinstein , both opposed an order by Gavin Newsom, the mayor of San Francisco, that San Francisco officials wed gay and lesbian couples despite state prohibitions. I wondered, had these Democrats been politicians in the days of *Loving v. Virginia*,[30] might they have opposed intermarriages between whites and blacks because their constituents considered them immoral?

Partners in same-sex relationships were deprived of all sorts of rights the federal government afforded opposite sex couples including:

· Social Security benefits;

- the right to stay in the family home when the other spouse needs Medicaid for nursing home care;
- the right to be included in family health insurance;
- the ability to use the "Married Filing Jointly" for federal income tax status;

- the right to take family medical leave to care for an ill spouse;
- the right to disability, dependency or death benefits for the spouses of veterans and public safety officers;
- the right to employment benefits for federal employees, including family health insurance and retirement and death benefits;
- entitlement to estate protections that allow a spouse to leave assets to the surviving spouse—including the family home—without incurring any taxes; and
- the ability of a citizen to obtain a visa for a non-citizen spouse.

Certainly, I reasoned, by the time the majority of voters in the United States realize that LGBTQs should have the same rights as heterosexuals, politicians who hope to get elected or re-elected would be calling for those rights. The majority in *Lawrence* had concluded that "[a]s the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom."[31] In order for such a possibility actually to exist, however, the Justices, I figured, hopefully, certainly would protect minority rights instead of majority intolerance.

By 2003 things were getting crazy for the LGBTQ+ world. In that same year, California passed a domestic partnership law that provided same-sex partners with many of the legal rights and responsibilities spouses had in civil marriages. So, Joanne and I became domestic partners. In 2004, the city of San Francisco finally began marrying same-sex couples in an open challenge to the law, known as Prop 22. But sure enough, the California Supreme Court then voided the already performed same-sex marriages. (I can imagine there could still be legal consequences to this!) This whipsaw craziness was echoed throughout the country in different states with different bans. One suit claimed that San

Francisco lacked authority to issue marriage licenses. Right before that, a lawsuit on behalf of twelve same-sex couples was filed by the ACLU, NCLR and Lambda Legal demanding their right to marry. The year after that (2005), California's legislature attempted to pass a law legalizing same-sex unions but it was vetoed by Governor Arnold Schwarzenegger, Then Prop 8, a proposed amendment to California's constitution, banning same-sex marriage in the state, was introduced. And the fight over Prop. 8's passage awakened a sleeping and ugly giant. It was set for a vote in November 2008.

We went to protests and marches constantly after election day, and more and more signs like "Another Hetero Family against (H)8" kept popping up, along with "No more Mr. Nice Gay." "Where is the Gay Tax Discount?" "When do I Get to Vote on Your Marriage?" along with all sorts of other creative slogans, peppered with rainbow flags and trinkets. There were protests at city halls all over the country organized not just by established groups like Equality California, NCLR, the ACLU and NO on 8, but also on the Internet, on YouTube and many other sites I had never seen or heard of before. All those kids that got involved in the recent election had taken up the cause, which was muddied by the president. Before election day, Obama said he opposed Prop.8 because constitutional rights should be decided by the courts. But, all of a sudden, on the morning of Nov. 4th, as I was heading out to vote, in came a robocall with Obama loudly proclaiming, in support of Prop 8, that his Christian faith dictated that marriage is between a man and a woman[32]. That was the message that Black churches with Obama's help were spreading. (70% of African Americans apparently ended up voting for Prop 8.) However, both California Attorney General Jerry Brown and Governor Arnold Schwarzenegger agreed with the unmarried gay and lesbian plaintiffs that Prop 8 unfairly deprived them of equal rights.[33] By June 2009, Schwarzenegger had changed his mind

on Prop 8, declining to defend it and saying it was for the courts to decide.

The religious right had decided that it would use Prop. 8 as its personal tool in bashing down the separation of church and state. With signs quoting religious homilies, the “yes” people invaded our protests. Actually, I did not see a single person trying to defend Prop. 8 on anything other than religious grounds. There was a poignant episode in San Francisco when a 2nd grade teacher, a lesbian, kept getting peppered by her class with questions about her upcoming marriage to her longtime female partner. The kids got their parents’ permission to attend the wedding and, with their parents, watch their teacher get married. In San Francisco the parents of those kids proudly went with their children. To make matters even more weird the Yes on (H)8 people took a video of several of the children in attendance, emphasizing their point about our wanting to brainwash their children. And not long after that, an ad popped up on TV, warning that children would be taught about same-sex marriage in school. (In fact, parents in California must give their permission before their children are taught anything about sex and/or marriage in our public schools.) That ad, in turn, prompted a lawsuit by the (straight) parents who believe in same-sex marriage, claiming that the (H)8 people had had no right to use images of their kids without their permission.

A challenge was eventually filed in the California Supreme Court arguing that Prop. 8 should be overturned because it was really a constitutional revision that required a two- thirds vote of the legislature before it could go to the people for their vote. Clearly it was a revision, because we had been granted full and equal rights earlier by the court and then Prop. 8 came along carving out specific rights (from the rights we’d just obtained), namely the right to marry that the religious right did not think we deserved. Furthermore, the challengers argued that an amendment to the

constitution could not do what Prop. 8 tried to do: namely, take rights away from a minority group because, if it could, then all sorts of chaos might ensue against disliked minority groups and we would then really see what a "tyranny of the majority" would look like.

On May 15, 2008, after four years of briefs and appeals, the California Supreme Court overturned the state's earlier law banning same-sex marriages. Two months later, on the Fourth of July, feeling like we should jump at our big chance, Joanne and I got married in a little ceremony and exchanged rings. It didn't feel like any wedding I had ever attended, let alone the big one that Marc and I had at the New York City Harvard Club with hundreds of witnesses. We were in Carmel, California, with Alexis, the officiant, her partner Kim, the witness, and our puppy, Truman, the ringbearer. We would have to deal with the fact that the federal government wouldn't recognize our marriage, and, of course, when we travelled out of California there was no guarantee we'd be considered married. The hateful Prop 8 was actually approved by California voters in the November 2008 election.

At the time when Joanne and I got married, five states and the District of Columbia allowed same-sex marriages to be performed, but 31 states had passed laws blocking them. California already had 18,000 same-sex married couples, but once Proposition 8 was approved by the voters, four months after we got married, no more California same-sex marriages were allowed. Fortunately, those of us who had married in that five-month window in 2008, like Joanne and me, could stay married.

To put this into perspective, I reasoned that if we had lost in state court, the next step would be to go to federal court, arguing that Prop. 8 was a violation of the equal protection and due process clauses of the 14th amendment, because the state not only would have denied us equal protection but also would have stripped us of

the fundamental right to marry. That brings us closer to what, in fact, did happen in the U.S. Supreme Court seven years later.

I was delighted in 2010 when two big-deal litigators, Ted Olson and David Boies (and the organizations they were representing), brought the lawsuit *Perry v. Schwarzenegger*[34] in the U.S. District Court in San Francisco challenging Prop 8 as being unconstitutional under the U.S. Constitution, a denial of both equal protection and due process rights. And it was a rare occurrence having the highest-ranking state officials, Attorney General Kamala Harris and Governor Jerry Brown, disapprove of their own newly amended state constitution. The federal government was now left alone to defend it. That did not mean that everyone was happy. Most of the groups that had been lobbying hard to defeat Prop 8 were now deploring this lawsuit. They did not trust the courts, especially since so many recent appointments were made during the Republican Bush years even though, before that, Bill Clinton had appointed a number of judges.

But the Supreme Court wasn't going to get any more liberal. The older members were then all Democratic appointments. So was Justice Souter, and they were more likely to leave sooner rather than later. Obama would appoint liberals to replace them, but the balance in the Court was viewed as highly unlikely to change for the better, for a long time, given the relative youthfulness of the Republican appointees. (Today it's even worse, of course.) What the groups were waiting for I wasn't sure. Another chance to spend millions of dollars, probably every two years, going back and forth on Prop 8, its repeal, its return and so on, like a ping pong ball. In any case, I did not want my rights determined by voters, even a majority of voters. I belong to a minority group, several in fact, who did and do not deserve to be tyrannized by the majority in any way whatsoever.

Because it was now part of the California constitution, Prop 8 would have to be challenged in federal court. It was and it was declared unconstitutional by the federal district court and, in 2012, the Ninth Circuit Court of Appeals agreed. But the religious radicals persisted; the case went to the Supreme Court and it wasn't until 2013 that the U.S. Supreme Court declared not that Prop 8 was unconstitutional but that the Prop 8 defenders lacked standing. The way was cleared for same-sex unions to be legalized in California. We had to remember all this drama just involved California. Because of DOMA, other states were still racked with confusion. For example, a same-sex marriage bill would not be addressed in the next session of the N.Y. Assembly that Gov. Paterson had called. He decided that New York, where same-sex marriages were not allowed, would indeed recognize same-sex marriages that were valid in other states and countries. However, Patterson remained unwilling to push his own legislature in the right direction that would allow same-sex couples to marry in New York state.

And we were still in DOMA limbo. That odious law that kept ours and millions of other marriages from recognition under federal law had also been directly challenged in May 2010. In that case, *Gill v. Office of Personnel Management****[35]***, filed in federal district court in Massachusetts, eight sets of plaintiffs sued under various sections of the U.S. constitution, challenging the Defense of Marriage Act, signed into law by Bill Clinton and continuing to be supported by Obama.

The Obama administration in its brief defending the odious law remarked: "[DOMA] does not impinge upon rights that have been recognized as fundamental…." It went on: "While the Supreme Court has held that the right to marry is 'fundamental,' … that right has not been held to encompass the right to marry someone of the same sex." [36] Needless to say, my respect for Obama has plummeted as I've been writing this chapter!

In fact, in 1972, way before DOMA was enacted, the Supreme Court had dismissed, for lack of a "substantial federal question," a claim that the Constitution provides a right to same-sex marriage.[37]

Meanwhile, another challenge to the federal law that designated marriage as the legal union only between one man and one woman was on its way up to the Supreme Court. Edith Windsor was the widow and sole executor of the estate of her late spouse, Thea Clara Spyer, who died in 2009. They had married in Toronto, Canada, in 2007, and their marriage was recognized by New York. Thea left her estate to Edie, her spouse, and because their marriage was not recognized by federal law, the government imposed $363,000 in taxes. Had their marriage been recognized, the estate would have qualified for a marital exemption, and no taxes would have been imposed.

On November 9, 2010, Windsor filed suit in federal district court in New York seeking a declaration that DOMA was unconstitutional. At the time the suit was filed, the government's position was still that DOMA must be defended. Lest anyone continue to rationalize that liberals like Obama might finally be farsighted in guaranteeing rights, let's look at a really sick part of the Obama Government's brief this time in *Windsor****[38]***:

[DOMA] maintains the status quo …of promoting traditional marriages, by clarifying that the terms "marriage" and "spouse," for purposes of federal law, refer to marriage between a man and a woman, and do not encompass relationships of any other kind within their ambit.… DOMA does not distinguish among persons of different sexual orientations, but rather it limits federal benefits to those who have entered into the traditional form of marriage.… As a result, gay and lesbian individuals who unite in matrimony are denied no federal benefits to which they were entitled prior to their marriage; they remain eligible for every benefit they enjoyed

beforehand. DOMA simply provides, in effect, that as a result of their same-sex marriage they will not become eligible for the set of benefits that Congress has reserved exclusively to those who are related by the bonds of heterosexual marriage. In short, then, the failure … to recognize a certain subset of marriages that are recognized by a certain subset of States cannot be taken as an infringement on plaintiffs' rights….

Obama's Justice Department went on to defend, in its pro-DOMA brief, the prohibition of same-sex marriages because of variations in other kinds of questionable unions:

State courts may refuse to give effect to [certain] marriages …And the courts have widely held that certain marriages performed elsewhere need not be given effect, because they conflicted with the public policy of the forum….For example, marriage of uncle to niece is valid Italy but not in Connecticut; marriage of a 16-year-old female was held invalid in New Jersey, because an adult woman in NJ can get an annulment of her underage marriage; marriages of first cousins have been held invalid in Arizona, but lawful in New Mexico, given Arizona policy reflected in a statute declaring such marriages "prohibited and void."

In other words, the federal government was defending DOMA by saying that states had the authority to reject marriages performed in other states, based on the forum state's public policy. This really makes me wonder if the federal government even before *Loving*[39] would have dared say that a bi-racial marriage performed in one state need not be recognized by all the others.

But wait! All of a sudden, on February 23, 2011, President Obama announced that the U.S. Justice Department would actually not defend DOMA after all. Two months later, the Bipartisan Legal Advisory Group of the House of Representatives ("BLAG"),

coming suddenly to the defense of DOMA, made a motion to dismiss the case. The district court denied the motion and later held that DOMA was unconstitutional. The U.S. Court of Appeals for the Second Circuit agreed. Then the case was appealed by BLAG to the U.S. Supreme Court.

When it finally became clear that DOMA would actually be tested by the Supreme Court, I had high hopes that Justice Kennedy, who had written the majority opinion in the same-sex sex case, *Lawrence v. Texas****[40]***, would again join the "liberal bloc" and denounce DOMA in another 5–4 decision.

I was invited by Justice Ginsburg to be her guest at the hearing, as I had been on other occasions. So, on the day of that hearing, having flown in to D.C. from Los Angeles, as I was sitting in the Gallery, I heard her say *sotto voce* that domestic partnerships were like "skim milk marriages." I had to ask the young stranger who was sitting next to me if I had heard right.

A few months later on June 26, 2013, Justice Anthony M. Kennedy did indeed deliver the opinion of the 5–4 majority, writing that the purpose and effect of DOMA was to impose a "disadvantage, a separate status, and so a stigma" on same-sex couples in violation of the Fifth Amendment's guarantee of equal protection.[41] The Supreme Court found Section 3 of DOMA to be unconstitutional, "as a deprivation of the liberty of the person protected by the Fifth Amendment". The Court held that the Constitution prevented the federal government from treating state-sanctioned heterosexual marriages differently from state-sanctioned same-sex marriages, and said that such differentiation "demean[ed] the couple, whose moral and sexual choices the Constitution protects. We had won!

Because the *Windsor* case thoroughly wiped out DOMA, the Massachusetts case with its eight sets of plaintiffs was dismissed

as having been resolved. All their problems were gone; DOMA was unconstitutional! That was twenty-nine years after Bill Clinton thought it was a good idea to keep us from marrying,

On July 9, 2013, in answer to my query about whether she was taking a vacation, Ruth wrote me a letter:

Dear Brenda:

Yes, I have some holidays in store. I will be in Paris when you receive. DOMA's defeat is cause for celebration, but other last week decisions were unsettling. Enclosing bench announcements of my dissents.

Wishing you tranquil summer days. Ruth

As New Year's Eve 2013 was approaching, I received one of the most heart-warming compliments of my life. Lily Tomlin and Jane Wagner, who had already been partners for 44 years, asked me if I would marry them. I was thrilled but not terribly shocked since I'd been badgering them about the tax advantages of being married. So, I, an avowed atheist, became a Universal Life Minister for them.

A little late, they arrived at our house, looking slightly apprehensive. Jane had little trinkets she wanted to show Lily during the ceremony…. But then Lily realized they'd forgotten their marriage license which I was supposed to sign. Stickler lawyer that I am, I refused to proceed without it. We decided that I'd drive Lily back over the hill and down to their fortunately nearby house. We ran out of my house so quickly that I had not bothered to take my drivers' license. When we got to their back door, Lily rushed in, emerging victorious a few seconds later and back we headed, fortunately making it to our house with only a few

minutes before midnight to spare. Joanne filled the role of witness and videographer. Truman, with a little velvet bag tied around his neck holding their rings, was a ringbearer for the second time in his life. On the mantel of our fireplace were three little witnesses, stuffed Edith Ann's that Jane and Lily had years earlier given to both of us, as well as to my mother.

Lily Tomlin and Jane Wagner being married by Brenda Feigen 12/31/2013

I had found some love poems for the occasion and especially beautiful and very apt words from Rainer Maria Rilke: "Believe that with your feelings and your work you are taking part in the greatest; the more strongly you cultivate this belief, the more will reality and the world go forth from it.

We had to wait until early in the morning of January 1, 2014, to eat our dinner that Joanne had lovingly prepared. It was a merry beginning of that new year.

Shortly thereafter, Ruth sent me a copy of her words for the marriage ceremony she officiated seven months after the same-sex marriage decision. In her note, dated January 14, 2014, she said in part:

Dear Brenda:

Good to hear from you.

I have now performed four same-sex marriage ceremonies. Enclosing script from the first, and a Stanford Magazine. Interviewer Liz Magill is Dean there, and a former law clerk some years back.

Love to you, Ruth

But still, even though some states had mandated that same-sex couples be allowed to marry and be treated the same as opposite sex couples, there was no federal mandate forcing all fifty states to require same-sex marriage. That wouldn't happen until the 2015 *Obergefell*[42] ruling in favor of the fourteen same-sex couples who were suing, asking that their marriages be upheld across state lines.

In his path-breaking majority decision, Justice Kennedy wrote for the Court that "the right to marry is a fundamental right inherent in the liberty of the person." Laws making same-sex marriage illegal violated both the due process and equal protection clauses of the fourteenth amendment.

He elaborated:

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In

forming a marital union, two people become something greater than once they were.... [M]arriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization's oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.

Joanne and I visited with Ruth in her Chambers right after the Obergefell decision came down. And she explained that she had been delighted to join Kennedy's majority opinion and not write a separate concurrence, because he had included a page on equal protection. His inclination, as is apparent from his other opinions, was to focus on privacy and liberty. Ruth's feelings about this were consistent with the position she had enunciated about *Roe:* The case should have been decided on equal protection grounds. If men have control over their bodies, so should women over theirs. Here, if opposite sex couples can marry so should same-sex couples. It's simple!

I admit that I believe in activist judges like the ones who integrated schools in *Brown v. Board of Education,* like the ones who ended prohibitions on bi-racial marriages in *Loving v. Virginia* and the ones who, in the *VMI* cased forced the all-male military academy, Virginia Military Institute, to accept women or lose their government funding. I once wished for a Supreme Court that, when neither the legislative nor the executive branch of government has taken aggressive steps to end inequality, would ultimately will come to the rescue.... Those days, alas, with Amy Coney Barrett's appointment are past I fear, at least for a while.

I have my fingers crossed that we are able to keep as many cases out of the high court as possible. I don't want likely bad decisions to become part of the supreme

law of the land. This assumes that the "court enlarging" issue disappears. Some friends think it would be great for the Court to be expanded to have thirteen rather than nine members. I have always been skeptical that giving Democrats the opportunity to do so would be met with another change when/if the Republicans ascend to the White House again. And, of course, there's the problem of the continuing Senate filibuster. With that in place, I don't see how Biden can add members to the Court, even with the Commission that, as of this writing, continues to study the issue.

I'm pretty sure Ruth would have agreed with me about all this. In addition to the script from the first same-sex marriage she officiated, Ruth has given me books to which she's contributed, as well as some of her favorite opinions, including her from-the-bench dissents—and also a book of Marty's favorite recipes. He had become a world-class cook! Ruth also sadly told me about the walks she had taken with Marty, before he died in 2010, and his severe pain that made them have to stop and rest during their frequent short walks to the Kennedy Center.

***

The issues surrounding the rights of gays and lesbians have multiplied. Where not long ago we referred to "lesbian and gay rights," that morphed into "LGBT rights," adding those of Bisexuals and Transsexuals. Then it morphed again into "LGBTQ+ rights" which added the people who identify as Queer, some of whom refer to themselves as Non-Binary. And so began the movement for these rights. The lesbian Jewish anarchist, Eve Adams, back in the early 20th century, was very cool. Always

wearing men's clothes, she was among the first to call herself and use the word "lesbian." During the same period, in Emma Goldman's days, the concept of "intermediate sex" was bandied about. In the '70s, there were lesbians who wanted to be and were considered "butch" if they chose to present as more male. (Men who dressed like women were transvestites.) Many feminists thought of themselves as androgynous rather than butch or femme. Today the people who want to be thought of as "non-binary" resist saying they are "androgynous." I hope it's not homophobia that keeps some of them from just being "butch" lesbians or misogyny that keeps them from just being "women."

Meanwhile, grammar has taken a hit when non-binaries want us to refer to them as "they and them." About a woman who is now non-binary we are to say "they are nice," not "she is nice." I started a case a few years ago in which I represent pregnant women working on the docks. I brought the ACLU and another law firm in as co-counsel. Several of my younger colleagues on the case have resisted my calling our clients "pregnant Women," rather than "pregnant People," to allow for "trans-men" who can get pregnant. A subtle variation on this occurred recently when I mentioned that one of our clients would move from needing a pregnancy leave to a "maternity" leave. I was corrected and told I should use "parental leave of absence," which is okay since about 47 years ago I helped usher in the concept of fathers taking leaves after their children were born and that's what we called those leaves. But I do feel the people who are so eager to correct my language are acting like the "speech police." And then there are our weekly conference calls in which we are supposed to "identify our pronouns," whenever a new person joins the call. In 2019, I was the keynote speaker at the Girls Inc. annual luncheon in Santa Barbara. They asked me to meet with the young girls who are the beneficiaries of the organization. So, the day before my talk, we sat in a circle and we each introduced ourselves. Every one of the girls (probably about 25 of them) first said her name and then her pronoun. Almost all

were “she/her.” When we got to me, I just said my name and that I’d founded the ACLU’s Women’s Rights Project with then Professor Ginsburg. I don’t think it’s fair to make us conform to this unwieldy and unnecessary custom. I’ve read quite a bit about the movement for gender self-identification.[43] It’s a complex subject: how we identify ourselves. So, it seems to me that it ought to be okay if we want to leave out the clarification. If we want to send a notice about our gender, we can do that, too. Despite a wholesale endorsement of “new pronouns” in a recent New York Times Opinion piece,[44] I do not think we should need others to ratify who we are and expect us to use pronouns that are just plain awkward. I don’t usually feel the need to consider what’s between the legs of the person I’m talking with.

There are many issues raised by transactivists. One is how we can fairly treat athletes who were born (assigned at birth) male and have transitioned to identify now as women. Is there a difference between people who transitioned before or after puberty? This is relevant because males develop larger muscles, hearts and height, especially during puberty. Several transwomen have drawn headlines during the Olympics and so a process has been implemented of testing athletes’ testosterone levels. Is this a sufficient solution? And it remains to be figured out what to do about trans women in non-Olympic sports settings.

Then there is the prison issue. Some people born male and convicted as men have become aware that women’s prisons are easier, less crime-ridden, less violent. Allegedly some have even sought to undergo gender transition so they have a better time in prison. A new law (SB 132) went into effect in California in January 2021. T[45]he Los Angeles Times captioned its story: “California prisons grapple with hundreds of transgender inmates requesting new housing.”[46] Of the 261 housing transfer requests by male inmates, in the five months after the new law went into effect, all but six asked to be housed at a women’s facility. It seems

logical to me that almost anyone would want to get out of a men's prison and enjoy the relative comfort of a women's prison. But apparently due to this, crimes against women inmates have occurred, and some allegedly have been raped by the formerly male inmates. [47] Shouldn't there be a more rigorous process for approving hormones and surgery for male inmates considering such a transition? Should there be separate facilities for trans women? What about transmen who, if incarcerated, may face violence from male prisoners who could take advantage of their still having at least partly female bodies?

Those are questions, but this is a statement. I'm troubled by the folks who have decided that a solution to gender dysphoria is to delay the onset of puberty in children who are unsure if their sex matches the gender they believe they are. Some of these young children are enabled by their parents to take "puberty blockers (gonadotrophin-releasing hormone analogues)" that pause the physical changes of puberty, including breast development or facial hair, until they're old enough to make a final decision. When I first got my period at age eleven, I was very upset. I didn't want to become a woman. (I've since learned that many of my friends felt the same way.) I am very glad even this temporary "solution" was not available back in 1955. Experts in the field today acknowledge that little is known about the long-term side effects of hormone or puberty blockers in children with gender dysphoria. Those side effects may include hot flushes, fatigue and mood alterations. And it is not known whether hormone blockers affect children's bones or the development of the teenage brain. As adults, some of them might find they have become infertile. Others may be unable to reach orgasm. Although some experts advise this might be a physically reversible treatment if stopped early enough, even if that's true it is not known what the psychological effects may be.

Despite problems I have with the current treatment of gender dysphoria in children, there is, of course, no question that trans people should be treated equally in all aspects of life and careers. For example, I thoroughly support trans actor, Suni Reid, a valued cast member for more than three years, of the hit musical "Hamilton", who filed a charge with the EEOC against the show's parent company, accusing it of discrimination and retaliation against the Black transgender cast member. The claim is that Reid experienced discriminatory comments regarding gender identity, homophobic comments and problems being provided with a gender-neutral dressing room.[48] Meanwhile, one very encouraging bit of news is that California became the first state to require large stores to sell at least some children's toys outside of the usual boys' and girls' sections[49]. If they can't just eliminate those tired old sexist stereotypes, we can hope the new gender-neutral toy sections will simply take over as they did in Target that dropped gender-specific labels in 2015.

Netflix made headlines, not in a good way, for its continuing support—to the tune of $24.1 million—of Dave Chappelle and his special, "The Closer," Chappelle was quoted as making homophobic, transphobic remarks in his questionably funny show. Ted Sarandos, Netflix's co-CEO, publicly defended Chapelle's show: "Content on screen doesn't directly translate to real-world harm." This angered some of Netflix's queer and trans employees, chiming in from their twitter handle "Most."[50] I wonder if Sarandos still really thinks that sexist depictions of women don't contribute to sexism in the real world? Netflix also saw fit to make a multi-part docuseries featuring a guy who wrangled tigers ("Tiger King"). It's not just Netflix. A 12-part "Band of Brothers" was snapped up by HBO.

It would have cost a lot less and enlightened the viewers a lot more if these companies had instead greenlighted projects Joanne and I (and, no doubt, many others) brought to Netflix. Joanne is an

expert on women's suffrage, and we wanted to make a limited series about the suffragists who fought tirelessly for their entire lives to ensure that women had the right to vote. We were also unable to interest Netflix in a multi-part docuseries showcasing historic moments in women's history, as demand grew for more and more rights. I always tell myself to remain hopeful. Maybe now that the pandemic seems to be lifting the fog surrounding women's stories will, too.

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Feminists still have a lot of unfinished business. We all hoped that by 2020, when we celebrated the centennial of the 19th amendment, there would be a recognition that now is the time to show these stories.

"Mrs. America" is one series that did get made partly, I believe, because it attracted such great actors. And the subject matter was dramatic.... I first heard about it from Lily Tomlin's agent in May 2019 at a reception after a tribute to Lily and Harry Belafonte at the Geffen Theater in Los Angeles. He told me that I was depicted in it, not just in one mention but throughout. (Later, when I asked him to send me the script, he said he didn't have it!) Anyway, the next day I called Gloria who said she'd just heard about it herself. In an email to me on May 22, 2019, Gloria repeated: "All I know is that Schlafley (sic) is the Ms.(sic) America in the title, and that Tracey Ullman is playing Betty Friedan. Haven't seen any script." That turned out to be a lie; I don't use that word lightly. She was in direct correspondence with the show's creator and producer, Dahvi Waller, in both August and September of 2018, a full eight months before I called Gloria to tell her what I thought was news about a new limited series. In a September email, Dahvi even thanked Gloria for reading the pilot script. I was profoundly hurt—and angry—when I learned that Gloria had lied to me.

I've been going through my papers in advance of their being added to my archives. While I was leafing through several old journals, I read my December 26, 1976, entry:

"I can't expect G to agree with me or fight for me all the time…There's a love, a constancy, a loyalty…I realized that comes out of time and experience and that we'll always be there for each other."

Back in the '70s, I considered Gloria one of my best friends and now this happened.

I didn't know the producers of "Mrs. America" nor did I then know anything about Gloria's correspondence with them. But, as I read a description of the series on IMDB Pro, I realized I would indeed be depicted in it. So, I wrote a letter at the end of July pointing out that they did not have my rights. One month later on August 28, 2019, I received a letter from their lawyer telling me I'm a "public figure." That meant, they figured, they could rip off my book (this book) completely and use me in their series with impunity. I thought about it for a while and decided I had to let the matter go.

Joanne and I started to watch "Mrs. America" when it dropped episode by episode in April 2020. Although the character called "Brenda Feigen Fasteau" didn't figure prominently at the beginning, I saw myself portrayed by Ari Graynor, a wonderful actor, in the various early episodes. By the eve of the 5th episode, to say I was anxious is an understatement. This episode was entitled "Phyllis and Fred and Brenda and Mark (sic)." A few days before it was set to drop, I started to feel itching and stinging on one side of my face that prompted me to call my dermatologist. After her peering carefully at the photo I sent via Facetime—this being COVID lockdown—she diagnosed me with shingles!

Watching their depiction of me and my relationship with Marc and then showing me having a fling with a woman in the Watergate pool, I felt eviscerated. It didn't get better the more I reflected on it, but I was relieved to see my debate and trouncing of Phyllis Schlafly, ably played by Cate Blanchett who was so much more likeable than the noxious woman she was portraying. Phyllis Schlafly had lied on camera, on a national television network, about not having any children at home anymore. Her mantra was that mothers of school-age children should stay home with them. In truth, she had six children, Andrew who was ten or eleven years old, another (Anne) was even younger, when she and I debated, both of whom she'd left in the care of a housekeeper when she traveled which seemed to be constantly. Schlafly also made up a case that she said arose in Illinois, with the wife's being divorced by her husband and denied alimony, she said, because the ERA might pass in her state. It made no sense. I actually called her on it, told her there was no such case. That left her open-mouthed, agape, unable to name that "case" or give me its cite, because it didn't exist.

I was moved by the kind and thoughtful performance of Ari, depicting my 29-year-old self. It took me three weeks to feel well enough to reach out to her. I had obtained her email and cell number from her manager whom I knew because I had been trying to get one of her other clients, Julianne Moore, to star in Joanne's and my long-hoped-for movie about Susan B. Anthony and Elizabeth Cady Stanton. In my email, I thanked Ari. Then we set up a call and talked. I really liked her, and that began a friendship. Shortly after that, Ari told me "they (the other stars) were all in (happy, relieved) tears when they heard" that I'd called her.

As it turned out, I appreciated the series but not the fact that it depicted our women's movement through the lens of Phyllis Schlafly. I thought Margo Martindale did a wonderful job with

“Bella” and Uzo Aduba, with “Shirley Chisholm.” Tracey Ullman managed “Betty Friedan,” coming across almost as unlikable as the real Betty. “Gloria,” portrayed by Rose Byrne, seemed self-absorbed, dancing around her apartment by herself in a haze of smoke, and unfaithful to her boyfriend, Frank Thomas. She only really came across as a bridge-builder in the ’77 Houston Convention. Of course, I would have done a show like this differently, but I’ve been hearing from women everywhere that they learned about our movement from watching “Mrs. America.” They didn’t learn anything wrong.

Ari had wanted other people to know about our connection, so our conversation, which was more like an interview of me by Ari, was published in *NY Magazine’s* “The CUT” on August 26, 2020, the hundredth anniversary of the ratification of the 19th amendment to the U.S. Constitution. In that interview, we talked about how we felt our conversation could shed light on a friendship between two women, one of whom was twice as old as the other. Before that, on July 30, 2020, the *L.A. Times* had published on the front page of the Calendar section an op-ed by Gloria and one of NOW’s former presidents, Ellie Smeal. (This was obviously planned to influence voters for the Emmys whose ballots were due in soon.) Their point: “Mrs. America” misrepresented history. They called the series “hopelessly wrong… factually, historically wrong,” stating that it was mainly corporate lobbying that slowed the ratification of the Equal Rights Amendment. Frankly it seemed to me that Gloria was motivated mostly by her dislike of the way she was depicted. Their attack angered me. They feel the real ERA culprit was the insurance industry not Schlafly?! Of course, the insurance industry, as well as other corporate interests, didn’t want the ERA. It would require women to have the same rates as men. Because women live longer, the industry would lose money, having to pay out more over their additional years of living. We had done everything we could back in the ’70s to address this problem but make the industry into the series’ antagonist, rather than

Schlafly?! Who would watch such a show? It was supposed to be entertainment and not a documentary, using real characters to illuminate our fight.

Anyway, I set about writing a detailed point-by-point response to what Gloria and Ellie had said, and I shared it with the producers with whom I had, by now, talked on the phone. When I told them about my call with Gloria a year earlier, they confirmed that Gloria had, indeed, lied to me when she told me she knew nothing about the series. In fact, they had sent her the scripts for two episodes and she even sent them notes on the first. But it seems they did not make enough changes to satisfy Gloria so she took her upset to the press. In fact, maybe she could have explained why she thought the insurance industry was more to blame for the ERA's defeat than Phyllis Schlafly. She could have told the producers her feelings instead of lashing out at them and the show—needlessly, announcing that it got the women's movement "all wrong" and accusing them of instigating a "catfight." And, note, it was Gloria who used that sexist expression about Schlafly and the rest of us.

Soon, one of the producers, Stacey Sher, as well as Cate Blanchett's publicist, called me, asking if I would talk to a group of them about Gloria's criticism. I agreed. I gained even more respect than I already had for Cate, as well as Uzo Aduba and Dahvi Waller, the show's creator, in an interview the four of us had with Meredith Blake for the *L.A. Times*. It was published in the Calendar section on August 19, 2020. It had become clear to me that Gloria, who says she hates confrontation, does not really tolerate even differences of opinion.

She certainly did not reach out to me after our disagreement about "Mrs. America" was aired in the *L.A. Times*. I have not talked with her since my call to her in May 2019. Meanwhile, In April 2020 one of the original editors of *Ms.,* Letty Cottin Pogrebin, called me after I was credited on "Mrs. America" with co-founding *Ms*. with

Gloria. She told me she liked the episode that featured me, but by the way, I was not, in fact, a co-founder of *Ms*. I was stunned. Letty had been a friend of mine; we had been in the same consciousness-raising group back in the '79s. Then I proceeded to send her a published statement from Gloria written years earlier that referred to me as her co-founder. Maybe, I wondered, is it crazy to surmise that Gloria may have been behind Letty's call?

Because she has long been dubbed the leader of the Women's Movement, I think it's appropriate to set Gloria in context. She has inspired young girls everywhere and shown them that you can be a feminist and still be "feminine." She helped explain to women of color to understand that the Movement was for all of us, not just white middle-class white women. But there was a mostly unknown side of Gloria. In 1975, after the feminist group Redstockings researched and raised questions about Gloria's activities on behalf of the CIA's "Independent Research Service" ("IRS"), Gloria published a "Statement" in connection with those activities. And just before the Redstockings' book, *Feminist Revolution,* was due to be published, I've been told that Gloria through her lawyers threatened to sue for libel if Random House allowed the CIA chapter to be published in their book. Libel means untruths were due to be or had been spread. The chapters were deleted. I don't know why Random House caved to her demand. Next when Gloria found out that the *Village Voice* had assigned a journalist to prepare an article on the censorship of *Feminist Revolution, t*hrough her attorneys Greenbaum, Wolff and Ernst, Gloria apparently threatened another lawsuit against the *Village Voice* if any mention of her CIA association appeared in that article. There was more of what might be characterized as legal harassment, but the point is not that Gloria Steinem has been a CIA asset. She seems to have admitted that. Of course, it's a fact I wish I had known when I proceeded through the early days of the feminist movement with her at my side! The real issue is her threatening the *Village Voice* and pressuring Random House to eliminate a

chapter from the Redstockings book, before it was published, even though the veracity of that chapter seems not to have been in doubt.

This all makes me unhappy. Back when I was working with Gloria it was important to me that I trusted her. There have been more instances of what I view to be Gloria's obstructionism that seem to raise questions about her loyalty to other feminists and even women and the Movement, in general.

A national crisis began, caused by President Clinton and his womanizing. The Paula Jones case in which she accused Clinton of sexual harassment was filed and eventually settled in 1998 for $850,000. Not having known for sure what the facts were and waiting for the trial court to resolve the matter, most feminists did not publicly support Paula. And most of the other women who would come forward against Clinton, had not yet done so. But then along came Monica Lewinsky, White House intern, and soon all the world knew that Clinton had lied under oath about his behavior with Paula Jones. (In fact, in April 1999, a federal judge found him in contempt of court for that lie.) A few feminists by now had risen to the occasion and criticized Clinton for behavior which clearly would violate Title VII were he an employer in the private sector. Others refused to get caught up in the debate about whether what he'd done was sexual harassment, preferring to focus on what it said about his character and ability to continue as the leader of the free world. The ebbing respect for Clinton was highlighted in the recent FX limited series "Impeachment." With Monica Lewinsky as one of the producers, it featured the amazing Sarah Paulson in the role of "Linda Tripp," whose taping of Lewinsky's calls with her proved the undoing of the president.

The first inkling of real trouble within the Women's Movement in the late '90s came when—out of the blue—Gloria wrote an op-ed piece for the New York Times, in which she defended Clinton. She

characterized his dropping his pants, exposing himself and asking for a blow job as a "clumsy sexual pass", which was okay with Gloria because, she said, he took "no" for an answer. She also added, sounding sympathetic, that Clinton "may be a candidate for sex addiction therapy." Then some of his followers used this addiction argument as reason not to come down hard on Clinton but rather to urge him to seek "help" or to pity him for his weaknesses. Gloria also criticized Clinton's detractors, among them other feminists, for disqualifying Clinton's "energy and talent [which] the country needs." (As far as I was concerned, he was the one who had disqualified his energy and talent, especially the energy and "talent" he was using to discredit the many women he used for his own sexual pleasure.) The main thrust of Gloria's defense of Clinton sounded like she really did think boys will be boys.

It didn't take long to realize that her column would be interpreted as the position of the Women's Movement with regard to Clinton. So, I sent off my own letter to the *New York Times*. In my opinion, Clinton's dropping his pants (when he was Governor of Arkansas) and "asking" Paula Jones, an Arkansas state employee, for a blow job was sexual harassment. He had the power to ensure her being fired if he so chose—or to reward her if he liked the performance he was trying to get out of her. I added, in my letter, that Gloria did not represent the views of many feminists. Unfortunately, the Times' editors ducked, saying they never publish rebuttals; my little piece never saw the light of day.

Mostly out of courtesy, I decided to fax what I'd written to Gloria. Her defensive response back to me included a noteworthy line: "Remember, I'm not a leader, and have never been elected to anything. I'm a writer and organizer who says what I think."

At least Time Magazine (not usually my favorite weekly news source) backed me up. In its June 1998, cover story entitled “Is Feminism Dead? it said:

The doyen of second-wave feminism startled many… when she penned an op-ed piece for the *New York Times* arguing that the allegations of a sexual dalliance between the President and a 21-year-old intern were nothing to get worked up [about]. If the

stories were true (and she believed they were) then Clinton was guilty of nothing more than frat boyishness, Steinem wrote.

From my perspective today, I believe that women’s consciousness, raised by Clinton’s behavior, enabled by Gloria’s fractured response, led to the Me Too movement that started publicly with charges of sexual misconduct and rape against Harvey Weinstein almost twenty years later. Now that we’ve had a chance to relive those years of Clinton’s behavior, as I did watching “Impeachment,” we see the parallels clearly.

Recently, Gloria took aim at commercial surrogacy, the only way, short of adoption, that many people can have children, She was quoted in *The New York Times* as saying that legalizing surrogacy would put “disenfranchised women at the financial and emotional mercy of wealthier and more privileged individuals” and allow “profiteering from body invasion.”[51] By taking this position Gloria is denying people the right to pay a surrogate to carry a pregnancy that started with an implanted embryo, as well as the right to pay for health insurance for their surrogate. It would clearly be a way of denying the agency of women who should have the right to control their own bodies, whether or not they get paid for doing so.

The surrogacy bill had floundered for years in the face of staunch opposition by the Roman Catholic Church—and Gloria who teamed up with them. This odd alliance argued that paid surrogacy led to the exploitation of women. To quote AP, "'Under this bill, women in economic need become commercialized vessels for rent, and the fetuses they carry become the property of others,' renowned feminist Gloria Steinem wrote to lawmakers in 2019."

Gloria's plan, had it gone through, meant that basketball star, Breanna Stewart and her wife Marita Xargay, whose baby girl Ruby was born in August 2021, would not have been able to compensate the surrogate who bore the child, using an egg from Stewart, inseminated by a donor. The Women's National Basketball Players Association had championed the trailblazing agreement that "ensured full pay for maternity leave, boosted access to child care and provided significant financial support for surrogacy…."[52] Gay male couples who wanted to ensure the health of an impregnated surrogate wouldn't be able to insure the safe birth of their own biological baby either. The same would be true for women who can't get pregnant or who can't carry a pregnancy to term. For example, Kristen Welker of NBC News announced that after four years of trying to become pregnant, it was confirmed that she was unable to maintain a pregnancy, and finally she and her husband, John, were delighted to announce they had found a surrogate and they would, in fact, be parents. Gloria apparently doesn't think they should have been allowed to pay the surrogate or obtain health insurance for her.

Despite Gloria and thanks to the Child-Parent Security Act, gestational surrogacy is finally legal in New York State, giving LGBTQ+ couples and everyone else experiencing infertility the opportunity to build a family through surrogacy. The law that that took effect in February 2021 is known as the surrogates' bill of rights, and it provides the right to independent legal representation, guaranteed comprehensive medical coverage, and

the right to make the woman's own health care decisions, including whether to terminate.

In the multi-hour docudrama about Gloria based on her book, *My Life on the Road,* she is depicted gloriously by four different actors. One of my issues with that show is the way Gloria is credited as being the only one who had the meetings with women writers and journalists to verify the need for a future possible *Ms. Magazine.* In fact, one of only two meetings that were held was in my apartment. The idea to start the Women's Action Alliance from which *Ms*. sprang as a newsletter was solely my idea. A friend, Marlene Krauss, a graduate of Harvard Business and Medical Schools, accompanied me to a meeting with Jane Trahey, the most powerful woman in advertising and head of her agency Trahey/Wolf. We thought that *Ms*. should be a glossy magazine. Did Trahey agree with us? She did. Such a magazine would indeed garner advertising.

In yet another assault on the truth, Gloria, on a late-night talk show, said she had had no idea what would be in the then upcoming "The Glorias." That was hardly credible since it was based on her own book, and Gloria, in the publicity surrounding the release of the four-hour show, loudly sang the praises of its director-producer, Julie Taymor.

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I have continued my law practice and, as I mentioned above, in 2016, I undertook the representation of several pregnant women dockworkers in Long Beach, California. They were refused lighter duty that would substitute for the usual extremely hard, often dangerous, physical labor required by their jobs. This case highlights the fact that women in their 20s and 30s are the most likely of any age group to get pregnant while it's also women of

that age who are the most fit for the heavy physical labor of being dockworkers. Another group of often overlapping women are those who are lactating and want to be able to feed their babies with their own breast milk, pumped at work in a private safe space (as required by law). Of course, the states of being pregnant and nursing are unique to women and the concomitant issues need to be handled properly. This raises questions about whether and how to treat pregnant women appropriately and still in accordance with the fundamental notions of equality that have developed over the last fifty years. I brought the ACLU and a class action law firm in on this matter, as my co-counsel. And, as of December 2021 after all these years of working on it, we seem to be heading into a major class-action trial.

I've had other interesting clients. Teamster women gathered at my house to complain about the shoddy treatment they were getting from their union and from the men who worked alongside them. One, "Belinda," described her job driving a truck to film locations, carrying equipment for the shoots. The two men who rode alongside her constantly made horrible sexist remarks, turned the air conditioning on in the dead of winter and, finally, relapsed to penis jokes and to designing a penis out of the wax covering they got off a Baby Bell chunk of cheese. After they put it on the hood of her truck, Belinda had had enough. I involved a litigation firm and, several years later, we were able to secure a settlement from the film company that was making the TV series on which she had been working.

Then a funny, strong stuntwoman called, asking me to help her. Again, the harassment and discrimination were finally too much. She was ready to go public with her complaint: the male stunt supervisor had been giving jobs to men in wigs who were pretending to be women, thereby keeping my client and other women from the jobs that were supposed to go to them. This had a sad ending because, even though those stunt women were

continuing to be deprived of work, they lost their nerve to participate in the class action lawsuit I was proposing.

Hollywood women writers with whom I and a very competent litigator met were similarly scared to step forward though they had proof that they were being paid less than their male counterparts for the same work. Maybe that's changing since I see that some of the women in power in this town were writers themselves in their earlier careers and since women like Emma Thompson and Emerald *Fennell* have won the Oscar for best original screenplay and Michaela Coel, the Emmy for her work on the series "I May Destroy You."

At the turn of the millennium in 2000 when this book was first published, I was concerned that there was a "vacuum of vision" and that the women's movement did not act cohesively on a set of issues. But then there was the disastrous election of 2016 followed by an extraordinary Women's March on January 21, 2017. 5.2 million people in the streets around the globe marched, not only to protest the election of Donald Trump, but also to speak out on issues of great concern to feminists today, so many important issues from the Climate Crisis to Choice to Black Lives Matter. The March provided a sense of solidarity among people of different races, ethnicities, ages, gender identities and sexual orientations that I had not witnessed together in one place before. I was delighted that they were all calling themselves "feminists." I consider that uprising to have been a big factor in Donald Trump's 2020 defeat.

Washington, DC, January 21, 2017—The Women's March. (Abrams Image)

These days, inspired by the multitude of different posters, banners and flags feminists were waving around the world, I've developed a new theory about feminism. I think of it as the Feminist Wheel with many spokes. And I created an image for it. Each spoke represents issues and causes that need to be addressed. For example, ending racism is an imperative. Ending sexism, ending homophobia that continues to harm members of the LGBTQ+ communities; addressing the issues that are wrecking our environment, that are perpetuating homelessness. And my goal is not just to stop bad practices; we need to create new opportunities as we address the specific issues.

So, I envision a Wheel with twelve spokes, each of which raises a particular issue in a forthright manner. If one of the spokes is missing or broken, the Wheel weakens; maybe it won't even turn. With this metaphor, I am expanding on the use of the word "feminist." These issues are interrelated and of a piece. By calling myself a "feminist" I am saying I believe in the importance of all of them. You don't get to call yourself a feminist if you don't want to end racism, heal the environment, etc. You can be a single-issue person, but "feminist" means a lot more than just saying that you are "for women's rights." It means more than saying you're for "equal rights," because we need more than equality to achieve the goals so many of us are determined to reach. I also want us to use the phrase "feminist movement," rather than "women's movement" because we do include men; we do include people whose emphases have been on issues like reproductive rights, voting rights and equal pay, racial justice, immigration reform, as

well as healing the environment. Our priorities may be different, as we saw in the March, but we're walking side-by-side with people of different genders, races, ethnicities, ages and abilities who support us just as we support them.

THE WHEEL OF FEMINISM

The Wheel of Feminism copyright © 2021 by Brenda Feigen. Color design by Erika Rothenberg.

As we address these issues, our society comes closer to being one in which we should want to live. To elaborate on each spoke: Women's Rights means equal rights. Reproductive Rights means the right to control our own bodies. LGBTQ+ Rights means just that. People must be free to express themselves and be free to love whomever they choose as long as others aren't hurt in the process. Gender Violence asks for the elimination of domestic violence and sexual harassment. Family Rights notably includes a demand for 24-hour child care, paid by the government as public schools are now, only for younger children whose parents need or want to work outside the home. (I have hope because Vice President Kamala Harris has prioritized this issue.) It also includes health care, the absence of which for many has been brought into full view by the pandemic. Gun Violence represents a determination to walk back the Supreme Court's interpretation of the Second Amendment so we can be free of fear going about our daily lives, as well as in our homes. Anti-Semitism, recently on the rise thanks largely to Trump and his coziness with former Israeli prime minister, Benjamin Netanyahu, as well as domestic terrorists like the ones we saw on January 6th wearing "Camp Auschwitz" t-shirts, must be confronted with even harsher penalties. Anti-Racism includes Black Lives Matter, as well as anti-Asian hate that again sprang up recently largely due to Trump's "Kung-Flu" jokes and his desire to blame Asians for starting and spreading the pandemic. Immigrants' Rights has been highlighted by the Muslim Ban that Trump embraced, as well as recent treatment of DACA recipients. Disability Discrimination continues shockingly allowing many businesses to deprive access to disabled people for whom necessary accommodations have not been made. I now broaden its traditional meaning to include ageism which leads seniors often not to aspire for more, knowing it's usually pointless to apply for jobs or improve their looks because no one really cares. "They'll be gone soon…." And finally, the Climate Crisis, affects every single one of us. A shred of light may be coming since Exxon Oil has elected several climate activists to its Board.

I wonder if we can now envision the body of a bus that is propelled by its feminist wheels and their spokes. In that bus, we'll see people—young and old—like those at the Women's March, hanging out of their windows, waving their banners, glad to be on their way to solving the problems that continue to plague us. That bus and its wheels are feminism.

I firmly believe that the feminist movement today is strong and thriving and addressing virtually all the important issues of the day. Clearly, we laid the groundwork for the Biden administration with the first woman vice president in our history as well as a bunch of women in Biden's cabinet, totaling 48% of it. It was more than fifty years ago that we founded the National Women's Political Caucus, and not only do we have an intrepid woman Speaker of the House, finally we have a woman Vice President, and a great and diverse one at that.

Meanwhile, we have lived through a very hard almost two-year pandemic. COVID has not only killed way too many people but also exposed fissures that were close to but not right on the surface. Before the beginning of 2020, everything seemed to be working but then the whole world emptied out. Now many of us are terrified that we are foreseeing the end of the planet with so much conscious disregard of the climate crisis. And here in America, we may be witnessing the end of democracy in our country with so many states rife with calls for various maneuvers to suppress votes.

COVID cost my brother's life, along with more than one million other American lives. And right before that, we lost my old pal and colleague, Ruth Bader Ginsburg, to whose memory I dedicate this book.

Brenda Feigen, August 2023

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*Joanne Parrent, my life partner, whose love and devotion have buoyed me for over the past 30 years and who has allowed me to count on her for almost everything

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A postscript: I must add that the overturning by the Supreme Court of *Roe v. Wade* makes some of what I've said obsolete. I was shocked by this terrible setback in the progress of women's rights in America – the misogyny of the Court and the comparative powerlessness of women -- and, like so many others, am trying to develop strategies that will help women realize full bodily autonomy in the coming years.

ENDNOTES

[1] 410 U.S. 113 (1973).

[2] NY Times Nov. 28, 2021, p.6

[3]550 U.S. 124 (2007)

[4] Id.

[5] Id.

[6] 570 U.S. 529 (2013).

[7] Id.

[8] 573 U.S. 682, (2014).

[9] Id. at 682, 730–31, 736

[10] Id.

[11]. A Conversation Between Justice Ruth Bader Ginsburg and Professor Robert A. Stein, 99 Minn. L. Rev. 1, 14 (2014).

[12] Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania, 140 S. Ct. 2367, 2372–73 (2020).

[13] Id. At 2400 (Ginsburg, J., dissenting).

[14] Id. At 2401.

[15] *Goodridge v. Department of Public Health, 798 N.E. 2d 941 (Mass. 2003).*

[16] *Lawrence v. Texas,* 539 U.S. 558 (2003).

[17] See *Roe* Supra

[18] 505 U.S. 833 (1992).

[19]See fn.16 supra.

[20] *Lawrence*, 123 S. Ct. at 2487 (O'Connor, J., concurring) (quoting *Railway Express Agency, Inc. v. New York*, 336 U.S. 106, 112–113 (1949) (Jackson, J., concurring)).

[21] Id.

[22] *Goodridge v. Dep't of Pub. Health*, 798 N.E.2d 941 (Mass. 2003); Opinions of the Justices to the Senate, 802 N.E.2d 565 (Mass. 2004).

[23] Id. at 2487–8 (O'Connor, J., concurring).

[24] *Id*. at 2484. (O'Connor, J., concurring) (noting that the present case "does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter").

[25] Supra at 959.

[26] Id.

[27] 347 U.S. 483, 495 (1954).

[28] 531 U.S. 98 (2000).

[29] Julie Tamaki, *Boxer Walks a Tightrope*, L.A. Times, Feb. 20, 2004, at B1.

[30] 388 U.S. 1 (1967).

[31] *Lawrence v. Texas*, 123 S. Ct. 2472, 2484 (2003).

[32] Politico, Nov. 4, 2008 Ben Smith Blog.

[33] *LA Times*, June 18, 2009.

[34] 570 U.S. 693 (2013).

[35] 682 F.3d 1 (1st Cir. 2012).

[36] Id.

[37] *Baker v. Nelson* 291 Minn. 310, 191 N.W.2d 185 (1971).

[38] 570 U.S. 744 (2013)

[39] *Loving v. Virginia, supra*.

[40] *Supra*

[41] 570 U.S. 744 (2013).

[42] *Obergefell v. Hodges*—135 S. Ct. 2584 (2015).

[43] See, e.g. Helen Joyce, "Trans: When Ideology Meets Reality," One World 2021

[44] NY Times, A22, September 24, 2021.

[46] *L.A. Times*, April 5, 2021.

[47] See “Trans” by Helen Joyce, supra.

[48] L.A. Times, 10/15/2021, E3

[49] *L.A. Times 10/11/2021, B3*.

[50] L.*A*. *Times,* 10/19/2021, E1

[51] *New York Times, June 12, 2019*.

[52] *New York Times*, August 17, 2021, P. B7.