

Citizen Engagement Corner

ERA Finally on the Verge

League of Women Voters of Brookline

Certainly the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn't. – Justice Antonin Scalia

In the days of the #MeToo movement, women's marches symbolized by pink pussy hats, and a record number of women elected to Congress last November, final ratification of the Equal Rights Amendment (ERA) should be a no-brainer. Hopes were high in mid-January that Virginia would become the 38th — and final state needed — to ratify the ERA, making it officially the 28th Amendment to the U.S. Constitution. But, alas, it failed.

The Amendment's language is simple:

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.

The proposed amendment would outlaw discrimination based on gender, providing Congress with firmer grounding to pass anti-discrimination laws while giving lawsuits more strength in the courts. Sex-discrimination cases could then be analyzed in the same way that courts analyze those based on race, religion and national origin.

Why so long? After 75 years of struggle, women finally got the right to vote with passage of the 19th Amendment by Congress in 1919 and ratification in 1920. But Alice Paul, a leading figure in gaining women the right to vote, recognized that without an Equal

Rights Amendment, women would never be able to ensure their rights to claim equal protection under the law. She drafted the ERA in 1923.

The Republican and Democratic parties added the ERA to their platforms in 1940. Congress finally sent the proposed amendment to the states for ratification in 1972, allowing seven years for states to take action. It later extended that timeframe to 1982. By then 35 states had ratified it (Massachusetts in 1972). In the past 18 months, Nevada and Illinois have done so. The final state could be North Carolina, Georgia or Arizona.

Pros and Cons: Polling research by the ERA Coalition/Fund for Equality (composed of nearly 100 organizations nationwide, providing education and advocacy on Constitutional equality) indicates that while 94 percent of Americans support constitutional equality for women and men, 80 percent mistakenly think it already exists. The ERA Coalition states that the ERA can make a significant difference in the areas of pay equity, violence against women, pregnancy discrimination, equity for men and women in granting of U.S. citizenship, systemic bias/unequal treatment by not having to prove the intent to discriminate, public policy guidance and international leadership by “walking the walk” at home.

Historically, arguments against the Amendment have included women would have to go to war, they’d demand higher pay and would have to use the same bathrooms as men. Today arguments include that the ERA could be used to support abortion rights and to prevent special programs for women.

Possible legal challenges: The Constitution doesn’t require a deadline on amendments, and last month legislation was filed in both the U.S. House and Senate to lift the existing deadline on the ERA. Ready to go once the 38th state ratifies!

The League is a nonpartisan organization that encourages informed and active participation in government and that works to influence public policy through education and advocacy.