



The Equal Rights Amendment

Erasing Women and Their Rights

The Equal Rights Amendment (ERA), a proposed constitutional amendment defeated in the 1970s, is making headway in Congress again. It is being touted as a legal cure for unjust discrimination against women; however, it would do little to advance women in society. Instead, it would eliminate existing legal protections that celebrate the biological realities of women. Women deserve better than the misleading promises of the ERA.

The ERA Eliminates Sex Distinctions that Benefit Women

- The main text of the federal ERA reads: “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 word “sex” is undefined; therefore, interpretation of this language would be left entirely up to judges.
 - The U.S. Supreme Court’s majority opinion in *Bostock v. Clayton County* (2020) proves why this is a bad idea. *Bostock* redefined “sex discrimination” in Title VII to include sexual orientation and gender identity. The Biden administration has used the *Bostock* opinion to erroneously expand that radical redefinition into other areas.
 - For example, the administration is trying to use the redefinition in *Bostock* to eliminate biological sex distinctions in Title IX, which is precisely the opposite of Title IX’s purpose of giving women equality of opportunity in athletics.
- Representative Jerry Nadler (D-NY), Ranking Member of the House Judiciary Committee, has [said](#) this language “includes sexual orientation and gender identity.” When directly asked, Democrat

witnesses at the [2019 House Judiciary Committee hearing](#) on the ERA either agreed with this interpretation or said it would be litigated. This redefinition of “sex,” if applied, would adversely affect programs established specifically to help women.

- For example, the Small Business Administration Office of Women’s Business Ownership, whose mission is to “enable and empower women entrepreneurs,” could be forced to either abandon that mission or give biological males who identify as women access to its programs, diluting resources for female entrepreneurs.
- Even liberal legal scholars have [raised concerns](#) that the ERA would negatively impact women by:
 - Not prohibiting violence against women by private individuals.
 - (We’d go further: Government efforts to protect women from violence and give them recourse if they are victimized are already being hindered, and the ERA would only exacerbate these impediments. For example, the *Violence Against Women Act* is supposed to give battered women greater access to resources, but the addition of sexual orientation and gender identity into the reauthorization of the bill has upended these efforts.)
 - Likely applying strict scrutiny to laws with sex distinctions, thereby prohibiting policies that specifically benefit women.
 - (Again, we’d go further: Any law protecting women in any area—women’s shelters, locker rooms, bathrooms, employment, prisons, and more—would face a steep uphill battle, as would laws protecting parental rights or protecting children from indoctrination and experimentation.)
- Inclusion of this harmful redefinition in the U.S. Constitution would be much worse than passage of a bill like the *Equality Act*. Enshrining a radical (and ever-expanding) gender identity ideology in the Constitution would be exponentially worse than enshrining it in statutory law. It is much harder to amend the Constitution than it is to pass a new statute or adjust or repeal an existing law.
 - Cases regarding attacks on people of faith for their beliefs about human sexuality would increase and become much more difficult to win.