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The Riddle of Ruth Bryan Owen

Daniel B. Rice
Law clerk, U.S. Court of Appeals for the D.C. Circuit; Duke University School of Law, J.D. 2015

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The Riddle of Ruth Bryan Owen

Daniel B. Rice*

INTRODUCTION

Her ancestors helped win America's independence. As a child, she watched House debates with rapt attention, vowing eventually to return to her beloved Capitol building. She gazed out on millions of cheering faces during her father's three presidential campaigns. Her uncle was a governor and vice-presidential nominee, her father the American Secretary of State. She ran the American Women's War Relief Fund alongside future First Lady Lou Hoover and nursed dying Allied soldiers. After establishing herself as Florida's leading female activist, she campaigned for the House of Representatives in 1928, promising to send her district's most exemplary young citizens to Washington on an unparalleled civic pilgrimage. She won resoundingly—making her the first woman the South ever sent to Congress—even though her home state hadn't yet ratified the Nineteenth Amendment. She later served as our nation's first female ambassador. Who was more American than Ruth Bryan Owen?

But just as this dazzling stateswoman-to-be prepared to take her seat in Congress, her defeated opponent challenged her eligibility to participate in the federal lawmaking process. For only the second time since 1789, a losing House candidate impugned his opponent's qualifications on citizenship grounds, arguing that Owen hadn't "been seven Years a Citizen of the United States" as the Constitution requires. How could Owen have possibly been vulnerable on this score?

Under the Expatriation Act of 1907, American women (but not men) who married foreigners were automatically stripped of their American


1. For these and other biographical details, see infra Part II and Conclusion.


3. See CHESTER H. ROWELL, A HISTORICAL AND LEGAL DIGEST OF ALL THE CONTESTED ELECTION CASES IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES FROM THE FIRST TO THE FIFTY-SIXTH CONGRESS, 1789-1901, at 37-38 (1901) (examining David Ramsay's failed challenge to William Smith's eligibility to serve in the First Congress); id. at 426 (discussing Lowry v. White, a House case from the 1880s, in which a foreign-born candidate failed to produce his naturalization certificate).

citizenship. Owen found true love in 1910, but her husband happened to be a subject of Edward VII of England. The Nineteenth Amendment’s egalitarian ethos rendered this discriminatory regime perverse and archaic; after Congress passed the Cable Act in 1922, no American woman lost her citizenship simply by reason of marriage. But the Cable Act’s justice wasn’t retroactive; Owen had to undergo naturalization, even as she guided fellow aliens through the acculturation process. Finally, in 1925, her busy schedule allowed her to become naturalized on the federal judiciary’s timetable. By 1928, Owen had been a U.S. citizen for at least twenty-eight years of her storied life. Wasn’t this good enough?

William Lawson, Owen’s challenger, argued that the period of “seven years” spelled out in the Constitution refers to the seven immediately preceding years as a consecutive unit. On this theory, the House Qualifications Clause regarded Owen as an American citizen only from the moment in 1925 when she became one by choice. Owen had therefore “been” a U.S. citizen for only three years when elected to Congress, and the House could not legitimately seat her.

Owen publicly regarded Lawson’s challenge as a “joke” and an “absurdity... not worth taking seriously.” When House Elections Committee No. 1 took her contest as seriously as all others, Owen rose to her own defense. She naturally replied that seven cumulative years of citizenship suffice. But more importantly, Owen welcomed this controversy as a teaching opportunity—she desired “to make more clear the laws which have dealt unjustly with women.” Accordingly, Owen stressed Section 4 of the Cable Act, which allowed any marital expatriate who later became naturalized to “have the same citizenship status as if her marriage had taken place after the passage of [the Cable Act]”—that is, that she had effectively never “cease[d] to be a citizen.” Congress had wiped away the old law and removed the “stain it once had placed on our citizenship record.” Her involuntary expatriation was but a bad dream.

The Elections Committee issued a ten-page report in March 1930, unanimously resolving that Owen retain her seat. But the report’s concluding resolutions masked deep interpretive disagreements. Five of

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6. See, e.g., infra notes 577-582 and accompanying text.
8. Lawson’s argument is recounted in Part III.B.4.a infra.
10. Owen’s argument is recounted in Part III.B.4.b infra.
14. For a detailed analysis of the Committee’s fascinating report, see infra Section III.B.6.

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the Committee's nine members endorsed Owen's "cumulative" reading of the citizenship requirement, seemingly unaware that it would permit aliens to serve in Congress if they had been U.S. citizens for any seven years of their lives. The minority instead concluded that only seven immediately preceding years of citizenship suffice. Nonetheless, it found that Section 4 utterly erased Owen's denaturalization, so she had "been" a U.S. citizen since her birth in 1885. The full House failed to adopt either interpretation—it simply seated Owen by voice vote.\textsuperscript{15}

Key participants repeatedly insisted that Owen's case was unprecedented.\textsuperscript{16} Yet the Senate had confronted a remarkably similar conundrum in 1870, when Democrats protested the seating of Hiram Revels, the nation's first African-American senator-elect. The infamous Dred Scott\textsuperscript{17} decision had come down in 1857; the Fourteenth Amendment—which said nothing about retroactivity—was ratified only in 1868. So Revels had been a citizen for only two years, they argued, seven short of the required nine. Senate Republicans seated Revels anyway, refusing Dred Scott any role in the transformative arithmetic of post-Appomattox Senate qualifications.\textsuperscript{18}

Professor Richard Primus rescued the Revels episode from obscurity in a 2006 law-review article, The Riddle of Hiram Revels.\textsuperscript{19} Primus lamented that "[m]odern constitutional law has entirely forgotten the Revels debate. It is not covered in textbooks, not written about in law reviews, not discussed by law professors, and not cited by judges. In short, it is wholly absent from our constitutional discourse."\textsuperscript{20} He therefore sought to "recove[r] Revels for our collective stock of constitutional knowledge."\textsuperscript{21}

The legal academy's neglect of Owen's historic victory also "marks a tremendous act of collective forgetting."\textsuperscript{22} Only two law-review articles since the 1930s have as much as mentioned the dispute over Owen's citizenship, both in footnotes.\textsuperscript{23} A few modern historians have discussed the episode, but these cursory treatments either round out biographical sketches or briefly situate the contest within the broader campaign for

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15. For a fuller account of this session, see infra Section III.B.7.
16. See infra notes 247 and 473-476 and accompanying text.
18. The Revels episode is chronicled in Section IV.B infra.
20. Id. at 1683.
21. Id.
22. Id.
23. See Leti Volpp, Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage, 53 UCLA L. Rev. 405, 448 n.198 (2005) ("In 1928, Ruth Bryan Owen's election to Congress was challenged by her opponent on the grounds that she had not met the constitutional requirement of seven years of citizenship."); Paul E. Salamanca & James E. Keller, The Legislative Privilege To Judge the Qualifications, Elections, and Returns of Members, 95 Ky. L.J. 241, 370 n.841 (2007) ("For other contests at the federal level involving qualifications, see Lawson v. Owen [citation omitted].")
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women’s independent citizenship.24 This first full-length treatment of 
_Lawson v. Owen_ examines a hidden treasure of constitutional history and a 
forgotten chapter of congressional constitutional interpretation. Owen’s 
struggle cries out to be “recover[ed] . . . for our collective stock of 
constitutional knowledge.”

Part I sorts through the applicable law in an effort to demystify the 
House’s odd adjudicatory predicament. Part II summarizes key features of 
Owen’s remarkable biography. Her personal history and character traits—
especially her unassailable patriotism—raised absolutely none of the 
Qualifications Clause’s and Expatriation Act’s core exclusionary 
concerns. It is difficult to imagine a set of human facts more conducive to 
result-oriented constitutional reasoning.26 Aware that Owen’s ouster 
would be intolerable, the Elections Committee studied her case for months 
and strained to articulate a principled rule of decision.

Part III tells the story of Lawson’s failed effort to unseat Owen. Because 
every development garnered nationwide newspaper coverage, I rely 
heavily on contemporaneous accounts. This long-unpublished 
commentary yields fascinating insights into popular understandings of 
women’s constitutional equality. And because Owen’s eligibility was a 
contested electoral issue, this background context offers a glimpse into a 
political campaign preoccupied with mass constitutional persuasion. Part 
III then chronicles Owen’s celebrated self-advocacy and parses the 
Elections Committee report’s curious constitutional reasoning.

Part IV puzzles over the participants’ complete ignorance of applicable 
historical lessons. In 1845, as Congress considered annexing the Republic 
of Texas for immediate admission to statehood, its members sparred over 
whether a Texas so received could instantly be entitled to full 
representation in the House and Senate. This potentially hinged on 
whether the Qualifications Clauses refer to the _immediately preceding_ 
seven or nine years, or _any_ past seven or nine years. Clever annexationists 
sidestepped the obvious difficulty and secured Texas’s admission. 
Congress soon welcomed six Texans who had recently helped govern a 
foreign country. Had Owen known these details, she might have fortified 
her forward-looking appeal with a potent argument from historical 
practice.

24. _See, e.g.,_ CANDICE BREDBENNER, _A NATIONALITY OF HER OWN: WOMEN, MARRIAGE, AND 
THE LAW OF CITIZENSHIP_ 170 (1998) (offering a four-sentence overview of the “unfortunate but 
propitious incident”); JO FREEMAN, _WE WILL BE HEARD: WOMEN’S STRUGGLES FOR POLITICAL 
POWER IN THE UNITED STATES_ 109 (2008) (briefly describing Owen’s political and constitutional 
victories); JOANNA L. GROSSMAN & LAWRENCE M. FRIEDMAN, _INSIDE THE CASTLE: LAW AND THE 
FAMILY IN 20TH CENTURY AMERICA_ 66 (2011) (devoting one paragraph to Lawson’s challenge); J. 
STANLEY LEMONS, _THE WOMAN CITIZEN: SOCIAL FEMINISM IN THE 1920S_, at 235-36 (1973) 
(devoting two).

25. _Primus, supra_ note 19, at 1683.

26. To echo Chief Justice Marshall, if these congressmen-jurists had been “permitted to indulge 
their sympathies, a case better calculated to excite them c[ould] scarcely be imagined.” _Cherokee 
The Revels affair seems to cut the other way, however. Republicans could have buttressed their depictions of “grand, tectonic constitutional shifts” with a “technical point[] of law”—the free-born Revels had been a citizen from birth until well beyond his ninth birthday, and that was enough. But not one senator made this argument. Lawson might have seized upon this apparent institutional waiver of the “cumulative” view in exhorting the House to reason as the Senate once did. Or Owen might have instructed the House to entirely ignore the loathsome expatriation law in computing her eligibility, just as most Senate Republicans had with Dred Scott. Instead, everyone played John Marshall and argued from scratch.

Part V closes with three practical meditations on Lawson v. Owen. First, that controversy invited serious reflection on the present status of gender-discriminatory laws in a post-Nineteenth Amendment world. Participants and intrigued observers all seemed to agree that the Expatriation Act of 1907 was now unconstitutional, and Congress was right to repeal it posthaste. That day’s legal cognoscenti—unlike the modern Supreme Court—understood the Nineteenth Amendment as something more than a rule of equality in governments’ allocation of voting privileges. This Article presents considerable new evidence that the Nineteenth Amendment’s contemporaries came to regard women as improper objects of state-sanctioned discrimination soon after that Amendment’s ratification. In short, Owen’s triumph marks an important turning point in American women’s effort to achieve full constitutional equality. But because scholars have largely forgotten her story, they have overlooked crucial sources that might have helped provide a historically firmer basis for modern sex-discrimination doctrine.

Second, Owen’s case yields fresh insight into one of the most hotly debated questions in modern constitutional and statutory interpretation: whether ostensibly clear legal texts can be validly deemed ambiguous after resort to external devices like purpose, consequences, and historical practice. As Professor David Strauss observed in his recent Harvard Law Review Foreword, the presumed distinction between specific and general constitutional provisions “has a long and illustrious history.”

27. Primus, supra note 19, at 1696.
28. Surely no Senate Republican believed that Dred Scott merely declared preexisting law. For a taste of Republicans’ antipathy toward Dred Scott, see Section IV.B infra.
30. The Amendment itself reads, “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.” U.S. CONST. amend. XIX.
31. This view is prominently associated with Professor Steven Calabresi and Julia Rickert. See generally Steven G. Calabresi & Julia T. Rickert, Originalism and Sex Discrimination, 90 TEX. L. REV. 1 (2011).
32. David A. Strauss, The Supreme Court, 2014 Term — Foreword: Does the Constitution Mean
Supreme Court opinions assert that constitutional and statutory text can be entirely unambiguous on its own terms. Scholars have echoed this sentiment, often in reference to the Constitution’s numerical provisions. Yet the perceived clarity of constitutional text has long been influenced by extratextual factors. And in three recent high-profile cases, the Supreme Court has invoked purposive and consequentialist considerations in deciding whether statutory text was clear in the first place. It might seem unthinkable that this move could ever become necessary when interpreting “mathematical” constitutional provisions. Yet Owen’s generation managed to fight over how one such “breathtakingly exact judgment”—the seven-year provision—applied to a strange situation. On a quick glance, the Constitution’s text alone does not seem to require consecutive, immediately preceding citizenship periods. But the text suddenly seems suppler when one realizes that Owen’s “cumulative” reading would allow aliens to serve in the House, Senate, and the presidency. Owen’s case thus shows the folly of blanket generalizations about numerical constitutional clauses, and of the effort to classify any legal text as utterly “clear” without remaining open to extratextual considerations.

And third, if the Elections Committee had studied Revels’s victory, Owen’s case might have embodied a larger legal principle—that historical practices repugnant to the modern constitutional order should never be accorded residual legal effect. This insight offers the hope of at least some common ground in one of constitutional law’s most contentious enterprises: the identification of unenumerated fundamental rights under the Due Process Clause. Two competing approaches fuel this ever-simmering methodological conflict. One is largely deductive and open-ended, requiring the exercise of reasoned judgment in prototypical common-law fashion. The other is inductive, recognizing only those rights with an amply documented historical pedigree.

In the 2015 case of Kerry v. Din, Justice Scalia’s plurality opinion invoked Section 3 of the Expatriation Act—Owen’s very nemesis—in
denying that an asserted liberty interest was "deeply rooted in this Nation's history and tradition." 41

Scalia acknowledged that current equal-protection doctrine and "modern moral principles" are squarely aligned against marital expatriation. 42 Yet he allowed the mere historical existence of an older, blatantly unconstitutional legal order to affirmatively shape modern constitutional doctrine, much as Senate Democrats had sought to do in 1870. (Lawson's challenge was adjudicated in a similar fashion in 1930, likely because of Owen's unfamiliarity with Revels's regime-bridging triumph.)

The Expatriation Act, like Dred Scott, issued from an institution under the temporary thrall of un-American constitutional commitments. Just as Reconstruction Republicans refused to "go back and reason upon the principles" of a slaveholders' juristocracy, 43 fundamental-rights identification should shun historical sources that offend "the Constitution under which we live this day." 44 And more broadly, constitutional adjudicators should never affirmatively invoke universally rejected historical practices in a law-generating fashion.

I. UNPACKING RUTH'S RIDDLE: THE LAW AS IT STOOD

Resolving William Lawson's challenge to Owen's eligibility required the House to consider a citizenship-stripping law, a potentially regime-shifting constitutional amendment, and a corrective statute that purported to expunge an established historical fact when the aggrieved party met a specified condition. This Part untangles the web of applicable law and imagines several ways in which the House could have solved this peculiar constitutional puzzle.

A. Judging Qualifications

In a clearly marked departure from conventional accounts of the separation of powers, the Constitution provides that "[e]ach House shall be the Judge of the Elections, Returns and Qualifications of its own Members." 45 In deciding whether a member-elect satisfies the enumerated age, citizenship, and residency requirements, "each chamber acts as the sole arbiter without external constraint." 46 There is "no appeal" from this "unlimited" authority. 47 Accordingly, the Supreme Court has

41. Id. at 2134 (plurality opinion) (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997)).
42. Id. at 2136; see id. at 2135 ("[T]hese early regulations were premised on the derivative citizenship of women, a legacy of the law of coverture.").
44. Id. (statement of Sen. Drake).
acknowledged the legislative branches’ prerogative to “make an unconditional and final judgment” regarding these three qualifications.\(^{48}\)

So despite one observer’s proposal that the Court take Owen’s case if a partisan Elections Committee bungled it,\(^{49}\) only the House could have legitimately decided her fate.

B. “Seven Years a Citizen”

When judging qualifications, the House enforces three Article I imperatives: Representatives must be at least twenty-five years old, inhabit the states from which they are chosen, and have “been seven Years a Citizen of the United States.”\(^{50}\) I have found no trace of any Framer or ratifier giving a moment’s thought to the problem of inconsecutive citizenship periods (or prophesying the policy of involuntary marital expatriation).\(^{51}\) Yet their “mathematical” House Qualifications Clause promises absolute exclusion for those who fall within its prohibitory scope. What was the seven-year requirement designed to accomplish?

The Framers broke with early English practice in allowing naturalized citizens to serve in Congress.\(^{52}\) The Committee of Detail originally proposed that each House member “shall have been a citizen of the United States for at least three years before his election.”\(^{53}\) George Mason strenuously objected: he “was for opening a wide door for emigrants,” but he “did not chuse to let foreigners and adventurers make laws for us & govern us.”\(^{54}\) Mason thought three years’ citizenship insufficient to “ensur[e] that local knowledge which ought to be possessed by the Representative.”\(^{55}\) He also feared that “a rich foreign Nation, for example

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Representatives to exclude a member-elect for reasons unrelated to Article I’s age, citizenship, and residency qualifications, but it left untouched congressional interpretive primacy within those three domains. Id. at 522.


49. See Erma E. Cole, Op-Ed., A Case for the Supreme Court, THE SUN (Baltimore), Feb. 12, 1930, at 10 (arguing that the House should “give the case to the Supreme Court” if the Committee’s decision “would be an arbitrary one and decided by a party vote”).

50. U.S. CONST. art. I, § 2, cl. 2. Similarly, senators must be at least thirty years old, inhabit the states from which they are chosen, and have “been nine Years a Citizen of the United States.” Id. art. I, § 3, cl. 3.

51. This was widely assumed to be true in 1930 and became a recurring talking point. See, e.g., Ruth Bryan Owen’s Case, LUDINGTON DAILY NEWS (MI), Jan. 23, 1930, at 4 [hereinafter Owen’s Case] (“Now a case like Mrs. Owen’s never entered the heads of the lawyers in the constitutional convention of 1787. The political emancipation of women was then 137 years in the future.”).


53. 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 178 (Max Farrand ed., 1911) [hereinafter RECORDS]. Professor Mary Bilder has recently explored the pitfalls of treating James Madison’s notes from the Philadelphia Convention as sacrosanct. See generally MARY SARAH BILDER, MADISON’S HAND: REVISING THE CONSTITUTIONAL CONVENTION (2015). But Professor Bilder does not claim that Madison tinkered specifically with his synopsis of the debate over what became the seven-year provision, nor is it obvious why he would have done so.

54. 2 RECORDS, supra note 53, at 216.

55. Id. According to Justice Story, the seven-year provision required “naturalized citizens to
Great Britain, might send over her tools who might bribe their way into
the Legislature for insidious purposes."\textsuperscript{56}

Mason moved to substitute "seven" for "three," and all states but one
agreed to the change.\textsuperscript{57} When the Convention revisited the question,
Elbridge Gerry warned that "[f]oreign powers will intermeddle in our
affairs . . . . Persons having foreign attachments will be sent among us &
insinuated into our councils, in order to be made instruments for their
purposes."\textsuperscript{58} Hugh Williamson then proposed to increase the requirement
to nine years.\textsuperscript{59} He wished the United States "to acquire as fast as possible
national habits" unsullied by wealthy emigrants' "luxurious examples."\textsuperscript{60}
The Convention ultimately voted down all departures from the seven-year
rule.\textsuperscript{61}

In accommodating clashing visions of eligibility, the Framers thus
constitutionalized what they believed to be a precise citizenship
requirement for federal legislative service.\textsuperscript{62} By formulating congressional
qualifications in a most rule-like fashion—"seven years a citizen," rather
than "devoid of foreign attachments"—the Framers thus forbade future
Congresses to monitor candidates' Americanism directly. Significantly (if
unsurprisingly), this debate proceeded on the shared premise that federal
legislators must actually be U.S. citizens. The seven-year provision
emerged from disagreement over how quickly foreign-born immigrants
could be clothed with constitutional authority after undergoing
naturalization.

To forestall legislative self-entrenchment, the Convention also rejected a
plan to permit Congress to regulate its own membership qualifications.\textsuperscript{63}
By virtue of being settled in Article I, congressional qualifications were
understood to be tightly fixed rather than legislatively regulable.

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acquire a reasonable familiarity with the principles of our institutions and with the interests of the
people." JOSEPH STORY, A FAMILIAR EXPOSITION OF THE CONSTITUTION OF THE UNITED STATES § 75
(1842). Justice James Wilson understood the requirement to perform two functions: "1. That the
constituents might have a full and mature opportunity of knowing the character and merit of their
representative. 2. That the representative might have a full and mature opportunity of knowing the
dispositions and interests of his constituents." Of the Constitutions of the United States and of
Pennsylvania—of the Legislative Department, in THE WORKS OF THE HONOURABLE JAMES WILSON,
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\textsuperscript{56}. 2 RECORDS, supra note 53, at 216; see also A Republican Federalist, To the Members of the
Convention of Massachusetts, Feb. 2, 1788, reprinted in 1 THE COMPLETE ANTI-FEDERALIST 185
(Herbert J. Storing ed., 1981) ("Will there not be immediately planted in the several States, men of
abilities, who, having the appearance of privates, will nevertheless be in the pay of foreign
powers? . . . [W]ill you not be the puppets of foreign Courts?").

\textsuperscript{57}. 2 RECORDS, supra note 53, at 216.

\textsuperscript{58}. Id. at 268.

\textsuperscript{59}. Id.

\textsuperscript{60}. Id.

\textsuperscript{61}. Id. Alexander Hamilton and James Madison would have required "mere[] Citizenship"; they
assumed that Congress's uniform rule of naturalization would set the probationary period sufficiently
high. Id.

\textsuperscript{62}. In other words, this deceptively "clear text" was "the product of deliberate compromise," not
of "an inattentive mistake." Re, supra note 37, at 418.

\textsuperscript{63}. 2 RECORDS, supra note 53, at 250; AMAR, supra note 52, at 68.
Majoritarian contraction of the roster of eligible candidates would, in Madison’s words, “subvert the Constitution.”64

Needless to say, Owen was no British tool, no alien adventurer insinuating herself into the councils of state. If she stood out as a “luxurious example,” it was thanks to the richness of her republican learning.

C. Marriage as Treason: The Expatriation Act of 1907

On March 2, 1907, it became the policy of the United States that “any American woman who marries a foreigner shall take the nationality of her husband.”65 Section 3 of the Expatriation Act was uniformly interpreted to divest these women of their American citizenship, whether they remained in the United States or lived abroad.66 A woman therefore incurred the same penalty for marrying a Canadian as she would for assisting America’s military enemies.67 In fact, assumption of her husband’s nationality became “an unwritten part of a married woman’s nuptial contract.”68 When Section 3 became law, no woman had ever been elected to Washington.69 So congressmen probably didn’t realize they were effectively legislating another membership qualification:70 no American woman who had married an alien could serve in Congress.

In 1830, the Supreme Court held that an American woman who had taken a British husband did not lose her citizenship by virtue of her marriage.71 A generation later, Congress selectively overrode the common-law doctrine of perpetual allegiance in providing that any foreign woman who married an American would “be deemed and taken to be a citizen.”72 Once Congress later declared voluntary self-expatriation to be a “natural and inherent right of all people,”73 it eliminated a major theoretical obstacle to equality of derivative citizenship—that is, the equal right of all women to have no separate and independent nationality of their own.

64. 2 RECORDS, supra note 53, at 250.
67. See Anne Marie Nicolosi, “We Do Not Want Our Girls To Marry Foreigners”: Gender, Race, and American Citizenship, 13 NWSA J. 1, 11 (2001) (“[W]omen who married aliens faced the same punishment as if they had committed treason.”).
68. BREDBENNER, supra note 24, at 4; see also Kerry Abrams, Citizen Spouse, 101 CALIF. L. REV. 407, 414 (2013) (concluding that, after the 1907 law, “a woman’s marital identity [w]as her primary identity-producing legal status”).
69. Jeannette Rankin, the first woman elected to Congress, took her seat in 1917. NORMA SMITH, JEANETTE RANKIN: AMERICA’S CONSCIENCE 8, 103 (2002).
70. This assumes the correctness of Lawson’s “immediately preceding” view; otherwise, a noncitizen could assume office. See Section III.B.5 infra.
71. See Shanks v. Dupont, 28 U.S. 242, 246 (1830) (“[M]arriage with an alien, whether a friend or an enemy, produces no dissolution of the native allegiance of the wife.”).
73. Expatriation Act of 1868, ch. 249, § 1, 15 Stat. 223 (1868).
As abhorrent as Section 3’s citizenship-stripping feature seems in hindsight, the Expatriation Act passed with little fanfare. The Act was but one element of a bureaucratically devised program to codify, clarify, and tighten citizenship policies at a time of increased anxiety over immigration.74 America joined most other nations in declaring women’s citizenship totally derivative of their husbands.75 While the bill was pending, virtually no one publicly debated the merits of renouncing America’s commitment to native-born women with exotic romantic preferences.76 Its suddenness came as a shock to women’s-rights advocates, who were apparently kept in the dark.77

Section 3 couldn’t have been entirely unexpected—“wanderlustful” American heiresses had been publicly maligned for purchasing aristocratic bridegrooms, and such scolding continued apace after 1907. These “scattered eruptions” of indignation never spawned a political movement,78 but they provided a prepackaged apology for the Expatriation Act (sometimes called the “Gigolo Act”79) and helped sustain its unparalleled harshness as several states enfranchised women in the early twentieth century.80

Many Americans came to see transatlantic marriages as “loveless unions that exchanged capital for class.”81 In 1893, the New York Times published a scandalous list of “American Women Who Have Given Their Hearts and Money to Foreigners,” with the amount of lost “enviable American cash” ($50,000,000 in all) recorded alongside each international wedding.82 One prominent minister viewed these marriages as “a matter of sale and purchase” in which American girls “sold their womanhood, their country, their language, and their religion for husbands who are peculiarly contemptible cads.”83 Congressman Charles McGavin berated the women who “sacrific[ed] their souls and honor upon the altar of snobbery and vice,” who are “not satisfied with any other name than Countess Spaghetti

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74. Roche, supra note 66, at 25-26; BREDBENNER, supra note 24, at 56-57; GROSSMAN & FRIEDMAN, supra note 24, at 65. 1907 was the “very height of immigration, when about a million immigrants were entering the United States each year.” Nancy F. Cott, Marriage and Women’s Citizenship in the United States, 1830-1934, 103 AM. HIST. REV. 1440, 1461 (1998).


76. BREDBENNER, supra note 24, at 63; see Nicolosi, supra note 67, at 14 (“No Congressional records remain of the discussions of the law, only a few lines in The Congressional Record, making it impossible to know precisely what lawmakers were thinking when they passed the act.”).

77. BREDBENNER, supra note 24, at 64.

78. Id. at 61.


82. Have Found Husbands Abroad, N.Y. TIMES, Apr. 19, 1893, at 2.

or Macaroni.”

Even President Theodore Roosevelt denounced the man “whose son is a fool and his daughter a foreign Princess.”

Congressman N.E. Kendell put the problem most succinctly: “[W]e do not want our girls to marry foreigners.”

Congressmen frequently assumed that women invited any dreadful consequences of their international marriages. Loss of citizenship and confiscation of property were “a good lesson to our American girls to marry American boys.” When a “prodigal daughter” made a different choice, she effected a “clear, open, broad daylight, voluntary surrender of citizenship.”

As Congressman Samuel Dickstein later mused, “They brought it about themselves, did they not? . . . The women who married these foreign dukes and counts, these duchesses and countesses and that sort of stuff, when there are enough Americans for them to select from.”

In Mackenzie v. Hare (1915), the Supreme Court upheld Section 3 of the Expatriation Act against a constitutional challenge for precisely these reasons. Congress didn’t annul anyone’s citizenship, the Court reasoned; the Expatriation Act merely proposed a “condition voluntarily entered into, with notice of the consequences.”

Ethel Mackenzie’s betrothal was “as voluntary and distinctive as expatriation and its consequence must be considered as elected.”

So when Ruth Bryan exchanged vows with Reginald Owen, Earl of

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84. American Women of Title Scorned, N.Y. TIMES, Jan. 29, 1908, at 3; see also 62 CONG. REC. 9053 (1922) (statement of Rep. Herrick) (chastising the American women who married “some Count No Account, some degenerate from over the seas”).


87. American-born women married to citizens of the Central Powers were themselves alien enemies during World War I. The Alien Property Custodian confiscated over $25 million of property from them during the Great War. BREDBENNER, supra note 24, at 72.


89. BREDBENNER, supra note 24, at 6.


92. 239 U.S. 299 (1915).

93. Id. at 312.

94. Id.

95. As one observer noted, Mackenzie’s theory of the Expatriation Act “makes mere marriage conclusive evidence of intent to transfer allegiance. . . . This cannot be called an enforced transfer, for the doing of the act necessary to constitute the change must be regarded as at will.” W.W.S., Comment, Expatriation Resulting from Marriage to Alien Husband, 14 MICH. L. REV. 233, 235 (1916). In 1930, this reasoning “seem[ed] rather far-fetched” to Congressman J. Lincoln Newhall of the Elections Committee. Owen Hearing, supra note 11, at 33. He contended that denaturalized American women “have never invited [expatriation] any more than the martyrs of the ages have invited dire consequences because of their belief in a principle or their adherence to a faith.” 72 CONG. REC. 10196 (1930) (statement of Rep. Newhall).
Nothing, she, too, “voluntarily” cast off her native allegiance. The Congress she loved had foisted upon her an impossible choice between lifelong happiness and American citizenship. She became Ruth Bryan Owen, a virtual traitor to her country.

**D. American Again: The Cable Act of 1922**

Congress emphatically renounced the policy of women’s derivative citizenship in 1922. Never again would the daughters of statesmen self-expatriate by taking foreign husbands; and if the Expatriation Act’s victims so desired, they could be fully restored to their civic birthright.

The Cable Act opened with a mostly symbolic gesture that nonetheless captured emergent constitutional attitudes: “the right of any woman to become a naturalized citizen of the United States shall not be denied or abridged because of her sex or because she is a married woman.”96 Section 2 discontinued the practice of automatically conferring citizenship on alien women who married Americans.97 Conversely, Section 3 provided that “a woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after the passage of this act.”98 But what of those who had ceased to be “woman citizens” between 1907 and 1922?

Section 7 expressly repealed the Expatriation Act policy that had affected Owen and many others.99 But this repeal didn’t automatically restore lost citizenship; instead, marital expatriates could become naturalized more quickly than normal.100 “After her naturalization,” Section 4 proclaimed, “she shall have the same citizenship status as if her marriage had taken place after the passage of this act.”101 What status was that? One of a woman who had never “cease[d] to be a citizen of the United States by reason of her marriage,” according to Section 3.102 Put simply, Owen and others like her had suffered a unique and undeserved hardship. This would never happen again. As long as these women complied with the Cable Act’s relaxed naturalization procedures, federal law would regard them as lifelong citizens.103

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97. Id. § 2 (“[A]ny woman who marries a citizen of the United States ... shall not become a citizen of the United States by reason of such marriage.”).
98. Id. § 3. Eight years later, the fiercely nativist Congressman Albert Johnson boasted that “[n]o woman American citizen surrenders her own citizenship under any circumstances. She is protected by our laws.” 72 Cong. Rec. 9319 (1930) (statement of Rep. Albert Johnson).
100. See id. § 4 (permitting such women to be “naturalized as provided by [S]ection 2” of the Cable Act). Section 2 waived the required declaration of intention to seek naturalization and lowered the minimum period of U.S. residency from five years to one. Id. § 2.
101. Id. § 4.
102. Id. § 3.
103. Professor Candice Bredbenner writes that these women were to be regarded as ordinary naturalized citizens—“The new law allowed the government to disavow any knowledge of this woman’s former status as a U.S. citizen.” BRED BENNER, supra note 24, at 100. But this interpretation
Universal female suffrage was the chief motivating cause of a law that proved an ambitious first step toward full citizenship equality for women, or what Owen liked to call the “dignity and individuality” of female citizenship. The Nineteenth Amendment’s several influences on the Sixty-seventh Congress are worth distinguishing. On the one hand, congressmen felt the mighty pull of practical politics. Automatic naturalization of American grooms’ foreign brides had once been touted as a low-stakes fix to promote family unity and cultural assimilation. But the prospect of enfranchising masses of ignorant alien newlyweds prompted sober reconsideration, especially at a time when Congress was restricting immigration at unprecedented rates. These women supposedly knew “no more about the American Constitution than they know about the Egyptian Book of the Dead.” So making them earn American ballots made plenty of sense.

On an even more practical note, within a month of the Nineteenth Amendment’s ratification, female activists secured pledges from both parties to embrace women’s independent citizenship in their 1920 platforms. Federal lawmakers sensed universal enthusiasm for the Expatriation Act’s repeal among what they expected to be an energetic and cohesive voting bloc. Antagonizing millions of newly enfranchised women would have been terrible politics. Unsurprisingly, then, a Republican National Committee executive remarked that “[s]everal Congressmen whom I know feel that their seats depend on the passing of this bill.”

Yet several Cable Act supporters reinforced cold, hard realities with confident lessons in constitutional law. Their Nineteenth Amendment forbade more than just gender discrimination in the bestowal of voting.

defies Section 4’s unmistakably clear language, as well as Congressman Cable’s lucid explanation of the provision’s import. See American Citizenship Rights of Women: Hearing Before a Subcommittee of the Committee on Immigration, United States Senate, 72d Cong., 2d Sess. 32 (1933) [hereinafter Citizenship Rights of Women] (expressing Cable’s view that naturalization under the Cable Act “restored [expatriated women] to the status of natural born citizens”); Owen Hearing, supra note 11, at 54 (quoting Cable’s written affirmation that Owen “stands ... as one who has always been a citizen of the United States”).

104. 72 CONG. REC. 9318-19 (1930) (statement of Rep. Owen); Owen Hearing, supra note 11, at 55, 59.

105. BREDBENNER, supra note 24, at 9, 17; see also CONG. GLOBE, 33d Cong., 1st Sess. 170 (1854) (statement of Rep. Cutting) (claiming that such derivative citizenship “is a relief to the husband” because “it aids him in the instilling of proper principles in his children”).

106. BREDBENNER, supra note 24, at 17 (noting the shift toward “comprehensive and restrictive policies on naturalization and immigration”).

107. “I Am a Citizen, Too”, 7 LIFE AND LABOR 95 (1918); see Abrams, supra note 68, at 417 (“It took enfranchisement through the Nineteenth Amendment ... and the specter of illiterate, potentially disloyal, and now voting foreign wives to finally persuade Congress that derivative national citizenship was a bad idea.”).

108. BREDBENNER, supra note 24, at 81.

109. Id. at 81, 97; see also Abrams, supra note 68, at 411 (observing that the Act “aroused vociferous complaint from feminists”).

110. BREDBENNER, supra note 24, at 104.
The tendency has been constantly toward extending the rights of women so as to bring them more and more nearly on an equality with man. . . . [T]here was no particular force in the demand for this bill until the nineteenth amendment became a part of the organic law of the land. But when women were given civil equality with men, the right to vote, it seems to me at that moment it became ludicrous for us to say that thereafter the rights of women to citizenship shall be dependent on the rights of men. At that moment the doctrine of dependent or derived citizenship became as archaic as the doctrine of ordeal by fire.  

One congressman insisted that "[u]nder the nineteenth amendment the thing is equal. . . . The nineteenth amendment has placed women in the same position as men." In short, "The same laws ought to govern the women as govern the men." Congressman Cable himself believed that "[s]ince the nineteenth amendment grants equal suffrage to women, so also should they have equal rights with reference to citizenship." If an American man who married an alien woman got to keep his citizenship, "so also should the American girl who marries the alien man." In other words, the Nineteenth Amendment precluded Congress from perpetuating a non-uniform "Rule of Naturalization" (and expatriation) between the sexes.

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111. 62 CONG. REC. 9047 (1922) (statement of Rep. Rogers); see id. at 9059 (statement of Rep. Volk) (contending that, by virtue of the Nineteenth Amendment, "[t]he doctrine of dependent or derived citizenship has become archaic").

112. Id. at 9061, 9063 (statement of Rep. Stephens). Stephens believed that marital expatriation was "something in the past" even before the 1907 Act's repeal. Id. at 9062; see also id. at 9040 (statement of Rep. Vaile) (asserting that women's citizenship "should be endowed with the same dignity . . . as a man's citizenship"); id. at 9048 (statement of Rep. Siegel) ("As to the right of the woman to be an independent American citizen . . . the nineteenth amendment to the Constitution has settled that."); id. at 9057 (statement of Rep. Albert Johnson) (insisting that the Cable Act had "become[] necessary" after "the enactment of the nineteenth amendment"); id. at 9059 (statement of Rep. Volk) (claiming that "in the last few years . . . [t]he tendency has been toward extending the rights of women and to place them on a plane of civil equality with men").

113. Id. at 9063 (statement of Rep. Stephens); see id. ("They all ought to come under the same naturalization law, because they are all citizens and electors alike . . . . What is sauce for the goose is sauce for the gander."); id. (statement of Rep. Kincheloe) (demanding that "discrimination in favor of the man" be discontinued); id. at 9060 (statement of Rep. Chalmers) ("Having the nineteenth amendment, which places women on the same footing with men, the laws governing naturalization should be about the same for both of them, should they not?").

114. Id. at 9046 (statement of Rep. Cable).

115. Id.; see id. at 9043 (statement of Rep. Raker) ("[W]e are trying to place the American woman upon the same base as the American man."); id. at 9057 (statement of Rep. Raker) ("The women have been denied their rights. We want to equalize them as nearly as we can."); id. at 9060 (statement of Rep. London) (declaring that the Cable Act's proponents sought "to place the individual, irrespective of sex, on a basis of equality in society"); id. at 9062 (statement of Rep. Vaile) (decrying "inequitable distinction[s] between the citizenship of women and the citizenship of men").

116. As a result, the Cable Act "abolished many deplorable discriminations against women." Citizenship Rights of Women, supra note 103, at 29.
These parallel constitutional and statutory reforms followed a familiar pattern. Once the Fourteenth Amendment constitutionalized territorial birthright citizenship in 1868, excluding African-Americans from the privilege of naturalization lost any justification. Accordingly, the Naturalization Act of 1870 “extended [the naturalization laws] to aliens of African nativity and to persons of African descent.” The Nineteenth Amendment’s blazing ethos cried out for parallel statutory progress. The Cable Act therefore outlawed sex discrimination in the process of obtaining naturalization and in the expatriative effects of marriage.

E. Counting to Seven

Lawson v. Owen presented the House Elections Committee with three separate interpretive issues: the meaning and proper application of the Qualifications Clause’s seven-year provision, Section 4 of the Cable Act, and the Nineteenth Amendment.

The Committee could have interpreted the Qualifications Clause to require either seven immediately prior years of citizenship or any seven years, whether they happened decades ago or in eighty-four one-month increments. It could have regarded Section 4’s restorative provision as either a valid enactment or a nullity, Congress being powerless to retroactively erase the constitutional implications of uncontested historical facts. And it could have read the Nineteenth Amendment narrowly to simply prohibit the denial of suffrage to women, or broadly as a revolutionary shift in the assumptions of American constitutionalism. In either case, the Committee might have granted marital expatriations continuing mathematical force in contested elections. If the Nineteenth Amendment changed much more than its bare text bespoke, the Committee could have instead entirely denied the old, unjust law any vestigial influence in Qualifications Clause contexts, as Republicans did with Dred Scott in 1870.

To prevail, Lawson had to convince the House of three propositions: 1) “seven years” meant the immediately preceding seven years, 2) Section 4 of the Cable Act was unauthorized by Congress’s enumerated powers, and 3) the now-unconstitutional expatriation law’s ugly tentacles should still penetrate into modern constitutional adjudication. To retain her seat, Owen just needed to persuade the House that any one of these statements was false.

117. See U.S. Const. amend. XIV (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.”).
119. For one unfortunate exception, see supra note 7.
120. Cf. Primus, supra note 19, at 1684 (describing the prevailing Republican view that “events of the Civil War era changed the Constitution even more than the text of the Reconstruction Amendments indicates”).
121. See infra notes 511-525 and accompanying text.
II. RUTH’S REMARKABLE LIFE

A. Youth and Marriage

Ruth Bryan was born an American citizen in 1885, the descendant of eleven Revolutionary soldiers. She grew up in the shadow of political greatness. Her silver-tongued father, William Jennings Bryan, served in the House of Representatives from 1891 to 1895. Ruth joined the family in Washington and frequently accompanied her father to work. She watched House debates with “awed delight.” As she later recalled, “when I was so small [that] I could scarcely see above the top of his desk in congress I stood beside him in that assembly and listened to his defense of democratic principles.” The Capitol dome became “an obsession and a symbol” to her, and she “vowed to return in triumph” as a public servant in her own right. Many of her colleagues in 1929-30 were old enough to remember this “sweetheart of the House” daily slaking her thirst for political oratory.

Ruth campaigned with her father during each of his three presidential crusades. The Bryans traveled tens of thousands of miles by rail on these precedent-shattering nationwide campaigns. Ruth was her father’s secretary in 1908 and cheered proudly from the platform as he accepted the Democratic nomination. She addressed large crowds directly on his behalf. Her uncle, Charles Bryan, later served as Mayor of Lincoln, Governor of Nebraska, and the 1924 Democratic vice-presidential candidate. As one columnist wrote, Ruth took in “the entire political landscape of the times, studying men and events and political manners with a cool eye that never missed anything.” She also wrote nationally syndicated newspaper articles and filled in for her father on the Chautauqua lecture circuit, sometimes speaking every night for months on end.

124. E. LYNNE WRIGHT, MORE THAN PETTICOATS: REMARKABLE FLORIDA WOMEN 69 (2d ed. 2010).
127. Vickers, supra note 125, at 446.
130. Vickers, supra note 125, at 447.
131. Id.
132. KAZIN, supra note 128, at 171.
133. Id. at 199.
135. Vickers, supra note 125, at 450.
136. Id.
Bryan’s daughter brushed up against the Qualifications Clause for the first time by announcing her candidacy for a House seat in the 1910 elections.137 (She declared mere days after her twenty-fourth birthday, and would turn twenty-five only a month after the election.) At this time, no woman had ever served in Congress, nor would for eight years.138 But life reshaped her pioneering political plans. On May 3, 1910, Ruth Bryan married Reginald Altham Owen, whom she had met while studying voice in Germany.139 Owen was British, an officer in the Royal Engineer Corps, but no hereditary peer.140 Ruth gushingly described their connection as “a real romance... real romance always.”141 The Owens would enjoy a “rewarding marriage filled with mutual respect, support, and friendship.”142 Ruth called Reginald her “understanding life companion.”143

Ruth Bryan Owen took a husband during the Expatriation Act’s infancy, before the notorious case of Mackenzie v. Hare upheld the Act’s constitutionality. I have found no evidence that she, or anyone, realized at the time that her choice of a spouse worked an immediate and unconditional loss of American citizenship. None of the New York Times articles announcing her engagement or describing the wedding ceremony mentioned the automatic consequence of expatriation.144 Nor, so far as I can tell, did the scores of other newspapers that carried the information. The United States Congress silently withdrew Owen’s dearest possession, her constitutional birthright. This was no “clear, open, broad daylight, voluntary surrender of citizenship.”145 Owen’s will operated only in “the conjugal change.”146 As an Elections Committee member rightly concluded, Owen’s expatriation “was not due to a voluntary action on her part... but was forced upon her by reason of the law.”147

138. See supra note 69. Years after Owen announced her abortive congressional candidacy, traditionalists were still arguing that the Qualifications Clause excludes women because it uses the masculine pronoun “he.” See generally Does Constitution Permit Woman To Serve in House?, INDIANAPOLIS STAR, Nov. 19, 1916, at 53.
140. WRIGHT, supra note 124, at 73.
142. VICKERS, supra note 141, at 71.
143. Id. at 72.
144. See Ruth Bryan To Wed Again, N.Y. TIMES, Apr. 28, 1910, at 1; Some Interesting International Matches, N.Y. TIMES, May 1, 1910, at 11; Leavitt Wedding To-morrow, N.Y. TIMES, May 2, 1910, at 6; Bryan’s Daughter Marries, N.Y. TIMES, May 4, 1910, at 2.
146. Objections To Seating Mrs. Owen, BILoxi DAILY HER., Dec. 6, 1928, at 4 [hereinafter Objections to Seating].
B. War Service, Chautauqua Speaking, and Civic Engagement

Owen indeed left America to be with her husband. But she hardly "prostitute[d] her American name to the scandals, the vices, the social immoralities and moral impurities of foreign cities."\textsuperscript{148} She never voted in England, swore allegiance to the king, or exercised the slightest privilege inconsistent with her native civic fidelity.\textsuperscript{149} When the Great War came, she devoted herself to relieving her fellow creatures' suffering. Along with Lou Hoover, wife of future-President Herbert Hoover, Owen served as co-secretary-treasurer of the London-based American Women's War Relief Fund.\textsuperscript{150} This organization employed destitute widows and starving soldiers' wives to sew garments, then shipped these necessities to the front and to a three-thousand-bed military hospital.\textsuperscript{151} This hospital was so essential to the Allied military effort that the American government assumed its administration in 1917.\textsuperscript{152}

Some women in Owen's organization were American citizens, and some involuntary expatriates,\textsuperscript{153} but all of them self-identified as American—hence the association's name.\textsuperscript{154} American newspapers praising Owen's efforts admired the "body of American women living in London"\textsuperscript{155} and commended Owen for "endear[ing] herself to her English cousins" by raising colossal sums of relief cash.\textsuperscript{156} By 1914, Owen regretfully acknowledged that "I am a Britisher now, because my husband is."\textsuperscript{157} But her Anglo-American humanitarian work "only makes me love both countries more."\textsuperscript{158} She might have been expected to revere the
nation that had elevated her father to the position of Secretary of State.\(^{159}\)

Beginning in 1915, Owen endured three gruesome years as a surgical and operating-room nurse,\(^{160}\) at one point treating her own ailing husband.\(^{161}\) She lived and worked “absolutely as near the war as I could be without being myself a soldier.”\(^{162}\) Through her Allied war service, Owen had “seen, experienced, endured and helped more than most women if they should live a thousand years.”\(^{163}\) (The Veterans of Foreign Wars inducted her as an honorary member in 1928—not a full member, because the American government hadn’t paid for her services after withdrawing her citizenship.\(^{164}\))

In 1919, the exhausted couple relocated to Florida in hopes of repairing Reginald’s shattered constitution. With four young children and a husband to support on no income from her family,\(^{165}\) Owen turned to what she knew best: the Chautauqua lecture circuit. Though technically not an American citizen, she became the highest-paid woman speaker on the circuit.\(^{166}\) Crowds (and newspapers) all across the country acclaimed Owen’s rare rhetorical gifts. She was “[a] man’s woman”\(^{167}\) who possessed “a power of animating the imagination of her hearers which is remarkable.”\(^{168}\) One writer pronounced Owen the most eloquent woman he’d ever heard.\(^{169}\) In sum, her singular American heritage and riveting wartime experiences had produced “one of the leading women of the nation.”\(^{170}\)
By campaigning with her father and mesmerizing Chautauqua audiences in every state, Ruth Owen the alien came to "know her United States, every nook and corner of it, from the large cities . . . to the most obscure county districts." Owen had to contract for these tours a year in advance, but she never broke a speaking appointment. In her own caustic recollection, "the law of my country specified that I could not regain my citizenship unless I presented myself on a certain date, in Miami (a date not given me a year in advance), at the courthouse, when, in order to take care of my children I had to be perhaps in North Dakota or in Minnesota on that date." So it wasn't until April 27, 1925, that Judge Rhydon Call of the U.S. District Court for the Southern District of Florida finally declared Owen a citizen of the United States in accordance with the Cable Act's renaturalization provisions.

Owen shone as Miami's star citizen during the Chautauqua offseason. With only mild exaggeration, a contemporary depicted her rise: "[S]oon she was chairman, director or president of every civic, church and educational movement in the State." She "proved her good citizenship" as president of the Miami Women's Club by instilling "principles of Americanization" in aliens and citizens alike. The University of Miami hired Owen as a speech professor in 1925. She donated her entire teaching salary to subsidize scholarships for students who wrote the best essays on citizenship. Soon after, Owen was elected vice president of the University's Board of Regents.

In 1927, Rollins College bestowed an honorary doctorate of laws on this "[g]ood daughter of a good father, mistress of the spoken word, statesman of both achievement and promise . . . for your high concept of civic duty and for your many services to your state and nation." To consummate her storied service to state and nation, Owen sought a seat in the beloved Congress of her childhood, but also the very body that had expatriated her.

171. Douglas, supra note 134.
172. Id.
173. Owen Hearing, supra note 11, at 58.
176. Id. at 16.
179. Bryan's Daughter, supra note 160. Owen "put her entire salary into scholarships . . . in order to give as many as possible her own deep appreciation of what it means to be a citizen of the United States." Riley Bryan Owen, Congresswoman, KERRVILLE DAILY TIMES (TX), July 11, 1929, at 3 [hereinafter Owen, Congresswoman].
180. McIver, supra note 139, at 120.
C. The Election Years (1926-28)

When Owen first ran for Congress in 1926, the South had never sent a woman to Washington. Florida still hadn’t ratified the Nineteenth Amendment. The state Democratic Party openly opposed Owen’s candidacy, preferring the eleven-year incumbent. The New York Times predicted she would “meet an overwhelming ‘native son’ sentiment,” since “the voters of Florida are notably opposed to accepting women in politics.” Owen ultimately lost the 1926 Democratic primary by a mere 776 votes—“which realistically was a triumph, considering the odds she had faced.”

Owen suffered an even more crushing loss in December 1927—the death of her husband Reginald. The British officer for whom Owen had surrendered her American citizenship had become one of Miami’s most “substantial, beloved citizen[s]” and a keen observer of American politics. The American Legion had offered to support him in his poor health, and it now stood on guard at the church door as mourners honored their valiant soldier. The Miami News lamented his passing as “a distinct loss to the community.”

Reginald’s widow transcended her “debilitating melancholy” to run for Congress again in 1928. Channeling her tireless father, Owen campaigned in every precinct of her 588,000-resident district. She drove sixteen thousand miles, gave over six hundred speeches, and sat down with all ninety newspaper editors in her district. Reflecting on Owen’s blistering primary campaign, one reporter marveled, “This weaker sex stuff is exploded for me forever.” Owen thrashed the Democratic incumbent, then bested Republican William Lawson by a nearly two-to-one margin in November—on the same day that the Republican presidential candidate cruised to a 17-percent margin of victory in Florida.

Through it all, this “First Lady of the South” passionately promoted her pet virtue: good citizenship. In the midst of her primary campaign, she...
sponsored a statewide oratorical contest on “Citizenship.” She spoke on “Better American Citizenship” and implored Florida’s youth to ponder the “seriousness of citizenship.” Owen explained that the republic “rests equally on the shoulders of every citizen. . . . [W]e need two ships inside our republic—Citizenship and Statesmanship.” Why had she embarked on such a grueling campaign? “I would fail in my duty to [my children] if I did not set them an example of citizenship.” The government “can only function perfectly when each citizen bears his share in this responsibility.” Owen even promised to send a contingent of model student-citizens to Washington every year at her own expense.

Ruth Bryan Owen exuded republicanism. Her contemporaries, though, described her as “regal”—soon to become the “queen of congress.” One newspaper editor imagined her ascension to the presidency. Probably no one in America better appreciated the role of informed civic engagement as the grist of good government. Yet in a singular irony of American constitutional history, Owen’s defeated Republican opponent charged that she was insufficiently American to serve in the House of Representatives. Perhaps he had a point.

III. CONTESTING OWEN’S CITIZENSHIP

A. Constitutional Politics in Florida’s Fourth District

Only the House could authoritatively pass on Owen’s eligibility. But why vote for someone the House might eventually disqualify? From the outset, Owen wrestled with accusations that she could not constitutionally serve in Congress (yet). Convincing voters that a Republican House would seat her, and providing a cogent legal foundation for this prediction, became indispensable to her political survival.

On April 8, 1926, Owen left a handwritten note with the Miami News in which she announced her congressional candidacy. That very day, a

197. County Winners To Be Eligible, ST. PETERSBURG TIMES, Feb. 5, 1928, at 9.
200. Id.
202. Id.
203. Vickers, supra note 125, at 459; Ruth Bryan Owen To Take 36 Young Folks to Capital from 18 Florida Counties, EVE. INDEP. (St. Petersburg), Mar. 18, 1930, at 1.
206. See supra Section I.A.
207. Mrs. Ruth Owen To Enter Race for Congress, MIAMI NEWS, Apr. 8, 1926, at 1. Not even a year had elapsed since her naturalization on April 27, 1925.
newspaper editor contacted her with sad tidings: Article XVI, Section 20 of the Florida Constitution rendered her ineligible to serve in Congress, because she hadn’t “been . . . ten years a citizen of the United States.”\footnote{208} Owen immediately called on James M. Carson, a prominent Miami attorney and close confidant, to investigate this inauspicious claim.\footnote{209}

Carson and a team of Jacksonville attorneys “agreed unanimously upon an opinion . . . that she could be seated if elected.”\footnote{210} Carson dismissed Section 20 as unconstitutional,\footnote{211} focusing instead on the federal Qualifications Clause. He published an expanded version of his legal opinion in the \textit{Miami News} on April 14,\footnote{212} the first public defense of Owen’s congressional eligibility. Carson appealed to the letter of the Qualifications Clause, its underlying purposes, and the perversity of wielding the now-unconstitutional Expatriation Act as a sword against mistreated female candidates.

First, Owen had undeniably been a U.S. citizen for at least twenty-five years of her life. If the Framers had meant to say “the seven years immediately next preceding” an election, they could have.\footnote{213} Second, the provision’s goal was to prevent foreign-born political aspirants from holding office until they had been sufficiently schooled in American principles. “[N]obody has ever questioned [Owen’s] Americanism,” of course; nor had the Framers contemplated women’s suffrage or the congressional enumeration of individual expatriable acts.\footnote{214} (This last point clashes with Carson’s assertion that the Philadelphia delegates knew exactly what they were doing when they wrote “seven years” instead of “seven years immediately next preceding.”)

But Carson had a subtler and more powerful constitutional argument, one that drew upon history everyone could remember. The Nineteenth Amendment’s sweeping subtext had been instantiated in the Cable Act, which governed “the very facts involved in this case” by “repeal[ing] the harsh law theretofore in existence . . . on the ground that it was unjust to...
American women.\textsuperscript{215} It would be no less absurd for the House to exclude Owen because of this "TECHNICAL SO-CALLED POINT" than it would be for the state to convict someone for violating a repealed law.\textsuperscript{216}

For extra assurance, Owen took a written statement of her case to a Jacksonville law firm, which rendered "an unequivocal statement of [her] eligibility."\textsuperscript{217} Another group of volunteer Jacksonville attorneys\textsuperscript{218} furnished a critical insight: Section 4 of the Cable Act meant nothing unless naturalization by its terms restored a woman’s citizenship "as fully as if she had not lost it."\textsuperscript{219} Owen’s reacquisition of citizenship was therefore "as complete as if the citizenship had never been lost."\textsuperscript{220}

Owen later told the Elections Committee that she had "consulted authorities in two cities, men of the highest integrity and reputation for knowledge in the law."\textsuperscript{221} Their written assessments were "placed at the disposal of the public" through publication in Florida newspapers.\textsuperscript{222} Owen also took out quarter-page advertisements that confidently assured readers, "SHE WILL BE SEATED."\textsuperscript{223} In 1926, Owen’s Democratic opponent had repeatedly cited her marriage to a foreigner to try to delegitimize her candidacy.\textsuperscript{224} Carson’s preemptive assistance largely silenced these voices.\textsuperscript{225} Her narrow defeat postponed a final resolution of the question.

Once Owen won the 1928 Democratic primary, Republican candidate William Lawson revived the old citizenship charge in an effort to swipe votes from her. His campaign distributed thousands of circulars throughout the Fourth District, excerpting a partial assortment of relevant provisions (but not Section 4 of the Cable Act) and inviting voters to "draw their own conclusions."\textsuperscript{226} Owen frequently addressed her citizenship status on the hustings.\textsuperscript{227} But

\begin{itemize}
  \item \textsuperscript{215} Id.
  \item \textsuperscript{216} Id.
  \item \textsuperscript{217} Owen Hearing, supra note 11, at 48. Owen characterized the firm as one "of high repute in the State of Florida." Id.
  \item \textsuperscript{218} As Owen told the Elections Committee, "Later a number of other lawyers offered to give me their own statements on this matter, a group of lawyers in Jacksonville, Fla. . . . . They voluntarily offered to investigate this matter." Id.
  \item \textsuperscript{219} Id. at 52.
  \item \textsuperscript{220} Id.
  \item \textsuperscript{221} Id. at 48. Noah Bainum, Lawson’s attorney, spoke of Carson as "a lawyer of good reputation." Id. at 52.
  \item \textsuperscript{222} Id. at 48.
  \item \textsuperscript{223} See, e.g., She Will Be Seated, MIAMI NEWS, June 7, 1926, at 8. This particular leaflet quoted Section 4 of the Cable Act in full.
  \item \textsuperscript{224} WRIGHT, supra note 124, at 74.
  \item \textsuperscript{225} See Vickers, supra note 125, at 455 (observing that in 1926, "Owen’s offensive strategy reflected any potential controversy").
  \item \textsuperscript{226} Owen Hearing, supra note 11, at 15-16. Owen called this document a "campaign dodger" that was "in no way a legal document," "signed by no lawyer," and riddled with "inaccuracies." Id. at 49-50.
  \item \textsuperscript{227} See id. at 13, 15 (reproducing the testimony of two witnesses who heard Owen discuss the citizenship issue).
\end{itemize}
she thought it unnecessary to distribute Carson's statement as aggressively as in 1926, since "the whole attitude of the district was one of accepting my eligibility, except for an occasional attempt to stir up the question." Instead, the Owen campaign kept copies handy and released them individually as inquiries arose. Owen testified that "[i]n a large number" of her district's ninety newspapers, "there was mention editorially of the fact that I was eligible."

After losing the general election, Lawson boldly declared that he should be declared "the duly elected and qualified member of Congress" from Florida's Fourth District. Owen's supporters, he maintained, had "wantonly misapplied" their votes, choosing a candidate they knew to be ineligible and thus "dead in the eye of the law." Lawson also produced a witness who insisted that the Fourth District universally rejected Owen's exposition of her congressional qualifications.

Predictably, the Elections Committee ultimately reasserted the House's prerogative to judge its members' qualifications in the face of Lawson's preclusive opinion-shaping strategy. Even if all 67,130 Owen voters had believed she was as eligible as the man in the moon, "Neither Mrs. Owen's attorneys nor the people of Florida had authority to determine the question of citizenship involved." Her ineligibility was but a hypothesis; only through congressional action could her status "be removed from the realm of mere contention and established in fact." The House would confront Lawson v. Owen's substantive legal issues head-on.

B. The Life of Lawson v. Owen

1. Governor Martin Abstains (Dec. 1928)

William Lawson conceded Owen's House election on November 6, 1928. But on November 28, a Daytona Beach law firm notified Governor John W. Martin that Lawson would contest Owen's right to
Attorneys Noah Bainum and Lawrence Sherman (a former U.S. senator) pointed Governor Martin to Article XVI, Section 20 of the Florida Constitution. This provision purported to forbid Florida’s governor from certifying the election of any congressional candidate “who has not been . . . ten years a citizen of the United States.” Moreover, Owen was ineligible to serve in the House under the U.S. Constitution, having been a citizen only since her naturalization in 1925. Perhaps Governor Martin himself would act unconstitutionally by issuing Owen’s certificate of election.

Martin, though a Republican, would have none of this. With hard-boiled simplicity, he announced, “The people of the fourth district of Florida elected Mrs. Owen and I am going to issue her a certificate.” Owen spoke even less elliptically. She told an audience that Lawson’s challenge must be a “joke,” since Section 4 of the Cable Act had ripped the reviled expatriation law from the annals of American history. She again “laughed at” Lawson’s action during an interview in mid-December. “[W]hat sense would there have been [in] my running for Congress” with a tarnished citizenship record? Lawson’s stunt was an “absurdity . . . not worth taking seriously.” Owen telegraphed Governor Martin her thanks.

Lawson had lost the election, and he lost round one of his improbable legal challenge. But he vowed to persist in what he publicly regarded as a rare opportunity to serve his country. After extensive research at the Department of Labor, Lawson concluded (somewhat correctly) that this contest was “without precedent in the history of the United States.” He,

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238. Id.
239. FLA. CONST. OF 1885, art. XVI, § 20. This provision was probably doubly unconstitutional, both for curbing democratic choice beyond the Qualifications Clauses’ strictures, see U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 837 (1995), and for requiring the governor to make independent, potentially unreviewable Qualifications Clause determinations. No occasion can arise for the House to judge a member-elect’s contested eligibility if state officials refuse to certify the candidate’s election.
240. G.O.P. Contests, supra note 237.
242. To Appeal on Mrs. Owen, N.Y. TIMES, NOV. 30, 1928, at 22.
244. Id.
246. Id.
247. Florida Woman Faces Election Victory Contest, EVE. INDEP. (St. Petersburg), NOV. 29, 1928, at 2 [hereinafter Florida Woman]. It was unprecedented in that no losing candidate had ever asked either chamber to adopt the “cumulative” or “immediately preceding” theory of American citizenship for Qualifications Clause purposes. For an inquiry into other historical antecedents, see Part IV infra.
too, praised Owen as a paragon of American values. But he worried that seating someone three years removed from alienage would “set a dangerous precedent... in case some undesirable person was elected.”

Even an unsuccessful challenge would illuminate “what construction the congress would place on that provision” requiring seven years’ citizenship. Or so one might suppose.


The House received Lawson v. Owen testimony in early April 1929. But no one was in a hurry to decide her case. As April’s special congressional session was set to begin, the House Rules Committee changed the institution’s protocol for handling contested elections. To allow the House to concentrate on more-pressing issues, elections committees would not organize until the regular December session. Candidates with properly authenticated certificates of election would take the oath of office and sit provisionally as full members. Owen was accordingly sworn in on April 15. Constitutionally eligible or not, she would hold her title undisturbed until at least January 1930.

Congressmen had greeted Owen with a “standing ovation” when she paid a preparatory visit to the House chamber on February 19, 1929. As one Florida newspaper described the scene, “Members on both sides of the aisle, Democrats and Republicans alike, arose to their feet without a single exception and vigorously applauded. Old-time observers about the capitol were unable to recall a similar instance in recent congressional history.” By early March, she had “received an enthusiastic welcome from Democrat members in the House” eager to enlist her eloquence in their legislative causes.

The adoration never abated. Owen “captivated Washington completely” with her potent charm, high erudition, and sightly figure. A contemporary depicted her almost-comical celebrity:

[H]er male colleagues are daft about her, and she has been

248. Florida Woman, supra note 247.
249. Lawson Doesn’t Seek Owen Seat, He Says, ATL. CONST., Jan. 13, 1929, at 2. Lawson certainly had “ample incentive to enforce” this “governmental process provision[].” Bradley & Siegel, supra note 36, at 1287.
250. Probably Defer House Contests, LEWISTON MORN. TRIB. (ID), Apr. 15, 1929, at 1.
253. 71 CONG. REC. 25 (1929).
254. McIver, supra note 139, at 121.
255. Id.
257. Gilfond, supra note 177, at 152.
rushed like the most popular co-ed on a campus. Handsome elderly boys of the Senate come over to the House floor to sit by her side, and when she swings over to the higher chamber to listen to a debate dozens of Senators leave their seats to shake hands with her. . . . Patriots from all parts of the country request their Congressmen to introduce them to her.258

When she spoke, the entire House, "usually a medley of noise and confusion, listen[ed] attentively."259 Her Florida colleagues were firmly in her camp.260 The House of Representatives would ultimately decide Owen's political destiny, and it openly revered her.

Two months into the special session, Owen was "giving a perfectly swell demonstration of how to be a good congressman."261 Her "unusual amount of ability" and unrivaled constituent service created a memorable impression,262 one suggesting a distinguished senatorial future.263 When Owen the Democrat requested a seat on the all-important Foreign Affairs Committee, the Republican-dominated House created one for her.264 (She was the first woman ever to hold this prestigious post.265) Amusingly, the House deemed Owen perfectly suited for the foreign-affairs position for the same reason that Congress had once annulled her citizenship: her marriage to a foreigner.266

Owen continued her good-citizenship crusade as she awaited an Elections Committee inquiry into her own citizenship. She queried of that generation's excitement-seeking youth, "What could be more sensational than being a citizen of the United States?"267 Owen longed for her compatriots to construct a "worthy edifice of American citizenship"268 and

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258. Id.
260. See Florida Woman Confident of Congress Post, ST. PETERSBURG TIMES, Dec. 2, 1929, at 1-2 [hereinafter Florida Woman Confident] ("Behind Mrs. Owen stands the staunch body of Florida delegates who are backing up the daughter of the ‘great commoner’ in her first important battle for political prestige.").
263. See Dutcher, supra note 261 ("[T]here are a great many persons . . . who expect that she will at least some day step from the house to the senate.").
266. In explaining why the House valued Owen's international expertise, a New York Times profile specifically mentioned that she had "married a British army officer" and thereafter amassed a "war record . . . which added tremendously to her understanding of foreign affairs." Douglas, supra note 134.
268. Distinguished Daughter of One of Southern Illinois [sic] Greatest Sons Pays Tribute to Clark, MT. VERNON REGISTER-NEWS (IL), May 27, 1929, at 50.
for adolescents to internalize the habits of “real American citizenship.” She presented an engraved copy of *The American’s Creed* to every high-school and college graduate in her district. In one newspaper’s estimation, “The study of citizenship and the instilling of the knowledge and appreciation of it into the youth of today may be said to be the hobbies of Mrs. Owen.”

Editorialists nationwide cheered for Owen as congressional elections committees lay dormant. “W.C. Lawson,” the Montana Standard barked, “will go down to history as a bad loser and a poor sport. The effort to oust Mrs. Owen is based on an absolute technicality.” The Biloxi Daily Herald extolled that “brilliant woman congressman from Florida—whose American citizenship and seat in congress some mere man . . . has the effrontery to contest.” An Iowa journalist teased the “long-nosed individuals who wield hammers in that [Republican] disorganization” for “[h]aving nothing else to do for the moment.” The Lima News revealed its own sympathies as it measured Owen’s popular support:

Shall the Great Commoner’s daughter be denied a seat in the halls of congress because her dead husband was a subject of Great Britain? A great swelling chorus of “no” has been sweeping the nation. Thousands of women have come to Mrs. Owen’s defense, along with men of varied political faiths.

As early as July 4, 1929, the Hawarden Independent reported that some Elections Committee members privately believed that Owen possessed an “unbeatable defense” (even if those congressmen wouldn’t speak for attribution). Other publications announced that she would likely prevail. Owen, too, happily forecast her fate: “I await the verdict in the calm and confident belief that I shall be confirmed in my right title to the seat to which I was so decisively elected.”

270. Woolf, supra note 262. Owen believed that “[s]urely there should be some gesture on the part of the government when the duties of citizenship in school are exchanged for those of citizenship in the nation.” Id.
271. Owen, Congresswoman, supra note 179.
272. Considerable searching has turned up zero pro-Lawson opinion pieces at any point in the process.
273. The Fight on Ruth Bryan Owen, MONTANA STAND., June 28, 1929, at 4; see also Mrs. Owen’s Citizenship, LINCOLN STAR, Dec. 4, 1928, at 12 (dismissing the “technicalities of the silly statute which congress wiped off the books”).
278. See, e.g., Walsh Busy on Tariff, LOWELL SUN, Sept. 21, 1929, at 6 (“It is not expected, however, that the claim of her contestant will be upheld. Mrs. Owen will probably retain her seat.”).
279. *Cable Assists*, supra note 276; see also Florida Woman Confident, supra note 260 (“I have
Finally, on December 10, 1929, the Clerk laid *Lawson v. Owen* (and all associated documents) before the House. Speaker Nicholas Longworth referred the case to House Elections Committee No. 1 two days later. Lawson would wage his well-watched battle alone: Florida Republican National Committeeman Glenn B. Skipper made perfectly clear that “[n]either the State Republican organization, myself as a national committeeman, nor the national Republican organization is having anything to do with this contest, nor will we.” Even the 1928 Republican platform had championed “whole-heartedly equality on the part of women.”

3. **Elections Committee No. 1 Hears Owen’s Case (Jan. 17-18, 1930)**

The Elections Committee finally convened its *Lawson v. Owen* hearings in a “stuffy little committee room” at 10 A.M. on Friday, January 17, 1930, thirteen months after Lawson drew up his notice of contest. Owen had labored for nine months as the Fourth District’s “prima facie” congresswoman.

Lawrence Sherman, Noah Bainum, and Edward Clifford presented Lawson’s legal case in a brief submitted to the Elections Committee. Bainum and another lawyer, H. B. Morrow, fielded questions from the Committee. Owen wrote her own brief and chose not to hire a seasoned oral advocate, “because, to me, the elements we are considering are so simple that they do not require any legal presentation.” (Not that a Chautauqua legend and speech professor needed any oratorical reinforcement; she published *Elements of Public Speaking* one year

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280. 72 CONG. REC. 572 (1929).
287. As far as I know, no copy of Owen’s brief survives. Lawson’s may be found in the papers of Elections Committee No. 1, Seventy-first Congress, at the National Archives. Owen’s is strangely missing from the file. On March 6, 1930, the Clerk of the House wrote the following letter to a Senate employee who had requested a copy of Owen’s brief: “I am extremely sorry I was unable to furnish you with a copy of Mrs. Owen’s brief. There were printed only sixty copies of the brief and our supply of them was exhausted some time ago. Enclosed is a copy of the Hearings held in the Lawson-Owen Case. Mrs. Owen’s statement covers all the points made in her brief, much of it quoted directly from it.” Letter from William Tyler Page to Harry Davis (Mar. 6, 1930), National Archives, Center for Legislative Archives, HR71A-F9.2.
288. *Owen Hearing, supra* note 11, at 47. So confident was Owen that she told Chairman Beedy, “I do not propose to take more than five minutes myself.” *Id.* at 35.
later.) Spectators filled the room to witness Owen’s historic performance.290

As the proceedings began, Chairman Carroll Beedy pledged “to conduct this hearing just as though it were a law case.”291 But the Committee’s nine members had never encountered a “profound constitutional question”292 quite like this one.

a. Lawson’s Argument

Noah Bainum began by assuring the Committee that he approached Lawson v. Owen “without any personal feeling in the matter, or without any political view of the situation.”293 He focused “purely [on] the construction of the constitutional provision.”294 Bainum’s gentlemanly disclaimer ironically foreshadowed the failure of Lawson’s legal team to offer any persuasive counter-account of a critical statutory provision: Section 4 of the Cable Act.

Bainum surprised the Committee by arguing that Owen’s first twenty-four years of American citizenship—not just the middle fifteen—had been “wiped out” when she married a foreigner.295 “Once a Britisher always a Britisher until naturalized,” he chanted.296 (Why this logic didn’t also apply to Owen’s resumed American citizenship, Bainum failed to explain.) Chairman Beedy asked Bainum how he would respond as a witness if asked whether Owen “had been at any time” a U.S. citizen for seven years. Bainum would say she had been, but he adamantly denied that she had “been seven Years a Citizen of the United States.”297 “Why do you want us to add those words to the Constitution,” Beedy groaned?298 “Because unless you do you would not be adhering to the Constitution.”299 “Your Constitution, then, is different from mine.”300

As this exchange suggests, Lawson’s brief contended that the Qualifications Clause refers to the immediately prior seven years as a continuous unit. Why? Because the language “who shall not have . . . been

290. Right to House Seat Pleaded by Mrs. Owen, THE SUN (Baltimore), Jan. 19, 1930, at 1 (describing the “crowded committee room”). Owen’s defense of her own congressional eligibility calls to mind Augustus Garland’s self-representation in Ex parte Garland, 71 U.S. 333 (1866), which concerned the constitutionality of a statute forbidding former Confederate officials (Garland included) from appearing in the courts of the United States.

291. Owen Hearing, supra note 11, at 35.

292. Id. at 42.

293. Id. at 1.

294. Id.; see id. at 42 (“We do not view this as a party or political question at all. There is no Republicanism, there is no Democracy, in it.”).

295. Id. at 26.

296. Id. at 23; see id. at 26 (“THE CHAIRMAN. But by that marriage she was robbed of the citizenship of 24 years which she had theretofore enjoyed? MR. BAINUM. Yes, sir.”). I suppose Owen would have been forever ineligible to the presidency under this theory.

297. Id. at 27.

298. Id.

299. Id.

300. Id.
seven Years” should be read to require that Representatives “shall have been” citizens for seven years.\footnote{Lawson Brief, supra note 231, at 12.} From this commonsense deduction, and with no further explanation, Lawson asked the Committee to infer that Article I’s citizenship requirement “relate[s] to seven continuous years before the member’s election.”\footnote{Id.} Bainum analogized the seven-year requirement to a statute of limitations that “can not work two years now and two years after a while. . . . This statutory period of seven years must be an entirety.”\footnote{Owen Hearing, supra note 11, at 28.} And it had begun to run on April 27, 1925, the day Owen was naturalized.\footnote{Id. at 25.} She wouldn’t be eligible until April 27, 1932.

Bainum believed he’d won the big statutory battle by establishing that Section 3 of the Cable Act\footnote{"[A] woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after the passage of this Act." Cable Act of 1922, ch. 411, § 3, 42 Stat. 1021 (1922).} wasn’t retroactive.\footnote{As Bainum explained, “assuming . . . the act was retroactive, there would be no occasion for Mrs. Owen to be naturalized.” Owen Hearing, supra note 11, at 22. Bainum argued the nonretroactivity point repeatedly even though no one contested it. Id. at 20-21. Perhaps he missed Section 7, which did the work for him: “Section 3 of the Expatriation Act of 1907 is repealed. Such repeal shall not restore citizenship lost under such section.” § 7, 42 Stat. 1021.} Hardly so. In a remarkable failure of lawyering, both Bainum and Morrow betrayed a complete ignorance of Section 4 of the Act. Neither had even read Owen’s written brief—filed at least nine days earlier\footnote{See Hearing Saturday in Move To Oust Ruth Bryan Owen, EVE. INDEP. (St. Petersburg), Jan. 9, 1930, at 25 (reporting that Owen had “filed her own brief”). Lawson had also submitted his brief by January 9. See id. (referring to Lawson’s “brief filed with the committee”).}—before arguing Lawson’s case to the Elections Committee.\footnote{Id. at 29. I assume that if Bainum hadn’t seen Owen’s brief, neither had Morrow, who played a subsidiary role. But Owen had examined Lawson’s. During her oral argument, Owen observed that “[i]n his brief contestant quotes liberally the expatriation act of 1907.” Id. at 54.} Perhaps the Committee forgot to deliver a copy to Lawson’s attorneys, but the duo greatly disserved their client by agreeing to argue Lawson v. Owen without having seen the opposing brief. Procedural glitches aside, there can be no extenuating their failure to read every word of the one-page Cable Act. Owen’s “She Will Be Seated” advertisements had even quoted Section 4 in full.\footnote{See supra note 223 and accompanying text.} Minimal research could have anticipated this strategy.

The hearing’s first Section 4 question caught Bainum badly off guard. “I do not seem to have that [provision],” he shrugged. “Have you got it?”\footnote{Owen Hearing, supra note 11, at 22.} Sticking to the script, Bainum assured the Committee that “there is nothing retroactive about [Section 4] at all.”\footnote{Id. at 20-21.} That provision’s entire point, though, was to edit an expatriated woman’s past citizenship record once she became naturalized. Yet Bainum continued believing that quicker
naturalization procedures were "[t]he only privileges which Congress extended to such women." When Chairman Beedy read Sections 3 and 4 together to suggest that Owen had always been a citizen in the eyes of the law, Bainum denied the legitimacy of this simple syllogistic exercise: "No. You are reading that into the statute. It does not say that." Rather, Owen enjoyed only those rights conferred on naturalized citizens of foreign birth.

Morrow fared no better. He emphatically denied that any part of the Cable Act "restore[d] citizenship." As far as the Committee should be concerned, Owen "became a citizen for the first time ... when she was naturalized in 1925." Beedy reiterated his holistic reading of Sections 3 and 4. An American-born woman who had never ceased to be a citizen had always been a citizen, right? Morrow was trapped. "Answering your question, Mr. Chairman, I would say yes; but I do not think the law means that.

The law did mean that. As a purely interpretive matter, Section 4 plainly purported to restore the lost citizenship of any qualifying woman who took the trouble to become naturalized. Lawson's attorneys faltered on account of their poor preparation and inability to make mid-course corrections. But their oral obduracy contained the seeds of a potentially winning constitutional theory: Congress could not validly rewrite the historical record, overriding amply evidenced alienage.

Bainum and Morrow never labeled Section 4 unconstitutional, because they didn't know what it said. But that conclusion followed naturally from their rhetoric. By her own admission, Bainum pointed out, Owen had been a British subject as late as April 1925. "There is no such thing as restored citizenship," which would entail an absurdity—that Owen was an American when she applied for American citizenship. The record showed that she re-entered America as an alien, Morrow reminded the Committee. "If that does not constitute a foreigner, I do not know what, in law, would be a foreigner." Congress "could not ... change [Owen's] citizenship status, a substantive thing in the law."

A few Committee members indulged their purposivist inklings.
Chairman Beedy shared "a thought": the Framers created a citizenship qualification because "they did not want people coming here who had no local knowledge of our institutions." Owen was technically stripped of her citizenship, "a thing which the framers of the Constitution perhaps never thought of or did not have in mind." But she clearly satisfied the Qualifications Clause's subsurface strictures. Why exclude her "simply on the ground of a technicality"? The Framers were clearly "considering the foreign born instead of the native born." And to them, the "foreigner" was an emigrant "coming here unfamiliar with American institutions, and possibly not in sympathy with our form of Government." Hadn't Owen's earliest memories consisted of her sympathizing with the American form of government?

Bainum and Morrow offered two responses. First, to maintain the "dignity and solemnity of this constitutional provision," the Committee could not make Owen its special favorite. This case was an important test for the rule of law: "[I]t would be an unfair thing for this committee to apply to a person in Mrs. Owen's situation... a different rule than... would be applied to any other foreigner." With ordinary foreigners, after all, the House would undoubtedly adopt Lawson's "immediately preceding" interpretation. But this response was fallacious on two levels. The House wouldn't consciously adopt the "immediately preceding" view in the case of a foreign-born alien; it wouldn't need to pick a precise approach, just as the Framers didn't. And if Owen's "cumulative" view were correct, the principle of equal treatment would require its application across the board (even if that choice wouldn't affect most contested-citizenship cases).

Second, Lawson's attorneys insisted that the "cumulative" interpretation's consequences would be intolerable. American women taking foreign husbands normally "acquir[ed] so many bad habits that the limitation ought to be absolute," "perpetual." Notwithstanding Owen's exquisite qualities, Morrow warned of American women marrying aliens, "going abroad and staying there a long period of time, and becoming completely out of touch with the American viewpoint, American...

322. Id. at 33.
323. Id.
324. Id.
325. Id. at 37.
326. Id. at 38.
327. Id. at 42.
328. Id. at 41.
329. Id. at 42.
330. Bainum insisted that "you have got to apply this Constitution regardless of whether it is Mrs. Owen or somebody else." Id. at 33. Chairman Beedy agreed: "Exactly. We ought not to use her name in the case at all." Id.
331. Id. at 32, 34.
principles, and American customs." The Qualifications Clause should therefore be read to subject recovering expatriates to a long and continuous probationary period in which to discard their "entanglements."

The Committee adjourned three hours after it began, and reconvened the next morning to complete hearings in "Mrs. Owen's case." Chairman Beedy thanked Bainum for his efforts and initiated the hearing's most anticipated phase: "Mrs. Owen, the committee will be very glad to hear you."

b. Owen's Argument

Owen first thanked opposing counsel for proceeding without any "personal animus" or "political partisanship." She confidently asserted that "the laws of my native country, exactly as the laws are written," entitled her to a seat in Congress. Then, "[w]ith her hands behind her, and her body braced against a bookshelf," Ruth Bryan Owen argued her case to the Elections Committee and to newspaper readers nationwide.

Owen pounced on Lawson's failure, "for obvious reasons," to mention Section 4 in his brief (and during oral argument). She quoted Congressman Cable's own analysis of the law: "[N]aturalization obliterates her foreign-citizenship status, and she stands, by virtue of such naturalization, as one who has always been a citizen of the United States." Reading Sections 3 and 4 in conjunction made this an exceedingly easy case. As Owen saw it, Congress had wiped out every trace of "my involuntary expatriation because of a law now no longer valid." Owen had "never by word or act," or by act of Congress, "been anything but a loyal American citizen during my entire life."

But she cared far less about the "letter" of the law than its "spirit." In a powerful culmination of Carson's early efforts, Owen viewed her present struggle against the backdrop of America's newly purified constitutional commitments:

332. Id. at 38.
333. Id.
334. Id. at 42. This quote is from Chairman Beedy, who, interestingly, chose to use Owen's name as shorthand for the contest's full name.
335. Id. at 47.
336. Id.
337. Id.
339. See Owen Hearing, supra note 11, at 56 ("The CHAIRMAN. Are there any press reporters here? (There were four newspaper reporters present.").
340. Id. at 54.
341. Id.
342. Id.
343. Id.
344. Id.
No man ever lost his citizenship through his marriage. If on the same day that I married Major Owen an American man had married a woman from another country, he would not have had five minutes of loss of citizenship. The last thing that is done to [a] man who has disqualified himself in the eyes of his Government as a citizen, the last punishment that is ever inflicted on a man is the deprivation of citizenship. The traitor, the felon, the lowest criminal, is deprived of his citizenship, and yet by the enactment of my country I was deprived of my citizenship for no fault of my own... but because I was a woman.\(^\text{345}\)

There was "no better time and place" than the House Elections Committee to accord women "the same dignity and individuality of citizenship which is enjoyed by the male citizen."\(^\text{346}\)

Owen spoke tenderly of her war service, and of the many personal comforts she had relinquished on her cyclical quests to feed and clothe six human beings.\(^\text{347}\) Were these the "vicious habits which American women might bring back"?\(^\text{348}\) Owen's voice "dropped almost to a whisper" as she eulogized her departed husband.\(^\text{349}\) His gallant spirit transcended the inevitable death he first tasted in Turkish trenches. Everyone knew how ably Ruth had aided the Allied cause on British soil; now, she proudly boasted of having "conferred a favor upon my adopted State in bringing to them so beloved and so honored a citizen," the late Reginald Altham Owen.\(^\text{350}\) If American law penalized this marriage, "I want to bear that penalty, as I bear my husband's name, very proudly."\(^\text{351}\) And after stealing her citizenship, the government had made it impossible for Owen to petition for naturalization without losing her Chautauqua lecture fees, the family's only income.\(^\text{352}\) "If the consideration of my case is going to make more clear the laws which have dealt unjustly with women," she decided, "I welcome this case."\(^\text{353}\)

Almost as an afterthought, Owen dutifully discussed the Qualifications Clause.\(^\text{354}\) The Committee's odd interpretive dilemma posed a false

\(^{345}\) Id. at 54-55; see id. at 59 ("[N]o American man has ever been called before a committee of this sort to explain his marriage.").

\(^{346}\) Id. at 55.

\(^{347}\) Id. at 56-58.

\(^{348}\) Id. at 58.

\(^{349}\) Crawford, supra note 284.

\(^{348}\) Owen Hearing, supra note 11, at 59.

\(^{350}\) Id.

\(^{351}\) Id. at 58.

\(^{352}\) Id. at 58-59.

\(^{353}\) See id. at 59 ("[E]ven if you find that you are unable to justify yourself in agreeing with the intent of the framer of the Cable Act, then I refer you to the Constitution.").
choice: the seven-year provision was "definite."\footnote{Owen detected "nothing equivocal, gentlemen, about the wording of the Constitution."\footnote{Id.}} It simply required seven years of citizenship. Any other stance would "qualify" the Framers' careful word choice and insert extraneous language into the Constitution.\footnote{Owen had therefore "been seven Years a Citizen" many times over, regardless of how one parsed the Cable Act.\footnote{Id.}} Nor was there anything equivocal about the reasons for adding a citizenship requirement. The point, she thought everyone agreed, was to exclude those "who have not lived here sufficiently long to be safe guardians of our institutions" through "sufficient background and knowledge."\footnote{Owen dared the Committee to deny that someone with her "American background" would be "a safe interpreter of the laws and institutions of our country."\footnote{Id.}}

At bottom, though, this wasn't a fight over the arcane incidents of legislative qualifications. It was about equality. Owen posed the question starkly: Would the House secure to the American woman "her right to the same consideration at the hands of her Government as is enjoyed by the male citizen"?\footnote{Lawson v. Owen "hinges upon the attitude of my Government toward its women citizens."\footnote{Id.}} A new constitutional day had dawned. At this aurora of full citizenship equality, Congress must vindicate "the right of an American woman before the eyes of her Government to exactly the same treatment that is meted out to a man."\footnote{In other words, equal protection of the laws."

"With intense feeling,"\footnote{Owen held forth for over an hour.\footnote{A Montana newspaper reckoned her appeal "[o]ne of the most dramatic and affecting pleas ever made before a government tribunal."\footnote{When she finished, Chairman Beedy declared the hearings closed, and House Elections Committee No. 1 went into executive session.\footnote{}}}}

\footnote{Id. at 60.} Chairman Beedy seemed to have been leaning this way the day before: "If, as lawyers, we are taught to believe that if a statute is retroactive it should say so ... why, if this provision of the Constitution intended to prescribe that [the] limitation of the seven years should be next preceding the year of the election, should it not also state that too?"\footnote{Id. at 27.}

\footnote{Forty-four years "[i]f you accept the intent of the framer of the Cable Act," and twenty-nine otherwise.\footnote{Id. at 61.}}

\footnote{Id. at 60.}\footnote{Id.}\footnote{Id. at 61.}\footnote{Id.}\footnote{Id.}\footnote{Mrs. Owen Upholds Election Legality, WASH. POST, Jan. 19, 1930, at 4.}\footnote{Crawford, supra note 284.}\footnote{The Commoner's Daughter, MONTANA STAND., Jan. 24, 1930, at 6.}\footnote{Owen Hearing, supra note 11, at 64.}
4. Waiting for an Answer (Jan. 18–Mar. 24, 1930)

Owen’s address to the Elections Committee had made her “the most talked-of woman in the United States.”368 This burst of attention “brought her a flood of commending communications,” from men as well as women.369 “[M]any throughout the land” hoped and expected that the Elections Committee would unreservedly endorse Owen’s eligibility.370

One newspaper branded Lawson a “poor loser.”371 He was “squarely beaten,” his Qualifications Clause challenge “mean in spirit.”372 Lawson’s unmanly move should “meet with disaster”—not just because of Owen’s sterling credentials, but because his “pettifogging”373 dignified a law that had discriminated against a class of equal American citizens. Lawson’s ploy was a “hang-over from a bad law,”374 the “officious and unjust”375 Expatriation Act. Lawson v. Owen presented an elemental question of political justice: “whether in the general application of the law the government will discriminate against women.”376 If constitutional fidelity mandated present-day sex discrimination, “The law is an ass!”377

Newspaper editors also agreed that excluding Owen would be utterly pointless. She was “[b]orn in America, raised in America, always an American,”378 William Jennings Bryan’s daughter was “100 per cent an American,”380 a “mighty fine American girl.”381 No one was more “American from head to foot.”382 If it seated Lawson, the House would commit a “rigid literalism” in the application of rule-like legal provisions.383 Even if the Qualifications Clause seemed to bar her, Owen’s

368. A Widow Fights for Her Rights, LETHBRIDGE HER. (Alberta), Feb. 1, 1930, at 10 [hereinafter Widow Fights].
369. C.O. Smith, Law Covering Nationality Is Attacked, CALGARY DAILY HER., Jan. 28, 1930, at 2. A few days after the committee hearings, the Ludington Daily News accurately predicted that Owen “will have the sympathy of the American people.” Owen’s Case, supra note 51.
370. The Commoner’s Daughter, supra note 366.
371. Owen’s Case, supra note 51.
373. An Absurd Situation, supra note 372.
374. Id.
375. Smith, supra note 369.
376. Cole, supra note 49.
377. Smith, supra note 369.
378. Absurd Situation, supra note 372.
379. The Commoner’s Daughter, supra note 366.
380. Owen’s Case, supra note 51.
381. Mere Technical Objection, supra note 372.
382. An Absurd Situation, supra note 372. Indeed, “one would have to hunt pretty far to find a more thorough-going American than Mrs. Owen.” Mrs. Owen Should Remain, OAKLAND TRIB., Jan. 25, 1930, at 24.
was an "exceptional case[]." Here was someone who could have run for Congress on her wedding day, and who had only grown stronger, wiser, and more quintessentially American since. The combined force of her Section 4 and seven-year arguments "ought to satisfy the most inexorable constitutional pedants, sticklers and purists."

The Elections Committee held an executive session on January 27, 1930. It made no real headway on Owen’s case. Chairman Beedy released a statement that "the questions in the case are so complex that they will require considerable study. It will require several meetings of the committee before all the points involved can be gone into." The Committee adjourned again on February 22 with nothing final to announce—it was "still studying the constitutional and statutory provisions dealing with the case." As she awaited the Committee’s decision on her citizenship status, Owen was specially chosen to deliver an homage to the American flag as part of a radio series designed to inspire patriotism.

Her wait ended on March 1. After an all-day conference, the Elections Committee unanimously agreed to recommend Owen’s seating. Chairman Beedy revealed nothing about the Committee’s report, because it hadn’t been written yet. He merely shared his colleagues’ bottom line—unanimity as to the outcome. Owen expressed relief at this long-awaited deliverance: "I am very happy that the Committee has decided in my favor, and I am exceptionally pleased that the decision was unanimous."

As always, the print media celebrated with her. The Washington Post considered Chairman Beedy’s announcement a historic "victory for women who are seeking to remove legal discriminations against their sex." Another newspaper thought the decision "courteous, sensible and just," the "gentlemanly thing to do." The Committee’s decision had a "firm foundation in common sense" and would be "applauded by both Republicans and Democrats alike." No one ever doubted Owen’s

384. Id.
385. Owen’s Case, supra note 51.
386. No Decision Reached in Mrs. Owen’s Case, SARASOTA HER.-TRIB., Jan. 27, 1930, at 4.
387. Id.
388. No Action in Election Case of Mrs. Owen, EVE. INDEP. (St. Petersburg), Feb. 24, 1930, at 9.
390. Wins in House Fight, supra note 265.
393. Mrs. Owen’s Victory, WASH. POST, Mar. 4, 1930, at 6; see also id. ("This is a sensible construction of the law. The effect of that untenable arrangement under which an American woman became an Englishwoman though a marriage contract should not be perpetuated, now that the measure has been supplanted.").
394. Sensible and Just, ZANESVILLE TIMES RECORDER (OH), Mar. 6, 1930, at 4.
395. A Common Sense Decision, CARROLL DAILY HER. (IA), Mar. 10, 1930, at 2. After all, the "[a]ction to bar her ... never had more than a flimsy technical basis." Ignoring a Foolish Quibble, SCRANTON REP., Mar. 7, 1930, at 8.
"American citizenship in the broad and only important sense of the term";\(^{396}\) her failed ouster "never did seem quite the sporting thing."\(^{397}\) "Everybody" should applaud this felicitous outcome.\(^ {398}\)

The Elections Committee met on March 8 and again on March 16 to frame a final report, but each time the nine failed to resolve internal differences.\(^ {399}\) On March 22, they simply stopped trying. After what proved to be its last executive session, the Committee decided to submit majority and minority reports to the House. These reasoned analyses would "arrive at the same conclusion"—Owen’s constitutional eligibility—"but via different routes."\(^ {400}\) Owen professed not to care how many reports the Committee wrote, "[s]o long as the conclusions are the same."\(^ {401}\)

Chairman Beedy submitted Report No. 968 to the House on March 24, 1930.\(^ {402}\) Elections Committee No. 1 passed along its unanimous “recommendation that William C. Lawson is not entitled to a seat and that Ruth Bryan Owen is entitled to the seat from the fourth district of Florida."\(^ {403}\) Busy congressmen could have been forgiven for failing to recognize Lawson v. Owen as a novel, multidimensional constitutional controversy. Reading Report No. 968 would have stirred them from their detachment.

5. Reading the Elections Committee Report

The ten-page report opened with brisk summaries of “The Question Involved,” “The Facts,” and “The Constitutional Provision and Federal Laws Affecting the Case.”\(^ {404}\) It then stated the crux of Lawson’s contention: even though Owen “is, and always has been, loyal to and familiar with our American system of Government and American institutions,” the House should always insist upon a term of seven years’ citizenship immediately preceding an election.\(^ {405}\) Otherwise, “a dangerous precedent would be established” for the injection of “foreign influence in the Federal Congress.”\(^ {406}\)

The Committee forcefully booted Lawson’s claim that Owen supporters had squandered their votes,\(^ {407}\) but it splintered on the merits of his

\(^{396}\) Id. \\
^{397}\) Id. \\
^{398}\) Id. \\
^{399}\) Mrs. Owen Wins, supra note 392. \\
^{400}\) Few Activities in Congress Today, ELYRIA CHRON. TELEG., Mar. 8, 1930, at 3; Day in Congress, WASH. POST, Mar. 16, 1930, at 2. \\
^{401}\) Committee Splits over Owen Report, WASH. POST, Mar. 23, 1930, at 2. \\
^{402}\) Id. \\
^{403}\) 72 CONG. REC. 6050 (1930). \\
^{404}\) Owen Report, supra note 234, at 1-3. \\
^{405}\) Id. at 4. \\
^{406}\) Id. \\
^{407}\) See Section III.A supra.
constitutional plea. A five-person majority—all Republicans—found Owen eligible "through a consideration of the constitutional provision alone." They construed the seven-year provision to be "cumulative." When interpreting the Constitution, the majority advised, "the ordinary meaning should be ascribed to its language. . . . [W]hen that meaning is apparent on the face of the instrument," neither courts nor legislatures can add to or subtract from it. Singing from Owen's songbook, these five insisted that "if the framers had intended the seven years' citizenship to have been limited to the seven years next preceding an election, they would have said so." Counting the time before her marriage and after her naturalization, Owen had been a U.S. citizen for over twenty-eight years when Florida's Fourth District elected her. She was therefore quadruply eligible to serve in the House of Representatives.

The majority didn't explain why, if the Framers hadn't even foreseen the problem of inconsecutive citizenship periods, they would have said "immediately preceding" if they had meant it. And the majority failed to engage with an even more devastating counterargument. If any seven years' citizenship forever qualify their holders for House membership, noncitizens may lawfully serve in Congress. By the "cumulative" view, one could renounce his U.S. citizenship and spitefully serve his rebuffed counymen in the House of Representatives with no constitutional difficulty. Given the Article I and II Qualifications Clauses' structural consonance, the same would also be true of candidates for the Senate—and even the presidency! We intuitively discredit these striking conclusions because the Qualifications Clauses seem to have as their bedrock objective the exclusion of aliens from federal legislative service. Indeed, even Antifederalist scaremongers assumed that federal legislators must actually be citizens. After nearly two centuries of constitutional governance, the Supreme Court similarly insisted that "the right to govern is reserved to citizens."
During oral argument, Committee members acknowledged that their chosen interpretation must apply equally to everyone.\(^4\) \(^1\) Well, one might ask, would the ratifying generation have readily permitted erstwhile Americans to run for Congress after internalizing the snobbish customs of European capitals? What if native-born Ruth Bryan had instead married Leon Trotsky and launched the Bolshevik Wives’ War Relief Fund, then returned to America, still married, seeking admission to Congress “for insidious purposes”?\(^4\) \(^1\) Since 1802, the naturalization laws have presumed that aliens must live in the United States for at least five years to cast off their inborn allegiances.\(^4\) \(^1\) Why should a similar presumption not apply to Americans who choose to make new lives abroad? The “oddity” (and possible danger) of allowing aliens to make federal law for Americans “should weigh against endorsing this method of declaring [candidates] eligible.”\(^4\) \(^1\)

The four-person minority\(^4\) \(^2\) espoused Lawson’s view of the Qualifications Clause—only seven years of citizenship “next preceding the date of election” suffice.\(^4\) \(^2\) But according to Congress, Owen had been an American citizen her entire life. She became naturalized as specified by Section 2 of the Cable Act, thereby acquiring “the same citizenship status as if her marriage had taken place after the passage of this act.”\(^4\) \(^2\) Section 3 defined this status as that of someone who had “not cease[d] to be a citizen of the United States by reason of her marriage.”\(^4\) \(^2\)

The minority correctly sensed that disagreement over Section 4 concerned congressional power as well as statutory interpretation. The institution that could constitutionally\(^4\) \(^2\) strip Owen of her American citizenship, the minority explained, “also had the power to pass a law which set out the procedure by means of which she could recover her American citizenship.”\(^4\) \(^2\) Moreover, the Cable Act should be expansively

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Harisiades v. Shaughnessy, 342 U.S. 580, 586 n.10 (1952) (explaining that the Qualifications Clauses “require that candidates for election to the House of Representatives and Senate be citizens”) (emphasis added). Justice Story agreed, insisting that “[n]o person will deny the propriety of excluding aliens from any share in the administration of the affairs of the national government.” STORY, supra note 55, § 75.

\(^4\) \(^1\) See supra note 330.

\(^4\) \(^1\) 2 RECORDS, supra note 53, at 216 (statement of George Mason).


\(^4\) \(^1\) 19. Primus, supra note 19, at 1706 n.107. Primus offered short reflections on the “cumulative” and “immediately preceding” interpretations in the course of imagining alternative justifications for seating Hiram Revels. He tentatively rejected the “cumulative” approach on consequentialist grounds. Id. at 1705-06.

\(^4\) \(^1\) 20. The minority consisted of three Democrats (Edward E. Eslick, Robert S. Hall, and J. Bayard Clark) and the Republican Chairman, Carroll Beedy.

\(^4\) \(^1\) Owen Report, supra note 234, at 6.

\(^4\) \(^1\) Id. at 7. The minority was quoting Section 4.

\(^4\) \(^1\) Id.

\(^4\) \(^1\) 23. At least before the Nineteenth Amendment. See Mackenzie v. Hare, 239 U.S. 299, 312 (1915) (upholding Section 3 of the Expatriation Act of 1907).

\(^4\) \(^1\) 24. Strictly speaking, the Naturalization Clause empowered Congress to specify the procedure
interpreted “in the light of [the Nineteenth] Amendment as but another step in extending the rights and privileges of American women.” 426 It should be “liberally construed as a measure intended to right an injustice” inflicted on American women by the Expatriation Act, and “to place her upon an equality with American men” with respect to American citizenship. 427

The Cable Act’s connection to the Nineteenth Amendment arguably bolstered the minority’s implicit defense of congressional authority to erase the historical record. 428 But as a statutory-interpretation lesson, this point was misplaced. The Cable Act’s relevant provisions were not susceptible of more- and less-liberal interpretations. They could properly be interpreted only to constitute Owen a perpetual, unbroken American citizen. Whether Congress possessed the authority to command such an interpretation is an entirely separate (and prior) constitutional question.

So although the Committee agreed on virtually nothing else, it rallied around the “unanimous conclusion” that Owen was eligible to sit in the House of Representatives. 429 It urged the House to adopt two resolutions:

Resolved, That William C. Lawson was not elected a Representative to the Seventy-first Congress from the fourth congressional district of the State of Florida and is not entitled to a seat therein.

Resolved, That Ruth Bryan Owen was duly elected a Representative to the Seventy-first Congress from the fourth congressional district of the State of Florida and is entitled to retain her seat therein. 430

Though the majority would have seated Owen on constitutional grounds alone, it felt obligated to “amplify the report of the chairman” with a stinging critique of the minority’s approach to Section 4. 431 In short, the minority had misconstrued Section 4, and Congress could not constitutionally restore lost American citizenship.

by which Owen could recover her citizenship. See U.S. CONST. art. I, § 8, cl. 4. The theoretical dispute over Section 4 concerned substance, not procedure. The minority probably meant that if one Congress could unmake Americans, a later Congress could reverse this decision by entirely eliminating the past, present, and future legal effects of earlier marital expatriations. This inference isn’t self-explanatory, and the minority gave no further justification for it.

427. Id.
428. Like the Thirteenth, Fourteenth, Fifteenth, Eighteenth, Twenty-third, Twenty-fourth, and Twenty-sixth Amendments, the Nineteenth empowers Congress “to enforce this article by appropriate legislation.” U.S. CONST. amend. XIX. Perhaps the Sixty-seventh Congress thought it was “enforcing” the Nineteenth Amendment when it purported to deny a past discriminatory law any continuing legal effect.
430. Id.
431. Id.
How to apply Section 4's key language, "After her naturalization she shall have the same citizenship status as if her marriage had taken place after the passage of this act"? The majority read the first "after" in contradistinction to "before," so that the Cable Act "only establishes [Owen's] citizenship status after the date of her naturalization"—not from 1910 to 1925. But this ignores Section 3's definition of what that citizenship status would be. "After" Owen's naturalization, it would be as if she had never ceased to be a U.S. citizen by reason of her marriage. Sections 3 and 4 plainly purported to restore citizenship instead of just conferring full American citizenship prospectively. The minority invoked Section 7 as its coup de grâce; that provision clarified that the Expatriation Act's repeal "shall not restore citizenship lost." But Owen agreed that the repeal alone restored nothing; rather, naturalization according to the Cable Act's terms eliminated prior disabilities.

The key question, then, was whether Congress could validly erase periods of lost citizenship. The majority's addendum addressed this fascinating issue, though without using familiar terminology of constitutional power. The majority first decried the minority's "inconsistency" in reading the Qualifications Clause strictly and the Cable Act broadly. The minority "sets up a man of straw and then proceeds to rough it with him." Having read an "immediately preceding" requirement into the Clause, they apparently found it "necessary to resort to mental acrobatics to avoid what they have done" and award Owen her seat. But bulk obliteration of non-citizenship periods is a "legal fiction [that] may not be indulged.... It would make untrue an obvious, evident, and known fact"—that Owen was a British subject for fifteen years, applied for naturalization as a British subject, and renounced her very real political allegiance to George V.

Whether liquidation of once-true legal facts is per se unconstitutional, the majority didn't clarify. But it left no doubt that it was "giv[ing] consideration to the constitutionality of the Cable Act." And it found two fatal infirmities. First, adopting the minority's interpretation of the

432. Id. at 8.
433. The majority's interpretation can be correct only if expatriated women would otherwise have been something less than full citizens after becoming naturalized under the Cable Act. If not, it would have been redundant to prescribe their assumption of ordinary citizenship status in Section 3. But it has never been true that some naturalized American citizens enjoy a lesser citizenship status than others. And Section 1's codification of gender equality in the privilege of naturalization belies any conception of women as lesser naturalized citizens.
434. Id.
435. Id.
436. Id. at 9.
437. Id.
438. Id. at 8.
439. Specifically, to Section 4. See id. at 9 ("We must face that responsibility. We assumed such duty in full measure when, as individuals, we subscribed to the oath of office, the chief and central obligation of which requires us to support and defend the Constitution of the United States.").
Cable Act would permit the Senate and President to usurp the House’s exclusive right to judge its members’ qualifications, since those institutions also played a role in enacting the absurdity. By this logic, any law that regulated qualification-related facts—the simplest naturalization or voluntary-expatriation law—would be automatically unconstitutional as an arrogation of the House’s exclusive prerogative to judge its members’ qualifications. That argument proves too much, since Article I, Section 8 empowers our bicameral Congress to “establish an uniform Rule of Naturalization.”

Second, if Congress could lawfully annul Owen’s expatriation period, it could easily evade other constitutional requirements. Authority to pass an alienage-erasing Section 4 also entailed the power to proclaim that “an alien shall, after his naturalization, have the status and enjoy the privileges of a natural born citizen,” qualifying him to serve as president. By the minority’s logic, Congress could even pronounce aliens eligible to serve in the House of Representatives “immediately after [their] naturalization[s]!” But both points missed a plausible limiting principle, and the latter was self-defeating. If it would be unthinkable for new naturalized citizens to serve in Congress, surely aliens cannot legislate for the political community. Yet the majority’s “cumulative” interpretation would permit exactly that. Perhaps the Committee would have coalesced around the minority’s “immediately preceding” approach if the majority had fully grasped the consequences of its commendable (but likely misplaced) no-secret-intent philosophy. Instead, the Committee fractured bitterly, supplying Congress with a rare opportunity to engage in direct and unreviewable—if substantively perplexing—constitutional lawmaking.

440. Id.
441. U.S. CONST. art. I, § 8, cl. 4. Chairman Beedy, for one, refused to conclude “that in recognizing the binding force and effect of our naturalization laws the House has surrendered its constitutional right to be the sole judge of the qualifications of its Members.” 72 CONG. REC. 10195 (1930) (statement of Rep. Beedy). The better objection to Section 4’s unusual restorative provision would be that one House cannot obligate its successors—“each House”—to disregard qualification-related historical facts, even conceding Congress’s general authority over naturalization and expatriation procedures.
443. Id.
444. Here is one possibility: Congress may not retroactively change individuals’ citizenship records, except to restore citizenship lost during nonelective expatriation periods. Such periods could not arise today, since the Supreme Court held in Afroyim v. Rusk that Congress may not expatriate American citizens unless they “voluntarily relinquish[] that citizenship.” 387 U.S. 253, 268 (1967).
445. The majority explained itself as follows: “The framers of the Constitution sought to avoid language or phraseology which is complex and shunned any hidden meaning. They employed language which is clear, simple, and easy of understanding. The ordinary rules of construction are natural. They forbid the adding of any intent not reasonably within the meaning of the language.” Owen Report, supra note 234, at 10.
6. The House Seats Owen (June 6, 1930)


Except that Report No. 968 was just a proposal; only the full House could dispose of Lawson v. Owen. It did just that on June 6, 1930, nearly two years after Owen’s election. The Clerk read the Committee’s two resolutions, bundled together as House Resolution 241.⁴⁵¹ The House unanimously adopted this analytically empty measure by voice vote, without the least hint of prior discussion or dissent (save a prepared speech by Chairman Beedy).⁴⁵² The House merely “agreed to” the Committee’s bottom-line determination that Owen was “duly elected” and “entitled to retain her seat.”⁴⁵³ Owen’s colleagues had witnessed her fourteen-month clinic on how to be a good congressman; they positively adored her.⁴⁵⁴ Rejecting the Committee’s recommendation would have effectively expelled her from Congress, creating a nationwide sensation. So although the House’s new provisional-seating rule⁴⁵⁵ guaranteed Florida a full complement of congressmen, it likely multiplied Lawson’s burden of persuasion in this made-for-media constitutional challenge.

The Elections Committee must have known that this outcome was inevitable. But three of its members troubled themselves to deliver lengthy lectures on the deeper principles involved. Chairman Beedy went first, right before the House voted. After covering much familiar ground, he firmly insisted that Congress may lawfully regulate the status of its own citizens, even to “bridge a gap” in someone’s citizenship record.⁴⁵⁶

⁴⁴⁶ Vote To Seat, supra note 391.
⁴⁴⁷ Wins in House Fight, supra note 265.
⁴⁴⁸ Mrs. Owen’s Victory, supra note 393.
⁴⁴⁹ Ruth Bryan Owen Wins Congress Seat, ATL. CONST., Mar. 23, 1930, at 6A.
⁴⁵⁰ Mrs. Owen Wins, supra note 392.
⁴⁵¹ 72 CONG. REC. 10193 (1930).
⁴⁵² Id. at 10196. Owen missed the denouement—she was still in Florida, celebrating her recent renomination. Mrs. Owen Wins Right to Seat, SARASOTA HER.-TRIB., June 6, 1930, at 1.
⁴⁵³ 72 CONG. REC. 10193, 10196 (1930) (emphasis added). In a speech written before (but delivered after) the full-House vote, Congressman Eslick ten times called Owen the "sitting Member." Id. at 10198-99, 10202.
⁴⁵⁴ See Section III.B.3 supra. As one editor mused, "To find not one person in a republican house to vote for a republican against a democrat is quite some compliment to the democrat." KEY WEST CITIZEN, June 9, 1930, at 2.
⁴⁵⁵ See supra notes 251-252 and accompanying text.
Legislating "in contravention of existing fact" was nothing new. In 1867, for example, Congress declared that enlistees who had deserted the Army and Navy after April 19, 1865, should be legally regarded as never having done so. That law was "but one of many of a similar nature," and "no one has ever been heard to question its constitutionality." Section 4 of the Cable Act was therefore plainly constitutional; properly interpreted, it made Owen whole.

Congressman Newhall expanded on the majority's position in a speech given after the House formally seated Owen. He quoted Chief Justice Marshall's *Dartmouth College v. Woodward* opinion to demonstrate the impropriety of reframing the Framers' charter to accommodate unforeseen conditions. "The case being within the words of the rule," Marshall had written, it "must be within its operation likewise, unless there be something in the literal construction, so obviously absurd or mischievous, or repugnant to the general spirit of the instrument," to warrant making an exception. The "words of the rule" called for seven years, not seven immediately prior years. As Newhall read the Convention debates, this provision was meant to ensure that Representatives possessed "a background of Americanism." Owen epitomized these qualities, so there was nothing "obviously absurd" about the majority's application. Case closed.

Congressman Eslick of the minority responded with a pragmatic case for the "immediately preceding" position. Change had come "thick and fast" in recent years, both in public opinion and in the challenges congressmen confronted. Deep knowledge of the Fathers' governmental machinery just wasn't enough. Today's lawmakers "must know the thoughts, the desires, and the heartbeat of the present age—not a decade or decades ago." According to the majority, anyone born and raised in America would be eternally eligible to the House after turning seven. Some scoundrel might junk his Americanism for the seductive "doctrine of the reds." When the apostles of Bolshevism came knocking, Eslick warned, "this case will be a precedent." Cornered congressmen might

457. Id.
458. An Act for the Relief of Certain Soldiers and Sailors Therein Designated, ch. 28, § 1, 15 Stat. 14 (1867). This statute also eliminated a soldier or sailor's disabilities previously "incurred by the loss of his citizenship in consequence of his desertion." Id.
461. Id. at 644-45 (quoted (imperfectly) in 72 CONG. REC. 10196 (1930) (statement of Rep. Newhall)).
463. Id. at 10199 (statement of Rep. Eslick).
464. Id.
465. See id. (hypothesizing a candidate who lived his first seven years in America, left the country, and immigrated back after having resided in his ancestral homeland for "40 or 50 years").
466. Id.
467. Id.
then concoct some other exclusionary pretext, but the House would not be able to deny admission to these ideological pestilences on citizenship grounds. The precedent "the majority has written in this case . . . will later rise to plague the House."468

But what legal principle did Lawson v. Owen stand for? The entire 435-person House of Representatives, not any supporting committee, is authorized to judge Members’ qualifications. Five congressmen thought citizenship periods could be cumulative; four disagreed.469 The other 426 members (98 percent) left no trace of where (if anywhere) they stood, because the House imputed none of the Committee’s constitutional reasoning to itself. It merely certified that Owen was “duly elected” and “entitled” to sit.470 When endorsing or rejecting Elections Committee resolutions in disputed-citizenship cases commits either chamber to a clear legal position, up-or-down votes have determinable precedential content.471 But there were many ways to defend Owen’s eligibility.472 By declining to choose among them, the House afforded later generations creative room to characterize the legal lessons of its barebones disposition.

IV. WAS LAWSON V. OWEN UNPRECEDENTED?

Lawson’s legal team discovered only one previous citizenship contest, and it availed nothing.473 “There is no precedent in either House of Congress,” Lawson averred in his written brief.474 As far as anyone knew, this was correct. “The case is one for which there is no precedent,” Congressman Newhall declared after the contest had ended.475 Congressman Eslick, who interpreted the seven-year clause differently, at least agreed that neither chamber had ever considered the question: “I have been unable to find, and so far as I know, there is not a precedent throwing real light upon the issues involved in this contest. It is a new

468. Id.
469. Id. at 10198.
470. Id. at 10193, 10196.
471. For example, West Virginians elected Rush Holt to the Senate in November 1934, fully seven months before his thirtieth birthday. He stalled and presented his credentials after turning thirty. A Senate committee concluded that the “date on which a Senator-elect presents himself to the Senate, is sworn, and takes his seat, should be determinative of the age qualifications under the Constitution.” RICHARD D. HUPMAN, SENATE ELECTION, EXPULSION AND CENSURE CASES FROM 1789 TO 1960, at 135 (1962). The full Senate declared Holt eligible. JOSH CHAFETZ, DEMOCRACY’S PRIVILEGED FEW: LEGISLATIVE PRIVILEGE AND DEMOCRATIC NORMS IN THE BRITISH AND AMERICAN CONSTITUTIONS 180 (2007). In doing so, it necessarily adopted the committee’s construction of the Qualifications Clause’s age provision, since Holt was eligible to serve only if the above-quoted statement is true.
472. See Section I.E supra.
473. Bainum told the Elections Committee, “There is one application that has been made of this limitation provision”—the Senate’s exclusion of James Shields in 1849. The Irish-born Shields had unquestionably not been a citizen for nine years when he presented himself for admission. Owen Hearing, supra note 11, at 34. Bainum also missed the Senate’s exclusion of Albert Gallatin in 1794. See Salamanca & Keller, supra note 23, at 278-83.
474. Lawson Brief, supra note 231, at 15.
question.  

If they were searching for a written report in which a House or Senate committee had endorsed either the "cumulative" or "immediately preceding" view, they wouldn't have found one. But this battle had been fought twice before—in 1845, when congressmen debated whether recent citizens of the Republic of Texas would be constitutionally eligible to serve in Congress; and in 1870, when senators sparred over whether to accord Dred Scott—now a constitutional laughingstock—any additive weight in calculating Hiram Revels's technical fitness for office. These deliberations offered alluring legalistic arguments in support of each contestant's position. But the Revels episode in particular illustrated why Lawson v. Owen ought to have been no riddle at all.

A. The Annexation of Texas: Hidden in Plain Sight

On December 29, 1845, the House and Senate jointly resolved that the Republic of Texas "shall be one . . . of the United States of America, and admitted into the Union on an equal footing with the original states." Equal footing meant full representation in Congress. Would the State of Texas, never having been the Texas Territory, be able to elect a constitutionally eligible delegation right away? That depended on how one read the Qualifications Clauses. Texas had very recently been "a sovereign nation, independent of us, owing us no allegiance, and governed by her own laws." Most of its political stars had accumulated plenty of American-citizenship credit, but they had sworn mandatory oaths of allegiance to Mexico after migrating southward. For the first time in American history, the problem of inconsecutive citizenship periods bedeviled conventional thinking about a concrete, numerical constitutional provision.

Opponents of slavery heaved every imaginable prudential and constitutional protest at annexationists. Early in the debates, Congressman John P. Kennedy crafted an elegantly deductive objection: if Texas were immediately admitted as a state, no one could represent it in Congress, since the Qualifications Clauses require seven and nine years' citizenship. But this would create the anomaly of a state "bound to obey all our laws, yet having no voice in the making of them." Kennedy's line of argument assumed that only seven or nine immediately preceding years of citizenship satisfy the constitutional requirement. Congressman

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476. Id. at 10198 (statement of Rep. Eslick).
481. Id. app. at 298.
Garrett Davis made this assumption explicit, panning the "cumulative" view as a "quibble unworthy of a county court lawyer."

At least two congressmen disagreed, arguing that Texan transplants were fully qualified under the Constitution as long as they had been American citizens past their seventh and ninth birthdays. Yet most annexationist responses implicitly conceded the "immediately preceding" interpretation's correctness—and not just for the sake of argument. For example, several annexationists claimed that Texas could simply elect candidates who had been U.S. citizens (citizens of other states) at the precise moment of annexation. But if this "borrowing" theory were a sufficient answer, retorted annexation's opponents, why did Congress admit Louisiana to statehood nine years to the day after the cession treaty had been signed in 1803?

Some friends of annexation maintained that the phrase "Citizen of the United States" refers to a citizen of any state presently within the Union. Therefore, the entire time that American emigrants had been citizens of the Republic of Texas could count toward their congressional eligibility. Some in the pro-annexation bloc even contended that Americans who had taken up allegiance to the Republic of Texas hadn't actually expatriated themselves; they had just "placed themselves beyond the operation of our laws." Upon annexation, their American citizenship—merely suspended—would reactivate, just as if they had never left the country. Much like Section 4 of the Cable Act, these outlier arguments permitted congressmen to avoid the Qualifications Clause problem altogether if they wanted to. Such theories thus threatened to distort the precedential signal of Congress's decision to seat, or exclude, Texas's first senators and representatives.

Congress chose the former path. Texas sent two senators to Washington
by December 1846 and four representatives by December 1851. Each of these six had helped govern a foreign country fewer than seven or nine years ago, yet Congress seated them all. The House and Senate probably appreciated the constitutional principles at stake, given how thoroughly they had debated the matter. Texas’s annexation therefore weighs strongly in favor of the “cumulative” theory of the Qualifications Clauses’ citizenship requirements, as do the explicit (if infrequent) assertions that American-born Texan colonists were all qualified to serve by virtue of seven and nine earlier years of citizenship. But the “cumulative” theory suffered explicit denunciation, and annexationists rarely invoked it as a justification for seating Texans in Congress (if they addressed the eligibility issue at all). And if some congressmen actually believed that Texan settlers hadn’t lost their American citizenship by swearing allegiance to a foreign country or had always been U.S. citizens inasmuch as Texas was now a state, seating them was entirely consistent with the “immediately preceding” theory.

But everyone missed these points in 1929-30. The annexation of Texas was entirely absent from the parties’ written briefs and oral presentations, Elections Committee members’ questioning, the Committee’s written report, and public discussion of Lawson v. Owen. That the Committee’s (and the competitors’) “considerable study” yielded no trace of this monumental legislative exchange suggests that congressional constitutional interpretation was vastly understudied in the early twentieth century. Unfortunately, the Elections Committee also overlooked the historic 1870 Senate debate concerning Hiram Revels’s eligibility. It might have taught them everything they needed to know.


492. See id. at 84 (Houston and Howard); id. at 93 (Kaufman); id. at 122 (Pilsbury); id. at 131 (Rusk); id. at 136 (Scurry).

493. I have been unable to locate the precise moment of Congressman Howard’s swearing-in in the Congressional Globe, but no one uttered a peep about constitutional qualifications when Kaufman, Scurry, Rusk, Pilsbury, and Houston were seated. See CONG. GLOBE, 29th Cong., 1st Sess. 553 (1846) (Rusk); id. at 566 (Houston); id. at 897 (Kaufman); id. at 952 (Pilsbury); CONG. GLOBE, 32d Cong., 1st Sess. 5 (1851) (Scurry).

494. See supra note 487, at 399 (“The depth and sophistication of the constitutional analysis was often extremely impressive.”).

495. See supra note 483 and accompanying text.

496. See supra note 482 and accompanying text. Congressman Joshua Giddings decried the seating of Texas’s Members as a naked constitutional violation. See CONG. GLOBE, 29th Cong., 1st Sess. app. at 828 (1846) (statement of Rep. Giddings) (“Here are members now present who, six months since, were citizens of a foreign nation—sworn to support a foreign Government.”).

497. No Decision Reached in Mrs. Owen’s Case, supra note 386.
B. Echoes of Revels: The Expatriation Act as Dred Scott

On January 20, 1870, the Mississippi legislature elected Hiram Revels to the U.S. Senate as a Republican. Revels was black, the first nonwhite congressman-elect in U.S. history. Democrats objected to his seating as soon as Senator Henry Wilson presented Revels’s credentials. The incident quickly escalated into a controversy over Revels’s constitutional eligibility. In 1857, Dred Scott—the “adjudicated law of the land”—had held that blacks could never be U.S. citizens. The Fourteenth Amendment was ratified only in 1868. On one view, it didn’t purport to confer citizenship retroactively, instead declaring that “[a]ll persons born or naturalized in the United States . . . are citizens of the United States.” Republicans must have understood Dred Scott to have been authoritative until then, or else the Fourteenth Amendment and the cognate Civil Rights Act of 1866 were redundant—a “ridiculosity,” a “preposterosity.” The date was now February 23, 1870. Republicans should acknowledge that a court wouldn’t—couldn’t—have declared Revels a U.S. citizen when General Lee surrendered his troops. Due regard for constitutional scruples meant tough luck for Revels.

There was an easy way out, one with tremendous facial appeal. To put it mildly, Republicans believed that Dred Scott departed from the correct understanding of national citizenship to inflict previously nonexistent disabilities on African-Americans. Under this theory, the free-born Revels had been a citizen for the first thirty-five years of his life. Why not claim that Revels had “been nine Years a Citizen” because he was once a citizen for thirty-five? But not a single Republican senator argued from “cumulative” premises. To be sure, Republicans “wanted the admission of Revels to stand for a set of larger principles”—specifically, that it “overrul[ed] the Dred Scott decision squarely.” But surely a group that generated a gloriously prosaic argument about fractional blood quanta

499. Id. at 54.
500. CONG. GLOBE, 41st Cong., 2d Sess. 1503 (1870).
501. Id. at 1557 (statement of Sen. Vickers).
503. Primus, supra note 19, at 1682.
504. U.S. CONST. amend. XIV. After all, “all laws are prospective unless by explicit words they are made retroactive.” CONG. GLOBE, 41st Cong., 2d Sess. 1558 (1870) (statement of Sen. Vickers).
505. CONG. GLOBE, 41st Cong., 2d Sess. 1560 (1870) (statement of Sen. Vickers). In all lexical fairness, Vickers was quoting Republican Senators Charles Sumner and Carl Schurz, respectively.
506. Primus, supra note 19, at 1705.
507. Id. at 1704-05.
508. Id. at 1698.
510. The plea in abatement in Dred Scott had stated that Scott was “of pure African blood.” Id. (statement of Sen. Williams). At a glance, it sure seemed that Revels was “a person with a large preponderance of white blood in his veins.” Id. The applicable legal decisions, as Senator Williams read them, held that “persons in whom the white blood preponderates are not persons of color” and so have always been citizens. Id.
would have pushed for Revels’s eligibility under the clear text of the Qualifications Clause if any of them had bought the “cumulative” argument. Their silence, I believe, counts as weighty evidence that a Senate majority rejected Owen’s interpretation of the Clause in 1870. If only Lawson had known.

But almost all Republicans simply refused to play the numbers game. These Senators sat in judgment of *Dred Scott*, not Revels’s eligibility. Taney’s vile verdict had “sunk into oblivion . . . into eternal derision and contempt.” This “outrage upon the Constitution” had been “repealed by the mightiest uprising which the world has ever witnessed.” “Born a putrid corpse,” *Dred Scott* “became at once a stench in the nostrils . . . to be remembered only as a warning and a shame.” And yet Democrats coolly cited it to exclude Revels, profaning the Declaration’s solemn ode to human equality!

Republican after Republican vowed “never again to hear [Dred Scott] quoted as an authority.” This entailed consciously denying Taney’s “reign of wrong” any continuing validity in qualifications mathematics. Instead, Republicans would reason from the enlightened integers of Reconstruction’s “reign of right and righteousness.” Senator James Nye preferred to consult “the brighter and more attractive page of modern progress” than the “cruelties and enormities” of the Taney era. “[I]n this blaze of light and constitutional reform,” no court could formally acknowledge the old regime’s parchment iniquities. Tone-deaf Democrats failed to appreciate “the music of the hour.”

Senator Jacob Howard, an architect of the Fourteenth Amendment, stripped the subject of any nonsense: “Shall we stand by our own legislation . . . or shall we adopt the principles of the *Dred Scott* decision?” Instead of ennobling “those barbarizing enactments of other times,” Senator Wilson savored “the living present and the advancing future.” Senator Frederick Sawyer also sickened of “defunct

511. Id. at 1542 (statement of Sen. Howard).
512. Id. at 1513 (statement of Sen. Nye).
513. Id. at 1566 (statement of Sen. Sumner); see also id. at 1513 (statement of Sen. Nye) (claiming that the People had jettisoned *Dred Scott* “as the lion shakes the dew from his hair”).
514. See id. at 1566 (“All men are created equal, says the great Declaration. . . . To-day we make the Declaration a reality.”) (statement of Sen. Sumner).
515. Id. at 1513 (statement of Sen. Nye).
516. Id.
517. Id.
518. Id.; see id. at 1514 (“Why hitch on to the stubbing-post of the past, and dwell where Taney dwelt?”).
519. Id.; see id. (claiming that *Dred Scott* “is beyond the power of human skill to revive it . . . . It is dead”).
520. Id.
521. Id. at 1543 (statement of Sen. Howard).
522. Id. at 1561-62 (statement of Sen. Wilson); see id. at 1566 (statement of Sen. Sumner) (refusing to suffer any “backward step”).

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dogmas." How could oath-swearing senators “go back and reason upon the principles of the Dred Scott decision”? Democrats must have been reading “the Constitution of nine years ago,” not “the Constitution under which we live this day.”

_Lawson v. Owen_ presented an eerily similar problem: a legal authority the sovereign People had rendered unconstitutional, but that still threatened to pollute post-reformation progress. Typically, “constitutional rules are formally entrenched against ordinary means of legal change.” But in an ironic inversion, the Expatriation Act—a product of ordinary lawmaking—found itself entrenched against new, true constitutional norms, since individual expatriations have constitutional implications that normally dissipate only with time. In 1870, Republicans hacked _Dred Scott_ to pieces and chose to pretend that it had never disgraced the U.S. Reports. By 1930, the Expatriation Act had also sunk into the unforgiving anticanon of congressional constitutionalism. Social movements seeking women’s equality had apparently changed the Constitution even more than the Nineteenth Amendment’s text indicated. Why entertain Lawson’s backward-looking challenge?

In 1930, not a single person—not even Owen—suggested that the Expatriation Act could be wholly ignored. Everyone “[went] into that recondite inquiry as to the political status of marital expatriates under the 1907 law.” After all, the very chamber deciding Owen’s case had passed the Expatriation Act by a nearly nine-to-one margin. The Supreme Court had overwhelmingly upheld the law’s constitutionality within recent memory. Universal female suffrage was a monumental achievement, of course, but it was hardly their grandfathers’ blood-soaked battle for the soul of America.

Still, Cable Act supporters interpreted the Nineteenth Amendment to require “equal rights with reference to citizenship.” Never again would

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523. _Id._ at 1564 (statement of Sen. Sawyer); _see id._ (arguing that Americans had “had enough of this sort of thing” after the illuminating “fires of war of revolution”).

524. _Id.; see id._ ("It is too late to talk about the Dred Scott decision.").

525. _Id._ (statement of Sen. Drake).

526. _See, e.g., infra note 582 and accompanying text._


528. Again, I assume the correctness of the “immediately preceding” view. The above scenario represents an unfortunate example of what Professor Sachs calls “constitutional backdrops”—nonconstitutional law insulated from ordinary methods of legal change. _See generally Sachs, supra note 527._

529. _See Section V.A infra._


531. 41 _CONG. REC._ 1467 (1907). The relevant bill had been “unanimously reported from the Committee on Foreign Affairs at the request of the Department of State.” _Id._ at 1464 (statement of Rep. Perkins).

532. _Mackenzie v. Hare_, 239 U.S. 299, 312 (1915). _Mackenzie_ was unanimous on the merits; Justice McReynolds penned an enigmatic one-sentence dissent asserting that the Court lacked jurisdiction. _Id._ at 312 (McReynolds, J., dissenting).

"[p]articipation in our Government" be regulated "solely by a marriage ceremony." 534 Like Dred Scott, the Expatriation Act was now "as archaic as the doctrine of ordeal by fire," 535 meaning that Mackenzie v. Hare could no longer withstand scrutiny. 536 Wouldn’t the House betray the principles of 1920 by giving continuing effect to the principles of 1907? 537 Why dignify the "defunct dogmas" 538 of an extinct patriarchy? Perhaps Owen’s Congress saw no other principled option. I’ve uncovered no evidence that anyone, until now, has connected the Revels and Owen episodes in this way, so the Elections Committee likely had no conception of refusing to grandfather the lingering effects of a now-unconstitutional legal authority. As charmingly esoteric as Professor Primus’s rediscovery of Revels might seem at first blush, it held the key to answering one of the strangest riddles a legislative body has ever faced.

V. WHAT CAN LAWSON V. OWEN TEACH US?

The next time an erstwhile expatriate seeks admission to Congress fewer than seven or nine years after her naturalization, Owen’s case will be a trove of insights. (We shouldn’t hold our breaths. 539) But more importantly, close study of Lawson v. Owen unlocks new evidence that can inform three of the debates most central to constitutional law and theory.

A. The Nineteenth Amendment and Equal Protection

Today, the Supreme Court treats the Nineteenth Amendment as a straightforward rule—no level of government may deny women, as women, the right to vote. 540 An epochal shift in the foundations of

534. Id.
535. Id. at 9058 (statement of Rep. Rogers).
536. See BRECKINRIDGE, supra note 75, at ix ("[T]he Nineteenth Amendment made a continuation of the old principle impossible."). It would seem, then, that the Eleventh, Fourteenth, Sixteenth, and Twenty-sixth Amendments are not the only ones to have overruled a Supreme Court decision. For one expression of the constitutional wisdom, see Erwin Chemerinsky, The Price of Asking the Wrong Question: An Essay on Constitutional Scholarship and Judicial Review, 62 TEX. L. REV. 1207, 1230 (1984) ("Constitutional amendments have overturned Supreme Court decisions on only four occasions."). In fairness, the Nineteenth Amendment was not principally designed to disturb a specific judicial precedent. But it did so just as effectively as the four listed above.

537. James Carson (Owen’s lawyer) had argued as early as 1926 that the Nineteenth Amendment expressed the People’s policy as to Owen’s very case: "If the house should enforce any other rule it would be enforcing a law which has since been repealed on the ground of justice. It would be no less absurd than for a court to convict in a criminal case a man for violating a statute which has been repealed." Carson, supra note 149; see also Mrs. Owen’s Victory, supra note 393 ("The effect of that untenable arrangement under which an American woman became an Englishwoman through a marriage contract should not be perpetuated, now that the measure has been supplanted.").

539. See 72 CONG. REC. 10196 (1930) (statement of Rep. Newhall) ("[I]t is only remotely possible that the decision in any future case will be based upon it as a precedent."); id. at 10198 (statement of Rep. Edlick) ("It is... probably a question that may never arise again.").

540. See Reva B. Siegel, She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family, 115 HARV. L. REV. 947, 953 (2002) (observing that the Amendment is now
American governance seems to have left only this "systemically unremarkable, normatively insignificant, fragment of constitutional text."\(^{541}\)

It was not always so. Professor Reva Siegel has persuasively argued that when Americans ratified the Nineteenth Amendment, they consciously elevated women to equal-citizenship stature by repudiating an entire way of thinking that had justified their disfranchisement.\(^{542}\) In *Adkins v. Children's Hospital*\(^{543}\)—decided just three years after the Amendment’s ratification—the Court invalidated a minimum-wage law on Fifth and Nineteenth Amendment grounds for drawing distinctions on the basis of sex.\(^{544}\) *Adkins* has since been discredited for exalting the so-called "liberty of contract," but modern distaste for that doctrine needn’t negate an entirely valid historical observation—that in 1923, the Supreme Court "rea[d] the Nineteenth Amendment as conferring equality on women . . . with significance for other bodies of constitutional doctrine."\(^{545}\)

In an important article,\(^{546}\) Professor Steven Calabresi and Julia Rickert built on Siegel’s synthetic approach to the Fourteenth and Nineteenth Amendments in arguing that state-sanctioned sex discrimination became unconstitutional after the latter was ratified. They claim that the Equal Protection Clause’s original public meaning forbids discrimination that creates a system of caste,\(^{547}\) and that sex discrimination came to be seen as a form of caste by 1920.\(^{548}\) Since an assurance of political rights necessarily implies full civil rights,\(^{549}\) a constitutionally enfranchised group may not be denied civil rights through reference to the very traits by

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\(^{541}\) Siegel, supra note 540, at 1012; see also Frederick Schauer, *Easy Cases*, 58 S. CAL. L. REV. 399, 402 (1985) (grouping the Nineteenth in a list of amendments “that are rarely, if ever, taken to be the stuff of constitutional adjudication or constitutional theory”).

\(^{542}\) See generally Siegel, supra note 540.

\(^{543}\) 261 U.S. 525 (1923).

\(^{544}\) Id. at 553. The Court took judicial notice of the “great—not to say revolutionary—changes which have taken place since [Muller v. Oregon (1908)] in the contractual, political, and civil status of women, culminating in the Nineteenth Amendment.” Id. It then cited the “present day trend . . . by which woman is accorded emancipation from the old doctrine that she must be given special protection or be subjected to special restraint in her contractual and civil relationships.” Id.

\(^{545}\) Siegel, supra note 540, at 1015; see also United States v. Hinson, 3 F.2d 200, 200 (S.D. Fla. 1925) (holding that “since the adoption of the Nineteenth Amendment,” the common-law doctrine of coverture “has no application” as a matter of constitutional law); cf. Hollander v. Abrams, 132 A. 224, 229 (N.J. Ch. 1926) (“[S]ince the Nineteenth Amendment to the Federal Constitution, practically all of the disabilities of women, both married and single, have been removed [by legislation], so that to-day she has practically all the rights and privileges of the male citizen.”).

\(^{546}\) Calabresi & Rickert, supra note 31.

\(^{547}\) Id. at 4.

\(^{548}\) Id. at 9.

\(^{549}\) See id. at 67 (“Political rights are the apex of the rights hierarchy with civil rights at the base.”).
which voting rights are protected. Therefore, “fidelity to the original public meaning of the Fourteenth Amendment has, since 1920, led inexorably to the conclusion that the Fourteenth Amendment prohibits sex discrimination.” Under this theory, the Nineteenth Amendment finished the work of John Bingham and Jacob Howard, “mak[ing] women the equals of men under the law.”

I take no position on this conclusion’s correctness or the methodology employed to reach it. I wish only to note that, to the extent that the widely shared understandings of Owen’s generation may reflect actual constitutional meaning, Owen’s struggle provides powerful evidence—the most direct historical evidence yet discovered—that the Nineteenth Amendment made women not just full and equal voters, but “the equals of men under the law.” Justice Ginsburg’s pathbreaking successes as a litigator were not “the first time in United States history [when] it became possible to urge successfully, before legislatures and courts, the equal-citizenship stature of women and men as a fundamental constitutional principle.” Owen did just that—and to a Congress of men eager to embrace it.

Two years after the Nineteenth Amendment’s ratification, Congress explicitly proscribed sex discrimination in the field of naturalization. Several congressmen championed the Cable Act as an inexorable outgrowth of the Amendment’s commitment to women’s equal citizenship. Far-flung print commentary on Lawson v. Owen suggests that such legislative measures weren’t simply products of political

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550. Id. at 85; see also Akhil Reed Amar, Women and the Constitution, 18 Harv. J. L. & Pub. Pol’y 465, 471 (1995) (“[The Nineteenth Amendment] can be understood as establishing a kind of a fortiori argument: if women have equal political rights, a fortiori they should have equal civil rights.”). Eric Fish astutely notes that the Twenty-sixth Amendment sits uneasily with this “a fortiori” theory of constitutional protection, but he proposes a “clarification theory” that justifies the former theory’s applicability to the Nineteenth. See generally Eric S. Fish, Response, Originalism, Sex Discrimination, and Age Discrimination, 91 Tex. L. Rev. See Also 1 (2012). Section 1 of the Twenty-sixth Amendment reads, “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.” U.S. Const. amend. XXVI, § 1.

551. Calabresi & Rickert, supra note 31, at 47.

552. Id. at 15. Professor David Strauss, for one, seems to deny the validity of this synthetic approach in the sex-discrimination context: “[A] lot has happened since 1868. But as far as sex discrimination is concerned, not a lot has happened to the Constitution. The Nineteenth Amendment guaranteed women the right to vote, but that’s all. No amendment was ever adopted to guarantee other rights to women.” David A. Strauss, The Living Constitution 13 (2010).


556. See Cable Act of 1922, ch. 411, § 1, 42 Stat. 1021 (1922) (“[T]he right of any woman to become a naturalized citizen of the United States shall not be denied or abridged because of her sex or because she is a married woman.”).

557. See supra notes 111-116 and accompanying text.
expediency. According to one newspaper, the Nineteenth Amendment "put wom[e]n on an individual citizenship basis."558 "In these days of equality of the sexes," another editorialist argued, Owen was right to argue that "[s]auce for the goose is sauce for the gander."559 A Washington Post op-ed expressed the point as plainly as possible: the law invoked to exclude Owen deprived her of equal citizenship rights, "in clear violation of the nineteenth amendment."560 "The only way that Congress could make this amendment fully effective," the writer continued, would be "to remove all disabilities on account of sex."561 These understandings echoed sweeping assertions about the Nineteenth Amendment that had appeared in 1920s newspapers,562 such as that by Congressman Edward E. Browne: "With the 19th amendment a part of our constitution it is an anomaly to deny to voting citizens subordinate rights on account of sex."563 Calabresi and Rickert's exact thesis, ninety years before.

Even Lawson joined the chorus. His written brief affirmed that the Cable Act "was caused by the ratification of the XIX Amendment."564 Accordingly, the Act "harmonized the rights of citizenship of an American woman with an American man, placing them on an absolute equality."565

558. Objections to Seating, supra note 146.
559. Widow Rights, supra note 368.
561. Id.
562. See, e.g., A Patriotic Obligation, EDGEFIELD ADVERTISER, Sept. 22, 1920, at 5 (claiming that the Nineteenth Amendment’s ratification “establish[ed] the full and equal citizenship of women”); J.C. Nagle, We Women of Today, THE EAGLE (Bryan, TX), Apr. 20, 1921, at 2 (“We women are equal citizens now.”); Wisconsin Where Women Are People, GULFPORT DAILY HER., Aug. 4, 1921, at 4 (arguing that the Nineteenth Amendment “intended to confer” “all the rights and privileges pertaining to sex equality” (quoting a Richmond newspaper)); A Twentieth Amendment, APPLETON POST CRESC., Oct. 8, 1921, at 4 (declaring that equality in the “rights, duties, functions and obligations of citizenship as between the two sexes are [sic] consequent upon the conferral of suffrage” (quoting a Lynchburg newspaper)); Women and Equal Rights, SCRANTON REP., Mar. 9, 1922, at 8 (“Unquestionably it was the intent of the nineteenth amendment to place women on a par with men as citizens.”); Bowling Green Man Enters as Dry Candidate?, SANDUSKY STAR JRN. (OH), May 16, 1922, at 1, 13 (quoting a congressional candidate’s pledge to support such “laws as are necessary to afford to women full measure of the civil and political rights conferred by the nineteenth amendment” (emphasis added)); Still Use Technicalities To Defeat Constitution, SAN BERNADINO CNTY. SUN, Dec. 28, 1925, at 12 (“The purpose of the [Nineteenth Amendment] was to place women on an exact equality with men in all matters of civil and political rights.”); id. (referring to the Nineteenth Amendment as “the equal rights amendment”); Knighthood Flowers, LIMA NEWS, May 19, 1927, at 6 (concluding that, by the Nineteenth Amendment, “Woman has gained her equality with man and as she stands in any court of the land, she must be prepared to take its findings under the same laws and the same codes that mete out justice to men”).
563. WAUKESHA DAILY FREEMAN (WA), Mar. 9, 1922, at 4; see id. ("[T]here certainly is no excuse or justification at the present time with the Nineteenth amendment in force for denying women the rights and privileges of men."). A League of Women Voters representative made this same point immediately after Owen's victory in 1930: "Women as well as men are now voters and should be entitled to all the responsibilities and obligations of citizenship as individuals without handicap by reason of sex." Marie Elwell Onions, Club Women Plan World Campaign To Aid Suffrage, OAKLAND TRIB., Mar. 16, 1930, at 1S, 4S.
564. Lawson Brief, supra note 231, at 7.
565. This statement wasn’t entirely true, since the law contained lesser discriminations that women’s groups grudgingly accepted as the cost of legislative compromise. See BREDBENNER, supra note 24, at 87 (describing this "gradualist approach to legal equality"). But the above quote provides
Bainum reiterated this point at the Elections Committee hearing: the Cable Act had “equalize[d] the man and woman so far as citizenship is concerned,” and “she stands before the law now as a man stands.”566 “Had it not been for the nineteenth amendment,” Bainum surmised, Owen would never have appeared before the Elections Committee to argue for women’s equal treatment.567 Lawson’s attorney believed and spoke these things!

So did Owen. In fact, she framed Lawson’s challenge as a referendum on “the attitude of my Government toward its women citizens.”568 A generation before, Congress had confiscated her citizenship merely “because [she] was a woman.”569 Lawson v. Owen was a blessing, really, to the extent that it “ma[d]e more clear the laws which have dealt unjustly with women.”570 The House would soon author an enduring installment of constitutional history: would it “establish the dignity and individuality” of the American woman’s citizenship by confirming “her right to the same consideration at the hands of her Government as is enjoyed by the male citizen”?571 Owen’s characterization stuck. The Washington Post considered her Elections Committee triumph “a victory for women who are seeking to remove legal discriminations against their sex.”572

As did the Elections Committee itself. In Report No. 968, the minority deliberately construed the Cable Act in light of its all-sufficient impetus, the Nineteenth Amendment. Their task—the law’s purpose—was “to right an injustice,” “to place [women] upon an equality with American men.”573 As Chairman Beedy saw it, this recent flurry of higher and ordinary lawmaking served “to place American-born women on the broad basis of enjoying all the essential rights of American citizenship.”574 Beedy fully embraced “the modern trend to give to the American woman the fullest enjoyment of those rights which are incident to American citizenship irrespective of sex.”575 (So did his political party, in its 1928 platform: “The Republican Party, which from the first has sought to bring this development about, accepts whole-heartedly equality on the part of women.”576)

For Congressman Newhall of the majority, the Nineteenth Amendment

566. Owen Hearing, supra note 11, at 32.
567. Id. at 40.
568. Id. at 61.
569. Id. at 55.
570. Id. at 59.
571. Id. at 61.
572. Mrs. Owen’s Victory, supra note 393.
575. Id. at 10196.
576. Id. at 9317.
“made an equal citizenship status” for women.\footnote{577} “There had been discrimination against woman,” but “now clothed in citizenship she possess[s] every right of man.”\footnote{578} The Expatriation Act had inflicted an “archaic injustice”;\footnote{579} now, the Cable Act “makes woman man’s equal.”\footnote{580} The former’s constitutionality had been “upheld on the basis of [a] legal fiction.”\footnote{581} But after the Nineteenth Amendment, the Expatriation Act “would now be unconstitutional.”\footnote{582} This was no casual or cryptic remark of an indifferent politician. It was the fully considered, crystal-clear legal conclusion of a congressman who had pondered Owen’s case for months, and who cared enough about getting the constitutional reasoning right to deliver a lengthy speech for the \textit{Congressional Record} after the House dismissed Lawson’s challenge.

Remarkably, \textit{Lawson v. Owen} overlapped with a League of Nations conference that addressed member states’ nationality laws. The American delegates walked out in protest over the attendees’ refusal to abolish derivative citizenship for women.\footnote{583} On May 21, 1930, two weeks before Owen was formally seated, the House debated whether to pass a resolution approving the delegates’ actions. Not a single participant denied the “absolute equality for both sexes in nationality to be our policy”,\footnote{584} dissent emerged only over the wisdom of inserting the House into an international-law imbroglio. Owen told her doleful tale to the very House preparing to judge her qualifications.\footnote{585} Minutes later, Republican Congressman Albert Johnson, reactionary in other respects,\footnote{586} remarked that “each and every one of us here is firmly of the belief that every woman in the United States should have every right that every man in the United States has—it is our policy.”\footnote{587}

In short, very soon after the Nineteenth Amendment’s ratification, “the same exposition” of women’s constitutional equality “was explicitly

\footnote{577} \textit{Id.} at 10200 (statement of Rep. Newhall).
\footnote{578} \textit{Id.} at 10200-01.
\footnote{579} \textit{Id.} at 10196.
\footnote{580} \textit{Id.} at 10201.
\footnote{581} \textit{Id.} at 10196.
\footnote{582} \textit{Id.} (emphasis added); \textit{see id.} at 10201 (observing that Mackenzie v. Hare “was before the nineteenth amendment and the passage of the Cable Act. If this question were presented now and under existing law, I think the judgment of the court would be the reverse”). One might instead conclude that the Nineteenth Amendment rendered the Expatriation Act unconstitutional merely as to new foreign marriages, because the Act had deprived certain women (Americans marrying foreigners) of the right to vote on the basis of their sex. Clearly, Newhall took a far more sweeping view of the Nineteenth Amendment.
\footnote{583} \textit{Id.} at 9317; \textit{see id.} (“[W]e believe in equality in nationality without distinction as to sex.”) (statement of Rep. Fish).
\footnote{584} \textit{Id.} (statement of Rep. Fish).
\footnote{585} \textit{Id.} (Because of that recent experience of my own, the nationality laws of our country are a matter of deep personal concern”) (statement of Rep. Owen).
\footnote{586} Johnson was the most vocal nativist in a Congress that had passed unprecedented immigration restrictions in the early 1920s. \textsc{Roger Daniels \& Otis L. Graham}, \textit{Debating American Immigration, 1882-Present,} 20 (2001).
declared and admitted by the friends and by the opponents of Owen’s political party. Yet, Adkins aside, not until the 1970s did the Supreme Court invoke equal-protection principles to invalidate laws discriminating on the basis of sex. In 1994, Justice Ginsburg reflected on this doctrinal path not taken, one marked so vividly by Owen’s generation:

There was always a view that once the Nineteenth Amendment was passed and it made women full citizens, that was in effect an Equal Rights Amendment. . . . Many people thought you could put the Fourteenth Amendment together with the Nineteenth Amendment and that was essentially the Equal Rights Amendment. But it didn’t happen.

Calabresi and Rickert argue that it should have, that “the Court has missed the boat” on the Nineteenth Amendment. The documentary history of Lawson v. Owen furnishes significant new evidence for their provocative counter-doctrinal claim. Owen’s story also necessitates two related inquiries: When did her generation’s shared assumption of women’s constitutional equality begin to break down, receding into a decades-long dormancy? And why, given the Court’s frequent resort to “constitutional history,” has modern sex-discrimination doctrine developed so ahistorically? It might have instead taken root in the post-suffrage proposition that “every woman in the United States should have every right that every man in the United States has.”

Lawson v. Owen was the epitome of what might have been. It shows that constitutional change can be as transient as it is transformative when citizen activism loses its steam. What Ruth Bryan Owen’s victory might have meant for equal-protection doctrine, and why she instead bequeathed no lasting constitutional legacy, deserve serious scholarly examination.

B. “Seven Years”: Phantom Clarity and Lived Experience

In researching her own eligibility, Owen found “nothing equivocal . . . about the wording of the Constitution.” The Elections
Committee majority also deemed the seven-year provision’s “ordinary meaning . . . apparent on the face of the instrument.”596 Who could fault them? Hadn’t Owen indisputably “been” seven years a citizen?

Almost all modern constitutional theorists agree that the Constitution contains some hard-wired provisions that, by their nature, dictate easy answers to legal disputes. Where the Framers consciously entrenched “particularized, bright-line demarcations,”597 this wisdom holds, the Constitution simply “means what it says and says what it means.”598 For such “specific” provisions, “conscious reference to purpose seems unnecessary.”599 It would simply be preposterous to allow “the principles or purposes behind the text” to override an “unambiguous, concrete and specific rule.”600 Accordingly, generations of judicial601 and scholarly602

599. JOHN HART ELY, DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW 13 (1980).
authority proclaim that absolute constitutional clarity can be ascertained from the face of the document itself. The same is often said of statutory text.\footnote{603}

The House and Senate Qualifications Clauses speak in numbers, not norms. Representatives and senators must have been citizens for “seven” and “nine” years, respectively. These clauses appear in Professor Frederick Schauer’s list of “settled” and “[u]nlitigated” constitutional provisions,\footnote{604} the ones that never “generate the important questions of constitutional theory.”\footnote{605} The seven-year figure was a somewhat-arbitrary product of interest-balancing, but the fact that the Framers settled on a hard number instead of a list of requisite traits is compelling evidence that they sought to bind future Congresses “to respond in a determinate way to the presence of delimiting triggering facts.”\footnote{606} What could be complicated about a congressional citizenship contest?

The unanticipated puzzle of lost birthright citizenship followed by naturalization, leading to scattered citizenship periods, forced the Seventy-first Congress to decide when a member-elect must have “been seven Years a Citizen.” One might deny the problem’s existence, as Owen did, by pointing to the clause’s rule-like precision. But without probing the citizenship requirement’s basic purpose—and the “cumulative” view’s unthinkable implications—the provision’s application to “new and unforeseen phenomena”\footnote{607} strikes at the heart of Article I, Section 2. For if the seven-year requirement is meant to accomplish anything, it forbids aliens from serving in Congress.\footnote{608} Yet the Elections Committee majority—and Owen herself—unwittingly granted that the Constitution

\footnote{603. See, e.g., Nichols v. United States, 136 S. Ct. 1113, 1119 (2016) ("[E]ven the most formidable argument concerning the statute’s purposes could not overcome the clarity we find in the statute’s text."); Kloeckner v. Solis, 133 S. Ct. 596, 607 n.4 (2012); Mohamad v. Palestinian Authority, 132 S. Ct. 1702, 1710 (2012) (concluding that a purposive argument simply cannot overcome the force of the plain text"); BedRod Ltd., LLC v. United States, 541 U.S. 176, 183 (2004) ("[O]ur inquiry begins with the statutory text, and ends there as well if the text is unambiguous.").

\footnote{604. Schauer, supra note 541, at 404.

\footnote{605. Id. at 401; see id. at 418-19 ("We need not depart from the text to determine . . . the age and other qualifications for various federal offices."); Strauss, supra note 32, at 12 ("[S]ome issues are so conclusively settled by the text that they are never litigated.").

\footnote{606. Kathleen M. Sullivan, The Supreme Court, 1991 Term — Foreword: The Justices of Rules and Standards, 106 Harv. L. Rev. 22, 58 (1992) (describing rule-like legal directives, as opposed to standards, which “ten[d] to collapse decisionmaking back into the direct application of the background principle or policy to a fact situation”); see also Jack M. Balkin, Nine Perspectives on Living Originalism, 2012 U. Ill. L. Rev. 101, 103 (claiming that “[c]onstitutional adopters choose hardwired rules because they want to limit discretion").


\footnote{608. For Supreme Court case law strongly supporting this position, see supra note 415.}
permits this inconceivable outcome.

It is not exactly news that the clarity-in-practice of seemingly precise legal language can be shaped by extratextual considerations. District of Columbia residents may avail themselves of federal courts’ diversity jurisdiction, even though Article III speaks of “Citizens of different States.” It is widely assumed that neither the Executive nor the judiciary, in addition to “Congress,” may abridge First Amendment guarantees. And despite that Amendment’s iconic phrase “no law,” the government may in fact silence speakers if its restrictions are sufficiently tailored to achieve a valuable enough state interest. As Professor Jamal Greene puts it, “The susceptibility of semantic meaning to political and historical construction may pose a serious challenge to the intelligibility of the rules-standards distinction.”

We as a legal culture have decided—at least sometimes—to allow concerns extraneous to the constitutional text to trigger perceptions of textual ambiguity. And as the Supreme Court has recently demonstrated in three marquee statutory-interpretation decisions, this move “can be made with respect to any text.” In Bond v. United States, for example, the Court concluded that statutory ambiguity “derive[d] from the improbably broad reach of the key statutory definition” and “the deeply serious consequences of adopting such a boundless reading.” Justice Scalia ridiculed this departure from diagnosing clarity on the basis of text alone: “Whatever has improbably broad, deeply serious, and apparently unnecessary consequences ... is ambiguous!” Yates v. United States and King v. Burwell similarly allowed purposive and pragmatic considerations to override initial perceptions of textual clarity.

This judge-empowering interpretive device has proven immensely

610. U.S. Const. amend. III; see Engblom v. Carey, 677 F.2d 957 (2d Cir. 1982).
611. U.S. Const. amend. I; see Bradley & Siegel, supra note 36, at 1243-47.
612. U.S. Const. amend. I (emphasis added). Even in the most speech-friendly doctrinal circumstances, abridgments are permitted if they are “the least restrictive means of achieving a compelling state interest.” McCullen v. Coakley, 134 S. Ct. 2518, 2530 (2014).
614. Re, supra note 37, at 418.
616. Id. at 2096 (Scalia, J., concurring in the judgment); see also Neal Kumar Katyal & Thomas P. Schmidt, Active Avoidance: The Modern Supreme Court and Legal Change, 128 Harv. L. Rev. 2109, 2150, 2152 (2015) (“The naked text could hardly have been clearer... There does not seem to be any textual ambiguity in the law.”).
617. See Yates v. United States, 135 S. Ct. 1074 (2015) (concluding that not all objects that are tangible are encompassed within the statutory phrase “any... tangible object”); King v. Burwell, 135 S. Ct. 2480 (2015) (holding that the statutory phrase “an Exchange established by the State” included exchanges established by the federal government).
controversial, for it threatens to distort the achievements of successful political coalitions. *Lawson v. Owen* should compound this anxiety, because it confirms that in some instances, purposive and pragmatic considerations are necessary to determine whether a text is clear in the first place. That long-overlooked episode shows that not even “mathematical” provisions are immune—indeed, perhaps the Framers used “breathtakingly exact” language when they most overestimated their own predictive abilities, causing them to dictate consequences at war with uniformly shared objectives. This isn’t to say that every numerical constitutional provision must suddenly be thrown into chaos, or that all exemplars of “constructed constraint” or “the New Holy Trinity” were correctly decided. But unless the Qualifications Clauses allow aliens to make Americans’ laws for them, Owen’s case shows why those interpretive techniques cannot be flatly rejected.

C. Expatriation’s Revenge? Containing Repudiated Constitutional Principles

As news of Owen’s Elections Committee victory broke, a *Washington Post* editorial offered a lucid overview of the situation: Owen’s challenger had perversely sought to capitalize on the lingering legal implications of a now-unconstitutional statute. In other words, “The effect of that untenable arrangement under which an American woman became an Englishwoman though a marriage contract should not be perpetuated.”

But in 2015, a Supreme Court plurality perpetuated the effect of that very law—one that had divested only women of their American citizenship upon taking a non-citizen spouse. Justice Scalia’s opinion in *Kerry v. Din* affirmatively cited the Expatriation Act of 1907 as part of our long and “all-too-recent practice” of “regulating spousal immigration.” In denying that an American woman possessed a liberty interest in the disposition of her foreign husband’s visa application, Scalia observed that women in the plaintiff’s position had once “lost [their] own rights as a citizen upon marriage.” This was a “striking[]” indication that the


620. See generally Bradley & Siegel, *supra* note 36.

621. *See generally Re*, *supra* note 37.

622. *Mrs. Owen’s Victory*, *supra* note 393.


624. *Id.* at 2135.
asserted liberty interest was not “objectively, deeply rooted in this Nation’s history and tradition,” which the plurality took to be a prerequisite for recognizing unenumerated fundamental rights under the Due Process Clause.\textsuperscript{626}

Aside from the factual inaptness of this citation,\textsuperscript{627} the \textit{Din} plurality thought it immaterial that women’s marital expatriation was a primitive practice now understood to offend elemental principles of inclusion in the American constitutional order. If enacted today, the Expatriation Act would be unconstitutional twice over. First of all, as even the \textit{Din} plurality acknowledged, women’s derivative citizenship was a vestige of the Blackstonian-era law of coverture.\textsuperscript{628} To understate the case significantly, “Modern equal-protection doctrine casts substantial doubt” on the male-empowering legal unity of husband and wife.\textsuperscript{629} And second, the Supreme Court held in \textit{Afroyim v. Rusk} that Congress may not “take away an American citizen’s citizenship without his assent.”\textsuperscript{630} \textit{Afroyim} repudiated the reasoning of \textit{Mackenzie v. Hare}, which had legitimated the fiction that a woman’s marriage to a foreigner demonstrated conclusively that she intended to renounce her citizenship.\textsuperscript{631} Yet the \textit{Din} plurality accorded this outmoded, long-repealed law continued force in present-day constitutional adjudication.

In recent years, the proper methodology for identifying fundamental constitutional rights has been as unstable as the Court’s shifting coalitions. The majority opinion in \textit{Obergefell v. Hodges} (2015) insisted that this task “requires courts to exercise reasoned judgment” in a way that is “guide[d] and discipline[d],” but not wholly determined, by past practices.\textsuperscript{632} This approach finds considerable support in the case law.\textsuperscript{633} But Chief Justice Roberts (in dissent) could also plausibly claim that “[o]ur precedents have
required that implied fundamental rights be ‘objectively, deeply rooted in this Nation’s history and tradition.”’634 The latter approach—which the Din plurality had embraced two weeks earlier—is designed to err on the side of preserving space for democratic choice. After all, “guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended,”635 and the Court’s exaltation of contested social and economic theories has accounted for some of its gravest historical errors.636

But resurrecting flatly unconstitutional practices is entirely unnecessary to maintaining an appropriately modest judicial role. Americans are not “engaged in an earnest and profound debate”637 about whether to involuntarily expatriate a portion of their law-abiding female citizenry. That ruinous policy choice has been constitutionally off limits for many decades. Forbidding constitutional actors to invoke such abhorrent traditions in generating new doctrine would be one way to ensure that “tradition is a living thing,” and that due-process jurisprudence not “build[] on” “traditions from which [the nation] broke.”638 But that narrow rule of admissibility—which could exist entirely apart from the feared subjectification of individual liberty—would not force judges to consider whether the philosophical underpinnings of certain practices have become obsolete, as Justice Brennan once advocated.639

The approach adopted by the Din plurality would truly “allow[] the past alone to rule the present,”640 even if every member of the Supreme Court agreed that the relevant “past” was now plainly unconstitutional. If forced female expatriation is part of “this Nation’s history and constitutional traditions”—and thus fair game for undercutting alleged liberty interests—then it is entirely proper to argue that a claimed right cannot be considered fundamental because American law once tolerated the slave trade, poll taxes, racial segregation, and women’s exclusion from the legal profession. Practices that have been extirpated from our constitutional tradition ought not weigh against a finding that others have firmly taken root there. “[C]areful ‘respect for the teachings of history’”642 requires at least this much. Or as the Supreme Court recently remarked in dissociating itself from past constitutional wrongs, “There is no grandfather clause that

636. See Obergefell, 135 S. Ct. at 2616-17 (Roberts, C.J., dissenting).
637. Glucksberg, 521 U.S. at 735.
638. Poe, 367 U.S. at 542 (Harlan, J., dissenting).
639. See Michael H., 491 U.S. at 140 (Brennan, J., dissenting) (preferring “to ask whether the basis for [a] rule . . . has changed too often or too recently to call the rule embodying that rationale a ‘tradition’”).
640. Obergefell, 135 S. Ct. at 2598.
641. Glucksberg, 521 U.S. at 725 (emphasis added).
permits States to enforce punishments the Constitution forbids.  

In allowing a blatantly unconstitutional practice to shape modern due-process doctrine, Justice Scalia's traditionalist Din opinion was itself quite innovative—apparently the first of its kind. Din's law-generating reanimation of revolting historical traditions should be rejected no less forcefully than the practices themselves. And more broadly, adjudicators of all stripes should never "giv[e] legal effect to the fact that other principles—evil principles—[were] applied at an earlier time."  

CONCLUSION

A surge of anti-prohibition sentiment swept Ruth Bryan Owen from office in November 1932. But President Roosevelt deemed her continued service indispensable. On April 12, 1933, he nominated Owen to become America's Minister to Denmark and the nation's first female ambassador. The Senate unanimously confirmed her that same day without the customary referral to the Foreign Affairs Committee. In the ultimate tragicomic twist, Owen resigned the post under considerable pressure after taking a Danish husband in 1936. Denmark hadn't yet abolished women's derivative citizenship, so the American Minister to Denmark found herself a subject of King Christian X!  

But Ruth Bryan Owen Rohde's native country knew better than to abandon her again. Less than a week after this controversial marriage, the Daughters of the American Revolution named her honorary chairman of their Good Citizenship Pilgrimage, modeled after Owen's innovative citizenship contests for schoolchildren. Much later, the New York City Federation of Women's Clubs honored Ruth for her "outstanding contributions to good citizenship" and devotion to "the letter as well as the spirit of our Constitution and the Bill of Rights."  

643. Montgomery v. Louisiana, 136 S. Ct. 718, 731 (2016); see also id. at 732 (clarifying that states have no interest in "preserv[ing] a conviction or sentence that the Constitution deprives [them] of power to impose").

644. Primus, supra note 19, at 1688; see also Entines v. United States, 160 F. Supp. 3d 208, 214 (D.D.C. 2016) ("[T]he Court today gives no continuing legal effect to the racial classifications of an earlier era."); cf. Stephen E. Sachs, Originalism as a Theory of Legal Change, 38 HARV. J. L. & PUB. POL'Y 817, 848 (2015) ("Our law might require us to ignore what past law actually was, in favor of what we now say it was. An honest positivist in mid-1650s England would say that the monarchy had been abolished; but when the Restoration came in 1660, the official position of English law was that Charles II had been king for the last twelve years.").


646. WRIGHT, supra note 124, at 78. Having seen the actual nomination letter, I can report (sadly) that it is marred by ink stains and pencil markings.

647. 77 CONG. REC. 1570 (1933).


Ruth Bryan Owen lived her life on the vanguard of social and constitutional change. Her celebrated citizenship case made her the face of gender equality in American law. But constitutional scholars have overlooked Owen’s struggles, and so for decades have missed crucial evidence that might have helped provide a more historically faithful basis for modern sex-discrimination doctrine. Likewise, this overlooked eligibility contest proves that whether even the Constitution’s numerical clauses are "clear" may well depend on extrinsic considerations that change continuously in light of freshly received facts. And the peculiar nature of Owen’s near-exclusion—an unconstitutional statute threatening to overshadow the very principles that supplanted it—shows why practices repugnant to the modern constitutional order should never be accorded residual legal effect.

Revels and Owen illuminate two generations’ efforts to make sense of our deepest national values by transcending a darker, not-so-distant past. Their gripping citizenship contests evoke long-forgotten—yet truly fundamental—strands of our constitutional heritage. What other neglected heroes have escaped our attention, and what will their stories tell us?