

Proposed Equal Rights Amendment

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.

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Arguments For and Against the Equal Rights Amendment

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The Alice Paul Institute describes the ERA as a proposed amendment to the U.S. Constitution designed to guarantee equal legal rights for all citizens, regardless of sex. The ERA seeks to end legal distinctions between men and women and treat all citizens the same, regardless of gender. It is important to note that the ERA does not explicitly mention men or women, so this could be interpreted as including people who are gender nonconforming. However, there has been hardly any formal discussion on this topic from a legislative perspective.

History of the ERA

The ERA was first introduced in 1923 by Alice Paul, a socialist, suffragist, feminist, and women’s rights activist who led the movement to ratify the 19th Amendment. The legislation was then introduced for debate in every session of Congress for 50 years. On March 22, 1972, the ERA passed the Senate and the House of Representatives by the required two-thirds majority and headed to the states for ratification.

To date (2019), 35 of the necessary 38 states have ratified the ERA. The deadline to receive 38 ratifications was June 30, 1982, but a legal fight has been developing to determine if the original 35 ratifications would stand if three more states ratified the amendment in the coming years. Nevada passed the ERA in 2017, and Illinois did the

1 same in 2018. The newly-elected Virginia legislature has promised to introduce this
2 legislation in the upcoming session, potentially making Virginia the critical 38th state in
3 the ratification effort. It will likely be left to the Supreme Court to decide if these
4 additional ratifications are legitimate.

5 **Arguments for the ERA**

6 In 1973, future Supreme Court Justice Ruth Bader Ginsburg wrote a summary of the
7 arguments in favor of the ERA:

8 *The equal rights amendment, in sum, would dedicate the nation to a new view of the*
9 *rights and responsibilities of men and women. It firmly rejects sharp legislative lines*
10 *between the sexes as constitutionally tolerable. Instead, it looks toward a legal system*
11 *in which each person will be judged based on individual merit and not on the basis of an*
12 *unalterable trait of birth that bears no necessary relationship to need or ability.*

13 A major argument in favor of the ERA is that it would guarantee that all citizens,
14 regardless of sex, are treated equally under the law. Currently, the 14th
15 Amendment gives equal rights to all citizens but does not explicitly mention women.
16 The 19th Amendment explicitly gives women equal voting rights relative to men but
17 does not broaden its scope beyond that issue. An amendment combining the two —
18 guaranteeing women equal rights with no caveats — is considered necessary by
19 proponents of this perspective.

20 Shirley Chisholm argued in front of Congress that the ERA would benefit both men and
21 women because it would negate laws that benefit only women. For example, women
22 would be required to sign up for the Selective Service under the ERA, adhering to the
23 same standard as men. She argued that women are held to higher standards when it
24 comes to volunteering for military service, whereas men are not. The full quote is below:

25 *The selective service law would have to include women, but women would not be*
26 *required to serve in the Armed Forces where they are not fitted any more than men are*
27 *required to serve. Military service, while a great responsibility, is not without benefits,*
28 *particularly for young men with limited education or training. Since October 1966,*
29 *246,000 young men who did not meet the normal mental or physical requirements have*
30 *been given opportunities for training and correcting physical problems. This opportunity*
31 *is not open to their sisters. Only girls who have completed high school and meet high*
32 *standards on the educational test can volunteer. Ratification of the amendment would*
33 *not permit the application of higher standards to women.*

1 The ERA would also set a clear federal judicial standard for deciding cases of
2 discrimination on the basis of sex. This amendment would give the federal courts a
3 precedent when deciding such cases, by codifying equality regardless of gender in the
4 Constitution. Theoretically, this could result in more legal victories for women’s rights
5 down the line, and would also provide a strong legal defense against a rollback of
6 women’s rights.

7 Most laws that protect women against discrimination (such as the Pregnancy
8 Discrimination Act or the Equal Pay Act) can be undermined or overruled by another bill
9 passed by a simple majority of Congress. A Constitutional amendment solidifies the
10 right of women not to be discriminated against on the basis of sex, and would
11 theoretically be protected from legal challenges. An example of this occurring in the
12 case of racial discrimination is Brown v. Board of Education of Topeka. The 14th
13 Amendment was the basis of the decision that separate was inherently unequal,
14 overturning Plessy v. Ferguson. The decision in Plessy also rested on the basis of the
15 14th Amendment; this will be discussed in more detail later.

17 **Arguments Against the ERA**

18 One common argument against the Equal Rights Amendment is the fact that the U.S.
19 already has the 14th Amendment, which states:

20 *All persons born or naturalized in the United States, and subject to the jurisdiction*
21 *thereof, are citizens of the United States and of the state wherein they reside. No state*
22 *shall make or enforce any law which shall abridge the privileges or immunities of*
23 *citizens of the United States; nor shall any state deprive any person of life, liberty, or*
24 *property, without due process of law; nor deny to any person within its jurisdiction the*
25 *equal protection of the laws.*

26 A woman is a citizen, so she falls under this category as much as anyone else does.
27 Laws like the aforementioned Pregnancy Discrimination Act and the Equal Pay Act
28 protect the individual rights of women and address the specific challenges women face.

29 Another major argument against the ERA is that the ratification of the ERA would mean
30 laws cannot be passed to protect men and women differently. The ERA states, “equality
31 of rights under the law shall not be denied or abridged by the United States or by any
32 state on account of sex,” implying all laws must affect men and women equally. That
33 standard is present in legislation surrounding racial discrimination. An example is
34 present in Adkins v. Children’s Hospital from 1923. In this case, the Supreme Court

1 ruled that it was unconstitutional to guarantee women a minimum wage because earlier,
2 the court had ruled that men could not be guaranteed a minimum wage. The court
3 based its decision on the 19th Amendment.

4 But, like in the case of racial discrimination, the ERA has the potential to backfire on the
5 greater mission of the women's rights movement. If the ERA is ratified, it would be more
6 difficult to pass laws that specifically protect women. The aforementioned Plessy v.
7 Ferguson decision hinged on the 14th Amendment. In a 7-1 decision, the Supreme
8 Court ruled that as long as the separate facilities were equal, they would satisfy the 14th
9 Amendment. This same line of thinking could be applied to issues of gender. The 14th
10 Amendment formally recognized a group of marginalized citizens as having rights, and it
11 was used against that same marginalized group of citizens; proponents of this
12 perspective worry that the same thing could happen to women if the ERA is enacted.

13 Finally, some are concerned that the ERA could also foster a false sense of security
14 among women in the women's rights movement. The passage of the ERA could be
15 seen as the end of a long journey, when the work was just beginning. Laws cannot
16 change the world if attitudes and practices do not change too. The focus would need to
17 shift to real-world implementation of this amendment to ensure the ERA is implemented
18 the proper way.

19 **Conclusion**

20 The ERA is overwhelmingly popular among Americans: 94% of citizens say they
21 support making the ERA the newest constitutional amendment. However, the
22 implications of ratifying this amendment are worthy of further discussion. The feminist
23 movement has grown and matured since the ERA was first introduced in 1923, mere
24 years after the ratification of the 19th Amendment. In the 100 years since women won
25 the right to vote, feminist leaders have started to think critically about the social and
26 legal implications of making men and women truly equal in the eyes of the law.

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Phyllis Schlafly and the Debate over the Equal Rights Amendment

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In 1973, feminist Betty Friedan debated conservative Phyllis Schlafly at Illinois State University in 1973. Friedan, who disliked Schlafly's opposition to an Equal Rights Amendment (ERA) to the Constitution, said, "I consider you a traitor to your sex." Schlafly countered by saying that Friedan and her allies were "intemperate, agitating proponents of ERA. . . so intolerant of the views of other people." Schlafly antagonized liberal and feminist women in the audience with comments like: "I'd like to thank my husband for allowing me to speak here tonight."

Friedan and Schlafly had much in common: they were both well educated, married with children, and passionate about their respective side in the fight over the ERA. The amendment simply stated: "Equality of rights under the law shall not be denied or abridged by the United States or by any other State on account of sex." But it was Schlafly whose opposition prevailed in the fight and who strengthened the position of traditional conservatism as a result.



Phyllis Schlafly protesting outside the White House against the Equal Rights Amendment (ERA) in 1977.

Phyllis Stewart was born in St. Louis and raised during the Great Depression when her mother had to support the family because of her father's inability to find work. A bright and hardworking student, Stewart graduated from Washington University in St. Louis in 1944, working at a World War II ammunition factory to help defray college costs. She also received an M.A. in government from Radcliffe College, then the sister school of Harvard University. She later received a law degree from Washington University in 1978.

1 After the war, Stewart worked for a year at the American Enterprise Institute, a
2 conservative pro-business organization in Washington, DC. She left to become involved
3 in a political campaign in St. Louis and eventually ran for Congress herself, and lost, as
4 the Republican candidate in a heavily Democratic district. In 1949, she married Fred
5 Schlafly, an attorney for the Olin Corporation, became active in Republican Party
6 politics, and was a delegate to every GOP convention from 1952 until 2016. She had six
7 children and attended Washington University Law School at night. A strong Roman
8 Catholic and anti-communist, she founded the Cardinal Mindszenty Foundation (named
9 after an imprisoned Hungarian prelate) to educate Americans about the communist
10 threat to religion.

11 Schlafly gained national attention with the publication of her first book, *A Choice, Not an*
12 *Echo* (1964), which attacked the moderate East Coast leaders in the Republican Party
13 and supported the campaign of conservative Arizona senator Barry Goldwater when
14 many party leaders did not. The slim volume of approximately 120 pages was
15 distributed by her own publishing house and sold more than three million copies,
16 catapulting Schlafly to fame within the emerging conservative movement (she used the
17 royalties from the book to fund her children's college educations). She now had a
18 platform for her views and published a monthly four-page pamphlet known as *The*
19 *Phyllis Schlafly Report*, distributing it to thousands of subscribers, many of them women
20 she had cultivated in her role as a member (and later vice president) of the National
21 Federation of Republican Women.

22 Schlafly's main interests as a writer and analyst were defense policy and nuclear
23 weapons, and she co-wrote several books about these with former Admiral Chester
24 Ward. She was very critical of Richard Nixon's policy of détente, the lessening of
25 tensions between the United States and the Soviet Union, as well as of Nixon's opening
26 relations with Mao Zedong's China in 1972. She thought the communists could not be
27 trusted to abide by agreements being reached on nuclear weapons and improved
28 relations.

29 One of the issues that did not interest Schlafly much at all was the feminist movement,
30 which had reemerged during the protest culture of the 1960s. Betty Friedan had helped
31 shape feminism in the 1960s by the publication of her book, *The Feminine*
32 *Mystique* (1963), which discussed how the domestic sphere of motherhood, for
33 educated women like herself, was akin to a "cultural concentration camp." In 1964,
34 Friedan helped form the National Organization for Women (NOW) and fought for equity
35 issues like equal pay for equal work and women's opportunities to have careers in the
36 professions, such as medicine, higher education, and law. But the cultural revolutions of
37 the 1960s, from civil rights to the anti-Vietnam War protests, reshaped feminist

1 responses and radicalized women, who now saw their concerns linked to political issues
2 in a very personal way.



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4 *Betty Friedan's The Feminine Mystique helped galvanize*
5 *the feminist movement in the 1960s.*

6 Even as members of protest movements, women often found themselves treated as
7 second-class citizens, with very few in leadership positions and most serving as
8 secretaries and romantic partners to the male leaders of the movement. Women began
9 to discuss their thoughts about these issues, and the resulting consciousness-raising
10 sessions led to an explosion of feminist organizations in the late 1960s and early 1970s.
11 Cultural and radical feminists bore no hostility toward the economic and political
12 concerns of NOW, but they pushed the movement further, urging control over their own
13 reproductive decisions and their sexuality. They also believed men and women were
14 equally competent and should be treated as equals in the workplace and in their
15 freedom to make personal decisions.

16 The feminist movement resurrected the ERA (initially proposed in the 1920s) and
17 moved for its adoption. Congress passed it in 1971 and, by early 1973, 30 states had
18 ratified it, leaving it only eight states short of adoption. Moreover, several states had
19 also legalized abortion and, in 1973, the Supreme Court legalized abortion nationwide in
20 a 7-2 vote in the case known as *Roe v. Wade*. Then Phyllis Schlafly entered the debate,
21 publishing "What's Wrong with Equal Rights for Women?" in the February 1972 issue
22 of *The Phyllis Schlafly Report*.

23 Schlafly's argument was that women's rights were already protected under the
24 Constitution and that the ERA would undermine the family, "the basic unit of society,
25 which is ingrained in the laws and customs of our Judeo-Christian civilization". The

1 modern American woman would lose the protection of father and husband and the
2 “Christian tradition of chivalry,” which supported the family and shielded women in the
3 case of divorce or separation. Schlafly also attacked the ERA as undermining the
4 protections that women already possessed and that the ERA would leave women
5 vulnerable to the military draft. Although she supported equity for women in careers and
6 pay, she also defended motherhood and the home in her essay. She also later claimed
7 the ERA would lead to coed bathrooms and the promotion of homosexual marriage.

8 Schlafly’s essay led directly to the formation of a movement of Christian evangelicals,
9 Mormons, Catholics, and other traditional groups to fight against the ERA in an
10 organization called STOP ERA (Stop Taking Our Privileges-ERA), led by Schlafly. ERA
11 supporters were often white, middle-class, secular, and well educated; they tended to
12 be single or, if married, in one of the professions. They were also divided among many
13 feminist organizations, such as NOW and others dedicated to securing passage of the
14 amendment. STOP ERA members were married women with children, religious, middle
15 class, and older, and they saw links between attacks on religion in the courts and the
16 feminist movement as threats to motherhood and the home. Democrats and
17 Republicans, including Presidents Gerald Ford and Jimmy Carter, as well as celebrities
18 and the media, supported the ERA, and making headway against it was an uphill climb,
19 but Schlafly’s organization and dedication to the cause prevailed. Schlafly linked the
20 ERA fight to the fight against abortion and drew support from the emergence of a
21 religious right at the grassroots level in the 1970s.

22 Schlafly took the lead in challenging feminists in debates and in making appearances in
23 the national media, while her grassroots supporters lobbied at the state level, often
24 bringing cookies to appeal to the men who dominated state legislatures. Five states
25 proved crucial battlegrounds: Florida, Missouri, Illinois, Oklahoma, and North Carolina.
26 In each state, the STOP ERA forces prevailed. Even after a five-year extension for
27 ratification was allowed by Congress, Illinois’s decision not to ratify the amendment in
28 1982 effectively killed the effort for passage. By that time, Ronald Reagan was in the
29 White House and the conservative movement was at its peak, with the majority of STOP
30 ERA members, including Schlafly, giving their full support to the White House and its
31 policies.

32 After the defeat of the ERA, when Schlafly came under verbal and physical assault from
33 supporters of the amendment, she converted STOP ERA into a pro-family, traditionalist
34 organization named Eagle Forum. As one of the leaders of the rising conservative
35 movement of the 1960s and 1970s, she remained an active Republican and
36 conservative activist for the rest of her life. The STOP ERA fight was one of the main
37 reasons conservatism as an ideology became crucial to Republican politics. The

1 grassroots activists in the STOP ERA fight remained committed to the conservative
2 cause and to traditionalism within American society.

4 Appeals court debates whether Equal Rights 5 Amendment is really dead

7 By Rachel Weiner

8 September 28, 2022 at 4:54 p.m. EDT

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10 www.washingtonpost.com
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13 A panel of federal judges expressed skepticism Wednesday about two states' effort to
14 enshrine gender equality in the U.S. Constitution by getting the federal government to
15 recognize the Equal Rights Amendment decades after it was considered dead.

16 At a hearing Wednesday before the U.S. Court of Appeals for the D.C. Circuit, Illinois
17 and Nevada sparred with the Justice Department over whether their ratification of the
18 proposed constitutional amendment, long after a congressionally set deadline to do so
19 had passed, should count for something.

20 The states are arguing that the deadline Congress set for ratification nearly three
21 decades ago is an unconstitutional encroachment on state power. A lawyer for the
22 Justice Department countered that, while the Biden administration agrees with the
23 principles of the Equal Rights Amendment, the executive branch can't unilaterally
24 decide whether it is part of the Constitution.

25 "Our ratifications are not being given their intended effect," said Jane Notz, solicitor
26 general of Illinois.

27 The three-judge panel on the appeals court appeared open to the idea that states had
28 the legal right to sue to force the U.S. archivist to certify and publish the Equal Rights
29 Amendment. But they seemed less sure that their position was the right one, and that
30 the amendment — which was proposed by Congress but needed ratification from three-
31 quarters of the states — has become part of the U.S. Constitution.

32 "The legislative history seems to indicate that Congress only passed [the Equal Rights
33 Amendment] because it did have this deadline," Judge Robert L. Wilkins said. If the
34 deadline wasn't allowed, he asked, "Wouldn't then the result be that we invalidate the
35 proposed amendment, as opposed to just striking the deadline?"

36 The states disagreed, arguing that the deadline in the preamble to the amendment was
37 simply unenforceable.

1 Judge Neomi Rao suggested that the states' interpretation "seems to take us way down
2 a slippery slope in terms of undermining Congress's ability to propose amendments to
3 the Constitution."

4 Sarah Harrington, an attorney for the Justice Department, said that "the Biden
5 administration supports the principles that are espoused in the ERA" but opposes the
6 lawsuit.

7 "The ERA either is or isn't part of the Constitution today, and nothing the archivist does
8 can affect that," she said. A person would have to claim that their rights under the ERA
9 were violated to sue for its enforcement, she argued.

10 "We are obviously considering many parallel options on having this enforced," Nevada
11 Attorney General Aaron Ford (D) said after the hearing.

12 The ERA was [considered](#) moribund when it fell three states short of the threshold
13 required for ratification, failing to meet both the original deadline of 1979 imposed by
14 Congress and a three-year extension. Five states subsequently withdrew their approval.
15 The House, but not the Senate, [has passed legislation](#) to remove the deadline.

16 Supporters of the amendment now take the view that the deadline and the withdrawals
17 were invalid, because the deadline was not in the amendment itself, and ratifications are
18 final. Inspired by those arguments, three states ratified the amendment in the past five
19 years — [ending with Virginia](#), the crucial 38th state, in early 2020. To supporters, that
20 means it went into effect this January.

21 But under the Trump administration, the U.S. archivist refused to certify the amendment,
22 leading to a [lawsuit](#) by Virginia, Nevada and Illinois. President Biden's nominee to run
23 the National Archives and Records Administration [has said](#) she will stand by that
24 decision unless a court or Congress orders her to do otherwise.

25 "The 28th Amendment exists," said Kwame Raoul (D), the attorney general of Illinois.
26 "The challenge is, if you're putting a protection in our Constitution for discrimination
27 based on sex, like any laws, people look to the books to know that they exist. There is
28 meaning in publication."

29 After the election of Republican Gov. Glenn Youngkin, Virginia [withdrew](#) from the suit,
30 taking the position that the deadline for ratification has passed.

31 Douglas Johnson of the [antiabortion](#) National Right to Life Committee said he believes
32 the panel "may have the courage to affirm the simple reality that the real ERA died
33 decades ago," which "would be a good thing for the rule of law."

34 Every other constitutional amendment with a deadline [has been ratified within the stated](#)
35 [time frame](#). A federal district court judge last year found that while the ratification effort
36 is "[I]audable," it contradicted a "clear deadline" that "there is no doubt that Congress
37 intended ... to be binding."

38 While sex discrimination is prohibited under federal law, the ERA would subject laws
39 that differentiate between men and women to greater scrutiny. Both advocates and

1 opponents believe that the ERA would have strengthened the argument for a
2 constitutional right to an abortion, undone by the U.S. Supreme Court earlier this year.
3 Arguments in that case occurred before January, when advocates argue the ERA took
4 effect. Advocates in North Carolina asked for time to argue that “the Court must
5 consider the entire Constitution, which legally includes the 28th Amendment.” They
6 were denied.