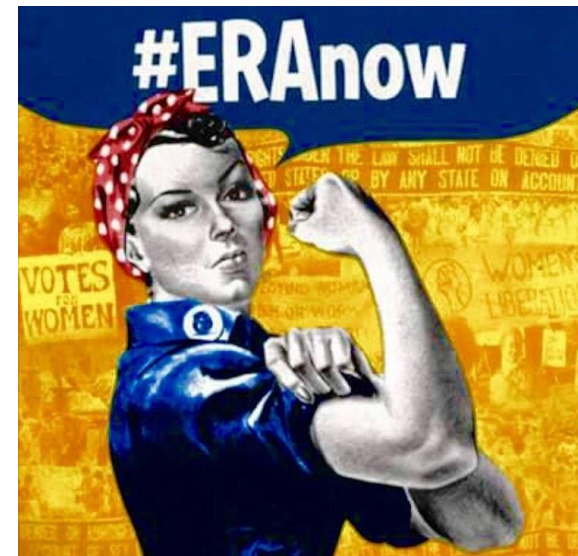


# ERA: How Long Must We Wait?



# *Welcome*



- Thank you to AAUW Illinois
- Consider joining the AAUW Northwest Suburban branch or the virtual Jane Addams Branch
- Use the chat window for questions
- Recording of the program on the Jane Addams website
- Please remember to stay muted throughout the program so we won't have noise on the recording

# Presenter: Marti Sladek

- Retired attorney, experience in employment discrimination and civil rights
- Long time ERA activist both independently and through several organizations
- Marti and other ERA warriors were recognized for their efforts by the Illinois Women's Leadership Institute in 2018



Photo credit: Kate Skegg

# Agenda

- What is the ERA?
- Why is it necessary?
- Recent history/action
- What are paths to success?
- What can we do?
- Questions
- Resources



# Alice Paul Amendment, 1923



“I never doubted that equal rights was the right direction. Most reforms, most problems are complicated. But to me there is nothing complicated about ordinary equality.” – *Alice Paul, 1972*

# The Equal Rights 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.

## 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 We Need the ERA

- The lack of constitutional equality reaches every aspect of women's lives. The ERA would clarify, once and for all, that sex discrimination in employment, reproductive rights, housing, education, and more is a violation of our constitutional rights as Americans.
- The ERA enhances the opportunity to seek legal recourse when an individual faces sex discrimination.



# Constitutional Amendment vs. Sex Discrimination Law

- The progress our country has made on gender equality through the courts and patchwork legislation can be reversed.
- Sex discrimination does not have the same legal protection as other constitutional classes, such as race, religion, or nationality.
- This constitutional double standard means that hard-won legislative and court victories against sex discrimination are not permanent.
- Your rights should not depend on your zipcode!





# How Long Will It Take?

Despite federal and state laws, and wide public support, implementation of the Equal Rights Amendment remains elusive.



# ERA Myths



# ERA Myths



# Historical Update in the States

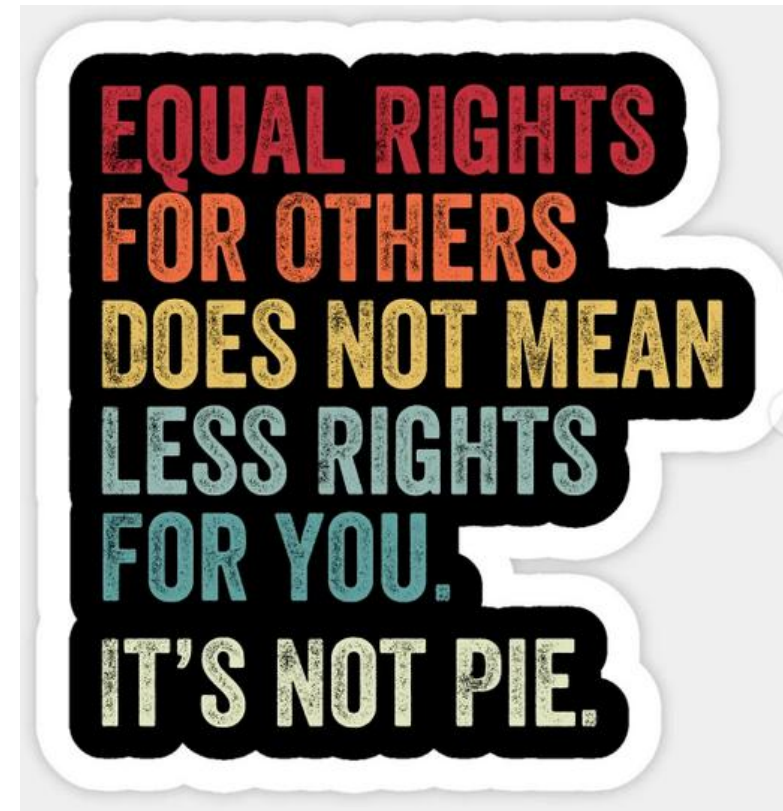
- Legal scholars suggested that if three remaining states ratify the amendment, the ERA stands a good chance of acceptance. As justification for this theory, scholars point to the 1992 ratification of the 27th Amendment, which was originally passed by Congress in 1789 — more than 200 years earlier.
- In 2017, **Nevada** became the 36th state to ratify the ERA. One year later, **Illinois** followed suit and became the 37th state.
- In early 2020, Virginia became the **38th and final state** needed to meet the three-fourths requirement.

# Historical Update in DC

- The Office of Legal Counsel (OLC) under Attorney General Bill Barr issued a memo stating that the National Archivist did not have to certify the Amendment after Virginia ratified it.
- On January 30, 2020, the Attorneys General of Virginia, Illinois, and Nevada filed a lawsuit to require the Archivist of the United States to "carry out his statutory duty of recognizing the complete and final adoption" of the ERA as the Twenty-eighth Amendment to the Constitution.
- On February 19, 2020, the States of Alabama, Louisiana, Nebraska, South Dakota and Tennessee moved to intervene in the case.

## Historical Update in DC (cont.)

- On March 5, 2021, federal Judge Rudolph Contreras of the United States District Court for the District of Columbia ruled that the ratification period for the ERA "expired long ago" and that three states' recent ratifications had come too late to be counted in the amendment's favor.
- The three Attorneys General filed their motion to appeal on May 3, 2021. Other lawsuits are also in various phases of litigation on behalf of, and against, the certification of the ERA.



# Congress Update

- Bill to remove arbitrary deadline has passed in the House three times. Can't get any movement in Senate.
- The vote is generally along partisan lines



# Executive Branch

- Trying to get AG Merrick Garland to rescind or rewrite the memo Bill Barr sent to the Archivist saying he should not certify the 28th amendment

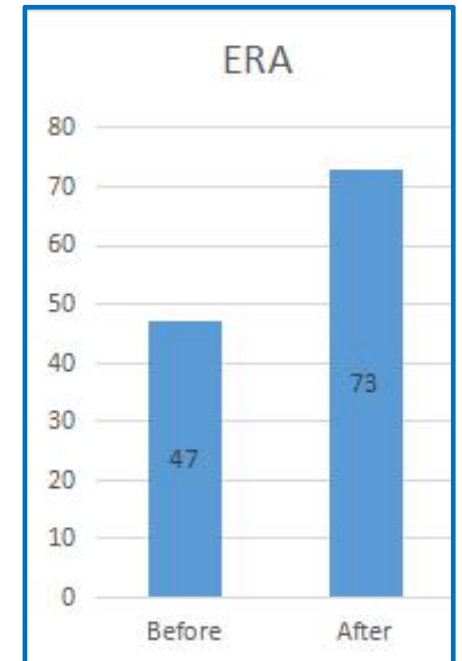




## After the 28th Amendment is enforceable

Gender discrimination cases should achieve a success rate similar to race, religion, and country of origin discrimination cases.

- The current standard for race, religion, or country of origin discrimination cases is “strict scrutiny” which provides a **73% likelihood of winning** (Source, Tennessee.edu)
- Currently, gender discrimination cases receive “heightened” or “intermediate scrutiny” and because of this the **likelihood of winning a case are only 47%** (Source, Tennessee.edu)



# American Bar Association

The ABA formally reaffirmed support for the Equal Rights Amendment in 2016:

- gender equality would be established under the law as a fundamental and irrevocable tenet of society
- existing gender equity laws would be protected, and enforcement of these laws would be reinvigorated



# What Won't Be Changed by the ERA

- It will not automatically mean equal pay in the private sector. We still need the Paycheck Fairness Act.
- It will not mean instant access to abortion. Roe v. Wade was NOT an “equal protection case.” ERA is about Equal Protection. Reproductive rights cases and right to die cases have all been heard under doctrine of 9th Amendment implied right to privacy. Opponents have tried to make this about abortion for decades.
- It does not change the burden of proof. In our system, it is usually the person who brings the civil suit who has the burden of proof. But it does mean government entities have to have a much stronger justification to get away with sex discrimination.

# How Can We Proceed to Success?

- Keep pressure on VP Harris, AG Garland, Senators and Representatives
- Educate other people on status and need
- Support the organizations that are pushing for the 28th Amendment; NOW, LWV, AlicePaul.org, ERA Coalition, AAUW, ACLU, Americans United for Separation of Church & State, ERANow, National Womens Law Center, Equal Rights Amendment.org



# What Can I Do?

- Review more information
- Talk to people you know
- Ask your branch members to raise their voices
- Letter to the editor
- Email/phone Congress persons
- Attend local women's rights events



## What Can I Do?

- Support pro-ERA candidates
- Show your colors like US Representative Carolyn Maloney
- Wear message shirts or buttons



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# What Can We Do?

- Activate Public Policy Chairs statewide
- AAUW IL state board statement/press release
- Encourage media coverage
- Other? type answers in chat



**ERA Sentinels at the DOJ**

# Have you signed up for AAUW Action Alerts?

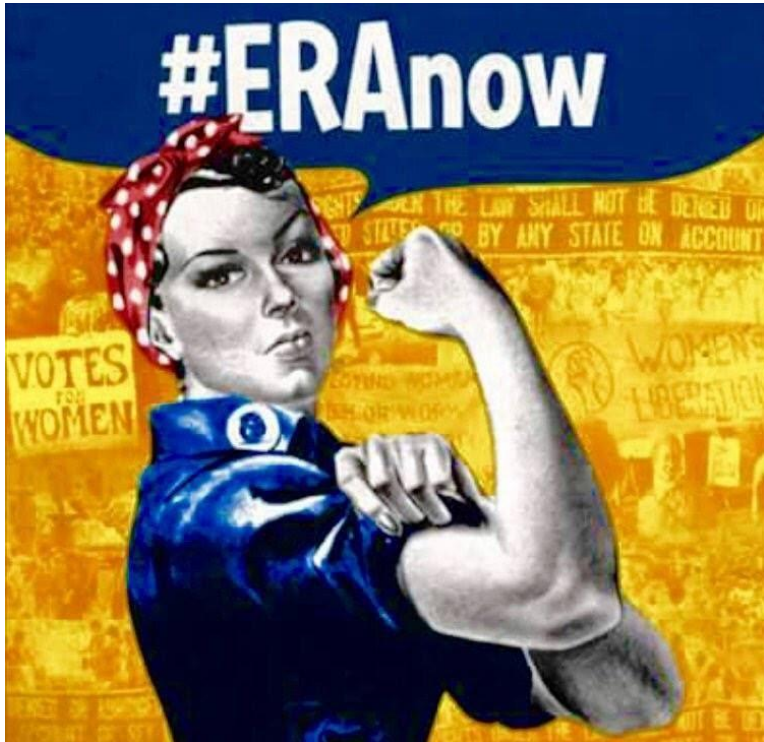
Become an AAUW Two Minute Activist



<https://www.aauw.org/act/two-minute-activist/era/>



# Social Media #eranow



Questions??

**Equal Rights**

**Amendment**

*It's Time!*



# Resources

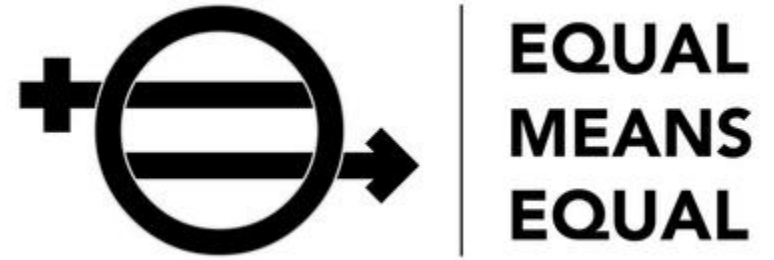


- <https://www.aauw.org/act/two-minute-activist/era/>
- <https://www.aauw.org/app/uploads/2020/03/quick-facts-era-nsa.pdf>
- <https://www.aauw.org/resources/policy/position/era>

A graphic for AAUW Quick Facts about the Equal Rights Amendment. It features the AAUW logo in green and blue at the top left. The text "QUICK FACTS" is in large, bold, red letters. To the right, "Equal Rights Amendment" is written in a smaller, red, italicized font. Below this, "December 2018" is written in a blue, sans-serif font. At the bottom, a green italicized statement reads: "The American Association of University Women is committed to the passage and ratification of the Equal Rights Amendment." The entire graphic is enclosed in a thin blue border.

**AAUW**  
**QUICK FACTS**  
*Equal Rights Amendment*  
December 2018  
*The American Association of University Women is committed to the passage and ratification of the Equal Rights Amendment.*

# Resources



- Alice Paul Institute [www.alicepaul.org/equal-rights-amendment-2/](http://www.alicepaul.org/equal-rights-amendment-2/)
- Equal Means Equal [equalmeansequal.com/resources](http://equalmeansequal.com/resources)
- ERA Coalition [eracoalition.org](http://eracoalition.org)
- Feminist Majority [feministmajority.org/our-work/equal-rights-amendment/](http://feministmajority.org/our-work/equal-rights-amendment/)



ERACOALITION



# Resources

- National Organization for Women <https://now.org/>
- National Women's Law Center [nwlc.org](http://nwlc.org)



# Alice Paul Institute

- The most important effect of the ERA would be the clarification of the status of sex discrimination for the courts. For the first time, “sex” would be a suspect classification, like race, and would require the same level of “strict scrutiny” and have to meet the same high level of justification – a “necessary” relation to a “compelling” state interest – as the classification of race.
- The ERA would not make all single-sex institutions unconstitutional – only those whose aim is to perpetuate the historic dominance of one sex over the other. Single-sex institutions that work to overcome past discrimination are currently constitutional and are likely to remain so.
- The 14th Amendment, providing an equal protection clause to all U.S. citizens, was not originally intended to apply to women, as it predates the 19th Amendment. As proof of this, Susan B. Anthony voted in the 1872 presidential election, was arrested two weeks later, and was convicted the following year for illegal voting. At her trial, she attempted to use the 14th Amendment to defend her actions, but the judge ruled that the amendment did not apply to her because she was a woman.
- The Equal Rights Amendment would prevent a rollback of the legal advances women have gained. It is important to remember that as governments change from conservative to liberal, citizens, neither male nor female, should not be subject to lose their right to vote, their right to free speech, or any other of their constitutional rights due to a change of political opinion.
- The ERA does not add new laws to the U.S. Constitution, it only guarantees the rights currently within it. Issues like abortion, same-sex marriage, unisex bathrooms, and the female draft exist separately from the ERA and would not become law upon the ERA’s passage.
- The ERA is an amendment for both men and women – it is not just a woman’s issue. Issues of custody, employment, and fair wages are important to both sexes and an Equal Rights Amendment would guarantee equal legal rights without regard to sex.
- The ERA would affirm the purpose that began with the writing of the U.S. Constitution, the basic human right of constitutional protection.

*Thank You!*

