

The Equal Rights Amendment

“Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”

What is the Equal Rights Amendment?

The Equal Rights Amendment (ERA) is a proposed amendment to the United States Constitution designed to guarantee equal rights for all citizens regardless of sex; it seeks to end the legal distinctions between men and women in terms of divorce, education, employment and pay, health, violence, and other matters. The language of the amendment is only 24 words long.

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.

Why do we need it?

A constitutional amendment would express a permanent, uniform, and national standard for eliminating sex discrimination via government at all levels, and would ensure strict scrutiny in cases of discrimination.

- The U.S. Constitution still does not explicitly guarantee that all of the rights it protects are held equally by all citizens without regard to sex. The only right that the Constitution specifically affirms to be equal for women and men is the right to vote (19th Amendment, 1920).
- The 14th Amendment’s equal protection clause has never been interpreted to guarantee equal rights as it pertains to sex or gender in the same way an Equal Rights Amendment would. Late Supreme Court Justice Antonin Scalia said in September 2010 that he does not think the Constitution prohibits sex discrimination, and Supreme Court Justice Ruth Bader Ginsberg has stated she strongly believes we need an Equal Rights Amendment.
- We need a clearer and stricter judicial standard for deciding cases of sex discrimination. Sex discrimination should have the highest level of strict judicial scrutiny, just as discrimination against race, religion, and nationality does, but it currently receives only intermediate scrutiny.
- We need its protection against a rollback of the advances in women’s rights achieved over the past half century. With the ERA in the Constitution, it would be more difficult for lawmakers and judges to reverse progress already made in eliminating sex discrimination.
- Without it, women will have to continue to fight long, expensive, and difficult political and legal battles to ensure that their rights are enforced – and men in some cases will have to fight for their equal rights.
- The Constitution’s silence on gender promotes and perpetuates the impression that women are not equal to men in our society, leading to de facto inequality.
- Depending on where one lives, women are currently subject to a patchwork of laws. This results in unequal treatment of women under the law between different states and municipalities.
- The United States fails in its global leadership as long as there is not a specific guarantee of equal rights for women in our Constitution, as almost all other countries already have such language.
- The vast majority of U.S. citizens want it. An April 2012 poll for Daily Kos and SEIU found 91% of Americans believe men and women should have equal rights affirmed by the Constitution. A 2001 Opinion Research Corporation poll showed that 96% of U.S. adults believe male and female citizens should have equal rights, and 88% said the Constitution should guarantee equal rights, but 72% mistakenly assumed that the Constitution already includes such a guarantee.

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To learn more about why we need the ERA, watch the documentary “Equal Means Equal” or visit equalmeansequal.org



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What is the history of the ERA?

Suffragist leader Alice Paul first introduced the ERA in 1923. It wasn't until 1972 that the ERA was finally passed by Congress and sent to the states for ratification. The original seven-year time limit was extended by Congress to June 30, 1982, but at that deadline, the ERA had been ratified by only 35 states, three states short of the 38 required to put it into the Constitution. Illinois is one of the states that has not ratified.

What about that deadline and how is the ERA still viable?

Congressional Research Service issued a report on the "three state strategy" on April 8, 2013 entitled "The Proposed Equal Rights Amendment: Contemporary Ratification Issues",^[102] stating that the approach is viable.

Legal Precedent

- Congress may determine the rules for ratification beyond those established in Article V of the U.S. Constitution. *Coleman v. Miller*, 307 US 433 (1939) and *Dillion v. Gloss*, 256 US 368 (1921). The Supreme Court overruled a lower court's attempt to invalidate ongoing ratification efforts after the original deadline *Idaho v. Freeman* 455 US 918 (1982).
- The seven-year deadline is in the resolution's preamble, and not in the proposed amendment passed by Congress in 1972, or the text ratified by 36 states.
- Time limits are a new custom. The first deadline was used in 1933 for the 21th Amendment (repeal of prohibition).

Historical Precedent

- In 1992 Congress declared the 27th Amendment ratified, despite a 203-year ratification process.
- In 1870 Congress declared the 15th Amendment ratified, despite New York's rescission.
- In 1978 Congress voted to extend the ERA deadline to 1982. Therefore, it can again.

Current Precedent

- States continue to take steps toward ratification. In 2017 alone, legislators in Arizona, Florida, Illinois, Nevada, North Carolina, and Utah introduced resolutions to approve the ERA.
- Nevada ratified on March 22, 2017, becoming the 36th state to ratify, 35 years after the deadline.
- Pending in Congress, S.J.Res. 5 and H.J.Res. 53 would remove the deadline.

Status in Illinois

Illinois Senate Joint Resolution Constitutional Amendment 4 (SJRC4) proposes to ratify the Equal Rights Amendment to the U.S. Constitution, making Illinois the 37th state (of the 38 states needed). Ratifying SJRC4 requires:

- A 3/5ths majority (super majority) of votes in the Illinois Senate and House.
- No change to the already-existing language of the amendment.
- No signature or approval by the Governor.
- Introduction in either chamber, and does not need to be ratified in one chamber before the other.

Illinois already shows its support for equal rights regardless of sex in its state Constitution: “The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts.” *Illinois Constitution, Article I, §18 (1970)*

The resolution has been passed by the Illinois Senate Executive Committee (spring session 2017), and resolution sponsors Sen. Steans and Rep. Lang are working hard with thousands of supporters and dozens of organizations across the state to ratify in the next year.

It's time, Illinois.

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