

Remembering Associate Supreme Court Justice Ruth Bader Ginsburg, a healthcare champion

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When Ruth Bader Ginsburg was nominated by President Bill Clinton to the Supreme Court in 1993, he described her as the “Thurgood Marshall of gender-equity law.” In her ensuing 27 years on the Court, she would

become an ardent champion of health equity, reproductive rights, Americans with disabilities, and challenges to the 2010 Patient Protection and Affordable Care Act (ACA).

Her recent passing and the debate over her successor brought to mind memories of an event I covered as Assistant Editor of *The Jewish Voice & Herald*, where she was the keynote speaker. August 22, 2004 was a balmy and beautiful Sunday in Newport. The Touro Synagogue was filled to capacity, eager to welcome Justice Ginsburg, accompanied by her husband, Marty, to the annual reading of the 1790 George Washington Letter to the Hebrew congregation in Newport, which reads, most notably:

...the Government of the United States gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection should demean themselves as good citizens, in giving it on all occasions their effectual support.

The Letter reading coincided with a celebration of 350 years of Jewish life in America. Sunlight shone through the balcony synagogue windows on Justice Ginsburg, a diminutive figure on the podium below, who was introduced as the “fulfillment of the American Dream.” While she spoke about

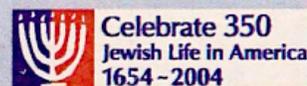


JUSTICE RUTH BADER GINSBURG receives a commemorative medal celebrating the 350th anniversary of Jewish life in America from Robert S. Rifkind, chair of the national committee, at Touro Synagogue on August 22.

Photo by Josh Korr

Ginsburg shares in American Jewry's 350th celebration

George Washington Letter reading at Touro Synagogue kicks off national celebration



the legal profession, spotlighting the history of Jewish justices of the Court, I noted lighter moments in my article. At one point she asked, “What is the difference between a New York City garment district bookkeeper and a Supreme Court Justice? Just one generation. My life bears witness, the difference between opportunities open to my mother, a bookkeeper, and those

open to me. Where else but in the USA could that happen?”

Her mother, Celia Amster Bader, passed away from cancer the year her daughter graduated from James Madison High School in Brooklyn. Described by Justice Ginsburg as a brilliant and determined woman, her mother would no doubt be proud of her daughter's opinions and dissents during her career,

both before and while sitting on the highest court in the land. The following Supreme Court cases, from 1999 to 2016, illustrate Justice Ginsburg's jurisprudence in the healthcare arena.

Americans with Disabilities

On June 22, 1999, the Court ruled 6-3 on a landmark case¹ which focused on the rights of people with mental health issues to have appropriate care in community centers where they lived, rather than be institutionalized. The case involved two women who were voluntarily admitted to the psychiatric unit of a state-run Georgia hospital, but were then held there in isolation for several years, despite receiving medical clearance for transfer of care to a community-based facility.

The Court voted in favor of the women and Justice Ginsburg wrote the majority opinion, stating that, "Recognition that unjustified institutional isolation of persons with disabilities is a form of discrimination..." The Opinion referred to Title II of the Americans with Disabilities Act (ADA): "States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."¹

ACA Challenges

Challenges to the ACA and the individual mandate have come before the Court, with Justice Ginsburg concurring in rulings to maintain it. On June 28, 2012, the Court upheld most of the ACA, including the individual mandate, which required that most Americans maintain "minimum essential" health insurance coverage, either through their employer, a government program or through a private plan. Beginning in 2014, those who did not

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The habits of a vigorous mind
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—Associate Supreme Court
Justice Ruth Bader Ginsburg,
2004, at *Touro Synagogue*, quoting
advice from Abigail Adams to her
son, John Quincy Adams

comply with the mandate must make a "[s]hared responsibility payment" to the Federal Government.² The court ruled 5-4 that the individual mandate is constitutional under Congress's taxing authority.

Ultimately, Congress repealed the individual mandate penalty as part of the Tax Cuts and Jobs Act of 2017. Challenges to the ACA continue. On November 10, one week after the upcoming Presidential election, the Court will hear oral arguments on two consolidated ACA cases, *California v. Texas* and *Texas v. California*, which pose the question whether the law's individual insurance mandate is unconstitutional without a tax penalty and, if so, whether the rest of the law can remain standing.

Reproductive rights

In 2016, the Supreme Court struck down a contentious Texas law which imposed severe restrictions on the delivery of services at abortion clinics. Justice Ginsburg filed a concurring opinion on June 27, 2016, and did not mince words. She stated:

"The Texas law called H.B.2 inevitably will reduce the number of clinics and doctors allowed to provide abortion services. Texas argues that H.B.2's restrictions are constitutional because they protect the health of women who experience complications from

abortions. In truth, complications from an abortion are both rare and rarely dangerous.

"It is beyond rational belief that H.B.2 could genuinely protect the health of women, and certain that the law would simply make it more difficult for them to obtain abortions. When a State severely limits access to safe and legal procedures, women in desperate circumstances may resort to unlicensed rogue practitioners, *faute de mieux*, at great risk to their health and safety."³

Farewell remarks

I will conclude this commentary with Justice Ginsburg's final remarks in 2004 at *Touro*, which seem to me to resonate in today's turbulent times. She said:

"Just as we draw inspiration from the letter exchange between this Congregation and George Washington, may I conclude these remarks with counsel a wise woman of that age, Abigail Adams, gave to her then young son, future President John Quincy Adams.

"These are the times in which a genius would wish to live. It is not in the still calm of life, or the repose of a pacific station, that great characters are formed. The habits of a vigorous mind are formed in contending with difficulties." ❖

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