

Background Paper 79-7

EQUAL RIGHTS AMENDMENT

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"Article--

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."

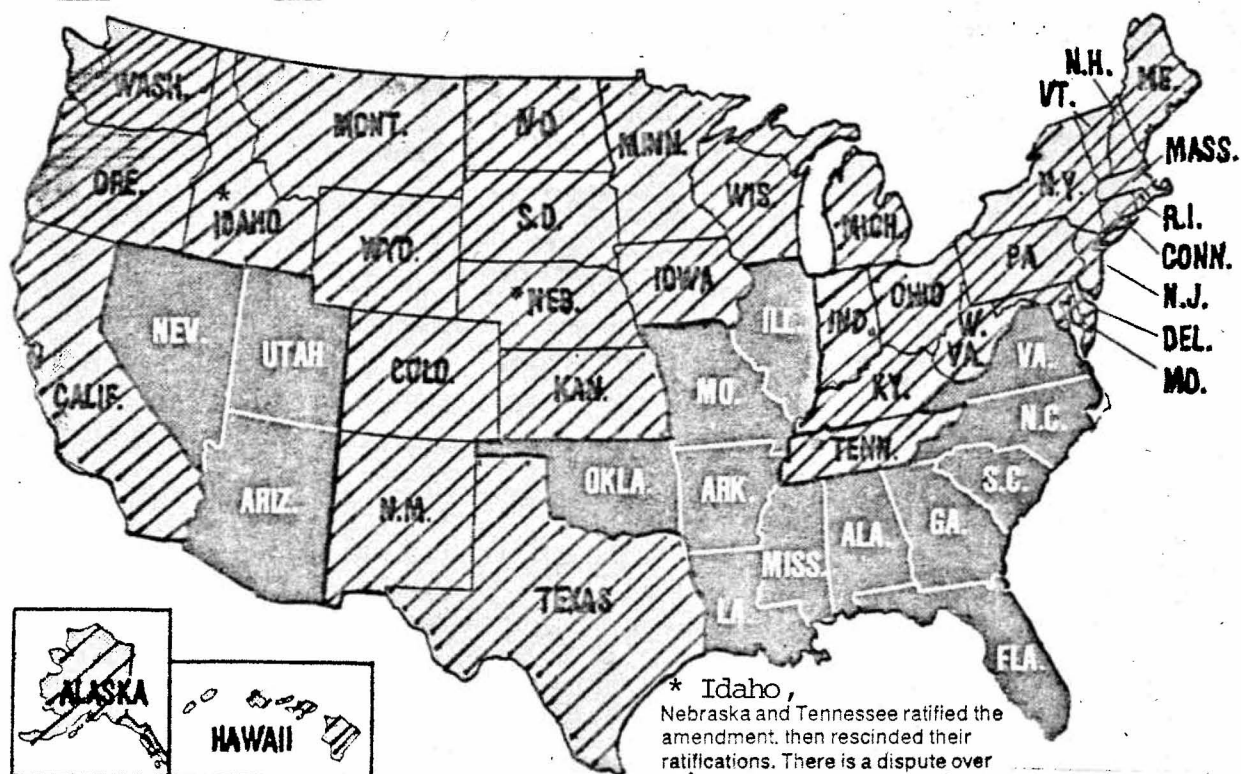
Where the Equal Rights Amendment Is Today

 Ratified

 Not Ratified

Needed to Pass: 38 States.

Deadline: March 22, 1979



Revised: 1/15/79

I. Status of the Amendment

Since 1923 equal rights amendments have been introduced into every session of Congress. On March 22, 1972, the United States Congress adopted a resolution to amend the constitution to provide equal rights for men and women. The 1972 United States Senate vote on H.J.R. 208 was 84 to 8; the House had already approved of the resolution in 1971 by a vote of 354 to 24. In order for the proposed 27th amendment to become part of our constitution, three-fourths of the states (38) must ratify it by 1982.

On October 6, 1978, the U.S. Senate approved an extension of the date for ratification of ERA from March 22, 1979, to June 30, 1982, (H.J.R. 638, which the House passed on August 15, 1978). While Congress is not subject to any ratification time limit it can only propose amendments with the approval of two-thirds of the members of both houses. ERA and the original seven year time limit for ratification were passed in 1972 by the same two-thirds vote. Many people question the legality of the extension because it passed only by a simple majority. In addition, many feel that because the extension was granted, those states that have already ratified ERA and want to rescind their action should be able to do so. The courts have not, however, addressed the issue of rescission.

At the beginning of 1979, 35 states had ratified the amendment, thereby bringing it within three states of the necessary approval. North Dakota was the only state which ratified the amendment in 1975 and no state ratified in 1976. Indiana ratified ERA early in 1977. Three states (Idaho, Nebraska and Tennessee)* which adopted resolutions ratifying the amendment later passed resolutions rescinding their action. The legality of rescission is questionable since states which rescinded ratification of the 14th and 15th amendments were counted as ratifying by the United States Congress.

Nevada is one of the 15 states which have not yet ratified the Equal Rights Amendment. In 1973, the Nevada senate defeated a resolution to ratify and the assembly resolution died in committee. In 1975, the resolution to ratify ERA passed the assembly by a vote of 27 to 13, but the Nevada senate defeated the measure by a vote of 12 nays to 8 yeas.

*The Kentucky Legislature rescinded its ratification of ERA in 1978, however, the lieutenant governor vetoed the bill.

In 1977 Senate Joint Resolution 5 passed the Senate by a vote of 11 to 8 with 2 not voting.* It was defeated in the assembly by a vote of 24 to 15. In 1978 an advisory question (Question 5) was placed on the ballot asking voters to advise the legislature on ratification of ERA. There were 61,768 voters favoring ratification and 123,952 opposing it.

At least 16 states have their own constitutional provisions which guarantee equal rights for men and women. These state amendments range from approximations of the proposed federal ERA to general civil and political protections. States with constitutional equal rights measures are Alaska, Colorado, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Montana, New Hampshire, New Mexico, Pennsylvania, Texas, Utah, Virginia, Washington and Wyoming.

II. The Arguments

Proponents of ERA argue that an equal rights amendment to the constitution is needed because discrimination on the basis of sex is firmly embedded in our legal system. It is their position that any system of dual rights and responsibilities leads to one group's dominance. In particular, they feel that sex is not a permissible factor in determining human rights, that such classification denies individual rights. ERA proponents state that at the present time state and federal legislation has not eliminated sexual discrimination in many aspects of life. They state that a constitutional amendment would provide the necessary mandate for legislation and litigation to eradicate legal inequality between sexes. To supporters, the Equal Rights Amendment is both a symbolic goal and a practical instrument for change.

Opponents of ERA take the position that the Equal Rights Amendment will take away rights and privileges which are important to women and substitute additional unwanted responsibilities. In their opinion, passage of ERA will deny women their present superior position in the home and family and remove legislation which protects women. Furthermore, anti-ERA forces point out that laws and constitutional provisions already exist to abolish

*The vote is an interesting one. Two senators did not vote and the lieutenant governor construed them to be negative votes. Therefore, he declared a 10-10 tie and cast the deciding vote. Several senators questioned his ruling that not voting means voting against and his power to cast the deciding vote. Neither question has been decided by a Nevada court.

unreasonable sex discrimination. Opponents of ERA cite the 5th and 14th amendments, the 1963 Equal Pay Act, the 1964 Civil Rights Act and the 1972 Equal Opportunity Act as examples of legal tools already available to counteract unfair treatment on the basis of sex. Another point of view presented by groups opposing the ERA is that a United States constitutional amendment will lead to federal usurpation of state and local power.

III. The Impact

Until and unless the ERA becomes part of the United States constitution and therefore subject to judicial review and legislative implementation, speculation about its impact on federal and state law is just that. Nevertheless, there are four major areas of law which both proponents and opponents of ERA agree will be subject to considerable scrutiny and possible alteration should ERA be ratified. Protective social and economic law, domestic relations law, criminal law and law pertaining to military service may be seriously affected by the proposed 27th amendment.

Protective social and economic legislation which treats men and women differently may have to be rewritten. Examples in this category are social security laws and protective labor legislation.

Domestic relations legislation, such as alimony and child support laws which make only one sex liable would probably be invalidated and then altered to reflect functional distinctions such as wage earner versus homemaker instead of sexual differences.

Criminal laws such as those referring to sex offenses by one sex only or prison sentencing which considers the sex of the offender could be struck down and replaced by laws referring to specific crimes and specific sentences without reference to the sex of the offender or victim.

Finally, if ERA were adopted, laws pertaining to military service would have to reflect the legal equality of women and not automatically defer them from the draft (should it be reinstated) on the basis of their sex.

In addition to legislative evaluations which may be mandated by ERA, passage of the amendment may have implications for practices unsanctioned or unmentioned in law. For example, insurance premiums and payouts based on actuarial findings about men and women as groups conceivably could be challenged. Employment practices would likely come under even closer scrutiny than is presently the case.

Opponents of ERA view the aforementioned implications of the amendment as drastic steps which will overturn the existing social order by removing laws which protect women from unscrupulous employers, by eliminating obligatory payments of alimony and child support to the wife, by repealing laws protecting women from sex crimes and by abolishing exemptions for women when the draft is in effect.

ERA supporters envision the amendment in terms of an enlightened move to eliminate protective social laws which apply only to women and in reality serve to keep women in inferior legal and economic positions. Proponents believe that domestic relations law should make distinctions which are based on financial ability or function in the home, not sex. Persons favoring ERA believe that enactment of the amendment will not affect most criminal law which treats men and women alike, but will require changes in law where sex differentiation is made, such as laws on prostitution directed solely at women. Finally, advocates of the 27th amendment admit that ERA will affect law pertaining to military service. Their position is that if the draft is re-enacted, no citizen should be deferred solely on the basis of sexual classification. ERA supporters point out that Congress will still have the power to grant exemptions and could do so on grounds other than sexual identity.

SUGGESTED READINGS

(Available in the Research Library)

Bellamy, Blank, Goodman, Kelly, Ross, and Stanley; The Proposed Equal Rights Amendment: A Brief in Support of Its Ratification, reprinted by the League of Women Voters of Nevada.

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California Commission on the Status of Women; Impact ERA: Limitations and Possibilities, 1976.

Freund, Paul A.; "The Equal Rights Amendment is Not the Way." Harvard Civil Rights and Civil Liberties Law Review, Vol. 6, 1971.

Ginsberg, Ruth B.; Constitutional Aspects of Sex-Based Discrimination, American Casebook Series, 1974.

Kurland, Philip B.; "The Equal Rights Amendment: Some Problems of Construction;" Harvard Civil Rights and Civil Liberties Law Review, Vol. 6, 1971.

League of Women Voters of the United States; In Pursuit of Equal Rights: Women in the Seventies, 1976.