



The Equal Rights Amendment

Erasing Women to Promote Abortion

The Equal Rights Amendment (ERA), a proposed constitutional amendment defeated in the 1970s, is making headway in Congress again. Members of Congress who support the ERA are attempting to retroactively eliminate Congress' deadline for ratification rather than starting the ratification process over.

The ERA is being touted as a legal cure for all unjust discrimination against women. However, the ERA would do little to advance women in society. Instead, it would mandate abortion funding and eliminate existing legal protections that celebrate the biological realities of women. Women deserve better than the misleading promises of the ERA.

The Federal ERA Eliminates Sex Distinctions that Benefit Women

- The main text of the 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 ERA does not define the word “sex” anywhere in its text; therefore, interpretation of this language would be left up entirely to judges.
- Representative Jerry Nadler (D-NY), chairman of the House Judiciary Committee, has [said](#) this language “includes sexual orientation and gender identity.” This definition, if applied, would

uphold laws that promote gender identity over biological sex, adversely affecting programs established specifically to help women.

- Even liberal legal scholars have [raised concerns](#) that the ERA would negatively impact women.
 - First, scholars have pointed out that the ERA would not apply to the private sector, which includes the businesses and private individuals responsible for much of the unjust discrimination faced by women today.
 - Additionally, liberal legal scholars argue that the ERA would likely apply strict scrutiny to any laws with sex distinctions, prohibiting policies that specifically benefit women, like maternity leave and increases to women's pay in government contracts.

The Federal ERA Creates a Backdoor for Abortion

- The ERA prohibits any laws that affect individuals on account of their sex. Abortion laws and restrictions affect women on account of their sex because only women can become pregnant. Therefore, under the ERA, any restrictions on abortion would be deemed unlawful. Consider the following consequences of the ERA:
 - Abortion rights throughout all three trimesters of pregnancy would be written into the Constitution, taxpayer funding of elective abortions would be required, and conscience protections that allow medical providers to abstain from performing abortions would be overridden.
 - Abortion advocates like NARAL and Planned Parenthood have successfully argued in state courts that state-level ERAs require taxpayer-funded abortion on demand. In New Mexico (*N.M. Right to Choose/NARAL v. Johnson*, 975 P.2d 841 (N.M. 1998)) and Connecticut (*Doe v. Maher*, 515 A.2d 134 (Conn. Super. Ct. (1986))), the courts interpreted state-level ERAs to force taxpayers to cover abortion.

- Proponents say the ERA is not about abortion. However, national abortion lobbying groups like NARAL [claim](#) the ERA would reinforce the constitutional right to abortion and require judges to strike down anti-abortion laws.

The Limited Effect of State-Level Equal Rights Amendments

- Over [20 states](#) already have language equivalent to the federal ERA in their state constitutions. These state-level ERAs can help us understand how a federal ERA would likely impact federal law.
- These state-level ERAs have not led to a clear elimination of unjust discrimination against women. The only area in which they have had a clear legal effect is forcing states to pay for abortion.
- Of the states identified as the [most supportive](#) of women business owners (based on the number of women-owned businesses, women CEOs, and sales per company), the top three states (Alabama, Minnesota, and Wisconsin) do not have an ERA. Most of the states with an ERA rank in the middle of the pack.
- Of the states with the highest rates of [domestic violence](#) against women, four of the top 10 have an ERA (Delaware, New Hampshire, Texas, and Wyoming). Of the states with the lowest rates of domestic violence against women, four do not have an ERA.
- Some ERA advocates [acknowledge](#) that a more robust legislative response than the ERA is needed in order to secure women's rights (including laws that would protect women against violence, strengthen Title IX, and expand pregnancy accommodations in the workplace).

The Legal Status of State-Level Equal Rights Amendments

- Thirty-eight states must ratify the ERA before it can become part of the U.S. Constitution.

- Only 35 states ratified the ERA before its initial ratification deadline of March 22, 1979.
- When Congress extended the deadline to June 30, 1982, the ERA still failed to rally enough states to ratify, and *five states withdrew their ratification*. Proponents of the ERA sued, arguing that the withdrawals were invalid, but a trial court recognized the withdrawals. Now proponents are trying to revive this stale effort.
- Countless lawyers, the Office of Legal Counsel at the Department of Justice (OLC), and even the late Supreme Court Justice Ruth Bader Ginsburg all have agreed that the ERA cannot be ratified unless Congress were to start the process over.
- On March 5, 2021, a federal district judge ruled against three states (Nevada, Illinois, and Virginia) that had sought to force the National Archivist to certify their ratifications of the ERA long after the congressional deadline had passed. This ruling made clear that the congressionally-set deadline to ratify the ERA was valid and expired long before the necessary number of states ratified the amendment.