

Q&A ON THE FEDERAL EQUAL RIGHTS AMENDMENT



Q: What is the complete text of the Equal Rights Amendment?

- A: 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 amendment shall take effect two years after the date of ratification.

Q: Why is an Equal Rights Amendment to the U.S. Constitution necessary?

A: The Equal Rights Amendment would provide a fundamental legal remedy against sex discrimination for both women and men. It would guarantee that the rights affirmed by the U.S. Constitution are held equally by all citizens without regard to sex.

The ERA would clarify the legal status of sex discrimination for the courts, where decisions still deal inconsistently with such claims. For the first time, sex would be considered a suspect classification, as race currently is. Governmental actions that treat males or females differently as a class would be subject to strict judicial scrutiny and would have to meet the highest level of justification – a necessary relation to a compelling state interest – in order to be upheld as constitutional. To actual or potential offenders who would try to write, enforce, or adjudicate laws inequitably, the ERA would send a strong preemptive message – the Constitution has zero tolerance for sex discrimination under the law.

Q: Why not just pass more legislation if you want to protect women further?

A: Legislation can be rolled back. Congress can repeal legislation with a simple majority vote. Critical provisions such as the right for women to vote and the end of slavery were put in the Constitution so that they could not be taken away easily.

A: We feel that to suggest legislating instead is to say that equal rights between men and women are not important enough to be protected and upheld in the Constitution. Other Constitutional amendments that currently exist include compensation for members of Congress (27th), prohibition and the repeal of prohibition (18th and 21st), and state immunity. Few would argue that these provisions are more important than equal rights for all.

Q: Doesn't the 14th amendment provide enough protection against discrimination for women?

A: The 14th Amendment was ratified after the Civil War to address race discrimination. It has only been applied to sex discrimination since 1971, and the 14th Amendment Equal Protection Clause has never been interpreted to grant equal rights on the basis of sex in the same way that the ERA would.

A: Currently, when courts analyze sex-based classifications, they use intermediate scrutiny. The intermediate standard has been criticized by lower court judges, commentators, and Supreme Court justices as being too vague. We need a clearer and stricter federal judicial standard for deciding cases of sex discrimination.

Q: What are the different strategies for ratifying the ERA, and why is there more than one?

A: There are two strategies for trying to ratify the ERA. This bill initiates the "starting over" strategy of passing the ERA through Congress and then seeking ratification by $\frac{3}{4}$ of the states. Another bill has traditionally been introduced each year which pursues the so called "three state strategy." The three state strategy is based on the fact that the Madison amendment concerning congressional pay raises went to the states for ratification in 1789 and reached the $\frac{3}{4}$ goal in 1992. That this 203 year ratification period was accepted has led some to propose that Congress has the power to maintain the legal viability of the 35 existing ratifications of the ERA.

A: Because it is hard to know if the three state strategy will be considered constitutional by the courts, most lawmakers support the starting over strategy as well as the three state strategy. Bills pursuing both strategies are introduced each year with the idea that this increases the chances that the ERA will finally be included in the Constitution.

Q: What is the political history of the ERA?

A: The Equal Rights Amendment was written in 1923 by Alice Paul, a leader of the woman suffrage movement and a lawyer. It was introduced in Congress in the same year and reintroduced in every Congressional session for half a century.

On March 22, 1972, the ERA finally passed the Senate and the House of Representatives by the required two-thirds majority and was sent to the states for ratification. An original seven-year deadline was later extended by Congress to June 30, 1982. When this deadline expired, only 35 of the necessary 38 states (the constitutionally required three-fourths) had ratified the ERA. It is therefore not yet included in the U.S. Constitution.

The Equal Rights Amendment has been reintroduced in every session of Congress since 1982. In the 111th Congress (2009-2010), Representative Carolyn Maloney (NY) just recently reintroduced new ERA resolution, H.J.Res. 61. There is no Senate sponsor as of this printing.

Q: Which 15 states have not ratified the ERA?

A: The 15 states whose legislatures have not ratified the Equal Rights Amendment are Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.

Q: Why are these 15 states still being asked to ratify the ERA under a “three-state strategy,” even though the 1982 deadline has passed?

A: The three-state strategy was developed following ratification of the Constitution’s 27th Amendment in 1992, more than 203 years after its passage by Congress in 1789. Acceptance of that ratification period as sufficiently contemporaneous has led some ERA supporters to argue that Congress has the power to maintain the legal viability of the ERA’s existing 35 state ratifications. The time limit on ERA ratification is open to change, as Congress demonstrated in extending the original deadline, and precedent with the 14th and 15th Amendments shows that rescissions (legislative votes retracting ratifications) are not valid. Therefore, Congress may be able to accept state ratifications that occur after 1982 and keep the existing 35 ratifications alive.

Since 1995, ERA supporters have advocated for passage of ERA ratification bills in a number of the “unratified” states. Such bills have been introduced in one or more legislative sessions in eight of these states (Arizona, Arkansas, Florida, Illinois, Mississippi, Missouri, Oklahoma, and Virginia). While no state has passed an ERA bill in both houses of its legislature, ERA bills have been voted out of committee in some of those states, and the Illinois House (but not the Senate) passed an ERA ratification bill in 2003.

Since 1994, Representative Robert Andrews (NJ) has been the lead sponsor of a resolution (H.Res. 757 in the 110th Congress) stating that when an additional three states ratify the ERA, the House of Representatives shall take any necessary action to verify that ratification has been achieved. Representative Andrews and Representative Carolyn Maloney (House leader of the “start-over” ratification strategy) have co-sponsored each other’s ERA bills, in line with the general belief of ERA supporters that both strategies should be pursued in the effort to put the ERA into the Constitution.

Q: Aren’t there adequate legal protections against sex discrimination in the Equal Pay Act, the Pregnancy Discrimination Act, Titles VII and IX of the 1964 Civil Rights Act, court decisions based on the 14th Amendment, and more?

A: Without the ERA in the Constitution, the statutes and case law that have produced major advances in women’s rights since the middle of the last century are vulnerable to being ignored, weakened, or reversed. By a simple majority, Congress can amend or repeal anti-discrimination laws, the Administration can negligently enforce such laws, and the Supreme Court can use the intermediate standard of review to permit certain regressive forms of sex discrimination.

Ratification of the ERA would also improve the United States’ global credibility in the area of sex discrimination. Many other countries have in their governing documents, however imperfectly implemented, an affirmation of legal equality of the sexes. Ironically, some of those constitutions – in Japan and Afghanistan, for example – were written under the direction of the United States government.

Information provided by Roberta W. Francis, Chair, ERA Task Force National Council of Women’s Organizations (www.equalrightsamendment.org) and the Office of Congresswoman Carolyn B. Maloney (www.maloney.house.gov). For more information, contact the MN CAFE Coalition at MnCAFEC Coalition@gmail.com