As noted in the text, not only did the Fourteenth and Fifteenth Amendments ignore the demands of the women's rights movement for equal access to the ballot box, but the Fourteenth Amendment introduced the word *male* for the first time into the U.S. Constitution. Nonetheless, many suffragists continued to believe that the newly formalized and broadened definition of American citizenship established by the Fourteenth Amendment could be used to gain women the vote through a judicial ruling. In 1872 a number of suffragists, including Susan B. Anthony, voted in the presidential election; Anthony was indicted and brought to trial, providing her the opportunity she sought to make her case (Document 15-8a). Anthony was blocked from making her appeal, but another suffragist, Virginia Minor of Missouri, sued the official who blocked her from the ballot box and saw her case reach the Supreme Court. The Court's decision (Document 15-8b), handed down in 1875, effectively ended all hopes that gender relations as well as race relations had been "reconstructed" by the Fourteenth Amendment, and strengthened the movement for a constitutional woman suffrage amendment. Furthermore, by effectively separating the right to vote from fundamental citizenship rights, the Court also helped set the stage for the later movement to use "color-blind" laws to disfranchise African Americans.

Sources: "The Fourteenth Amendment," July 9, 1868.

---

(a) I Stand Before You Under Indictment (1873)

*Friends and Fellow-Citizens:*—I stand before you under indictment for the alleged crime of having voted at the last presidential election, without having a lawful right to vote. It shall be my work this evening to prove to you that in thus doing, I not only committed no crime, but instead simply exercised my citizen's right, guaranteed to me and all United States citizens by the National Constitution beyond the power of any State to deny.

Our democratic-republican government is based on the idea of the natural right of every individual member thereof to a voice and a vote in making and executing the laws. We assert the province of government to be to secure the people in the enjoyment of their inalienable rights. We throw to the winds the old dogma that government can give rights. No one denies that before governments were organized each individual possessed the right to protect his own life, liberty and property. When 100 or 1,000,000 people enter into a free government, they do not barter away their natural rights; they simply pledge themselves to protect each other in the enjoyment of them through prescribed judicial and legislative tribunals. They agree to abandon the methods of brute force in the adjustment of their differences and adopt those of civilization. Nor can you find a word in any of the grand documents left us by the fathers which assumes for government the power to create or to confer rights. The Declaration of Independence, the United States Constitution, the constitutions of the several States and the organic laws of the Territories, all alike propose to protect the people in the exercise of their God-given rights. Not one of them pretends to bestow rights.

All men are created equal, and endowed by their Creator with certain inalienable rights. Among these are life, liberty and the pursuit of happiness. To secure these, governments are instituted among men, deriving their just powers from the consent of the governed.

Here is no shadow of government authority over rights, or exclusion of any class from their full and equal enjoyment. Here is pronounced the right of all men, and "consequently," as the Quaker preacher said, "of all women," to a voice in the government. And here, in this first paragraph of the Declaration, is the assertion of the natural right of all to the ballot; for how can "the consent of the governed" be given, if the right to vote be denied? Again:

Whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

Surely the right of the whole people to vote is here clearly implied; for however destructive to their happiness this government might become, a disfranchised class could neither alter nor abolish it, nor institute a new one, except
by the old brute force method of insurrection and rebellion. One-half of the people of this nation today are utterly powerless to blot from the statute books an unjust law, or to write there a new and just one. The women, dissatisfied as they are with this form of government, that enforces taxation without representation—that compels them to obey laws to which they never have given their consent—that imprisons and hangs them without a trial by a jury of their peers—that robs them, in marriage, of the custody of their own persons, wages and children—are this half of the people who are left wholly at the mercy of the other half, in direct violation of the spirit and letter of the declarations of the framers of this government, every one of which was based on the immutable principle of equal rights to all. By these declarations, kings, popes, priests, aristocrats, all were alike dethroned and placed on a common level, politically, with the lowliest born subject or serf. By them, too, men, as such, were deprived of their divine right to rule and placed on a political level with women. By the practice of these declarations all class and caste distinctions would be abolished, and slave, serf, plebeian, wife, woman, all alike rise from their subject position to the broader platform of equality.

The preamble of the Federal Constitution says:

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

It was we, the people, not we, the white male citizens, nor we, the male citizens; but we, the whole people, who formed this Union. We formed it not to give the blessings of liberty but to secure them; not to the half of ourselves and the half of our posterity, but to the whole people—women as well as men. It is downright mockery to talk to women of their enjoyment of the blessings of liberty while they are denied the only means of securing them provided by this democratic-republican government—the ballot.

For any State to make sex a qualification, which must ever result in the disfranchisement of one entire half of the people, is to pass a bill of attainder, an ex post facto law, and is therefore a violation of the supreme law of the land. By it the blessings of liberty are forever withheld from women and their female posterity. For them, this government has no just powers derived from the consent of the governed. For them this government is not a democracy; it is not a republic. It is the most odious aristocracy ever established on the face of the globe. An oligarchy of wealth, where the rich govern the poor; an oligarchy of learning, where the educated govern the ignorant; or even an oligarchy of race, where the Saxon rules the African, might be endured; but this oligarchy of sex which makes father, brothers, husband, sons, the oligarchs over the mother and sisters, the wife and daughters of every household; which ordains all men sovereigns, all women subjects—carries discord and rebellion into every home of the nation. . . . The moment you deprive a person of his right to a voice in the government, you degrade him from the status of a citizen of the republic to that of a subject. It matters very little to him whether his monarch be an individual tyrant, as is the Czar of Russia, or a 15,000,000 headed monster, as here in the United States; he is a powerless subject, serf or slave; not in any sense a free and independent citizen. . . .

Though the words persons, people, inhabitants, electors, citizens, are all used indiscriminately in the national and State constitutions, there was always a conflict of opinion, prior to the war, as to whether they were synonymous terms, but whatever room there was for doubt, under the old regime, the adoption of the Fourteenth Amendment settled that question forever in its first sentence:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside.

The second settles the equal status of all citizens:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, or deny to any person within its jurisdiction the equal protection of the laws.

The only question left to be settled now is: Are women persons? I scarcely believe any of our opponents will have the hardihood to say they are not. Being persons, then, women are citizens, and no State has a right to make any new law, or to enforce any old law, which shall abridge their privileges or immunities. Hence, every discrimination against women in the constitutions and laws of the several States is today null and void, precisely as is every one against negroes.

Is the right to vote one of the privileges or immunities of citizens? I think the disfranchised ex-rebels and ex-State prisoners all will agree that it is not only one of them, but the one without which all the others are nothing. Seek first the kingdom of the ballot and all things else shall be added, is the political injunction. . . .

If once we establish the false principle that United States citizenship does not carry with it the right to vote in every State in this Union, there is no end to the petty tricks and cunning devices which will be attempted to exclude one and another class of citizens from the right of suffrage. It will not always be the men combining to disfranchise all women; native born men combining to abridge the rights of all naturalized citizens, as in Rhode Island. It will not always be the rich and educated who may combine to cut off the poor and ignorant; but we may live to see the hardworking, uncultivated day laborers, foreign and native born, learning the power of the ballot and their vast majority of numbers,
combine and amend State constitutions so as to disfranchise the Vanderbilts, the Stewarts, the Conklings and the Fentons. It is a poor rule that won't work more ways than one. Establish this precedent, admit the State's right to deny suffrage, and there is no limit to the confusion, discord, and disruption that may await us. There is and can be but one safe principle of government—equal rights to all. Discrimination against any class on account of color, race, nativity, sex, property, culture, can but embitter and disaffect that class, and thereby endanger the safety of the whole people. Clearly, then, the national government not only must define the rights of citizens, but must stretch out its powerful hand and protect them in every State of this Union.

(b) Minor v. Happersett (1875)

MR. CHIEF JUSTICE MORRISON R. WAITE DELIVERED THE OPINION OF THE COURT:

The question is presented in this case, whether, since the adoption of the fourteenth amendment, a woman, who is a citizen of the United States and of the State of Missouri, is a voter in that State, notwithstanding the provision of the constitution and laws of the State, which confine the right of suffrage to men alone. . . . The argument is, that as a woman, born or naturalized in the United States and subject to the jurisdiction thereof, is a citizen of the United States and of the State in which she resides, she has the right of suffrage as one of the privileges and immunities of her citizenship, which the State cannot by its laws or constitution abridge.

There is no doubt that women may be citizens. They are persons, and by the fourteenth amendment "all persons born or naturalized in the United States and subject to the jurisdiction thereof" are expressly declared to be "citizens of the United States and of the State wherein they reside." But, in our opinion, it did not need this amendment to give them that position . . . sex has never been made one of the elements of citizenship in the United States. In this respect men have never had an advantage over women. The same laws precisely apply to both. The fourteenth amendment did not affect the citizenship of women any more than it did of men . . . Mrs. Minor . . . has always been a citizen from her birth, and entitled to all the privileges and immunities of citizenship.

If the right of suffrage is one of the necessary privileges of a citizen of the United States, then the constitution and laws of Missouri confining it to men are in violation of the Constitution of the United States, as amended, and consequently void. The direction question is, therefore, presented whether all citizens are necessarily voters.

The Constitution does not define the privileges and immunities of citizens. For that definition we must look elsewhere. In this case we need not determine what they are, but only whether suffrage is necessarily one of them.

It certainly is nowhere made so in express terms. The United States has no voters in the States of its own creation. The elective officers of the United States are all elected directly or indirectly by state voters. . . . It cannot for a moment be doubted that if it had been intended to make all citizens of the United States voters, the framers of the Constitution would not have left it to implication . . .

It is true that the United States guarantees to every State a republican form of government. . . . No particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated. . . . When the Constitution was adopted . . . all the citizens of the States were not invested with the right of suffrage. In all, save perhaps New Jersey, this right was only bestowed upon men and not upon all of them. . . . Under these circumstances it is certainly now too late to contend that a government is not republican, within the meaning of this guaranty in the Constitution, because women are not made voters. . . . If suffrage was intended to be included within its obligations, language better adapted to express that intent would most certainly have been employed . . .

For nearly ninety years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage. If uniform practice long continued can settle the construction of so important an instrument as the Constitution of the United States confessedly is, most certainly it has been done here. Our province is to decide what the law is, not to declare what it should be.

We have given this case the careful consideration its importance demands. If the law is wrong, it ought to be changed; but the power for that is not with us. . . . No argument as to women's need of suffrage can be considered. We can only act upon her rights as they exist.