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The Equal Rights Amendment: No Expiration Date to Put Women in the Constitution

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The Equal Rights Amendment: No Expiration Date to Put Women in the Constitution

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"The women of this country have waited over two centuries to be afforded equal protections under this country's founding document."[1]

The Equal Rights Amendment ("ERA") has endured an almost centennial-long battle in the United States' legal system. Proposed in 1923 by two leaders of the National Women's Party, Alice Paul and Crystal Eastman, the Amendment provides that: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." [2] The final version of the Amendment also gives Congress the power to enact appropriate legislation to enforce the article, and provides that it will take effect two years after ratification.[3] The core of the ERA is equal rights of the sexes. All the Amendment is saying is that men and women must be treated equally under the law.

During feminism's "first wave" in the 1920s, the Amendment did not render much support—not only in Congress, which was comprised almost entirely of men—but also amongst working women, who wanted workplace protections and feared the ERA would dismantle these safeties. [4] Not until the 1960's second wave of feminism did the Amendment started to gain momentum.[5] Congresswomen Martha Griffiths and Shirley Chisholm and advocates Betty Friedan and Gloria Steinem[6] are among

the women who started the ERA down the path of ratification.[7]

Approval of a Constitutional Amendment requires a two-step process: first, both the House and the Senate must pass the amendment by a two-thirds majority in each chamber; and second, it must be ratified by three-fourths of the state legislatures, or by 38 states.[8] The House of Representatives approved the Amendment in October 1971 and the Senate in March 1972, almost 50 years after its inception.[9] Congress set a seven-year deadline for state ratification: 1979.[10] The first prong was met and, initially, it looked as though the second prong would be as well, with 30 state legislatures ratifying the ERA within a year, reflecting societal approval of this shift toward justice and equality.[11]

However, movement toward ratification came to a halt at the impetus of Phyllis Schlafly and the anti-feminists, defending the traditional American family: the right of a woman to be in the home as a wife and a mother, supported by the husband.[12] Schlafly and her organization, STOP ERA, used scare tactics, telling women they would be shipped off to war and have to use gender neutral restrooms – much of which came to be without the Amendment.[13] She

successfully rallied conservatives to oppose the ERA and by the 1979 deadline, only 35 states had ratified it.[14] Congress extended the deadline for ratification by three years to 1982, but still only 35 states remained and the Amendment became lifeless.[15]

Fast forward to 2017: Nevada became the first state to ratify the ERA since 1977, with Illinois following suit the year after.[16] Recently, a resurgence of women’s activism renewed discussion of gender equality, putting the ERA back into focus.[17] In 2020, Virginia became the essential 38th state to ratify the Equal Rights Amendment.[18] The only remaining issue: the 1982 deadline.[19]

There are a couple of options to get around the deadline, including Congress extending it or eliminating it entirely, or a member of Congress giving the Amendment a fresh start with a new bill, which would require passage of both houses and re-ratification of 38 states.[20] Eliminating the deadline has been the most popular route, and the Constitution itself “sets a requirement that one Congress cannot bind a future Congress.”[21] In March 2021, the House voted to eliminate the expiration date for ratification, with President Biden’s support.[22] The attention now turns to the Senate where the bill faces an uphill battle.[23]

Why does this matter? The word ‘women’ does not appear in the Constitution, a document written by and for white men.[24] In the United States Constitution, explicitly, women are not guaranteed equal treatment under the law. While majorities of the Supreme Court have found implicit equal treatment under the Equal Protection Clause of the Fourteenth Amendment,[25] other justices have rejected this broad interpretation.[26] Additionally, anti-discrimination laws can, and have, been rolled back by Congress.[27] Equality of the sexes is too important a principle to rely on unpredictable interpretations and transitory laws.

“Ratifying the ERA would affirm that sex discrimination is inconsistent with the nation’s core value of equal protection under the law, and it would send a clear message about a national commitment to the inherent equality of all people.”[28] Women demand explicit text in our United States Constitution that compels equal protection of the sexes under the law. Equality is not debatable, it is a fundamental right.

[1] Mark Herring (@AGMarkHerring), Twitter (Mar. 5, 2021), <https://twitter.com/markherringva/status/1367992839720820738?lang=en> (<https://twitter.com/markherringva/status/1367992839720820738?lang=en>).

[2] Alex Cohen & Wilfred U. Codrington III, *The Equal Rights Amendment Explained*, Brennan Center for Justice, Jan. 23, 2020, <https://www.brennancenter.org/our-work/research-reports/equal-rights-amendment-explained> (<https://www.brennancenter.org/our-work/research-reports/equal-rights-amendment-explained>).

[3] Tara Law, *Virginia Just Became the 38th State to Pass the Equal Rights Amendment. Here’s What to Know About the History of the ERA*, TIME, Aug. 23, 2019, <https://time.com/5657997/equal-rights-amendment-history/> (<https://time.com/5657997/equal-rights-amendment-history/>).

[4] *Id.*

[5] *Id.*

[6] Gloria Steinem, Shirley Chisholm, Betty Friedan, and Bella Abzug were the main women fighting for the ERA in the 1960s and were the leaders for the second wave movement.

[7] Cohen, *supra*, note 2.

[8] 57c. *The Equal Rights Amendment*, U.S. History, <https://www.ushistory.org/us/57c.asp> (<https://www.ushistory.org/us/57c.asp>).

[9] *Equal Rights Amendment Passed by Congress*, History, Mar. 22, 1972, <https://www.history.com/this-day-in-history/equal-rights-amendment-passed-by-congress> (<https://www.history.com/this-day-in-history/equal-rights-amendment-passed-by-congress>).

[10] Cohen, *supra*, note 2.

[11] Cohen, *supra*, note 2.

[12] Law, *supra*, note 3.

[13] *Id.*

[14] *Last Week Tonight With John Oliver* (HBO series June 9, 2019).

[15] Law, *supra*, note 3.

[16] Erin Blakemore, *Why the Fight Over the Equal Rights Amendment Has Lasted Nearly a Century*, History, Nov. 26, 2018, <https://www.history.com/news/equal-rights-amendment-fail-phyllis-schlafly> (<https://www.history.com/news/equal-rights-amendment-fail-phyllis-schlafly>).

schlafly).

[17] Cohen, *supra*, note 2.

[18] Law, *supra*, note 3.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] Equal Rights Amendment, Removing the Time Limit, Alice Paul Institute, <https://www.equalrightsamendment.org/> (<https://www.equalrightsamendment.org/>). Dareh Gregorian, 'No expiration date on equality': House passes bill to remove women's rights ERA deadline, ABC News, Mar. 17, 2021, <https://www.nbcnews.com/politics/congress/no-expiration-date-equality-house-passes-bill-remove-women-s-n1261334> (<https://www.nbcnews.com/politics/congress/no-expiration-date-equality-house-passes-bill-remove-women-s-n1261334>).

[23] Veronica Stracqualursi, Federal judge says deadline to ratify ERA 'expired long ago' in setback to advocates' efforts, CNN, Mar. 6, 2021, <https://www.cnn.com/2021/03/06/politics/equal-rights-amendment-virginia-lawsuit/index.html> (<https://www.cnn.com/2021/03/06/politics/equal-rights-amendment-virginia-lawsuit/index.html>).

[24] Robin Bleiweis, The Equal Rights Amendment: What You Need To Know, Center for American Progress, Jan. 29, 2020, <https://www.americanprogress.org/issues/women/reports/2020/01/29/479917/equal-rights-amendment-need-know/> (<https://www.americanprogress.org/issues/women/reports/2020/01/29/479917/equal-rights-amendment-need-know/>).

[25] *Reed v. Reed*, 404 U.S. 71 (1971); *Frontiero v. Richardson*, 411 U.S. 677 (1973).

[26] Bleiweis, *supra*, note 24.

[27] Last Week Tonight With John Oliver (HBO series June 9, 2019) ("For example, Congress let the Violence Against Women Act expire and the Trump Administration rescinded more than 20 policy guidelines on Title IX anti-discrimination laws.").

[28] Bleiweis, *supra*, note 24.

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