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Tribute to Ruth Bader Ginsburg

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TRIBUTE TO RUTH BADER GINSBURG

The editors of the *Case Western Reserve Law Review* respectfully dedicate this issue to Justice Ruth Bader Ginsburg.

Jonathan L. Entin[†]

A TRIBUTE TO RUTH BADER GINSBURG: A LAW CLERK'S REFLECTIONS

I was privileged to know Ruth Bader Ginsburg for more than forty years. I was one of her earliest law clerks, and we stayed in periodic touch after that. The editors of the *Case Western Reserve Law Review* have invited me to provide a few personal reflections. I am honored by this request and hope that what follows does honor to Justice Ginsburg and fulfills the editors' expectations. The discussion proceeds in three stages: first, I will explain why I applied for the clerkship; next, I will describe some aspects of the clerkship and my continuing connections with her; finally, I will offer some observations on her judicial record and her place in our nation's law and history.

I

When I started law school I had no interest in clerking. But several of my professors encouraged me, with increasing levels of insistence, to throw my hat into the ring. I applied to Justice Ginsburg because she was a distinguished legal scholar who also directed a remarkable litigation campaign that resulted in a series of Supreme Court rulings that transformed the law of gender discrimination.

Let's begin with Professor Ginsburg, the scholar. She made her mark early with significant articles on complex procedural subjects in leading law reviews¹ as well as a highly regarded book and several other

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1. See, e.g., Ruth B. Ginsburg, *Judgments in Search of Full Faith and Credit: The Last-in-Time Rule for Conflicting Judgments*, 82 HARV. L.

articles on Swedish law.² Indeed, her work on Swedish law led to her receiving an honorary degree from Lund University that was presented to her by King Gustaf VI of Sweden; she hung the diploma on the wall of her chambers. But she also published numerous works on constitutional issues³ and coauthored the first law school casebook on gender discrimination.⁴

Those latter projects grew out of her work as a lawyer, leading an effort to combat the gender discrimination that was pervasive in our law. When she began her work, the Supreme Court had never in its entire history found a sex-based law to be unconstitutional. But the Court had decided quite a few cases that rejected challenges to such laws. For example, in 1873 the Court upheld the exclusion of women from membership in the bar.⁵ One of the opinions in that case, written by a supposedly progressive justice, said that women were too fragile to be lawyers: “The paramount destiny and mission of woman are to fulfil the noble and benign offices of wife and mother. This is the law of the Creator.”⁶ Sometimes the Court refused to take gender-discrimination claims seriously. In a 1948 case challenging a Michigan ban on women working as bartenders, the Court said that “to state the [legal] question is in effect to answer it.”⁷ And as late as 1961, the Court

REV. 798 (1969); Ruth B. Ginsburg, *Special Findings and Jury Unanimity in the Federal Courts*, 65 COLUM. L. REV. 256 (1965).

2. See, e.g., RUTH BADER GINSBURG & ANDERS BRUZELIUS, *CIVIL PROCEDURE IN SWEDEN* (1965); Ruth Ginsburg, *The Jury and the Nämnd: Some Observations on Judicial Control of Lay Triers of Civil Proceedings in the United States and Sweden*, 48 CORNELL L.Q. 253 (1963); Ruth Ginsburg & Anders Bruzelius, *Professional Legal Assistance in Sweden*, 11 INT’L & COMPAR. L.Q. 997 (1962).
3. See, e.g., Ruth Bader Ginsburg, *Gender and the Constitution*, 44 U. CIN. L. REV. 1 (1975); Ruth Bader Ginsburg, *Sex Equality and the Constitution*, 52 TUL. L. REV. 451 (1978); Ruth Bader Ginsburg, *Sexual Equality Under the Fourteenth and Equal Rights Amendments*, 1979 WASH. U. L.Q. 161; Ruth Bader Ginsburg, *Some Thoughts on Judicial Authority to Repair Unconstitutional Legislation*, 28 CLEV. ST. L. REV. 301 (1979).
4. KENNETH M. DAVIDSON, RUTH BADER GINSBURG & HERMA HILL KAY, *SEX-BASED DISCRIMINATION: TEXT, CASES, AND MATERIALS* (1974).
5. *Bradwell v. State*, 83 U.S. (16 Wall.) 130 (1873).
6. *Id.* at 141 (Bradley, J., concurring); see also *Muller v. Oregon*, 208 U.S. 412 (1908) (upholding a statute limiting women’s working hours due to females’ physical frailty and the potential harm to their reproductive capacity arising from long hours on the job).
7. *Goesaert v. Cleary*, 335 U.S. 464, 465 (1948).

upheld the effective exclusion of women from jury service because they were “the center of home and family life.”⁸

That changed in the 1971 case of *Reed v. Reed*,⁹ which struck down an Idaho law that preferred men over women as administrators of estates. Professor Ginsburg did not argue that case, but she wrote the brief. This seemingly small case—and a tragic one, involving the aftermath of a teenager’s suicide¹⁰—was the first time that the Supreme Court found any form of gender discrimination to be unconstitutional.¹¹ She soon built on that foundation in a series of cases that she argued and others in which she wrote amicus briefs and often advised the lawyers who did argue.

Her first oral argument at the Supreme Court came in *Frontiero v. Richardson*,¹² decided in 1973, which struck down a discriminatory Air Force rule about housing and similar benefits: married male officers could automatically qualify for those benefits, but married female officers could get them only if they could show that their husbands depended on them for more than half their support.

Two years later, she won the case of *Weinberger v. Wiesenfeld*,¹³ which struck down a provision of the Social Security Act that gave benefits to the widowed mother of small children but denied them to widowers who had small children. Stephen Wiesenfeld’s wife died in childbirth, leaving him to raise their son alone. Justice Ginsburg always said that Wiesenfeld was her favorite client; he testified at her Supreme Court confirmation hearing, and in 2014 she performed Stephen Wiesenfeld’s second marriage—with his son Jason in attendance (she also had performed Jason’s marriage some years earlier).¹⁴

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8. Hoyt v. Florida, 368 U.S. 57, 62 (1961).
 9. 404 U.S. 71 (1971).
 10. See Ruth Bader Ginsburg, *Speaking in a Judicial Voice*, 67 N.Y.U. L. REV. 1185, 1203 n.107 (1992).
 11. Even before *Reed*, she and her husband, a distinguished tax lawyer, successfully challenged a gender-based provision of the Internal Revenue Code, although the court of appeals did not issue its ruling for 18 months after oral arguments. *Moritz v. Comm’r*, 469 F.2d 466 (10th Cir. 1972); see Ruth Bader Ginsburg, Gillian Metzger & Abbe Gluck, *A Conversation with Justice Ruth Bader Ginsburg*, 25 COLUM. J. GENDER & L. 6, 9–10 (2013).
 12. 411 U.S. 677 (1973).
 13. 420 U.S. 636 (1975).
 14. See Robert Barnes, *Ginsburg Performs Wedding for Man in 1970s Case She Argued Before the Supreme Court*, WASH. POST (May 25, 2014), https://www.washingtonpost.com/politics/ginsburg-performs-wedding-for-man-in-1970s-case-she-argued-before-the-supreme-court/2014/05/25/a1add474-e114-11e3-9743-bb9b59cde7b9_story.html [https.perma.cc/BJ4G-2SBY].

And in 1976, she advised the lawyers and wrote an important amicus brief in *Craig v. Boren*,¹⁵ which established intermediate scrutiny as the constitutional standard for gender-discrimination cases. This was an unusual case, because it involved a state law that required men to be twenty-one before they could buy low-alcohol beer but allowed women to buy the same product at eighteen.

There were other cases along these lines,¹⁶ and by the end of the 1970s the Supreme Court had made clear that gender discrimination was no longer trivial but instead required a substantial legal justification. Ruth Bader Ginsburg was primarily responsible for this dramatic transformation. Not only did she make creative and ultimately persuasive legal arguments, but she also devised a brilliant litigation strategy. She proceeded incrementally, sometimes with male plaintiffs and sometimes with married couples. She understood that she had to persuade nine middle-aged and older men to take gender discrimination claims seriously, and she recognized that they would be more open to doing that if she could show them that traditional notions of gender roles affected men as well as women.

II

I did everything wrong in applying for my clerkship with Justice Ginsburg during my second year in law school. Based on incomplete information, I assumed that she was already on the United States Court of Appeals for the District of Columbia Circuit so sent my application to her in Washington. Some time later, I got a nice letter from her—on her Columbia Law School letterhead—explaining that her nomination had only recently been sent to the Senate. But she also asked me for more information. After I sent that material, she asked for more, so I sent that. Then she invited me to interview at her New York home, even before she was confirmed.

When I arrived shortly after 9:30 a.m. on June 18, 1980, her son welcomed me by saying: “I was going to ask why you want to clerk for an unconfirmed judge, but I can’t do that. The Senate just confirmed

15. 429 U.S. 190 (1976).

16. *See, e.g.*, *Califano v. Goldfarb*, 430 U.S. 199 (1977) (invalidating a provision of the Social Security Act that denied survivor’s benefits to widowers unless they could prove that they relied on their wives for more than half of their support but automatically allowed widows to obtain survivor’s benefits); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974) (striking down a rule that required pregnant teachers to stop working after their fourth month). Professor Ginsburg argued *Goldfarb*, and she both advised the lawyers for the teachers and submitted an amicus brief in *LaFleur*. For more details about *LaFleur*, see Jonathan L. Entin, *Sidney Picker: Legal Architect*, 71 CASE W. RES. L. REV. (forthcoming 2021).

her a few minutes ago.” So I was the first person she saw outside of her family after receiving that news. Our conversation was repeatedly interrupted as she took congratulatory phone calls. Eventually she made me the offer, which I happily accepted.

Although my clerkship would not begin for another year, she made sure that I received all the slip opinions from the D.C. Circuit so that I would know what the court had been up to when I started. She even welcomed my having caught a faulty citation in one of her opinions.¹⁷

Justice Ginsburg was a superb judge and a great boss. She didn’t have formal rules. For example, her office manager told the previous clerks that they couldn’t leave work while the judge was still there. Justice Ginsburg was not a morning person—I rarely saw her before 10 a.m. all year except on days when she heard oral arguments—and she worked very late. One evening around seven o’clock she came out of her office to get a cup of coffee and saw that all the clerks were at their desks. She asked why they were still there at such a late hour. They told her what the office manager had said about not leaving while she was still in chambers. The judge laughed and said that she had no such rule. In fact, she only expected her clerks to do excellent work and do it on time. There was no dress code (although of course we all dressed appropriately), nor were there formal working hours (except that we had to be in the courtroom when the cases for which we had prepared bench memos were argued).

That captures the essence of what made Justice Ginsburg such a wonderful boss. She wasn’t a schmoozer, but she treated us like professionals. She also made clear that she wrote her own opinions. Her name went on them, and she wanted them to reflect her own voice. She eagerly shared drafts and often incorporated suggestions from the clerks, but for the most part our writing consisted of memos. Toward the end of the year, she would let us do the first draft of an opinion. Our manuscripts came back covered with her editorial comments. She gave us more latitude with the short memoranda that were issued as unpublished opinions, but even there her style was evident. She also asked us to review drafts from other judges in cases in which she sat but was not writing, and she shared at least some of our comments with the authoring judge.

When we weren’t helping her with opinions, we prepared her for the next round of oral arguments. Each judge sat for several days each month, typically in panels of three. The clerks divided the cases that would be argued at each sitting and wrote bench memos on every case before it was argued. Those memos provided an overview of the issues, what had happened before the case got to the court of appeals, and the parties’ arguments. We focused in particular on whether those argu-

17. I later learned that the clerk who had worked on the case got taken to task for the error, but we managed to make amends before the end of his clerkship.

ments were supported by the record in the case and whether the authorities on which the parties relied actually supported their claims. You would be surprised how often the authorities had to be stretched to support the arguments for which they were cited. Then a few days before the argument, she would meet with each of us to discuss “our” cases.

My first bench memo was on a complicated election law case.¹⁸ I approached the project with more than usual trepidation. My co-clerks, Gary Harris and Monica Wagner, had been her students at Columbia, and Monica also had been the judge’s research assistant. I had no connection with Columbia and therefore had to prove myself, so I wrote a thirty-five-page memo that covered every imaginable aspect of the case. After reading it, she told me: “Don’t do that again.” My heart sank. Then she congratulated me on my thorough work but warned that I would never sleep if I wrote such detailed memos on every case. Everything went fine from there.

Another case that stands out was a libel suit against the Washington Post.¹⁹ The case reached us on an arcane procedural issue, not the merits, but the briefs were, to put it mildly, vitriolic. After we discussed the legal issues relating to voluntary dismissal under Rule 41 of the Federal Rules of Civil Procedure, the judge remarked about the harsh tone of the briefs. I offered a hypothesis: One of the plaintiffs was George Preston Marshall, Jr., whose father was the founder and longtime owner of what used to be known as the Washington Redskins. The Post was represented by Williams & Connolly, whose senior partner, Edward Bennett Williams, owned the Redskins after Marshall, Sr. Moreover, Williams detested Marshall, Sr., whom he rightly regarded as an unreconstructed racist—the Redskins were the last NFL team to have a Black player—and the feeling was mutual. I suggested that the terrible personal relationship between Marshall, Sr., and Williams might have been reflected in the briefs. The judge listened attentively and then, in all seriousness, asked: “Who or what are the Redskins?”

The clerk who had worked on each case would attend the oral arguments. We took detailed notes about the proceedings and were available to do quick research in the unlikely event that something unexpected came up during the arguments. Justice Ginsburg always had incisive questions that got to the heart of each case, but she was always respectful of the lawyers no matter how much they struggled. She even remained calm when one lawyer responded to one of her questions by asking how she would answer it, but I could almost see the steam coming out of her ears as she asked that hapless attorney to please answer the question.

18. *Int’l Ass’n of Machinists v. Fed. Election Comm’n*, 678 F.2d 1092 (D.C. Cir. 1982) (en banc).

19. *McLaughlin v. Cheshire*, 676 F.2d 855 (D.C. Cir. 1982).

Then there was the time that she led a lawyer through a series of questions about claim preclusion and finally told him that his argument was inconsistent with the position taken in the *Restatement (Second) of Judgments*. She did not say that she had helped to write the *Restatement* first as an advisor to and then as a council member of the American Law Institute. But it was clear that the lawyer's goose was cooked regardless of the authorship issue.

Of course, she did have views about the abilities of the lawyers who appeared before her. One of the cases argued on my first day in the courtroom involved a tiny woman who had been beaten within an inch of her life by a coworker at her place of employment before her shift started. The woman applied for worker's compensation, but her application was rejected. The agency explained that she did not have to be at work at the time the man beat her up, so her claim did not arise out of or in the course of her employment. At oral argument, Justice Ginsburg and the other two judges repeatedly asked her attorney what legal error the agency had made that would allow the court to overturn its ruling, but the man never gave a coherent answer. When we got back to chambers, Justice Ginsburg said to me: "If that woman paid her lawyer a penny, it was too much."

At the end of each monthly sitting, she would serve the clerks wine and cheese. After the first sitting, she was mortified to discover that she didn't have a corkscrew in chambers so had to borrow one from a colleague. When the holidays came around, she gave us very fancy corkscrews so that we would never be caught short.

And she stayed in touch with us after we left her chambers. For many years we had annual reunions that drew almost all the former clerks, their spouses, and children. She was always accompanied by her beloved husband, Marty, a distinguished tax lawyer and professor in his own right who was her opposite and complement in so many ways. She would greet everyone individually and talk briefly with each of us, but Marty carried the conversation with an infinite supply of great stories. Sometimes one of her judicial colleagues would serve as guest of honor: Justice Scalia spoke at the reunion marking her tenth anniversary on the bench, and he was so warmly received that he came back for her twentieth as well.

But it was more than reunions. For example, I quoted Marty in one of my articles. He had testified at a congressional hearing on the 1982 tax act. One of his comments appeared in boldface type on the front page of the Washington Post one day, and hundreds of T-shirts bearing that quote were distributed at the IRS. I alluded to that fact, too.²⁰ After reading the article, she found one of those T-shirts and sent it to me. I still have it.

20. Jonathan L. Entin, *Privacy, Emotional Distress, and the Limits of Libel Law Reform*, 38 MERCER L. REV. 835, 835 & n.1 (1987).

I had other opportunities to see her over the years. Occasionally when I was in Washington for other purposes, I would have lunch with her. She came to the Case Western Reserve University School of Law one year to speak and to preside at the final round of the Dunmore Moot Court Competition. She brought Marty with her, and they were ebullient when I picked them up for dinner. They had spent the afternoon at the Cleveland Museum of Art, which had a special exhibition of French art. It turned out that the show included the original of a painting that Marty knew about but hadn't seen; he had represented a previous owner in a dispute over its value and regaled us with the story of the hearing at which he had eviscerated the IRS appraiser who turned out to know almost nothing about art.

The last time I saw her in person was in late 2016, when the law school had a ceremony for alumni and faculty to be sworn in as members of the Supreme Court bar. That ceremony took place in the courtroom. Justice Ginsburg graciously agreed to speak to us after the ceremony, talking about other female judges who had marked the path for her. We had some correspondence more recently. To my enormous regret, I couldn't go to Washington for the memorial activities after she died, but her staff arranged for those of us who couldn't make the trip to participate in a virtual vigil alongside the vigil at the Court.

III

Let me say a few words about Justice Ginsburg's work on the bench. She spent thirteen years on the D.C. Circuit. One of her significant cases there was *Wright v. Regan*,²¹ in which the parents of black children in public schools that were under desegregation orders claimed that the IRS had improperly granted tax exemptions to discriminatory private schools, which in turn made it less expensive for white parents to send their kids to those segregation academies and thereby undermined desegregation efforts. An important part of this long-running case took place during my clerkship at a time when the Reagan administration was arguing that the IRS had no legal basis for denying tax exemptions to the discriminatory schools. That issue was before the Supreme Court in another case, *Bob Jones University v. United States*,²² that the administration was trying to undercut. The parents filed an emergency application to keep their case alive while the Supreme Court was deciding the other case.²³ That was one of the very

21. 656 F.2d 820 (D.C. Cir. 1981), *rev'd sub nom.* *Allen v. Wright*, 468 U.S. 737 (1984).

22. 461 U.S. 574 (1983).

23. *Wright v. Regan*, 49 A.F.T.R.2d ¶ 82-757 (D.C. Cir. Feb. 18, 1982) (directing the government not to grant or restore tax-exempt status to private schools that had racially discriminatory admissions policies),

few times all year when I saw the judge before ten o'clock on a non-argument day.

She also wrote a superb dissent in a 1988 case—it was called *In re Sealed Case*²⁴ in the court of appeals and *Morrison v. Olson*²⁵ in the Supreme Court—that challenged the independent counsel law. Her colleagues on the court of appeals thought the law was unconstitutional, but the Supreme Court—in a 7–1 ruling—agreed with her and upheld the law. But her dissent in the court of appeals was much better reasoned than the majority opinion in the Supreme Court. Anticipating Justice Scalia's dissent,²⁶ she agreed that the case indeed implicated first principles under the Constitution, but different principles than Scalia invoked. For Ginsburg, the question involved preventing the accumulation of unchecked power in any single branch of the federal government.²⁷

Sometimes her decisions as a circuit judge went against her deserved reputation as a liberal. For example, she voted against rehearing en banc in a case where the panel had rejected a constitutional challenge to the discharge of a gay Navy officer. She agreed with some of her colleagues that the panel opinion contained criticisms of Supreme Court decisions that went well beyond what was necessary to resolve the merits of the constitutional claim, but she emphasized that controlling precedent required the court of appeals to reject the challenge.²⁸ And she also wrote for the D.C. Circuit in holding that private plaintiffs could not maintain a broad-based challenge to the federal government's enforcement of civil rights protections in education under a wide range of statutes.²⁹

order continued in force, 49 A.F.T.R.2d ¶ 82–1081 (D.C. Cir. Mar. 24, 1982).

24. 838 F.2d 476 (D.C. Cir. 1988).

25. 487 U.S. 654 (1988).

26. *Id.* at 697 (Scalia, J., dissenting) (emphasizing that the framers “viewed the principle of separation of powers as the absolutely central guarantee of a just Government”).

27. *Sealed Case*, 838 F.2d at 536 (Ruth Bader Ginsburg, J., dissenting) (concluding that the independent counsel law was “a carefully considered congressional journey into the sometimes arcane realm of the separation of powers doctrine, more particularly, into areas the framers left undefined”).

28. *Dronenburg v. Zech*, 746 F.2d 1579, 1581–82 (D.C. Cir. 1984) (statement of Ginsburg, J., on denial of rehearing en banc).

29. *Women's Equity Action League v. Cavazos*, 906 F.2d 742 (D.C. Cir. 1990).

The Supreme Court occasionally overturned her appellate rulings. *See, e.g.*, *CFTC v. Schor*, 478 U.S. 833 (1986), *rev'g* 770 F.2d 211 (D.C. Cir. 1985); *Allen v. Wright*, 468 U.S. 737 (1984), *rev'g* *Wright v. Regan*, 656

Now for some brief remarks about her work on the Supreme Court. She became Justice Ginsburg in August 1993. As I mentioned, she was a brilliant lawyer and a shrewd strategist. And she brought that strategic sense to the Supreme Court, especially when she became the most senior member of the liberal wing in 2010. She helped to keep that group unified in some high-profile cases. And sometimes that meant *not* writing separately even when there was plenty to say. Take, for instance, *Obergefell v. Hodges*,³⁰ the same-sex marriage case. That was a 5–4 decision in which Justice Kennedy wrote for the Court. His opinion was unconventional in many ways, and almost certainly the other justices in the majority would have written it differently. But none of those justices wrote anything. Justice Ginsburg surely had something to do with that. She would have hesitated to write separately so as not to undermine the force of the Court’s ruling, and I suspect that one way or another she communicated her view to Justices Breyer, Sotomayor, and Kagan.

Similarly, last term in *Bostock v. Clayton County*,³¹ which held that employment discrimination based on sexual orientation violates Title VII, Justice Gorsuch wrote for a 6–3 Court, relying exclusively on textualism to interpret the statute. There are, of course, other approaches to statutory interpretation, but none of the liberal justices said anything about those alternatives—and I see the strategic hand of Justice Ginsburg there, too.

During her time, most of the justices were appointed by Republican Presidents.³² Still, she wrote more than her share of opinions for the

F.2d 820 (D.C. Cir. 1981); *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), *rev’g* *Nat. Res. Def. Council, Inc. v. Gorsuch*, 685 F.2d 718 (D.C. Cir. 1982). *Cf.* *Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J., concurring in the result) (“We are not final because we are infallible, but we are infallible only because we are final.”); J. Harvie Wilkinson III, *A Tribute to Justice Lewis F. Powell, Jr.*, 101 HARV. L. REV. 417, 417 (1987) (reminding retired Justice Powell, who had asked to sit by designation on the Fourth Circuit, that “*we* get reversed”).

30. 576 U.S. 644 (2015).

31. 140 S. Ct. 1731 (2020).

32. She was the first Democratic appointee in 26 years, following 11 consecutive Republicans. Appropriately, the last Democrat appointed before Justice Ginsburg was Thurgood Marshall, to whom her advocacy and legal strategy have often been compared. Indeed, President Clinton specifically compared the two when he announced his nomination of Justice Ginsburg. *See* Remarks Announcing the Nomination of Ruth Bader Ginsburg to Be a Supreme Court Associate Justice, 1 PUB. PAPERS 842, 843 (June 14, 1993).

Court.³³ Among them were important cases involving redistricting,³⁴ jurisdiction,³⁵ environmental law,³⁶ and copyright.³⁷ Perhaps most notably, she wrote for the Court in *United States v. Virginia*,³⁸ which struck down the male-only admissions policy of the Virginia Military Institute.

But, like Justice Holmes, she will probably be best remembered for her dissents.³⁹ One notable example is *Ledbetter v. Goodyear Tire & Rubber Co.*,⁴⁰ which rejected a claim of gender-based pay discrimination as untimely. Justice Ginsburg strongly disagreed with the majority's

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33. One commentator said that Justice Ginsburg wrote more opinions for the Court than anyone else during her tenure. Adam Feldman, *Empirical SCOTUS: Justice Ginsburg leaves a lasting legacy on the court*, SCOTUSBLOG (Sept. 25, 2020, 4:22 PM), <https://www.scotusblog.com/2020/09/empirical-scotus-justice-ginsburg-leaves-a-lasting-legacy-on-the-court/#more-296444> [<https://perma.cc/4D4C-L6XH>]. Of course, only one other justice served during that full time-period. But based on the data provided by that commentator, it appears that only two of Justice Ginsburg's 15 colleagues wrote more opinions for the Court on an annual basis. See *id.* (calculating based on Feldman's data, the author found that only Chief Justice Rehnquist and Justice O'Connor, who was typically the swing justice, wrote more opinions for the Court than did Ginsburg on an annual basis).
34. See, e.g., *Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945 (2019) (holding that one branch of a state legislature lacked standing to appeal in a redistricting case where the state's attorney general declined to appeal); *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (rejecting the argument that the Constitution requires states to draw legislative districts on the basis of citizen voting-age population rather than total population); *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787 (2015) (upholding the constitutionality of the agency that voters approved to draw congressional districts).
35. See, e.g., *Daimler AG v. Bauman*, 571 U.S. 117 (2014) (limiting the scope of general jurisdiction); *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005) (taking a narrow view of the *Rooker-Feldman* doctrine).
36. See, e.g., *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410 (2011) (holding that the Clean Air Act displaced common law nuisance claims); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167 (2000) (recognizing the validity of citizen suits to enforce environmental statutes).
37. See, e.g., *Eldred v. Ashcroft*, 537 U.S. 186 (2003) (upholding the constitutionality of the Copyright Term Extension Act).
38. 518 U.S. 515 (1996).
39. In fact, Justice Ginsburg was not an especially frequent dissenter. Justices Breyer, Scalia, Stevens, and Thomas all wrote more dissents than she did during her tenure, and Justices Alito, Gorsuch, Sotomayor, and Souter all had a higher number of dissenting opinions on an annual basis than did Ginsburg. See Feldman, *supra* note 33.
40. 550 U.S. 618 (2007).

“parsimonious reading of Title VII,”⁴¹ explaining in detail why Lilly Ledbetter had filed her lawsuit on time and examining the workplace dynamics that make wage bias difficult to discover.⁴² She concluded by noting that it would be up to Congress to amend the statute to make clear that claims like Ledbetter’s were indeed timely.⁴³ The Lilly Ledbetter Fair Pay Act of 2009 was one of the first pieces of legislation passed by the Congress that convened in January of that year.⁴⁴

Another came in *Burwell v. Hobby Lobby Stores, Inc.*,⁴⁵ which held that closely held corporations whose owners had sincere religious objections were entitled to exemption from all or part of the contraceptive mandate under the Affordable Care Act. Justice Ginsburg dissented, emphasizing that the employers’ position “would override significant interests of the corporations’ employees and covered dependents. It would deny legions of women who do not hold their employers’ beliefs access to contraceptive coverage that the ACA would otherwise secure.”⁴⁶

Perhaps her highest-profile dissent was in *Shelby County v. Holder*,⁴⁷ which invalidated the formula in section 4(b) of the Voting Rights Act.⁴⁸ This ruling eviscerated the preclearance provisions contained in section 5.⁴⁹ She challenged Chief Justice Roberts’s majority opinion in virtually every particular. As she put it: “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.”⁵⁰

IV

Ruth Bader Ginsburg was a unique figure in American history. If she had never served on the Supreme Court, Ginsburg would still have been a person of enormous importance. She was a leading legal scholar who wrote major works about procedure, jurisdiction, comparative law, and constitutional law. She was also the architect of a litigation

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41. *Id.* at 661 (Ginsburg, J., dissenting).
 42. *Id.* at 649–51 (Ginsburg, J., dissenting).
 43. *Id.* at 661 (Ginsburg, J., dissenting).
 44. Pub. L. No. 111–2, 123 Stat. 5 (codified at 29 U.S.C. § 626(d)(3), 42 U.S.C. § 2000e–5(e)(3) (2018)).
 45. 573 U.S. 682 (2014).
 46. *Id.* at 745–46 (Ginsburg, J., dissenting).
 47. 570 U.S. 529 (2013).
 48. 52 U.S.C. § 10303(b) (2018).
 49. 52 U.S.C. § 10304 (2018).
 50. 570 U.S. at 590 (Ginsburg, J., dissenting).

campaign that resulted in a series of Supreme Court rulings that fundamentally transformed the law of gender discrimination. Her scholarship put her in the first rank of the legal academy, and her legal advocacy transformed a vital area of the law to our lasting benefit. Then she went on to contribute enormously to the law on the bench. She was not only, as Chief Justice Roberts put it, “a *jurist* of historic stature.”⁵¹ She was also a scholar of historic stature and a lawyer of historic stature. Nobody can replace her.

51. Chief Justice John G. Roberts, Jr., *Statements from the Supreme Court Regarding the Death of Associate Justice Ruth Bader Ginsburg* (Sept. 19, 2020) (emphasis added), https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_09-19-20 [<https://perma.cc/5LRW-VKHY>].