

2014

# FAVORITE SONS (AND DAUGHTERS): THE CONSTITUTION'S GENDER- EGALITARIAN MINIMUM AGE QUALIFICATIONS

Lauren Biksacky

*Yale Law School*, [Lauren.Biksacky@yale.edu](mailto:Lauren.Biksacky@yale.edu)

Follow this and additional works at: [http://digitalcommons.law.yale.edu/student\\_papers](http://digitalcommons.law.yale.edu/student_papers)

---

## Recommended Citation

Biksacky, Lauren, "FAVORITE SONS (AND DAUGHTERS): THE CONSTITUTION'S GENDER- EGALITARIAN MINIMUM AGE QUALIFICATIONS" (2014). *Student Scholarship Papers*. Paper 129.  
[http://digitalcommons.law.yale.edu/student\\_papers/129](http://digitalcommons.law.yale.edu/student_papers/129)

This Article is brought to you for free and open access by the Yale Law School Student Scholarship at Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Student Scholarship Papers by an authorized administrator of Yale Law School Legal Scholarship Repository. For more information, please contact [julian.aiken@yale.edu](mailto:julian.aiken@yale.edu).

**TITLE: FAVORITE SONS (AND DAUGHTERS): THE CONSTITUTION'S GENDER-EGALITARIAN MINIMUM AGE QUALIFICATIONS**

**ABSTRACT:** This Article explores the Constitution's minimum age qualifications for President, Vice President, and Congress. It presents a new feminist account in support of the minimum age requirements that is grounded in empirical data about the later entry of women in politics. The data suggests women delay entry into politics, and this delay affects their ability to gain future leadership positions. In light of this data, this Article argues the Constitution's minimum age qualifications serve an important egalitarian function for women when read through the lens of the Nineteenth Amendment, which illuminates the importance of promoting and protecting women's political participation.

**FAVORITE SONS (AND DAUGHTERS): THE CONSTITUTION’S GENDER-  
EGALITARIAN MINIMUM AGE QUALIFICATIONS**

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	3
II.	THE CONSTITUTIONAL SETTING: MINIMUM AGE QUALIFICATIONS FOR FEDERAL ELECTED OFFICE .....	4
	A. The Constitution and Age .....	4
	B. Attempts to Remove the Constitution’s Minimum Age Qualifications.....	7
III.	A MODERN EGALITARIAN APPROACH TO MINIMUM AGE QUALIFICATIONS: PROTECTING FEMALE LEADERSHIP IN POLITICS .....	10
	A. Age and Entry into Federal Office.....	11
	B. “House” Responsibilities vs. Home Responsibilities: Congresswomen, Children, and Families.....	14
	C. The Importance of Age Qualifications: In Politics, Seniority is Power .....	17
	D. A Modern Egalitarian Rationale for the Constitution’s Minimum Age Requirements: Discouraging Gendered Capture of Federal Political Office .....	20
IV.	CONCLUSION.....	24

## I. INTRODUCTION

Women have long faced obstacles in their efforts to gain political representation. A glance at the current top elected officials in the United States reveals a deep gender disparity. In 2013, women held 18.2% of the seats in the House of Representatives, and 20% of the seats in the Senate.<sup>1</sup> But these statistics could be even lower without an important egalitarian feature of the Constitution: minimum age qualifications. The Constitution outlines minimum age qualifications to serve as President, Vice President, and in Congress. Political groups and scholars alike have advocated for the elimination of these qualifications, claiming they subvert democracy and discriminate against younger aspiring politicians under the Due Process and Equal Protection Clauses.

However, this Article argues the Constitution's minimum age qualifications continue to provide an important protection for one group of political candidates: women. Historically and currently, women enter politics at older ages than their male counterparts, often waiting to start their political careers until their children leave the home. Female federal legislators entering politics under the age of 40 are rare, and a delay in any candidate's taking office has effects on their ability to gain power and future positions in Congress and the Executive branch.

This Article argues that one unintended potential effect of the minimum age qualifications is a more egalitarian environment for female political candidates. Abolishment of

---

<sup>1</sup> *Women in Elective Office 2013*, Center for American Women and Politics, available at [http://www.cawp.rutgers.edu/fast\\_facts/levels\\_of\\_office/documents/elective.pdf](http://www.cawp.rutgers.edu/fast_facts/levels_of_office/documents/elective.pdf). Overall, this amounts to women holding 99 of the 535 seats in the 113<sup>th</sup> Congress, for an overall percentage of 18.5% of the seats. *Id.* Congresswoman Nancy Pelosi, who was the Speaker of the House, currently serves as the minority leader. The low numbers of women in politics are particularly glaring when placed in context: whereas the early 1990s experienced an increase of women in elected office, the last several election cycles can be characterized as a plateau. The 2010 congressional elections resulted in the first net decrease in the percentage of women serving in the U.S. House of Representatives since the 1978 midterm elections. The small gains for women in the 2012 elections were also especially low given that 2012 was a redistricting year that presented relatively more electoral opportunities and open seats than is typically the case. See Jennifer Lawless & Richard Fox, *Girls Just Wanna Not Run: The Gender Gap in Young Americans' Political Ambitions* 1, 23 n. 3 (2013), available at [http://www.american.edu/spa/wpi/upload/Girls-Just-Wanna-Not-Run\\_Policy-Report.pdf](http://www.american.edu/spa/wpi/upload/Girls-Just-Wanna-Not-Run_Policy-Report.pdf).

the age qualifications would be disproportionately to the detriment of women political candidates. Just as the age qualifications ensured at the time of the nation's Founding that "favorite sons" of wealthy men or politicians did not receive an advantage in running for political office earlier, the age qualifications today continue to promote more equal access to political office and Congressional leadership for all sons *and daughters*. These constitutional age qualifications fit into the larger democratic, egalitarian pattern of our Constitution, especially when read through the lens of the Nineteenth Amendment and women's political enfranchisement.

## **II. THE CONSTITUTIONAL SETTING: MINIMUM AGE QUALIFICATIONS FOR FEDERAL ELECTED OFFICE**

### **A. The Constitution and Age**

As a textual matter, the Constitution sets age, citizenship, and inhabitancy qualifications for those holding public office, while eschewing proposed religious and property requirements. In terms of age requirements, the United States Constitution explicitly addresses age qualifications for holding public office in four instances. Both the President and Vice President must be at least 35 years old to hold office. The constitutional provisions prescribing the President's qualifications are outlined in Article II, Section 1, clause 5 of the Constitution, which declares, "[N]either shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years..."<sup>2</sup> Similarly, for the Vice Presidency, the Twelfth Amendment specifies that "no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President..."<sup>3</sup>

The Constitution also outlines minimum qualifications for members of the Legislature, detailing that Senators must be at least 30 years old: "No Person shall be a Senator who shall not

---

<sup>2</sup> U.S. CONST. art. 2, § 1.

<sup>3</sup> U.S. CONST. amend. 16.

have attained to the Age of thirty Years...”<sup>4</sup> Lastly, the Constitution requires Representatives to be at least 25 years old: “No Person shall be a Representative who shall not have attained to the Age of twenty five Years...”<sup>5</sup> Although the Constitution sets minimum age qualifications for these offices, upper age limits have never been established.<sup>6</sup> At the time of the drafting and ratification of the Constitution, many state constitutions contained minimum age requirements, and likely served as exemplars during the drafting of the Constitution.<sup>7</sup>

The deliberations of the delegates at the Constitutional Convention of 1787 furnish few clues to explain the setting of these specific minimum age lines. The Drafters debated the age qualifications for Representatives during the Convention.<sup>8</sup> George Mason, of Virginia, successfully argued that the minimum age for Representatives should be 25, suggesting that “21-

---

<sup>4</sup> U.S. CONST. art. 1, § 3.

<sup>5</sup> U.S. CONST. art. 1, § 2. This Qualifications Clause was altered by the Committee of Style prior to submission to the states. Originally, the clause read, “Every Member of the House of Representatives shall be of the age of twenty-five years at least; shall have been a citizen of the United States for at least seven years before his election; and shall be, at the time of his election, an inhabitant of the State in which he shall be chosen.” Although the final clause was not substantively different, the Committee of Style ultimately phrased the clause negatively: “No person shall be a Representative who shall not have attained to the age of twenty-five years...” 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 565 (Max Farrand ed., 1966).

<sup>6</sup> The Constitution also sets no age qualifications for Article III judges. James F. Ianelli, *The Sound of Silence: Eligibility Qualifications and Article III*, 6 SETON HALL CIRCUIT REV. 55 (2009). (“[T]he historical record provides no direct explanation for the Article III omission of eligibility requirements.”) *Id.* at 56.

<sup>7</sup> Of the original thirteen colonies, four state constitutions (Maryland, Delaware, North Carolina, and Virginia) included minimum age requirements for public office. *See* MD. CONST. §XXX (1776) (setting a minimum of twenty-five years old for Governor), available at [http://avalon.law.yale.edu/17th\\_century/ma02.asp](http://avalon.law.yale.edu/17th_century/ma02.asp); DEL. CONST. art. IV, IX (1776) (setting a minimum of twenty-five years of age for members of “[t]he council”), available at [http://avalon.law.yale.edu/18th\\_century/de02.asp](http://avalon.law.yale.edu/18th_century/de02.asp); N.C. CONST. §XV (1776) (setting a minimum of thirty years for Governor), available at [http://avalon.law.yale.edu/18th\\_century/nc07.asp](http://avalon.law.yale.edu/18th_century/nc07.asp); VA. CONST. art. IV (1776) (setting a minimum of twenty-five years old for Senators), available at <http://www.nhinet.org/ccs/docs/va-1776.htm>. Although other states set age minimums for holding office at the voting age, these eligibility requirements did not differ from the requirements to vote, so were unlike the Constitution’s age qualifications at the time. *See, e.g.*, GA. CONST. art. VI, IX (1777) (setting a minimum of twenty one years of age to both vote and hold political office in Georgia), available at [http://avalon.law.yale.edu/18th\\_century/ga02.asp](http://avalon.law.yale.edu/18th_century/ga02.asp).

States, however, are prevented from adding any additional requirements to qualifications for *federal* office as outlined in the Constitution. In *U.S. Term Limits, Inc. v. Thornton*, the Supreme Court ruled that states cannot limit terms for their own members of Congress because the Qualifications Clauses of the United States Constitution prohibit states from adding any restriction on candidacy that amounts to a “qualification.” 514 U.S. 779, 836 (1995). The Court explained that when the Framers drafted the Constitution, and when it was ratified by the states, the intent of all participants was to prohibit states from adding further qualifications to those enumerated in Articles I and II, which require only that a candidate have attained a minimum age, be a United States citizen, and be an inhabitant of the state. *Id.*

<sup>8</sup> *See* 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 375 (M. Farrand ed. 1966) (Madison’s notes).

year-olds did not possess sufficient maturity to serve in the House, as their political beliefs were “too crude and erroneous to merit influence on public opinions.”<sup>9</sup> Arguing against the 25 year old age requirement, James Wilson, of Pennsylvania, suggested it would “damp the effects of genius and of laudable ambition” declaring there was “no more reason for incapacitating youth than age.”<sup>10</sup> Ultimately, with a vote of 7 “ayes” and 3 “nays”, the 25-year-old minimum age for Representatives made it into the draft of the Constitution, as did the other age requirements (those without deliberation at the Convention).<sup>11</sup>

James Madison set forth similar reasons in Federalist Paper No. 62 to explain why a higher minimum age of 30 should be required to serve in the U.S. Senate as opposed to the House of Representatives. He explained that “Senatorial trust” requires a “greater extent of information and stability of character” that could only be realized with age.<sup>12</sup> Just as the age requirements give aspiring candidates time to develop information and stability of character, they also give the electorate time to discover any dangerous personal traits those individuals might possess. Similarly, Professor Akhil Amar notes Convention Delegate Tench Coxe’s argument that America’s president “cannot be an ideot, [and] probably not a knave or tyrant, for those whom nature makes so discover [i.e., reveal] it before the age of thirty-five, until which period he cannot be elected.”<sup>13</sup>

---

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* On the question of inserting the “25 years of age” requirement for Representatives, the states in favor of the clause were Connecticut, New Jersey, Delaware, Maryland, Virginia, North Carolina, and South Carolina. Massachusetts, Georgia, and Pennsylvania voted against the age requirement, and New York remained divided. *Id.*

<sup>12</sup> THE FEDERALIST NO. 62 (James Madison); *See also* THE FEDERALIST NO. 57 (James Madison) (“The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust.”).

<sup>13</sup> AKHIL REED AMAR, AMERICA’S CONSTITUTION: A BIOGRAPHY, 160-161 (2006) (citing Tench Coxe, *An Examination of the Constitution (I)*, in Ford, *Pamphlets*, 133, 137-38).

Today, these same rationales of both maturity and developing political information and beliefs that the Founders invoked for minimum age requirements are largely accepted as reasons to continue to require a minimum age for federal office. The practical purpose of these age requirements is to ensure suitably mature and informed federal public officials. These minimum age qualifications have remained unchanged since the Constitution's ratification. Since the Founding, Presidents, Senators, and members of the House of Representatives have had to meet the same age requirements. The only change to the minimum age requirements arose with the Twelfth Amendment's specification that Vice Presidents require the same eligibility requirements as the office of the President.<sup>14</sup> However, some question whether the Constitution should continue to require older public officials as a means of ensuring informed and mature politicians, and have engaged in efforts to abolish the Constitution's minimum age requirements.

### **B. Attempts to Remove the Constitution's Minimum Age Qualifications**

From today's vantage point in history, many have questioned the propriety of the Constitution's unchanged age qualifications. They allege discrimination or ageism against more youthful candidates.<sup>15</sup> They assert that this "discrimination" is anti-democratic in nature because it limits the field of candidates from which voters can choose, thereby restricting the voters' ability to cast an effective ballot.<sup>16</sup> In this way, the constitutional age requirements violate the equal protection clause. They additionally burden the right of voters and candidates to associate under the First Amendment for advancement of political beliefs, as the state board of elections

---

<sup>14</sup> *Voter and Officeholder Qualifications*, 119 HARV. L. REV. 2230, 2236 (2006).

<sup>15</sup> *See, e.g.*, ANDREW LERNER, THANK YOU FOR BEING YOUNG 64 (2011) ("If the top of the legal pyramid discriminates against you, what about the building blocks of our legal system? Age of candidacy limits in the Constitution give credence to other federal laws that discriminate by age. Federal precedent supports local-level age of candidacy laws."). *Id.*

<sup>16</sup> Lawrence Bemis, *Comment: Age and Durational Residency Requirements as Qualifications for Candidacy: A Violation of Equal Protection* 1973 U. ILL. L.F 161, 177-79 (1973).



can essentially prohibit the candidate of a voter's choice from being allowed to seek public office.<sup>17</sup>

Political groups have attempted to overturn the constitutional age qualifications through both political advocacy and litigation. As early as the 1970s, the Socialist Workers Party repeatedly nominated candidates too young to qualify for the offices they were running for in an effort to abolish minimum age requirements for elected office.<sup>18</sup> To advocate for these underage candidates, the Socialist Workers Party also initiated lawsuits alleging constitutional violations based on this alleged restriction of voter choice. For example, in the early 1970s, the Socialist Workers Party brought a lawsuit seeking injunctive relief to challenge a state electoral board's denying of one such underage federal candidate.<sup>19</sup> The federal district court held that a state's refusal to certify political party candidates who do not meet the minimum age requirements of the Constitution violates no constitutional rights.<sup>20</sup> Similarly, the Ninth Circuit will soon hear oral arguments in February 2014 in a case alleging the state should have listed a twenty-seven year old candidate on the Peace and Freedom Party's primary ballot in the 2012 election.<sup>21</sup> The Peace and Freedom Party allege in their complaint that refusal to place the underage candidate

---

<sup>17</sup> *Id.*

<sup>18</sup> K. L. BHATIA, TEXTBOOK ON LEGAL LANGUAGE AND LEGAL WRITING 118-19 (2010). In 1972, Linda Jenness ran as the Socialist Workers Party presidential candidate at age 31, but was not able to receive ballot access in several States due to her age. Again in 2004, the Socialist Workers Party nominated 28-year-old Arrin Hawkins as the Party's vice-presidential candidate, and again she did not receive ballot access in several states. *Id.*

<sup>19</sup> *Socialist Workers Party of Illinois v. Ogilvie*, 357 F. Supp. 109 (N.D. Ill. 1972). The Socialist Workers Party was also active on the state court level for advocating against minimum age requirements in state constitutions. *See, e.g., Raza Unida Party v. Bullock*, 349 F. Supp. 1272, 1282 (W.D. Tex. 1972) *aff'd in part, vacated in part sub nom* (challenging the constitutionality of the age and residency requirements for Texas state executive offices imposed by Article IV, §§ 4 & 16 of the Texas Constitution based on theories of equal protection and First Amendment freedom of association, petition, and speech). *Id.* at 1282-83.

<sup>20</sup> *Id.* at 113 ("Under the circumstances present here, no due process rights of Plaintiffs under the Fourteenth Amendment were violated by Defendants' actions in refusing to certify the Socialist Workers Party for a place on the 1972 Illinois general election ballot because of the admitted age...")

<sup>21</sup> Richard Winger, *Ninth Circuit Will Hear Peace & Freedom Presidential Primary Case on February 13, 2014* (Dec. 18, 2013), <http://www.ballot-access.org/2013/12/ninth-circuit-will-hear-peace-freedom-presidential-primary-case-on-february-13-2014>. In the case, the U.S. District Court ruled that because the candidate admits she does not meet the qualifications, the Secretary of State was correct to keep her off the ballot. *Id.*

on the ballot for President violated the Due Process Clause, Equal Protection Clause, and First Amendment.<sup>22</sup>

In addition to political parties and activist groups, legal scholars too have suggested the discriminatory nature of the Constitution's minimum age qualifications, making similar arguments for the unconstitutionality of the age qualifications. Professor Anthony D'Amato outlines that there is a "good constitutional argument" for permitting an underage President.<sup>23</sup> He contends that every provision of the Constitution is subject to amendment, and the Fifth and Fourteenth Amendments qualify and modify the original age qualifications.<sup>24</sup> Specifically, age discrimination-in a matter that restricts the right of the people to elect a President of their own choosing would "clearly violate the due process clause of the fifth amendment, and the due process and equal protection clauses of the fourteenth amendment."<sup>25</sup> Professor D'Amato thus argues the provision requiring the President to be thirty-five years old "sets up an unconstitutional discrimination against younger persons based on an irrational age limit, and is therefore a nullity."<sup>26</sup> Although his argument is specific to the Presidency, the same reasoning could be applied to Members of Congress based on the age qualifications of Article I, suggesting those limitations too are irrational nullities.

Other legal scholars have also questioned whether the minimum age qualifications of the Constitution are truly hard and fast rules, or more malleable standards that can be manipulated. For example, Professor Gary Peller argues the age requirements of the Constitution could be interpreted as signifying to the Framers "a certain level of maturity rather than some intrinsically

---

<sup>22</sup> The Peace and Freedom Party, Peta Lindsay, and Richard Becker, Plaintiffs, v. Debra Bowen, in her official capacity as Secretary of State of California, Defendant., 2012 WL 1108796 (E.D. Cal.).

<sup>23</sup> Anthony D'Amato, *Aspects of Deconstruction: The "Easy Case" of the Under-Aged President*, 84 NW. U. L. REV. 250, 254 (1989).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 255.

<sup>26</sup> *Id.*

significant number of years.”<sup>27</sup> Therefore, if a presidential candidate was mature for his age, but under 35 years old, he could still be placed on the ballot and elected. Similarly, Professor Girardeau Spann suggests “the governing principle is that Presidents should possess a minimum degree of maturity and experience” and the “principle may best be advanced by ignoring the rule in the case of a particularly precocious thirty-four year old.”<sup>28</sup> In this way, the constitutional age qualifications can be seen as guidelines that allow “underage” candidates to run for office on a case-by-case basis when they are sufficiently mature.

The common thread between these political groups and legal scholars is that all see the minimum age requirements as irrational and anti-democratic. They contend that the Constitution’s minimum age requirements hinder the election process in a way that limits voter and candidate choice, and therefore these provisions of the Constitution are blatantly unconstitutional themselves. However, this Article suggests that such critics and opponents of the minimum age qualifications are wholly incorrect. Rather, today the minimum age qualifications of Articles I and II can be seen as serving an important egalitarian function that is essential to our republican form of government.

### **III. A MODERN EGALITARIAN APPROACH TO MINIMUM AGE QUALIFICATIONS: PROTECTING FEMALE LEADERSHIP IN POLITICS**

Of course, any qualification for holding office naturally restricts voter choice in some manner. What matters is whether the purposes that the minimum age restrictions serve outweigh any possible infringement on democratic legitimacy and voter choice. Instead of viewing the minimum age qualifications as anti-democratic constitutional “bugs”, the age requirements can instead be viewed as constitutional features that promote a broader, more diverse democratic culture of merit. The minimum age qualifications provide an egalitarian safety net for one very

---

<sup>27</sup> Gary Peller, *The Metaphysics of American Law*, 73 CALIF. L. REV. 1151, 1174 (1985).

<sup>28</sup> Girardeau Spann, *Deconstructing the Legislative Veto*, 68 MINN. L. REV. 473, 532-33 (1984).

specific underrepresented group of individuals in politics: women. Because women are more likely to enter politics later in life than their male contemporaries, often due to family-related concerns, the minimum age requirements encourage more equal political participation at the federal level. Earlier entry into politics equals with greater party and congressional authority, so the age qualifications prevent younger men from disproportionately eclipsing qualified female candidates who run for office later in life.

### **A. Age and Entry into Federal Office**

The Constitution's minimum age requirements are particularly salient for female candidates and politicians because as a general pattern, women tend to be older than men when they first run for office.<sup>29</sup> This general trend of women's later entry into political office remains true for the current 113<sup>th</sup> Congress. In the 113<sup>th</sup> Congress, the average age at which members of the House took office was slightly over 47 years old.<sup>30</sup> However, there is a significant difference between the average ages for male and female members. The average age when women politicians first took their congressional oath of office for the House of Representatives is 50.2 years old, whereas the average for their male counterparts is 46.7 years old.<sup>31</sup> A similar pattern existed for the 112<sup>th</sup> Congress: although the average age for members of the House first taking office was 46.9 years old, the average age for women was 49.5 years.<sup>32</sup> On the other hand, the average age for men was 46.3.<sup>33</sup> Likewise, of those Senators who were new to the 113<sup>th</sup>

---

<sup>29</sup> See, e.g., BARBARA PALMER & DENNIS SIMON, *BREAKING THE POLITICAL GLASS CEILING: WOMEN AND CONGRESSIONAL ELECTIONS* 68 (2008).

<sup>30</sup> E-mail from Kelly Dittmar, Assistant Research Professor at the Center for American Women and Politics (CAWP) at Rutgers University, to author (September 23, 2013) (on file with author). Professor Dittmar was kind enough to provide her empirical data detailing various factors related to age and gender of members of Congress in the 112<sup>th</sup> and 113<sup>th</sup> Congresses, along with data about the number of children each had under the age of 18. Professor Dittmar's data is the only current comprehensive dataset detailing age disparities between the genders in Congress. Her current data provides the basis for this analysis.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

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

Congress, the average age of first taking office was 53.9.<sup>34</sup> However, the average age of first-time female Senators was 59 years old, compared to only 50 years for men.<sup>35</sup>

These gender-significant age divides can be seen more prominently by analyzing the percentage of members of Congress who took federal office at age 40 or under. In the 113<sup>th</sup> Congress, only 19% of female members in the 113<sup>th</sup> Congress took office at age 40 or under, compared to 25% of male members.<sup>36</sup> These figures are not surprising given that in the entire history of Congress, only thirty-eight women under forty years old have served in the House.<sup>37</sup> Likewise, only one woman under the age of forty has been elected to the Senate: Blanche Lambert Lincoln (D-AR) ran in 1998 at the age of thirty eight.<sup>38</sup>

This current data on gender-significant age gaps in the 112-113<sup>th</sup> Congresses, summarized in Tables 1 and 2 below, confirms that women today continue to enter federal legislative office systemically later than their male colleagues, especially in the House of Representatives.

---

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* All but nine of these have been elected since 1972. *Id.*

<sup>37</sup> PALMER & SIMON, *supra* note 29, at 79.

<sup>38</sup> *Id.*

**Table 1: House of Representatives<sup>39</sup>**

U.S. House of Representatives	112 <sup>th</sup> Congress	New Members to 113 <sup>th</sup>	113 <sup>th</sup> Congress
<b>Average Current Age</b>	<b>58.1</b>		<b>56.3</b>
Women	59.9		58.5
Men	57.8		55.8
<b>Average Age Taking Office</b>	<b>46.9</b>	<b>49.92</b>	<b>47.4</b>
Women	49.5	52.7	50.2
Men	46.3	49.1	46.7
<b>Members 40 or under (Current Age)</b>	<b>24</b>		<b>38</b>
Women	3		6
Men	21		32
% All Women who are 40 or under	4.10%		7.70%
% All Men who are 40 or under	5.80%		9.00%
<b>Members Taking Office at 40 or under</b>	<b>107</b>	<b>17</b>	<b>103</b>
Women	14	3	15
Men	93	14	88
% All Women who were 40 or under	19%	15.79%	19.20%
% All Men who were 40 or under	26%	21.88%	24.60%

**Table 2: Senate<sup>40</sup>**

U.S. Senate	112 <sup>th</sup> Congress	New Members to 113 <sup>th</sup>	113 <sup>th</sup> Congress
<b>Average Age Taking Office</b>	<b>50.9</b>	<b>53.9</b>	<b>51.2</b>
Women	48.2	59	51
Men	51.4	50	51.2
<b>Members Taking Office at 40 or under</b>	<b>8</b>	<b>1</b>	<b>7</b>
Women	0	0	0
Men	8	1	7
% All Women who were 40 or under	0%	0%	0%
% All Men who were 40 or under	9.60%	14.29%	8.43%

<sup>39</sup> As of November 2013.<sup>40</sup> As of November 2013.

These recent statistics of the 112<sup>th</sup> and 113<sup>th</sup> Congresses echo other recent sessions of Congress as well, indicating the figures are not anomalies. For example, in the 110<sup>th</sup> Congress (2007 session), the average age of male House members when they first ran for office was 44.9, whereas the average for female House members was again higher, at 47.9.<sup>41</sup> These specific statistics regarding individual sessions of Congress likewise echo the general pattern of women being elected to Congress later in life: of all women to serve in the House between 1916 and 2006, the average age when they first ran for office was 48.6.<sup>42</sup>

This gender imbalance of age upon entry into politics is also consistent with state legislators as well. In a 2001 study, the Center for American Women and Politics found that only 24 percent of women legislators were under age 50, compared with 39 percent of their male counterparts.<sup>43</sup> In addition, on average, a woman serving as a state senator in 2001 started in that position at age 50, and the average age of entry for women state representatives was 49.<sup>44</sup> Men were significantly more likely than women to begin serving at a relatively young age.<sup>45</sup> About three in ten male state senators (28%) and state representatives (30%) entered those positions when they were 40 or younger.<sup>46</sup> Comparatively for women, only 11% of women state senators and 14% of women state representatives entered those positions when they were under 40 years old.<sup>47</sup>

### **B. “House” Responsibilities vs. Home Responsibilities: Congresswomen, Children, and Families**

---

<sup>41</sup> PALMER & SIMON, *supra* note 29, at 75.

<sup>42</sup> *Id.* at 75.

<sup>43</sup> *Women in State Legislatures: Past, Present, Future*, Center for American Women and Politics, Eagleton Institute of Politics, Rutgers University, (2001), available at <http://www.cawp.rutgers.edu/research/topics/documents/StLeg2001Report.pdf>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

Although it is not uncommon today for female members of Congress to be mothers, very few of them have young children. One reason attributed to female candidates' delayed entrance compared to male candidates is that women usually wait until their children are grown before they run for office.<sup>48</sup> Women seem to delay their political careers because of family responsibilities, and are far less likely to have young children in office.<sup>49</sup>

This general pattern again is consistent with the data from the 113<sup>th</sup> Congress. Of the 84 new members of the 113th House of Representatives (65 male, 19 female), 32 men and only 1 woman currently have children under age 18.<sup>50</sup> In other words, half of the freshman male members are elected while they still have young children at home. However, all but one of the new female members of Congress has either no children or only adult children. Similar statistics can be seen with new members of the Senate. Of the 7 male freshman Senators, 4 of them have children under the age of 18. Yet of the 5 freshman women Senators, none have minor children.<sup>51</sup>

These statistics tied to minor children illustrate the domestic limitations for many female candidates, and begin to explain why women may not enter politics as early as men. Anecdotally, Nancy Pelosi illustrates the importance of statistics, explaining how she entered politics late in life due to her responsibilities as a mother affected her seniority in Congress:

I came to Congress when my youngest child, Alexandra, was a senior in high school, practically on her way to college. I knew that my male colleagues had come when they were 30. They had a jump on me because they didn't have children. I did what I wanted to do, I was blessed to have that opportunity to sequentially raise my family and then come to Congress, but I wanted women to

---

<sup>48</sup> PALMER & SIMON, *supra* note 29, at 68.

<sup>49</sup> *Id.*

<sup>50</sup> Dittmar, *supra* note 31.

<sup>51</sup> *Id.*



be here in greater numbers at an earlier age, so that their seniority would start to count much sooner.<sup>52</sup>

Other women who have served as elected officials have the same impression as Congresswoman Pelosi regarding the inability to be both a mother and a Congresswoman. As former Congresswoman Pat Schroeder summarized, female politicians in the 1970s had two career tracks, “[Congress] was either a capstone at the end of a career for those with grown children, or it was the career for unmarried or childless women. You could have a career or a family, or maybe a career after your family was grown. But rearing a family while in Congress was unheard of.”<sup>53</sup> However, for many Congresswomen, the perception that Congress is not for mothers has not changed since the 1970s. As Congresswoman Jane Harman explained, “The schedule is the pits. There is absolutely no way to be a full-time parent and serve in Congress.”<sup>54</sup>

Political scientists have also identified the sociocultural expectation that women are the primary caretakers of children as a leading reason for the exclusion of women from elite level

---

<sup>52</sup> Seung Min Kim, *Russert Age Question Irritates Pelosi*, POLITICO (Nov. 14, 2012),

<http://www.politico.com/blogs/on-congress/2012/11/pelosi-reacts-to-russert-age-question-149540.html>.

Concerns similar to Pelosi’s regarding her family are representative of issues not that not only women considering entering national politics face, but all the way down to local office. For example, Beverly Moore, former mayor of Kalamazoo, Michigan, said she had to be talked into running for local office: “At the time, I had not even thought about entering into any kind of politics. I had children in the school system.” C. Allen Alexander in *SOCIAL CHANGES IN WESTERN MICHIGAN, 1930 TO 1992: ALEXANDER ORAL HISTORY PROJECT*, ed. 123-32 (1997).

However, other female politicians say they no longer feel that a political career and raising a family are mutually exclusive. Representative Wasserman Schultz said: “It’s important to have moms in Congress....I want to show other young women that it can be done.” See Richard Cohen, *Member Moms*, NATIONAL JOURNAL, April 7, 2007, 14-19.

<sup>53</sup> See JENNIFER LAWLESS AND RICHARD FOX, *IT TAKES A CANDIDATE: WHY WOMEN DON’T RUN FOR OFFICE* 64 (2005).

<sup>54</sup> See JENNIFER LAWLESS AND RICHARD FOX, *IT STILL TAKES A CANDIDATE: WHY WOMEN DON’T RUN FOR OFFICE* 77 (2010) (citing Wilkie, *Harman, Prototypical Political of the 90s, Juggles Family, Career*). Other women no longer feel that a political career and raising a family are mutually exclusive. Senator Mary Landrieu (D-LA) said, “It breaks my heart when I meet older women who once made a choice between career and family. There was a time, not long ago, when many women had to make that choice. Now these women are retired, and they have no children, no grandchildren. In some cases, not all, they were forced to sacrifice one great joy for another. It just doesn’t seem right. I want to make sure that picture is changed for good. If I can do it, other women can.” BARBARA MIKULSKI, KAY BAILEY HUTCHINSON, DIANNE FEINSTEIN, BARBARA BOXER, PATTY MURRAY, OLYMPIA SNOWE, SUSAN COLLINS, MARY LANDRIEU, BLANCHE LINCOLN, & CATHERINE WHITNEY, *NINE AND COUNTING, THE WOMEN OF THE SENATE* 25 (2000).

politics.<sup>55</sup> Similarly, the Citizen Political Ambition Study (CPAS), conducted in 2002, also provides parallel survey insight regarding women's consideration of family issues and their initial decisions to run for office.<sup>56</sup> One of the most striking findings of the CPAS was the impact of family and domestic responsibilities on the candidate's decision to run for office. For men, there was no relationship between the household division of labor and their likelihood to consider running for office.<sup>57</sup> For women on the other hand, as housework and childcare responsibilities increased, the likelihood they would consider running for office declined.<sup>58</sup> When a woman thinks about running for office, she often considers her qualifications and impact on her family. When a man considers the question, he often only considers whether he wants to run.<sup>59</sup>

### C. The Importance of Age Qualifications: In Politics, Seniority is Power

The data regarding female candidates' later entry into federal political office than their male counterparts becomes troubling when one considers the political consequences of candidates running later in life. In Washington, political tenure translates to political power.<sup>60</sup> As one author explained, "in no other place, perhaps, does seniority or length of service carry so much weight as it does in the Congress of the United States."<sup>61</sup> The entire leadership structure of

---

<sup>55</sup> See, e.g. M. Margaret Conway, Gertrude A. Steuernagel, & David W. Ahern, *Women and Political Participation*, CONGRESS. QUART. (1997); Susan J Carroll, *The Personal is Political: The Intersection of Private Lives and Public Roles Among Women and Men in Elective and Appointive Office*, WOMEN & POL. (1989).

<sup>56</sup> The study surveyed approximately 3,000 people drawn randomly from samples of workers in law, business, and education. See LAWLESS AND FOX, *supra* note 53; Richard L. Fox, *Gender, Political Ambition and the Decision Not to Run for Office*, Center for American Women and Politics (2003), available at <http://www.cawp.rutgers.edu/research/topics/documents/InitialDecisiontoRun.pdf>.

<sup>57</sup> Fox, *supra* note 56, at 9-10.

<sup>58</sup> *Id.*

<sup>59</sup> See, e.g., Timothy Bledsoe and Mary Herring, *Victims of Circumstances: Women in Pursuit of Political Office*, 84 AMER. POLIT. SCI. REV. 215,218 (1990).

<sup>60</sup> See, e.g. Brian E. Roberts, *A Dead Senator Tells No Lies: Seniority and the Distribution of Federal Benefits* 34 AM. J. OF POLY SCI 31, 33 (1990); Micheal Abram & Joseph Cooper, *The Rise of Seniority in the House of Representatives*, 1 POLITY 52, 52 (1968).

<sup>61</sup> GEORGE GALLOWAY, *THE LEGISLATIVE PROCESS IN CONGRESS* 367 (1953).

Congress revolves around longevity and seniority. Seniority acts as a means of choosing committee chairpersons and assigning members to committees and subcommittees.<sup>62</sup> Additionally, tenure in Congress affects the deference shown to legislators, the assignment of office space, and even invitations to private dinners and social events.<sup>63</sup> In Congress, seniority is the “spirit pervading the total behavior of Congress.”<sup>64</sup> In this way, the seniority system places an emphasis on congressional experience and longevity.

A quick glance at House committee leadership demonstrates the value of lengthy careers. For example, in the 110<sup>th</sup> Congress, among the twenty two chairs of the standing House committees, the average number of terms served was 13.7 years.<sup>65</sup> In this way, seniority translates to leadership positions. However, until recently, women have barely been represented in this leadership hierarchy of Congress. For example, in the history of Congress, only seventeen women have chaired standing committees.<sup>66</sup> The wake of the 2006 election saw the installation of Speaker Nancy Pelosi, and the subsequent 110<sup>th</sup> Congress did see a substantial increase in the number of women in leadership positions.<sup>67</sup> However, despite these gains following Speaker Pelosi’s ascension, women continue to be underrepresented in leadership positions in Congress.

Aside from these issues of leadership and seniority in Congress, age upon entering politics also can influence a candidate’s ability to get elected. Structural barriers, most notably

---

<sup>62</sup> George Goodwin Jr., *The Seniority System in Congress*, 53 AMERICAN POLIT. SCI. REV. 412, 412-414 (1959).

<sup>63</sup> *Id.*

<sup>64</sup> ERNEST GRIFFITH, CONGRESS: IT’S CONTEMPORARY ROLE 18 (1956). Congressional Historians are not entirely clear when the seniority system began to develop in Congress, as it the seniority system is enforced by tradition and leadership, rather than official written rules. By the 20<sup>th</sup> Century however, the seniority system was deeply engrained in the culture and actions of Congress. See Goodwin , *supra* note 62, at 417.

<sup>65</sup> PALMER & SIMON, *supra* note 29, at 94. At that time, only four of the chairs were female, with their average length of service much lower, at 7.5 terms on average. *CQ’s Guide to the Committees*, CQ WEEKLY, April 16, 2007.

<sup>66</sup> PALMER & SIMON, *supra* note 29, at 73-74.

<sup>67</sup> *Special Report: CQ’s Guide to the Committees*, CQ WEEKLY, April 16, 2007. In the 109<sup>th</sup> Congress (2005 session), only two women were committee chairs and no women chaired committees in the House. In the 110<sup>th</sup> Congress (2007 session), six women were committee chairs – two in the Senate and four in the House. This figures translates to 16.2% of all chairs in Congress. *Id.*

the incumbency advantage, inhibit electoral opportunities for previously excluded groups and limit the pace at which they can make substantial gains.<sup>68</sup> So those who enter politics later, such as women, are likely to face repeat-incumbent politicians in elections who have advantages they received by virtue of being elected earlier in their careers.

Beyond leadership positions in Congress and the ability to get elected, the Legislature is also seen as a political springboard to higher federal honors. The importance of entering politics at a young age becomes even more important given that thirteen of the nation's last twenty presidents first ran for elective office before they reached the age of thirty five.<sup>69</sup> Given these trends, it seems safe to predict that future presidents, senators and governors can be found among today's young elected officials. If this is the case, it is important to understand who the people are that are running for office at a young age. As the data demonstrates, at least for the current Congress, those people are largely men. If the younger members of Congress today are the future leaders of Congress in the future, women will be substantially underrepresented in leadership positions.

---

<sup>68</sup> See, generally BARBARA BURRELL, *A WOMAN'S PLACE IS IN THE HOUSE: CAMPAIGNING FOR CONGRESS IN THE FEMINIST ERA* (1996); Richard Fox & Jennifer Lawless, *Barefoot and Pregnant, or Ready to be President? Gender, Family Roles, and Political Ambition in the 21st Century*, Paper presented at the annual meeting of the American Political Science Association, Seattle, WA: September 1 – 4, 2011; David Nixon & R. Darcy, *Special Elections and the Growth of Women's Representation in the House of Representatives* 16 *WOMEN & POLITICS* 96, 96-107 (1996).

<sup>69</sup> Ruth Mandel & Katherine Kleeman, *Political Generation Next: America's Young Elected Leaders* 7(2004). These Presidents are: William McKinley (U.S. House of Representatives, 34) ; Theodore Roosevelt (State Assembly, NY, 24), William H. Taft (Superior Court Judge, OH, 31), Warren G. Harding (State Senate, OH, 35), Calvin Coolidge (Councilman, Northampton, MA, 26); Franklin D. Roosevelt (State Senate, NY, 28), John Kennedy (U.S. House of Representatives, 30) Lyndon B. Johnson (U.S. House of Representatives, 29); Richard M. Nixon (U.S. House of Representatives, 34); Gerald Ford (U.S. House of Representatives, 35); Jimmy Carter (Board of Education, Sumter County, GA, 32) William J. Clinton (Attorney General, AR, 30), Barack Obama (State Senate, IL, 35).

#### **D. A Modern Egalitarian Rationale for the Constitution’s Minimum Age Requirements: Discouraging Gendered Capture of Federal Political Office**

Although some argue minimum age requirements limit democratic choice, they also serve an important egalitarian function in today’s society where women enter politics later in life. Examining the populist purposes of the minimum age requirements at the time of the Constitution’s ratification help illuminate the continued importance of the minimum age requirements today. At ratification, the eligibility qualifications served populist goals because aristocratic entrenchment of political office was a major threat to America’s fledgling democracy. That is, the age qualifications reflect an immense aversion to the custom in early America of lineal succession of government office from fathers to sons.<sup>70</sup>

Professor Akhil Amar describes the goals of the eligibility qualifications as the promotion of a “democratic culture of republican merit and equal opportunity.”<sup>71</sup> At the nation’s Founding, the eligibility requirements promoted equal opportunity because they limited the premature elevation of “favorite sons” to political office, and in this way the age requirements embodied republican principles.<sup>72</sup> As Professor Amar explains, “Without a minimum-age rule, voters and legislature in each state might be tempted to send the state’s favorite son, such as the governor’s scion, to Congress as young as possible.”<sup>73</sup> Allowing young men to run for office at earlier ages could lead to a “republican race to the bottom,” where states competed with each other to elect Congressmen younger and younger so they could obtain more power in Congress.<sup>74</sup> The “haughty heirs of distinguished names” that would be famous enough to win a seat in Congress

---

<sup>70</sup> GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* 84 (1991).

<sup>71</sup> AKHIL AMAR, *AMERICA’S CONSTITUTION: A BIOGRAPHY*, 160 (2006).

<sup>72</sup> *Id.* at 71.

<sup>73</sup> *Id.* For example, in the fifty years before the Nation’s independence, upwards of 70 percent of New Jersey’s elected representatives had family ties to past representatives. GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* 84-85 (1991). WOOD, *supra* note 7071, at 84.

<sup>74</sup> Amar, *supra* note 71, at 71.

at a very young age would have a springboard to further federal honors.<sup>75</sup> The Constitution's age qualifications thus ensure that each generation's "low born" individuals have the time they need to display their own merit and virtue before their well-born counterparts run for office based on family reputation or wealth. In this way, the Framers designed the minimum age qualifications to grow a republican society open to meritorious people of humble origins.<sup>76</sup>

This same populist rationale for preventing favorite-born sons from amassing power too soon in Washington can also be applied in the context of women in Congress today. Just as the Drafters were concerned that favorite aristocratic sons would create political dynasties, given women's later entry into politics, a Constitution without minimum age requirements literally could encourage favorite *sons*, not daughters, to ascend in politics. While women enter politics later, potentially due to domestic concerns such as child-rearing and raising a family, their male counterparts would begin amassing federal honors and positions of leadership within political institutions at much younger ages. In a system where seniority is power, it is not difficult to imagine the effects of opening federal office to younger candidates: men, who traditionally are the young candidates who are able and willing to enter politics, will continue to ascend. If elected young, the incumbent advantage will benefit them more and more, and committee leadership will be within their grasp. If the Constitution's minimum age requirements were

---

<sup>75</sup> Professor Amar outlines that the data from the first decade of Congress provides evidence that the age requirements in Article I did indeed dampen the dangers of aristocracy. Men who were elected to office young were three times as likely as other representatives to have close family ties to elder statesmen. *Id.* at 71-72.

<sup>76</sup> James F. Ianelli, *The Sound of Silence: Eligibility Qualifications and Article III*, 6 SETON HALL CIRCUIT REV. 55, 58 (2009).

Wilson Carey Nicholas defended this egalitarian feature of the Constitution by arguing that "It has ever been considered a great security to liberty, that very few should be excluded from the right of being chosen to the legislature. This Constitution has amply attended to this idea. We find no qualifications required except those of age and residence...." 3 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION AS RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA IN 1787, at 8 (Jonathan Elliot ed., 1863).

eliminated, it is likely that a disproportionate amount of men would be able to participate in this “republican race to the bottom,” while women continue to seek election later in life.

These analogies between the Constitution’s allowing for the political advancement of sons of humble origins in 1787 and women more generally today are even more salient when read through the lens of the Nineteenth Amendment. Reasoning about the Constitution, which now includes the 19<sup>th</sup> Amendment, alters how we understand questions of equal citizenship for women. The Nineteenth Amendment was the product of the revolutionary idea that women have equal status in a democracy, and brought women into political citizenship after centuries of exclusion by men.<sup>77</sup> Although some legal scholars, including David Strauss, have opined that the Nineteenth Amendment is “irrelevant,”<sup>78</sup> many legal scholars argue the Nineteenth Amendment stands not only for women’s voting rights, but also for “full rights of political participation” for women.<sup>79</sup> This interpretive framework reads the Nineteenth Amendment as embracing a certain background understanding of civil and political rights for women.

---

<sup>77</sup> U.S. CONST. amend. 19 (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.”).

<sup>78</sup> David A. Strauss, *The Irrelevance of Constitutional Amendments*, 114 HARV. LAW REV. 1457, 1466-68, 1489-1500 (2001). Strauss argues that Article V amendments, such as the Nineteenth Amendment, should play no role in the way we interpret any other provision of the Constitution. He suggests that the fact that women’s suffrage was formally recognized by the Nineteenth Amendment, instead of coming about through judicial interpretation, should not carry any significant weight. *Id.* at 1467.

<sup>79</sup> Akhil Reed Amar, *Women and the Constitution*, 18 HARV. J.L. & PUB. POL’Y 465, 471-73 (1995); *See also* AKHIL REED AMAR, *AMERICA’S UNWRITTEN CONSTITUTION* 279-305 (2012) (discussing in a chapter of its own the importance of the Nineteenth Amendment’s guarantee of equal political and civil rights for women to America’s “unwritten Constitution,” and arguing that the words have come to mean more as women gained representation); Akhil Reed Amar, *The Bill of Rights as a Constitution*, YALE L.J. 1131, 1201-03 (explaining how the Nineteenth Amendment’s sex- equality principle should apply to political rights including militia and jury service); Vikram David Amar, *Jury Service as Political Participation Akin to Voting*, 80 CORNELL L. REV. 203, 241-42 (1995); Bruce Ackerman, *Constitutional Politics/Constitutional Law*, 99 YALE L.J. 453, 459 (1989) (arguing the Fourteenth and Nineteenth Amendments together should protect against discrimination on the basis of sex to the same extent that the Fourteenth and Fifteenth Amendments together protect against discrimination on the basis of race); Reva Siegel, *Text in Contest: Gender and the Constitution from a Social Movement Perspective*, 150 U. PA. L. REV. 297 (2001-2002) (reading the inclusion of the Nineteenth Amendment as having implications for diverse bodies of constitutional law); Jennifer K. Brown, *Note: The Nineteenth Amendment and Women’s Equality*, 102 YALE L. J., 2175 (1993).

Applying this interpretive framework that is cognizant of the Nineteenth Amendment, Professor Amar argues that the Nineteenth Amendment works as an estoppel argument, in that “[c]ertain arguments about the difference between the sexes that might have been constitutionally permissible, as justifying differential treatment before the Nineteenth Amendment, are, as a matter of law, precluded by the affirmation of political equality in the Nineteenth Amendment itself.”<sup>80</sup> Although a *lack* of minimum age qualifications in the Constitution would likely not constitute “differential treatment” for women as the age limitations would exist for both genders, the continued presence of age qualifications in our Constitution helps to underline and affirm the political equality of women political candidates and their familial concerns. Reva Siegel explains the transformative nature of the Nineteenth Amendment as it relates to family issues:

When Americans finally voted to ratify the Nineteenth Amendment, they were breaking with understandings of the family that had organized public and private law and defined the position of the sexes since the founding of the republic. The history of women’s struggle for enfranchisement thus teaches that equal citizenship for women includes freedom from subordination in or through the family.<sup>81</sup>

The Nineteenth Amendment is about women’s equal political participation, and reading the age qualifications through the lens of the Nineteenth Amendment illuminates the importance of this constitutional feature in promoting and protecting women’s political participation as federal officeholders. Women today have equal voice and representation, and our Constitution must now be construed with attention to this equality and the awareness of women’s political

---

<sup>80</sup> Akhil Reed Amar, *Women and the Constitution*, 18 HARV. J.L. & PUB. POL’Y 465, 472 (1995).

<sup>81</sup> Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family* 115 HARV. L. REV. 947, 951 (2002) (arguing generally for reading the Fourteenth and Nineteenth Amendments together as each secures constitutional protection for values of equal citizenship). Professor Siegel argues the history of women’s struggle for enfranchisement teaches that equal citizenship for women includes freedom from subordination in or through the family in the context of modern sex discrimination law. Although a lack of age qualifications in the Constitution would not subordinate women through the family in the same way issues as with anti-discrimination law, the focus on family issues and women’s equality under the 19<sup>th</sup> Amendment provides a new lens to view the Constitution’s age qualifications under.



exclusion in earlier centuries.<sup>82</sup> In this way, the Nineteenth Amendment gives new effect to the text of the Constitution's minimum age qualifications as they relate to women specifically.

The constitution's minimum age qualifications help promote women in positions of leadership in a strongly egalitarian fashion, just as the age qualifications originally promoted leaders from humble origins. The cumulative data on women in the 113<sup>th</sup> Congress, along with more general trends in Congress, suggest that the Constitution's age qualifications can not only dampen the intergenerational "aristocracy," the Framers intended to suppress, but also this form of *gendered* "aristocracy." If women wait until later in life to first run for political office, as the data demonstrates, an abolishment of the minimum age requirements for office would likely further widen the gap between men and women in positions of Congressional leadership.

#### IV. CONCLUSION

Women candidates' delay in taking office, like any candidate's delay in office, can affect their ability to gain power and future leadership positions in the legislature. A focus on the modern and unintended potential effects of minimum age qualifications in the Constitution fits into a larger democratic, egalitarian pattern of our Constitution's features, especially since the adoption of the Nineteenth Amendment. The elective mode of obtaining rulers is the characteristic policy of republican government. If women political candidates in our government do systematically delay entering politics until later in life compared to their male counterparts, then the Constitution's minimum age requirements can be seen as one means of promoting greater gender parity in Congress.

Although the age qualifications continue to promote mature and wise candidates for federal office, reflections on the Constitution's framing and ratification also remind us that the eligibility requirements in the Constitution were created to encourage the egalitarian promotion

---

<sup>82</sup> AMAR, AMERICA'S UNWRITTEN CONSTITUTION, *supra* note 79, at 305.

of political leaders. The Framers and ratifiers of the Constitution had a deep disdain for elevating high-born sons of famous aristocratic families to office at the expense of those born to less well-to-do families who were unable to be elected at such a young age. But sons of poor fathers aren't the only group who might be unable to run for office or be elected young. Today, the Constitution continues to protect those who would be unable to enter politics at a young age: namely, women.

The ability of women to enter politics and obtain leadership positions is not just a procedural issue, but potentially has substantive effects too for our system of government. Elected officials make a difference in the issues they prioritize, the committees they chair, the bills they sponsor and cosponsor, and the output they generate. Studies indicate policy differences between male and female elected officials. For example, female legislators are more likely than men to vote for reproductive rights role change legislation<sup>83</sup> and pursue policies related to women's issues.<sup>84</sup> Additionally, women who replace men in the same U.S. House district sponsor relatively more legislation that pertains to women's issues.<sup>85</sup> Women state legislators also hold more liberal preferences on welfare policy than men, even when controlling for constituency preferences and party ideology.<sup>86</sup>

---

<sup>83</sup> Noelle Norton, *Uncovering the Dimensionality of Gender Voting in Congress*, 24 LEG. STUD. QUARTERLY 65–86 (1999). See also Michele Swers, *Are Congresswomen More Likely to Vote for Women's Issue Bills than Their Male Colleagues?*, 23 LEG. STUD. QUARTERLY 435-48 (1998) (finding in the 103rd Congress, the sex of the representative was most significant on votes addressing abortion and women's health).

<sup>84</sup> MICHELE L. SWERS, *THE DIFFERENCE WOMEN MAKE: THE POLICY IMPACT OF WOMEN IN CONGRESS* (2002) (finding Democratic and moderate Republican congresswomen are more likely to pursue interests such as childcare and domestic violence); See also Colleen Shogan, *Speaking Out: An Analysis of Democratic and Republican Woman-Invoked Rhetoric of the 105th Congress*, 23 WOMEN & POLITICS 129-46 (2001) (finding that Democratic and Republican women are more likely than men to bring up women or women's issues in their floor speeches in the U.S. House; and women spend more time than men speaking about other women's health issues).

<sup>85</sup> Jessica Gerrity et. al., *Women and Representation: A Different View of the District*, 3 POLITICS & GENDER 179-200 (2007).

<sup>86</sup> Sarah Poggione, *Exploring Gender Differences in State Legislators' Policy Preferences*, 57 POLIT. RESEARCH QUARTERLY, 305, 305-14 (2004). Aside from policy differences between male and female legislators, evidence also suggest female elected officials affect constituents' political behavior, interest, and efficacy. See, e.g., Lonna Rae Atkeson & Nancy Carillo, *More is Better: The Influence of Collective Female Descriptive Representation on*

Given the importance of seniority in the hierarchy in Congress for acquiring leadership positions and influence, the constitutional minimum age requirements can be viewed from a modern lens as one means of preventing political capture of the highest federal positions by one gender. If the Constitution's minimum age qualifications in Articles I and II were abolished, as some reform groups have advocated for, this abolishment may further restrict the ability for equally credentialed women to emerge from the candidate eligibility pool, run for office, win their races, and obtain leadership positions in Congress. The Nineteenth Amendment today highlights the importance of promoting women's political participation, and gives new meaning to the minimum age qualifications. The requirements for age, residency, and citizenship stand today as the foundational qualifications for office holding, and should continue to stand in the Constitution. The age qualifications, while fulfilling their original purpose of ensuring that mature and wise candidates serve in office, also serve the egalitarian function of allowing more female participation in the highest federal offices.

---

*External Efficacy*, 3 *POLITICS & GENDER* 79-101 (2007) (finding that greater proportions of women in state houses across the country increase women's confidence in government relative to men's); Lonna Rae Atkeson, *Not All Cues are Created Equal: The Conditional Impact of Female Candidates on Political Engagement*, 65 *J. OF POLITICS* 1040-61 (2003) (finding women who live in states with visible and competitive female candidates have higher levels of political engagement among women).