

## 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 prohibiting all forms of discrimination on the basis of sex in the highest law of the land.

### THE TEXT OF THE ERA

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.

### HISTORY OF THE ERA

The ERA was authored by prominent suffragist and National Woman's Party leader Alice Paul. It was first introduced in Congress in 1923, and then again in every congressional session until it passed in 1972. In its original form, 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." However, in 1943 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." The ERA finally passed by a two-thirds vote of both the U.S. House and Senate, and section 1 contained the 1943 language.

All proposed constitutional amendments are sent to the states for ratification. However, in the preamble of the ERA, Congress imposed a seven-year deadline on the ratification process after passing the ERA by a supermajority in Congress.

Before an amendment becomes part of the U.S. Constitution, 38 states must ratify the amendment. Less than an hour after Congress passed the ERA, Hawaii became the first state to ratify; 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. In 1978, tens of thousands marched in Washington, D.C. as a result of NOW's comprehensive campaign, and hundreds of thousands more sent telegrams to Congress, shutting down Western Union.



Congress eventually granted an extension of the deadline until June 30, 1982. Opposition to the ERA was organized by Chambers of Commerce, the National Association of Manufacturers, and the insurance industry, and their organizing strategy managed to prevent ratification in 15 states. When the deadline expired, no new states had ratified. The campaign was still three states short.

However, the fight for the ERA did not end in 1982. On March 22, 2017, more than 30 years later, Nevada became the 36th state to ratify the Equal Rights Amendment and Illinois followed quickly behind in May 2018 as the 37th state. Just one more state is needed to reach the required 38 states for ratification. In 2019, Virginia came very close to ratifying the ERA. The ERA was passed by the Virginia Senate but was stopped from being considered by the Virginia House by just one vote. There are now very active campaigns to ratify the ERA in several unratified states including Virginia, North Carolina, and Arizona.

### CONTINUED NEED FOR THE ERA

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

The drive to ratify the ERA in the 1970s and 1980s spurred a vigorous women's rights movement resulting in impressive gains for women in education and athletics, employment and credit, and reproductive health and rights. However, these hard-fought wins have been under constant attack. Laws prohibiting gender-based discrimination are subject to the whims of Congress. They can be changed, gutted, or even eliminated with a simple majority vote and the President's signature.



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.” Having an ERA, she explained, would show that “women are people equal in stature before the law. She called that a fundamental principle that “belongs in our Constitution,” warning that anti-discrimination laws can be repealed or altered. “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 not the only 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. In 2011, the late Justice Antonin Scalia, a conservative leader on the Court, stated that nothing in the U.S. Constitution prohibits sex discrimination.

In 2014, the Supreme Court case *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. In that case, the majority of the Court focused almost exclusively on whether the ACA violated a corporation’s statutory rights under the Religious Freedom Restoration Act. Without an ERA, the Court did not consider the government’s interest in remedying and preventing sex discrimination by prohibiting women’s healthcare from being singled out for discriminatory treatment. An ERA would have forced the Court to weigh a constitutional right to be free from sex discrimination against a mere statute, which can never override a constitutional provision.

The ERA would not only give a constitutional basis to protect the gains we have won, but it would also give Congress more power to create proactive legislation that would advance 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, federal civil right of action against perpetrators – even if the state failed to prosecute. That same year, a survivor in college attempted to use VAWA to sue her rapist 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 had provided her with a federal civil right of action to use in her sexual assault case. 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 IN CONGRESS NOW

Currently, the ERA coalition campaign is pursuing two simultaneous strategies for ratifying the ERA. First, a three state strategy to remove the deadline and second, a start-over strategy as a back-up plan.

### THREE-STATE STRATEGY

The “three state strategy” to eliminate the deadline on ERA ratification, which would obviate the need for Congress to pass the ERA again, has been introduced in both houses of Congress. Since 35 states ratified the ERA before January 30, 1980, only three more states would have to ratify for the amendment to be adopted. This is called the “three-state strategy.” Now with the recent ratifications of Nevada and Illinois, only one more state is required for ratification of the ERA.

To avoid having to pass the ERA again and then restart the ratification process, members of the House and Senate have introduced “three-state strategy” resolutions. These resolutions read:

Notwithstanding any time limit contained in House Joint Resolution 208, 92nd 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. Right now, activists are encouraging members of Congress to co-sponsor these resolutions to remove the time limit.



## START-OVER STRATEGY

The ERA has been reintroduced with many co-sponsors in both houses of Congress in every session since 1982, which was the extended deadline. These ERA resolutions have not included a time limit on ratification.

The wording of the start-over ERA differs in the current House and Senate versions. The Senate version (S.J. Res 6) contains the 1972 ERA language that was approved by Congress and ratified now by 37 states.

### The current Senate start-over ERA 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.

### The current House start-over ERA 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.

These start-over ERA resolutions do not have a time limit and also have many co-sponsors.

## 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.

Currently, 26 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 all gender-based classifications.

The last time a state won an equal rights amendment to its state constitution was in November 2014. Local activists in Oregon collected over 118,000 petition signatures for amendment on the state ballot, asking voters to determine directly whether the state should adopt an ERA. The measure passed overwhelmingly with 64% of the vote. Students were a major driving force: in areas with college campuses the ERA received a higher "yes" vote, often capturing 80% of the vote.

## 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.

- Host an event in your community or 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.
- Launch a petition drive for the federal ERA.
- Ask your U.S. Senators and Representatives to cosponsor the ERA and the "three-state strategy" resolutions.
- 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.
- 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!