



FEMINIST MAJORITY FOUNDATION

## CHOICES CAMPUS LEADERSHIP PROGRAM

WORLD'S LARGEST PRO-CHOICE STUDENT NETWORK

# RATIFYING THE EQUAL RIGHTS AMENDMENT

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## ABOUT THE EQUAL RIGHTS AMENDMENT

The Equal Rights Amendment (ERA) would enshrine in the United States Constitution the concept of women's equality and create a national legal standard for the elimination of sex discrimination in the supreme law of the land.

### BRIEF HISTORY OF THE ERA

The ERA, authored by prominent suffragist and National Woman's Party leader Alice Paul, was first introduced in Congress in 1923, and then again in every Congressional session until it passed in 1972. In its original form, as drafted by Alice Paul, the first section of the ERA read: "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction." In 1943, however, the Senate Judiciary Committee amended this language to read: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." When the ERA finally passed, section 1 contained the 1943 language.

Like every proposed constitutional amendment, after it passed by a two-thirds vote of both the House and Senate, the ERA was sent to the states for ratification. Congress, however, had imposed – in the preamble of the ERA – a seven-year deadline on the ratification process.

38 states must ratify an amendment before it can become part of the U.S. Constitution. Hawaii was the first state to ratify, less than an hour after the ERA passed out of Congress. Other states quickly followed. By January 1977, 35 states had ratified the amendment. With the seven-year deadline approaching, however, women's rights activists, led by the National Organization for Women (NOW), took to the streets to demand removal of the timeline. Tens of thousands demonstrated in Washington in 1978 as a result of NOW's comprehensive campaign and thousands more sent telegrams to Congress, shutting down Western Union.



Congress eventually granted an extension of the deadline until June 30, 1982. The opposition to the ERA, however, was also organized, especially in the South, and they managed to hold back ratification in those states. When the deadline expired, no new states had ratified. The campaign was still three states short.

The 15 states that failed to ratify the ERA are: Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.

### CONTINUED NEED FOR THE ERA

The ERA is just as needed now, as it was when it was first passed in Congress in 1972. It is not just symbolic. The ERA would have a real impact on women and girls' lives.

The drive to ratify the ERA in the 1970s and 1980s spurred a vigorous women's rights movement that made impressive gains for women in education and athletics, employment and credit, reproductive health and rights and so much more, but



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these gains have been under constant attack. Laws prohibiting discrimination against women are subject to the whims of Congress. They can be changed, gutted, or even eliminated with a simple majority vote and the signature of the President.

Supreme Court Justice Ruth Bader Ginsburg has long supported the ERA, and stated in a 2014 interview: "If I could choose an amendment to add to the Constitution, it would be the Equal Rights Amendment." In that same interview, Justice Ginsburg, acknowledging that anti-discrimination could be altered or repealed said, "I would like my granddaughters, when they pick up the Constitution, to see that notion – that women and men are persons of equal stature – I'd like them to see that is a basic principle of our society."

Attacks from Congress, however, are only one way in which women can lose protection from discrimination. The conservative majority of the Supreme Court has also limited or gutted federal statutes prohibiting sex discrimination, and Justice Antonin Scalia, the so-called "dean" of the Court, has recently stated that nothing in the U.S. Constitution prohibits sex discrimination.

In 2014, the Supreme Court, in *Burwell v. Hobby Lobby*, rolled back gains made through the Affordable Care Act (ACA), ruling that closely-held, for-profit corporations could discriminate against women by refusing to provide health insurance coverage for FDA-approved contraceptives – a key part of women's preventive health care – in employee health plans. That means that men, no matter where they work, if their employer offers a health plan, they will have access to comprehensive preventive health insurance coverage, but women do not enjoy this same right.

The ERA would ensure that women are constitutionally protected from discrimination and give a constitutional basis not only to protect the gains we have won, but also for proactive legislation that would secure women's equality going forward. For example, when it was passed in 1994, the Violence Against Women Act (VAWA) made ending gender-

based violence a national priority and empowered survivors to seek their own justice through a private, civil right of action against perpetrators – even if the state failed to prosecute. That same year, a college survivor attempted to use VAWA to sue her rapists and her university for mishandling her sexual assault claim. The courts prevented her case from moving forward, and the Supreme Court later ruled that Congress had no constitutional authority to enact the VAWA provision that authorized her lawsuit. The ERA would give Congress the power to enact this kind of provision, and others, to help prevent systemic violence against women and give survivors better access to justice.

## STATUS OF THE ERA

The ERA has been reintroduced with dozens of sponsors in both houses of Congress in every session since 1982 and is expected to be reintroduced again in 2015. Subsequent introductions have included no time limit on ratification.

In addition, resolutions to rescind the deadline on ERA ratification, which would obviate the need for Congress to pass the ERA again, have also been introduced in both houses of Congress. Since 35 states have ratified the ERA, only 3 more states would have to ratify for the amendment to be adopted. This is called the "three-state strategy."

## TEXT OF THE ERA

The wording of the ERA differed in the most recent House and Senate versions. The Senate version contains the 1972 ERA language that was approved by Congress and ratified by 35 states.

### The Senate version reads:

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This article shall take effect 2 years after the date of ratification.



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Section 1 of the House version repeats Section 1 of the Senate version but adds language that, if passed and ratified, would be the first time women would be explicitly named and given rights in the U.S. Constitution. Not even the Nineteenth Amendment – prohibiting the denial of the right to vote based on sex – writes “women” into the Constitution.

The House version also adds language to Section 2 specifying that the amendment should be enforced with both federal and state legislation.

### The House version reads:

Section 1. Women shall have equal rights in the United States and every place subject to its jurisdiction. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. Congress and the several States shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.

### THREE-STATE STRATEGY

Article V of the Constitution gives Congress the power to propose amendments to the Constitution. Two-thirds of both the House and Senate must vote for the amendment. Then, the proposed amendment must be ratified by three-fourths of the states, through the state legislatures, before it can be made part of the Constitution. Nothing in the Constitution places a time limit on the ratification process.



The original time limit placed on ERA ratification was imposed by Congress in the preamble of the ERA, which states do not vote on in order to ratify the amendment.

To avoid having to pass the ERA again and then re-start the ratification process, members of the House and Senate introduced “three-state strategy” resolutions in the last Congress. These resolutions, which are expected to be reintroduced in 2015, read:

Notwithstanding any time limit contained in House Joint Resolution 208, 92d Congress, as agreed to in the Senate on March 22, 1972, the article of amendment proposed to the States in that joint resolution shall be valid to all intents and purposes as part of the Constitution whenever ratified by the legislatures of three-fourths of the several States.

If the resolution passes, Congress would nullify the time limit in the preamble to the 1972 ERA. That would mean that only 3 additional states would have to ratify the ERA for the amendment to take effect.

As part of the three-state strategy, ERA activists in unratified states are working to clear a path for the ERA. These efforts have had growing success. The Illinois State Senate passed the ERA in 2014 with a strong 39-11 vote, and in February 2015, the Virginia State Senate – which never took a floor vote on the ERA during the campaign in the 1970s and 1980s – voted to pass the ERA for the fourth time since 2011. These attempts to ratify the ERA have been blocked in the Illinois and Virginia Houses respectively, but ERA activists have continued to mobilize support for constitutional equality. Over the past five years, grassroots ERA activists have organized in Arkansas, Florida, and North Carolina to push for ratification of the federal ERA.



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### STATE-LEVEL ERAS

In addition to the U.S. Constitution, every state in the nation must abide by its own, individual state constitution. Advocates for women's constitutional equality have therefore always had a parallel strategy to gain state constitutional equality, organizing to amend state-level constitutions to guarantee protection against sex discrimination while also working to ratify the federal ERA.

23 states have adopted state constitutions or constitutional amendments that prohibit the denial of equal rights under the law based on sex. States have interpreted these provisions in various ways. Most state courts interpreting state-level ERAs apply "strict scrutiny" to gender-based classifications in the law, a higher standard than currently applied at the federal level. That means the government must not only have a compelling reason to discriminate, but the law must be narrowly tailored to achieve its goal – making it more difficult for lawmakers to pass laws that discriminate based on sex. Other states, such as Pennsylvania, apply an even higher, absolute standard, prohibiting almost all gender-based classifications.

In November 2014, Oregon became the most recent state to win an equal rights amendment to its state constitution. Local activists collected more than 118,000 petition signatures to place an ERA on the state ballot, asking voters to determine directly whether the state should adopt an ERA. The measure passed overwhelmingly with 64 percent of the vote, and students were a major driving force. In areas with college campuses, the ERA received a higher "yes" vote, capturing some 80 percent of the vote in those areas.

### TAKE ACTION FOR THE ERA!

Educate your community about the continued need for the ERA, the importance of state-level ERAs, and efforts to ratify.

1. Host an event on your campus to raise awareness of the ERA, the continued need for a federal amendment, and how it could impact the lives of women and girls.
2. Launch a petition drive for the federal ERA.
3. Ask your Senators and Representative to cosponsor the ERA and the "three-state strategy" resolutions.
4. Live in an unratified state? Organize a letter writing campaign or visit your state capital to let your state legislators know that you support ratification of the federal ERA.
5. Research whether your state has an ERA or a provision prohibiting sex discrimination in its state constitution. Learn more about how you can work with other activists in your community to obtain constitutional equality in your state! Students in Oregon were essential to winning an ERA in their state.