



HOW TO TALK ABOUT THE EQUAL RIGHTS AMENDMENT

WHY IS THE ERA IMPORTANT?

The Equal Rights Amendment explicitly guarantees our rights and would provide a permanent legal foundation to protect against discrimination based on sex in many areas.

GENDER-BASED VIOLENCE

Survivors of interpersonal violence and sexual assault who choose to press civil charges against their attackers are currently only able to seek legal action federally through employment and education protections.

Since the Supreme Court struck down a 1994 provision of the Violence Against Women Act (VAWA), allowing survivors to sue their attackers in federal court if such a charge is not within the purview of Title VII or Title IX, there is no federal recourse for survivors through the courts. The ERA has the potential to fill this gap for survivors seeking justice.

EQUAL PAY

Despite federal legislation prohibiting pay discrimination based on gender, there are many loopholes for employers to avoid paying their employees equitably, like requiring salary histories to base subsequent salaries and wages. The ERA would be the first step to ending the pay gap.

BIRTH CONTROL

As evidenced by 2014's *Burwell v. Hobby Lobby* Supreme Court case, access to birth control is still not fully guaranteed, even under the Affordable Care Act (ACA). The Religious Freedom Restoration Act (RFRA) has been weaponized to allow employers to refuse employees receiving health insurance benefits and ACA-mandated birth control coverage. Nine states currently allow individual healthcare providers to refuse to provide contraceptive-related services, seven states enable pharmacists to "explicitly permit" to refuse to give contraceptives, and eight states "allow healthcare institutions to offer services related to contraceptives (Guttmacher 2023). The ERA could close these loopholes to ensure birth control access definitively.

INSURANCE

Until recently, insurers—health, life, and auto—have been permitted to charge different rates based on sex. Auto and life insurers are still allowed to charge women more, and the ERA would require insurance regulators to end such practices by private insurance companies. Before the ACA, health insurers regularly charged women up to 50% more monthly premiums. We need a constitutional provision to protect patients from insurers' "gender rating" practices.

ABORTION

Since the Supreme Court overturned *Roe V. Wade*, the right to safe and legalized abortions has been stripped away. In June of 2022, President Biden signed Executive Orders 14076 and 14079, meant to protect Access to Reproductive Health Care Services, including contraceptives and abortions (White House 2023). These orders, though, depend on the independent state provisions that exist, and in this way, these orders do not translate entirely to the entire nation-state. This is why the ERA must be passed: it would help establish healthcare precedence in this way. At present, only six states have state-provided state-funded abortions, while ten states require insurance coverage of some sort to have the procedure (KFF 2023).

PREGNANCY DISCRIMINATION

Employers can currently deny necessary accommodations for pregnant employees. In a 2015 ruling, the Supreme Court determined that for an employer's actions to be legally discriminatory, pregnant employees must prove that their employer's demands place a "significant burden" on them and that the reason for this burden is not "sufficiently strong." Simply put, employers are allowed to refuse accommodations for pregnant employees if they have a good enough reason in the eyes of the court(s).

LGBTQ+ RIGHTS

Since the text of the ERA does not explicitly distinguish equality for women, instead stating that "equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex," the ERA may also have implications for LGBTQ+ rights. This would come down to what the courts determine the definition of "sex" encompasses, and so far, a majority of federal circuit courts interpreting the word in civil rights cases have ruled that prohibition of sex discrimination includes prohibiting gender-based discrimination against trans folks. In 2020, the Supreme Court ruled in *Bostock v. Clayton County* "that federal law prohibiting sex discrimination in employment necessarily includes sexual orientation and gender identity discrimination" (ERA Project, Columbia Law School 2022).

The ERA's addition to the U.S. Constitution could also have the potential to prohibit sexuality-based discrimination. Recently, two circuit courts have held that, under the Equal Protection Clause, discrimination based on one's sexual orientation is a subset of "sex-based" discrimination and is, therefore, unlawful. The potential to fight back against current restrictions and threats to abortion access and protect reproductive care for years to come.

INTERNATIONAL STANDING

In 2022, the World Bank reposted that "in 86 countries, women face some form of job restriction," and in 95 countries, equal pay for the same amount of work is "guaranteed" (World Bank 2023). The United States' standing and the credibility of our government with other nations and world leaders would significantly improve with the passage of the ERA.

BUSTING MYTHS ON THE ERA

WE ALREADY HAVE GENDER EQUALITY—ISN'T THE ERA UNNECESSARY?

We do not have gender equality already! Legislation and precedents established by the courts can constantly be amended, repealed, or abandoned. As the U.S. Constitution is the law of the land, a constitutional amendment is more enduring than the current statutes and rulings that provide us with the limited gender equality we have.

The late Supreme Court Justice Antonin Scalia once noted that there is nothing in the U.S. Constitution that prohibits gender discrimination, Supreme Court Justice Ruth Bader Ginsburg would like to see the ERA added to the Constitution, and the American Bar Association formally reaffirmed its support for the ERA in 2016.

BUT THE ERA WILL GIVE WOMEN UNFAIR ADVANTAGES!

The ERA does not grant special rights to anyone; it merely prohibits federal and state governments and courts from abridging or denying equality of rights under the law based on sex. As a lawyer for the ACLU in the 1970s, Ruth Bader Ginsburg advocated against gender-based discrimination. She used the same logic behind the ERA to advocate for men against laws prohibiting them from purchasing alcohol (while women their same age were allowed to), preventing them from receiving survivor benefits and property tax exemptions as widowers and inhibiting their ability to receive dependent benefits from their spouse's place of employment.

IF THE ERA IS RATIFIED, WON'T WE ALL HAVE TO SHARE BATHROOMS?

This argument used to discredit the ERA is from the 1970s. Much has changed since then; for example, North Carolina's H.B.2 of 2016 proved that public—and financial—opinion did not favor the argument of enforcing gender-based bathroom laws and policies. Bathroom myths like these are used to distract from the ERA's potential, and gender equality should not be delayed because of this argument. Not to mention that moving away from gender-based bathrooms is a good thing generally: single-stall, unisex bathrooms are typically safer, cleaner, more versatile, and more accessible!

WILL THE ERA OPEN THE DOOR FOR ABORTION RIGHTS?

The Supreme Court overturned federal abortion rights in 2022. Roe had established the right to choose to have an abortion, which is grounded in the right to medical privacy. Roe is now null and void. Thus, in a time like this, the official constitutional binding of the ERA would work to restore these rights by providing a legal basis to the principle that abortion restrictions violate women's equal rights.

However, the ERA is not solely about abortion, and elected officials who weaponize this argument do so to distract from the full reality of the ERA's potential. But, by tying the amendment to abortion, opponents are acknowledging that women are inherently unequal without access to the procedure.

DIDN'T THE DEADLINE ALREADY PASS?

Yes—in fact, the deadline has passed twice already. The deadline imposed on the ERA is part of the preamble, not the actual text of the amendment, and since states ratified the text and not Congress' separate deadline resolution, any deadline on the amendment can be extended or removed entirely.

For example, the original 1978 deadline for ratification has already been extended once—to 1982. Nevada and Illinois have both ratified the ERA since 2017 and following Nevada's ratification of the ERA, Congress found that the deadline was not preclusive to adding the ERA to the Constitution. Notably, in 2020, Virginia became the 38th state to ratify the ERA, bringing it the majority needed to make the ERA an official constitutional amendment. There is an ERA Discharge Petition in the House of Representatives, and as of February 15, 2024, it has received 214 signatures.

WOULDN'T THE ERA FORCE WOMEN TO REGISTER FOR THE DRAFT?

Potentially, yes. However, this is an issue that the ERA passage would not decide. Women have always been eligible to be drafted. At the end of WWII, women were almost drafted as nurses. Additionally, in 2017, the Pentagon officially recommended that women be required to register for the draft.

WHAT ABOUT THE STATES THAT HAVE RESCINDED THEIR RATIFICATIONS?

Based on Article V of the U.S. Constitution, states have no authorized power to rescind ratification of a constitutional amendment. Three amendments—14th, 15th, and 19th—have all been added to the Constitution despite rescissions from states that had previously ratified—Idaho, Kentucky, Nebraska, South Dakota, and Tennessee. In these cases, Congress declared that a state's rescission of an amendment it had previously ratified has no legal validity.