

EQUAL RIGHTS AMENDMENT (ERA)

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Equal Rights Amendment (ERA): A Legal and Social History

The Core Definition and Purpose

The Equal Rights Amendment (ERA) is a proposed amendment to the United States Constitution, designed to guarantee legal gender equality for all American citizens. The core text of the amendment is remarkably concise and powerful, stating plainly: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." This simple declaration represents a fundamental shift from existing constitutional interpretations of gender rights, aiming to establish sex discrimination as inherently suspect and requiring the highest level of judicial scrutiny. Unlike current protections derived primarily from the Fourteenth Amendment's Equal Protection Clause, which applies an intermediate standard of review to gender classifications, the ERA would necessitate a standard akin to that used for race--a standard known as **strict scrutiny**. This mechanism is the fundamental legal principle underlying the ERA, ensuring that any governmental action differentiating between individuals based on sex must serve a compelling governmental interest and be narrowly tailored to achieve that interest, making such discriminatory laws extremely difficult to uphold in court.

The objective of the ERA is not simply symbolic; it seeks to eliminate the remaining vestiges of statutory and common law that treat men and women differently regarding rights, responsibilities, and access to opportunities. Historically, many laws were rooted in outdated assumptions about gender roles, defining women primarily in terms of their domestic duties or requiring "protective legislation" that, while seemingly beneficial, ultimately limited women's economic and professional mobility. The ERA aims to rectify these historical inequalities by embedding the principle of legal gender neutrality directly into the nation's foundational document. Proponents argue that its ratification would settle centuries of debate and uncertainty surrounding gender equality, providing a clear, uniform legal standard across all 50 states and the federal government, thereby ensuring that legal rights are truly equal under all circumstances, regardless of an individual's sex.

Historical Roots and Early Advocacy

The origins of the ERA trace back almost immediately following the successful ratification of the Nineteenth Amendment in 1920, which granted women the right to vote. The key figure associated with its creation is suffragist Alice Paul, who, along with the National Woman's Party (NWP), recognized that suffrage alone was insufficient to achieve full equality. Paul and her colleagues drafted the ERA and first introduced it to Congress in 1923, initially naming it the Lucretia Mott Amendment. This early advocacy marked a significant split within the burgeoning feminist movement. While Paul and the NWP sought absolute equality and the eradication of all sex-based legal distinctions, many social feminists, labor activists, and advocates for working women opposed the ERA.

This opposition stemmed from concerns that the ERA would invalidate "protective legislation," a body of state laws designed to safeguard women in the workplace by limiting working hours, establishing minimum wages, or preventing them from working in hazardous occupations. These laws, championed by progressive reformers, were seen as necessary protections for vulnerable workers. Opponents feared that if the ERA passed, these protections would be struck down, leaving women workers exposed to exploitation. Consequently, the ERA languished in Congress for decades, repeatedly introduced but unable to garner the necessary bipartisan support due to this fundamental philosophical conflict between absolute equality and protective measures. It was only after the social and political upheavals of the mid-20th century, coupled with the rise of the modern civil rights and women's liberation movements, that the ERA gained significant political traction, culminating in its passage through Congress in the 1970s.

The 1970s Push and the Ratification Deadline

After nearly fifty years of legislative inertia, the ERA finally achieved congressional approval in March 1972, gaining overwhelming support in both the House and the Senate. Following passage, the amendment was sent to the states for ratification, accompanied by a seven-year deadline set within the preamble of the resolution, requiring ratification by three-fourths (38) of the states by March 22, 1979. Initially, the ERA garnered rapid support, with 30 states ratifying it within the first two years, driven by widespread public support and the energy of the second-wave feminist movement. This initial success suggested swift ratification and implementation, cementing gender equality into the constitutional framework within the decade.

However, the momentum stalled significantly toward the mid-1970s, largely due to a powerful conservative backlash led by figures like Phyllis Schlafly, founder of the STOP ERA campaign. Opponents effectively argued that the ERA would lead to unintended and negative social consequences, including the elimination of single-sex bathrooms, mandatory drafting of women into military combat roles, and the erosion of traditional family structures by stripping away legal protections for homemakers. These highly publicized, fear-based arguments proved effective in swaying public and legislative opinion in several key swing states. By the 1979 deadline, only 35 states had ratified the amendment--three short of the required 38. Congress subsequently voted to extend the deadline to June 30, 1982, but no additional states ratified the ERA during that extension period, leading most legal scholars at the time to conclude that the amendment had failed to pass.

Legal Mechanisms and Practical Implications

The primary legal significance of the ERA lies in its ability to elevate sex discrimination to the highest standard of judicial review, known as **strict scrutiny**. Currently, under the framework of the Fourteenth Amendment's Equal Protection Clause, classifications based on sex are typically

subjected to intermediate scrutiny, meaning the government must demonstrate that the classification serves important governmental objectives and is substantially related to the achievement of those objectives. While this standard has been effective in striking down blatantly discriminatory laws, it still permits some distinctions based on sex if the rationale is seen as sufficiently "important," such as laws related to military service or "inherently different" physical capacities.

Under the ERA, however, discriminatory laws would be subjected to the rigorous standard of strict scrutiny. For example, consider a state law that prevents women, but not men, from serving on juries, or a state law that uses different property division rules in divorce proceedings based on the spouse's gender. Currently, a court might uphold such a law under intermediate scrutiny if the state could articulate an "important" reason related to traditional roles or public order. With the ERA in effect, the state would be required to show that excluding women from juries or applying different divorce standards serves a **compelling governmental interest**--a burden almost impossible to meet in contemporary jurisprudence. The ERA would mandate that the law be entirely neutral unless the government could prove an exceptional, narrowly tailored reason for gender distinction, effectively dismantling thousands of discriminatory federal, state, and local statutes and regulations that persist in areas like insurance, family law, and employment benefits.

Arguments For and Against the ERA

Supporters of the ERA maintain that its ratification is essential to complete the promise of American democracy by ensuring that equality is recognized as a fundamental constitutional right, rather than one reliant on evolving judicial interpretation. Proponents stress that the ERA would provide a clearer, stronger legal basis for challenging systemic discrimination in areas where the Equal Protection Clause has proven insufficient, such as pay equity disputes, pregnancy discrimination, and issues of gender identity and sexual orientation, arguing that a constitutional mandate is necessary to force compliance across all levels of government. Furthermore, proponents believe that the symbolic weight of the amendment would have a profound positive impact on social norms and expectations, encouraging the dismantling of entrenched gender roles in education, career paths, and family life, ultimately benefiting all genders by expanding opportunities and reducing societal pressures based on sex.

Conversely, opponents raise several significant concerns. Historically, the primary argument revolved around the loss of protective legislation, particularly those laws related to women's safety and health in the workplace, though many of these specific laws have since been superseded by broader anti-discrimination statutes. Modern opposition often centers on potential unintended consequences in three key areas: military conscription, abortion rights, and family law. Opponents argue that the ERA could mandate the inclusion of women in mandatory military registration (the draft) without exception. They also suggest that the ERA could be interpreted by courts as

guaranteeing federally funded abortion access, linking reproductive autonomy directly to constitutional equality. Finally, there is the argument that the ERA is simply redundant, claiming that the existing protections offered by the 14th Amendment and numerous civil rights acts already provide sufficient legal recourse against sex-based discrimination, suggesting the ERA would merely increase litigation without providing substantive new rights.

Contemporary Status and the Three-State Strategy

The status of the ERA underwent a dramatic and unexpected resurgence beginning in the late 2010s, nearly four decades after the 1982 deadline expired. Utilizing what is sometimes called the "three-state strategy," activists successfully pushed for ratification in states that had previously failed to do so. Nevada ratified the ERA in 2017, followed by Illinois in 2018, and finally, Virginia in January 2020. This brought the total number of ratifying states to 38--the precise number required by the Constitution. This development triggered a complex legal and political crisis because of the expired 1982 deadline initially set by Congress.

The core legal question now revolves around whether Congress had the authority to impose a time limit on a constitutional amendment in the first place, or if that deadline is merely procedural and non-binding. Proponents argue that the deadline is irrelevant, citing the precedent that Congress can remove deadlines or that the current ratifications are valid because the amendment text itself does not include an expiration date. Conversely, opponents and some legal officials, including the U.S. Archivist and the Department of Justice's Office of Legal Counsel (OLC), have maintained that the deadline is binding and that the ratifications of the last three states are therefore invalid. Litigation is ongoing, with several states suing to compel the U.S. Archivist to certify the ERA as the 28th Amendment to the United States Constitution, reflecting a dedicated, final push to validate the amendment almost a century after its initial drafting.

Broader Context: Gender, Law, and Constitutional Equality

The Equal Rights Amendment is not merely a standalone piece of legislation; it is deeply intertwined with the broader legal subfield of **Constitutional Law** and the academic discipline of Gender Studies. The debate over the ERA fundamentally challenges how the Constitution defines personhood and equality, serving as a critical comparative point against the protections offered by the Equal Protection Clause of the Fourteenth Amendment. While the Fourteenth Amendment was originally designed to protect newly freed slaves, its application has been broadened over time to prohibit various forms of discrimination. However, the courts have consistently stopped short of applying strict scrutiny to sex classifications under the Fourteenth Amendment, creating a gap that the ERA is specifically designed to fill.

Furthermore, the ERA's impact extends beyond traditional legal interpretation into contemporary

social and political theory. It is often connected to discussions concerning LGBTQ+ rights, as many legal scholars argue that a guarantee of constitutional equality based on sex would naturally extend to protect against discrimination based on sexual orientation and gender identity, viewing such discrimination as inextricably linked to sex classifications. This broad interpretive potential highlights the ERA's importance not just for women, but for establishing comprehensive equality principles for all individuals in American society. The struggle for the ERA thus represents a continuous effort to evolve the nation's founding document to reflect modern understandings of civil rights and inherent human dignity, ensuring the principle of equality is truly universal and enforceable.

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