

# Tribute to Justice Ruth Bader Ginsburg

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*Martha Minow*<sup>1</sup>

As a lawyer, and then as a judge and justice, Ruth Bader Ginsburg brought the most rigorous form of analysis, the most focused attention to the life experiences of human beings, and the most generous personal approach to relationships, even with people with whom she deeply disagreed. My own career in crucial ways was made possible because of her work. And she has, for so long, been an inspiring, motivating, and personally supportive force for me and so many others. She was, beyond all this, a simply remarkable visionary and a formidable force for justice.

During the memorial service held at the Supreme Court, Rabbi Lauren Holtzblatt said:

To be born into a world that does not see you, that does not believe in your potential, that does not give you a path for opportunity or a clear path for education—and despite this, to be able to see beyond the world you are in, to imagine that something can be different—that is the job of a prophet . . . . It’s the rare prophet who not only imagines a new world, but also makes that new world a reality in her lifetime. This was the brilliance and vision of Justice Ruth Bader Ginsburg.<sup>2</sup>

For more than half a century, she pursued justice while being a devoted wife, mother, friend, and mentor. Meticulous as a legal analyst and writer, multidimensional as a strategist, and as a judge and justice, her legal work established the standard for rigor. Even her spoken words demonstrated an uncommon level of care and precision. As a justice, she was always the first to circulate an opinion. She commonly stayed up until the early hours of the coming morning, preparing for arguments and working on opinions. She was also unfailingly generous and gracious, in her own shy and introverted way. I offer a few of my own memories of her along with descriptions of her analytic and persuasive powers and her consistent appreciation of and respect for other human beings.

My own recollections start during my early law school days when fellow students and I debated on what to do about the notable absence of issues of gender in our curriculum. We found a recently published book—the first law school case book on sex discrimination—co-authored by one Ruth

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<sup>1</sup> 300th Anniversary University Professor, Harvard University. Thanks to Lauren O’Brien for comments and assistance.

<sup>2</sup> Julie Hirschfeld Davis & Annie Karni, *Ruth Bader Ginsburg Lies in Repose: Highlights From the First Day of Ceremonies*, N.Y. TIMES (Sept. 23, 2020), <https://www.nytimes.com/live/2020/09/23/us/ruth-bader-ginsburg-lie-in-repose-live-updates>, archived at <https://perma.cc/6Z3V-K32J> (quoting Rabbi Holtzblatt).

Bader Ginsburg.<sup>3</sup> That book inspired and enabled at first informal reading groups and eventually a course, teaching students directly of the cases that began to establish, in light of her advocacy, protections against sex discrimination. I was thrilled by her appointment to the court of appeals, which occurred while I was clerking on that court, and that is where I met her. To see a short, shy, Jewish woman exerting power and commanding respect was unprecedented and so very meaningful to me. She seemed a bit intimidating, formal, quiet, and by the accounts of her clerks, very demanding. In contrast to these impressions, somehow, one night, I found myself invited to her Watergate apartment for a dinner, where she delighted in explaining she never cooked and in showing us her brand-new, computer-driven player piano. We guests were also lucky to have the benefit of her husband Marty's culinary talents, conversational warmth, and legal acumen.

One day a few years later, when I was still an assistant professor, I answered the telephone to hear, with no small talk, "This is Ruth." She immediately asked: "Are you a member of the American Bar Association?" "Why, yes, I am," I answered. "Well, why don't you let people know that?" came the chiding question, followed by this surprising sentence, "I want to nominate you to something." The call soon ended. She then nominated me to serve on the board of the American Bar Foundation, the independent non-profit organization working to "advance the understanding and improvement of law through research projects of unmatched scale and quality on the most pressing issues facing the legal system in the United States and the world."<sup>4</sup> I learned three invaluable lessons from this experience. First, don't hide your involvements under a bushel; second, step up to leadership opportunities; and third, actively find ways to support the careers and development of others. My service on that board immersed me in the empirical study of law and law reforms, which is very much a predicate for my current work on access to justice reforms.

I leaped at the chance to help when then-Senator Biden invited me to help prepare him for the confirmation hearings of the 1993 nominee to the Supreme Court; I then had to decline when then-Judge Ginsburg asked me to help prepare her for the same hearings. She said she was glad I was helping, though in a different role. Reading her work in that context was awe-inspiring.

Here's another snapshot. In 2011, I delivered the Ruth Bader Ginsburg Lecture at an annual event the New York City Bar created to honor her. I spoke about the legal and policy issues presented by single-sex public schools; on the one hand, exclusions on the basis of gender could be unfair and reinforce faulty stereotypes; on the other hand, educational benefits to

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<sup>3</sup> KENNETH M. DAVIDSON, RUTH BADER GINSBURG & HERMA HILL KAY, *SEX-BASED DISCRIMINATION: TEXT, CASES AND MATERIALS* (1974).

<sup>4</sup> *About*, AM. BAR FOUND., <http://www.americanbarfoundation.org/about/index.html> (last visited Dec. 28, 2020), archived at <https://perma.cc/BJ5W-F8N8>.

girls from time in all-female settings could be especially empowering. Who should pop up from the audience but Justice Ginsburg herself? She remarked that while she opposed foreclosing opportunities for girls at prestigious schools, she thought I and others would find it interesting that she chose to send her daughter to an all-girls school. As the lecture and reception ended, she asked if I would like to join her and some friends for a drink. It was already after 10:00 p.m, but of course, I joined them. We walked across the street to the Algonquin Hotel, where she and her friends recalled fun times together. They called her “Kiki” and she reveled in the company. As the evening wore on, despite what was surely a long day, she was lively and energized, certainly more than I was at that point.

In 2013, to honor her 20th year as an associate justice of the Supreme Court, we at Harvard Law School hosted a day of events, including panels featuring discussions of her notable opinions.<sup>5</sup> The day was followed by an evening of toasts and music. As dean, I planned the event and turned to Harvard Law alum Mark Volpe, who was the chief executive officer of the Boston Symphony Orchestra, for help finding a way to honor Justice Ginsburg’s famous love of opera. He recruited two outstanding, young opera singers who planned an evening of choice selections. Who should rise up, unrehearsed, before each aria—to tell the assembled crowd about the distinctive context and meaning of each work—but of course, Justice Ginsburg. It was a tour de force.

Last spring, while battling her fifth bout of cancer, she displayed unadorned sheer will-power in delivering a dynamic speech as part of the ceremony for the first Justice Ruth Bader Ginsburg Women and Leadership Award. As a nominator for the award, I attended the celebration in Washington, D.C. and saw Justice Ginsburg’s delight at the selection of Agnes Gund, an art patron who notably devoted the \$150 million proceeds from the sale of a prized painting to create an Arts for Justice fund, which combatted mass incarceration through the arts. In her remarks, Justice Ginsburg said, “By honoring brave, strong and resilient women, we will prompt women and men in ever-increasing numbers to help repair tears in their local communities, the nation and the world, so that the long arc of the moral universe will continue to bend toward justice.”<sup>6</sup> The long evening was no doubt tiring, but Justice Ginsburg greeted friends and newcomers alike, showed off her sparkling metallic shoes, and stayed to the end, to thank all who had served food and handed out goody bags that evening.

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<sup>5</sup> See Martha Minow, *Essays in Honor of Justice Ruth Bader Ginsburg: Introduction*, 127 HARV. L. REV. 423, 423 (2013). The issue also includes essays—each addressing one decision—by Carol S. Steiker, Deborah E. Anker, John F. Manning, Judge Nancy Gertner, Julie C. Suk, Lani Guinier, Laurence H. Tribe, Mark Tushnet, Martha Minow, Richard J. Lazarus, Susan H. Farbstein, and Vicki C. Jackson.

<sup>6</sup> Julie Opperman, *The “Justice Ruth Bader Ginsburg Woman of Leadership Award” Legacy*, CISION PR NEWSWIRE (Sept. 20, 2020), <https://www.prnewswire.com/news-releases/the-justice-ruth-bader-ginsburg-woman-of-leadership-award-legacy-301134326.html>, archived at <https://perma.cc/X6GC-5RQK> (quoting Justice Ginsburg’s remarks).

During each day of her life, she accomplished feats of mental, physical, and psychological strength. On the strength of her excellent lawyering and reasoning, she not only sought but achieved landmark legal victories for gender equality through strategic litigation, legislation, and public awareness efforts. Through her assiduous efforts as a judge and justice, she pursued precise consideration and justice in each case. As an advocate for gender equality, she proceeded like the law professor that she was, teaching the judges, legislators, and public audiences before her. She and her colleagues tried “not to take the court by storm, but to lead them there in small degrees.”<sup>7</sup> This meant bringing early cases representing men who because of their gender were denied the limited privileges granted to women. Decades after this work, some scholars criticized this effort as a pursuit of “sameness,” treating gender as irrelevant and denying distinctive differences in gender due to biology or socialization.<sup>8</sup> Such critiques missed the brilliance of Ruth Bader Ginsburg’s strategy, which challenged the constraints that gender roles play in the lives of both men and women—and the interlocking assumptions about gender roles for people treated as different.<sup>9</sup>

Master strategist Ginsburg litigated governmental unequal treatment of men and women, understanding that all-male judicial benches might better understand the unfairness of classifications based on stereotypes about men. In search of heightened judicial scrutiny under the Equal Protection Clause for uses of gender categories in one of her early cases—recently depicted in the film, “On the Basis of Sex”<sup>10</sup>—she advocated for Charles Moritz when the Internal Revenue Service barred him, as a man, from using the tax deduction for caregivers.<sup>11</sup> After Ginsburg and her team won the case in the Tenth Circuit, the federal government petitioned the Supreme Court for review, claiming a parade of horrors because, if Mr. Moritz were to prevail, hundreds of other federal statutes would also be unconstitutional. To support this argument, the government attached a list of statutes as an addendum to its brief.<sup>12</sup> For the next decade, then-lawyer Ruth Bader Ginsburg used that list as she developed her plan to overturn and scrutinize any governmental

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<sup>7</sup> Colleen Walsh, *Ginsburg Holds Court at HLS (Video)*, HARV. L. TODAY (Feb. 7, 2013), <https://today.law.harvard.edu/ginsburg-holds-court-at-hls-video/>, archived at <https://perma.cc/BD2T-HN7K>.

<sup>8</sup> See Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CALIF. L. REV. 1279, 1291–95 (1987). For a summary of the arguments, see MARTHA MINOW, MAKING ALL THE DIFFERENCE 229–34 (1990) and John Capps, *Pragmatism, Feminism, and the Sameness-Difference Debate*, 32 TRANSACTIONS OF THE CHARLES S. PEIRCE SOC’Y 65, 65–66 (1996).

<sup>9</sup> See Walsh, *supra* note 7.

<sup>10</sup> ON THE BASIS OF SEX (Focus Features 2018).

<sup>11</sup> See Brief for Appellant, *Moritz v. Comm’r of Internal Revenue*, 469 F.2d 466 (10th Cir. 1972) (No. 71-1127).

<sup>12</sup> See Hon. Justice Ruth Bader Ginsburg, Keynote Address at the University of Cape Town, South Africa: Advocating the Elimination of Gender-Based Discrimination: The 1970s New Look at the Equality Principle (Feb. 10, 2006), [https://www.supremecourt.gov/publicinfo/speeches/sp\\_02-10-06.html](https://www.supremecourt.gov/publicinfo/speeches/sp_02-10-06.html), archived at <https://perma.cc/9353-EYT3>.

discrimination on the basis of sex as unconstitutional for the reliance on faulty stereotypes and generalizations.

She expressed opposition to sexual harassment and assault and to exclusions based on race, class, and other characteristics. Justice Ginsburg brought equal care, deft analysis, and persuasive reasoning to complex matters in civil procedure, federal courts, tax, environmental law, and so many other fields. *M.L.B. v. S.L.J.*,<sup>13</sup> one of her majority opinions, written just a few years after joining the Supreme Court, illuminates her distinctively superb analytic and persuasive powers. In this case, a poor woman wanted to appeal the trial court's termination of her parental rights but faced the insuperable barrier of paying for the transcript, required for an appeal.<sup>14</sup> Reflecting the lack of a social safety net and resistance to positive rights for the poor, two lines of prior federal constitutional cases stacked the deck against *M.L.B.*'s argument. Only in criminal cases posing risks of jail time had the Supreme Court found a constitutional right to a transcript without cost to the individual, and the Court had already concluded that parental rights termination cases did not give rise to a categorical right to counsel, other than in egregious cases as assessed by the trial court.<sup>15</sup> Justice Ginsburg did not offer a frontal challenge to those precedents and instead worked with them. Weaving together the actual language from prior decisions, she found a distinctive thread in family law cases. Prior cases granting as a constitutional matter access to divorce,<sup>16</sup> finding payment for a blood test constitutionally available to indigent men facing paternity cases,<sup>17</sup> and erecting a heightened burden of proof in termination of parental rights<sup>18</sup> articulated private interests far more precious than property rights commonly treated as a basis for constitutionally-mandated procedural protections. Bypassing the distinction the Court had drawn between criminal and civil cases, the majority opinion underscored the extreme power of the state to destroy permanently all legal recognition of the parental relationship and found a parent's interest in maintaining that relationship outweighed Mississippi's desire simply to save money.<sup>19</sup> In his concurring opinion, Justice Anthony Kennedy commended the "most careful and comprehensive recitation of the precedents" in Justice Ginsburg's well-crafted opinion.<sup>20</sup>

Her persuasive talents appeared when she subtly shifted the question presented in the case from "May a State, consistent with the Due Process and Equal Protection Clauses of the Fourteenth Amendment, condition appeals from trial court decrees terminating parental rights on the affected par-

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<sup>13</sup> 519 U.S. 102 (1996).

<sup>14</sup> *See id.* at 108–09.

<sup>15</sup> Compare *Griffin v. Illinois*, 351 U.S. 12, 19–20 (1956), and *Gideon v. Wainwright*, 372 U.S. 335, 342–44 (1963), with *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 31–33 (1981).

<sup>16</sup> *See Boddie v. Connecticut*, 401 U.S. 371, 374 (1971).

<sup>17</sup> *See Little v. Streeter*, 452 U.S. 1, 16–17 (1981).

<sup>18</sup> *See Lassiter*, 452 U.S. at 27.

<sup>19</sup> *See M.L.B.*, 519 U.S. at 123–24.

<sup>20</sup> *Id.* at 128 (Kennedy, J., concurring).

ent's ability to pay "record preparation fees?" to ask instead, "Does the Fourteenth Amendment require Mississippi to accord M.L.B. access to an appeal—available but for her inability to advance required costs—before she is forever branded unfit for affiliation with her children?"<sup>21</sup> In so doing, she avoided the disagreement among the justices over whether M.L.B. had a right under the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment—she pointed instead just to the Fourteenth Amendment. She recast the state conditioning an appeal on record preparation fees as a right to appeal, blocked by state-required costs. And she remade the bland "terminat[ion of] parental rights" to "forever brand[ing the mother as] unfit for affiliation with her children."<sup>22</sup>

Here and elsewhere, Justice Ginsburg illuminated tensions and gaps by reframing the issues, always with the lived experiences of people in mind. In one prominent case, she reframed an apparent conflict between religious freedom and individual equality, instead, as a public university requiring officially recognized student groups to open membership to any student, while a Christian Legal Society excluded students who did not subscribe to the sexual mores of the faith by such acts as engaging in "unrepentant homosexual conduct."<sup>23</sup> For a bare five-justice majority, Justice Ginsburg rejected the alleged conflict between freedom and equality, because the organization sought preferential rather than equal treatment at the expense of the equality principle embraced by the university.<sup>24</sup> And, in her last opinion for the Court—a dissent—she showed how statutory and administrative law could ensure accommodation for religious employers opposed to paying for contraceptive coverage while also preserving a statutory guarantee of preventive health care for women without additional cost.<sup>25</sup>

Her appreciation and respect for other human beings shines in her attention to the actual people behind litigation and to their lived experiences. It also informed her particular devotion to collaboration and dialogue accompanied with civility and respect, even for people with whom she profoundly disagreed. Indeed, this regard for other human beings connected her interpersonal relationships, her collegial approach to her work, and her ideas about how to make desirable changes in the world.

Thus, although known for her litigation before becoming a judge, she also worked tirelessly with teams of colleagues in pursuit of legislation, social movement, and changes in public opinion. In later years, somewhat surprised by the appellation as "Notorious RBG," she ultimately had fun with

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<sup>21</sup> Compare *id.* at 107, with *id.* at 119.

<sup>22</sup> *Id.*

<sup>23</sup> Compare *Christian Legal Soc'y v. Martinez*, 561 U.S. 661, 668 (2010), with *id.* at 672.

<sup>24</sup> See Francesca Procaccini, *RBG's Greatest Insight*, ATLANTIC (Sept. 22, 2020), <https://www.theatlantic.com/ideas/archive/2020/09/rbgs-greatest-insight/616423/>, archived at <https://perma.cc/427M-PJZK> (describing *Martinez*).

<sup>25</sup> See *Little Sisters of the Poor v. Pennsylvania*, 140 S. Ct. 2367, 2400–12 (2020) (Ginsburg, J., dissenting).

it—the socks, the movies, the tattoos, the saying: “There is no truth without Ruth.”<sup>26</sup> But she also understood that the public persona assisted public awareness and could change hearts and minds.

She treated her work—both lawyering and judging—as collaborative. Generous to those who preceded her, she took the unusual step of listing on her brief for a key case two people whose contributions occurred many years earlier. So in the brief in *Reed v. Reed*<sup>27</sup>—the first decision in which the Supreme Court concluded that the Equal Protection Clause of the Fourteenth Amendment called for scrutiny of gender-based classifications<sup>28</sup>—she listed Dorothy Kenyon and Pauli Murray.<sup>29</sup> As she later explained, “Women, and some men, *forever*, have been saying the same thing. But society wasn’t ready to listen.”<sup>30</sup>

Respectful of and cordial with even those with whom she disagreed, she had genuine friendships with conservative as well as liberal colleagues. Her close ties with Justice Antonin Scalia started when they both served on the Court of Appeals for the D.C. Circuit. Justice Scalia once described Justice Ginsburg as “the best of colleagues as she is the best of friends.”<sup>31</sup> Once, federal judge Jeffrey Sutton learned that Justice Scalia planned to send twenty-four roses to Justice Ginsburg for one of her birthdays; Judge Sutton asked if he hoped to win Ginsburg over to his side by buttering her up with the flowers.<sup>32</sup> “Some things are more important than votes,” Justice Scalia said.<sup>33</sup>

Less well-known, however, was Justice Clarence Thomas’s warm personal ties with Justice Ginsburg, well-captured in his statement when she passed away. Justice Thomas wrote:

My wife, Virginia, and I are heartbroken to learn of the passing of our friend, Justice Ruth Bader Ginsburg. . . . Through the many challenges both professionally and personally, she was the essence of grace, civility and dignity. She was a superb judge who gave

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<sup>26</sup> Jeffrey Brown & Anne Azzi Davenport, *How Ruth Bader Ginsburg Became “The Notorious RBG”*, PBS NEWSHOUR (Sept. 23, 2020), <https://www.pbs.org/newshour/show/how-ruth-bader-ginsburg-became-the-notorious-rbg> (full transcript), archived at <https://perma.cc/5B63-694N>.

<sup>27</sup> 404 U.S. 71 (1971).

<sup>28</sup> See *id.* at 74.

<sup>29</sup> See Brief for Petitioner, *Reed v. Reed*, 404 U.S. 71 (1971) (No. 70-4).

<sup>30</sup> Jeffrey Rosen, *RBG’s Life, in Her Own Words*, ATLANTIC (Sept. 19, 2020), <https://www.theatlantic.com/ideas/archive/2020/09/rbgs-life-her-own-words/616414/>, archived at <https://perma.cc/6247-JEG5>.

<sup>31</sup> Ronnie Koenig, *Antonin Scalia’s Son Shares 2 Touching Anecdotes About Father’s Friendship with Ginsburg*, TODAY (Sept. 20, 2020), <https://www.today.com/news/scalia-rbg-s-friendship-scalia-s-son-shares-touching-anecdotes-t192070>, archived at <https://perma.cc/MK45-YL57>.

<sup>32</sup> See Sara Dorn, *Ruth Bader Ginsburg Once Got Giant Bouquet of Roses from Supreme Court Bestie Antonin Scalia*, N.Y. POST (Sept. 19, 2020), <https://nypost.com/2020/09/19/antonin-scalias-son-mourns-death-of-ruth-bader-ginsburg/>, archived at <https://perma.cc/C8CD-KYAC>.

<sup>33</sup> *Id.*

her best and exacted the best from each of us, whether in agreement or disagreement. And, as outstanding as she was as a judge, she was an even better colleague – unfailingly gracious, thoughtful, and civil.<sup>34</sup>

Justice Ginsburg often recounted the advice given to her on her wedding day by her mother-in-law: “In every good marriage, it helps sometimes to be a little deaf.”<sup>35</sup> Justice Ginsburg would say she applied this adage not only to marriage but also to her jobs: “I have employed it as well in every workplace, including the Supreme Court. When a thoughtless or unkind word is spoken, best tune out. Reacting in anger or annoyance will not advance one’s ability to persuade.”<sup>36</sup>

To act in each interaction with civility and respect, in work and with family, requires discipline, control, and the cultivation of kindness. For Justice Ginsburg, it seemed inextricably connected with separating disagreements or slights from the human before her, as well as a kind of perpetual effort—much like her reframing of apparent conceptual conflicts—to find grounds of commonality with others even while vigorously disagreeing. As so many look to Justice Ginsburg’s life for inspiration and encouragement, this particular, disciplined effort to cultivate respect and regard across differences offers a lesson especially relevant during our polarized, divisive time.

But that never involved giving an inch on her commitments to what, by her lights, justice and truth demand. Respect and civility were part of what she wanted for herself and so she made them features of her daily life. Perhaps this too was for Justice Ginsburg part of the long game, for she saw the pursuit of justice an enduring task of persuasion, ultimately through dialogue across institutions and among communities. In the most recent years, as her dissents became more frequent, she often took the unusual step of reading her dissents from the bench and in doing so, brought the pursuit of justice beyond her colleagues, and beyond the particular moment at hand.

Thus, Justice Ginsburg spoke from the bench as she dissented in the case of Lilly Ledbetter, who had not discovered until close to her retirement the disparity in her pay during the many years working for the Goodyear Tire & Rubber Company when compared with the pay of her male colleagues. Ledbetter sued for back pay and punitive damages but lost, 5-4.<sup>37</sup> The Supreme Court majority ruled that she had waived the right to sue by failing to file within 180 days of the first act of discrimination even though

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<sup>34</sup> Press Release, *Statements from the Supreme Court Regarding the Death of Associate Justice Ruth Bader Ginsburg* (Sept. 19, 2020), [https://www.supremecourt.gov/publicinfo/press/pressreleases/pr\\_09-19-20](https://www.supremecourt.gov/publicinfo/press/pressreleases/pr_09-19-20), archived at <https://perma.cc/KK4Z-CNU9>.

<sup>35</sup> Ruth Bader Ginsburg, *Ruth Bader Ginsburg’s Advice for Living*, N.Y. TIMES (Oct. 2, 2016), <https://www.nytimes.com/2016/10/02/opinion/sunday/ruth-bader-ginsburgs-advice-for-living.html>, archived at <https://perma.cc/2QF8-TS8C>.

<sup>36</sup> *Id.*

<sup>37</sup> *See* Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618, 620–21 (2007).



the discrimination repeated year after year.<sup>38</sup> Justice Ginsburg read her vibrant dissent from the bench and talked of the majority's neglect of women's experiences in male-dominated workplaces where women might understandably be anxious to avoid making waves. As my colleague Lani Guinier later wrote, Justice Ginsburg deliberately spoke to the public in the dissent, and said to Congress: fix it.<sup>39</sup> The case ignited a movement; it became an issue in the 2008 presidential election. And Congress acted: one of the first bills signed into law by President Obama in 2009 was the Lilly Ledbetter Fair Pay Act.<sup>40</sup>

Respecting the other branches of government and respecting the people, Justice Ginsburg deeply believed that courts do not end democratic debate over the meaning of rights and laws. Instead, courts are participants in that large and long-running debate. During one of her visits to Harvard, she said, "It has to be the people who want the change, and without them no change will be lasting."<sup>41</sup> The courts cannot alone fix all social ills, she believed; instead the spirit of the people is the crucial ingredient for real and enduring solutions. But it can be spurred, guided, and propelled by inspiring, indomitable individuals who give their all in the struggle for justice. No one did so with more grace, power, and effect than Ruth Bader Ginsburg.

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<sup>38</sup> See *id.* at 628–29.

<sup>39</sup> See Lani Guinier, *The Supreme Court 2007 Term—Foreword: Demosprudence Through Dissent*, 122 HARV. L. REV. 4, 40–41 (2008).

<sup>40</sup> Pub. L. No. 111-2, 123 Stat. 5. (2009); Adam Liptak, *Justice Ginsburg's Judicial Legacy of Striking Dissents*, N.Y. TIMES (Sept. 18, 2020), <https://www.nytimes.com/2020/09/18/us/rbg-accomplishments.html>, archived at <https://perma.cc/679N-66CG>.

<sup>41</sup> See Walsh, *supra*, note 7.

