

## A Renewal for Equal Rights

In 1923, Alice Paul— a women’s rights activist— first introduced the Equal Rights Amendment to Congress.<sup>1</sup> After the Nineteenth Amendment, making it illegal to deny the right to vote to any citizen based on sex, activists wanted to expand women’s rights beyond voting through this ERA. Though women have gained more freedom in America since the 19th and 20th centuries, the country’s founding document— the Constitution— still does not guarantee the rights of women to be equal to the rights of men. Even with laws limiting sex discrimination, such as Title IX and VII and the Equal Pay Act, these can be withdrawn by a single majority vote without this written protection.<sup>1</sup> To secure new and revise old legislation to tackle pressing gender inequality issues— discrimination in the workforce, absence of strict scrutiny with sex discrimination, anti-LGBTQ policies, and absence of reproductive rights— the U.S. should adopt this new ERA (see Appendix I).

Gender discrimination is not uncommon in America, and it is completely legal. While the Equal

Pay Act of 1963 prohibits employers from paying differently based on sex, “it includes an

affirmative defense framework that allows employers to put forward specific defenses to justify a

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<sup>1</sup> “Equal Rights Amendment.”

pay disparity.”<sup>2</sup> Consequently, in 2020, women working full-time made 83 cents compared to the dollar earned by men.<sup>3</sup> The ERA could support legislation like the Paycheck Fairness Act, which could prevent loopholes from weakening the Equal Pay Act and establish the National Equal Pay Enforcement Task Force to enforce and eliminate pay disparities.<sup>4</sup> Additionally, the ERA can combat sex discrimination, especially in the workplace. According to the Pew Research Center, nearly 42% of women in the U.S. claimed they faced workplace discrimination, which includes unfair treatment, failure to promote, and receiving less support.<sup>5</sup> Women make up 47% of the workforce yet make up only 6% of all S&P 500 CEOs and only 29% of Congress.<sup>6</sup> Reviewing these statistics, it is clear that women need protection in the workforce. The ERA would be able to provide a clear judicial standard where “sex” will require the same level of strict scrutiny in court as, for example, race discrimination.<sup>7</sup> As a result, employers will be restricted from treating workers unequally by law. The ERA can help tackle this ongoing issue of unequal rights against women in the workforce.

While the United States has made advancements in acknowledging LGBTQ+ rights, it is still not fully protected under the law. This new ERA adds a clarifying note of what is regarded under the term “sex” because it is crucial to recognize the challenges of gender-based discrimination against individuals of marginalized groups, like the LGBTQ community. LGBTQ

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<sup>2</sup> President, Julia Cusick Vice, et al. “The Equal Rights Amendment: What You Need to Know.”

<sup>3</sup> *National Strategy on Gender Equity and Equality - White House.*

<sup>4</sup> *H.R. 7 - 117th Congress (2021-2022): Paycheck Fairness Act.*

<sup>5</sup> “Gender Discrimination in the Workplace.”

<sup>6</sup> Jacimovic, Darko. “30 Mind-Blowing Gender Discrimination in the Workplace Statistics [2023].”

<sup>7</sup> “Equal Rights Amendment.” *Alice Paul Institute*

Americans still do not possess protections under federal law in 29 states.<sup>8</sup> Also, in 2021, 30 states introduced over 80 bills targeting transgender youth and their rights to participate in sports and receive medical care.<sup>8</sup> Especially with the weak enforcement of bills like Title IX, which supposedly prohibits sex discrimination in federally funded education programs, the ERA would provide legal support against the government's inaction to protect and acknowledge survivors.<sup>2</sup> In this case, Congress is required to find clear methods of enforcing this bill. In addition to legal support, the ERA would also strengthen laws like the Clery Act— which requires disclosure of campus sexual assault— that try to prevent gender violence against these minority groups.<sup>3</sup> As a minority group, the LGBTQ community relies on an ERA that will give them clear, written protection against unfavorable laws.

The very ideas of equality and freedom in the constitution should translate to bodily autonomy, specifically for women, as well. With the overturning of *Roe v. Wade*, which granted the right to access abortion care, the bodily autonomy of many Americans was left in the hands of states.<sup>9</sup> Nearly 300,000 people globally die from conditions related to pregnancy and childbirth each year, which are preventable with better access to reproductive health care.<sup>3</sup> The ERA could help to ensure lawmakers secure access to reproductive health care and eliminate harmful restrictions on these reproductive laws, such as the Hyde Amendment, which restricts abortions to be covered by federal funds.<sup>2</sup> Without an ERA guaranteeing that all people— regardless of sex— will receive equal body autonomy rights, women's reproductive rights will remain in the unsteady hands of government officials.

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<sup>8</sup> "The Equal Rights Amendment and the Equality Act: Two Equality Measures Explained."

<sup>9</sup> "Dobbs v. Jackson Women's Health Organization."

In terms of ratification, Article 5 of the Constitution provides the processes by which an amendment can become ratified. After close review, ratification by three-fourths of states after a constitutional convention called by two-thirds seems to be the most effective way.<sup>1</sup> Needing three-fourths of the states to ratify the amendment means it only needs the approval of 38 states. In fact, in 2020, Virginia became the 38th state to ratify it.<sup>1</sup> That same year, the Trump administration released a memo stating that the “ERA resolution has expired and is no longer pending before the States,” so the three states that ratified the amendment after the extended deadline in 1982 would not count.<sup>10</sup> If it were not for the deadline imposed by Congress, the ERA would have already had enough states to ratify it, meaning an agreement by the states specifically is not the hindrance. On the other hand, some argue that five states have passed legislation to rescind their prior ratification; however, with the ratification of the 14th amendment, Ohio and New Jersey rescinded their ratification but were still published on the list of states who approved.<sup>10</sup> From this precedent, rescissions should not be accepted. By bypassing Congress’ approval, there is no doubt that the states can jointly pass the ERA by a three-fourths majority.

While the ERA may be controversial due to the potential removal of certain protections benefitting women, it is crucial to achieving full equality. Passing the ERA would not only establish the national commitment to creating equality amongst all Americans, but it would also allow the creation of new laws to ensure protection and the revision of old laws to eliminate outdated sex-discrimination laws.<sup>1</sup>

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<sup>10</sup> Suk, Julie C. “Perspective | the Trump Administration Says the Era Is Dead on Arrival. It Isn't.”

## Appendix I - Full Text of Proposed 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 (including sexual orientation, gender identity, and gender expression). \*added original amendment

Section 2- Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3- Congress shall enact a renewal by eliminating all deadlines placed for ratification.

Section 4- This amendment shall take effect immediately upon ratification.

(includes 1972 version ERA by Alice Paul and original additions)

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