

# PUTTING THE EQUAL RIGHTS AMENDMENT BACK ON THE AGENDA

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The denial of the Equal Rights Amendment (ERA) in 1982 relegated women to second-class citizenship in the U.S., yet very few women are seemingly aware of or care to change this legal slight to their constitutional rights. The ERA has been reintroduced in every Congress since its initial defeat, but the leadership in the women's movement continually loses momentum, becoming complacent with the stagnation of the dream of constitutional equality. Instead, the women's movement has become mired in small battles for incremental change and in campaigns to ensure that the current rights afforded to women are not further eroded. Sadly, the movement's leaders seem to be so focused on the details that they are letting the big picture of equality pass them by.

This spring the ERA was introduced yet again, but this time in a Democratic Congress eager to demonstrate a commitment to change. The bill was renamed the Women's Equality Amendment (WEA) in the hopes of disassociating it with the failed politics of its prior iteration. Senator Kennedy (D-MA) and Representative Maloney (D-NY), the bill's original sponsors, have gathered significant support in both chambers of Congress. They have organized 195 co-sponsors in the House and 24 co-sponsors in the Senate, and have secured a promise for hearings in the House Judiciary Committee by the end of the year. This reinvigoration of the issue provides the next generation of feminists with both an opportunity to learn from the previous campaign's mistakes and the chance to organize an effective movement to establish a protected place in the Constitution for women. The WEA will face a tough battle, but it is winnable if the women's movement can generate enough grassroots support to push for its passage.

First introduced in 1923 by suffragette Alice Paul, the ERA was the women's movement's solution to the

narrow language of the Fourteenth Amendment, which did not specifically include women. The Nineteenth Amendment, guaranteeing women the right to vote, was the natural counterpart to the Fifteenth Amendment, which guaranteed all men the right to vote. Suffragists who had fought hard to attain this counterpart envisioned an additional equal rights amendment that explicitly included women as the logical next step. The ERA passed the House in 1971 and then the Senate in 1972, but failed to get the 38 states needed for ratification. Unlike nearly every other proposed amendment, the ERA was given a time limit for state ratification and ultimately came up three states short when the time limit was reached.

Failure to ratify the ERA left women to rely upon legislation that may be overturned, as well as increasingly narrow judicial interpretations jeopardizing their civil liberties. Rulings in recent years that limit the interpretation of *Roe v. Wade* (1973), such as *Planned Parenthood v. Casey* (1992) and *Gonzales v. Carhart* (2007), as well as the recent decision in *Ledbetter v. Goodyear Tires* (2007), which restricted the ability of women to sue for equal pay, demonstrate the kind of dangers women face if left to rely only on the changing opinions of the courts to secure their rights.

Opponents have cited many reasons for challenging the ERA, but have historically relied on two main arguments to defeat it. First, they argue that the ERA could be interpreted in such a literal manner that programs that benefit women will have to be abolished. This would undo the hard-fought battles in women's rights that have been won over the years, effectively nullifying the benefits that the amendment is supposed to bring to women. Second, opponents argue that having an Equal Rights Amendment is redundant as the Fourteenth Amendment already guarantees equal rights to all persons.

The language of the ERA guarantees equal rights to all people regardless of sex, but in no way implies that the sexes have to be treated exactly the same. ERA opponents often state concerns that the amendment would mandate equivalent medical care for both sexes, which would prove detrimental for women because their reproductive health needs are more intensive than men's. On the contrary, under the ERA it would not be illegal for insurance companies to cover the costs of gynecological care, just as it would not prohibit covering prostate exams. If anything, the ERA would ensure that insurance companies could not deny coverage for women's medical care while paying for expensive male fertility drugs, a common current practice.

The amendment would also protect the rights of cities and states to have offices focused on domestic or sexual violence. It would set a precedent for localities funding these facilities in greater percentages just as they fund other anti-crime and community development programs. Men and women need inherently different medical care, and require different social services due to a history of inequality and differing social status, and the ERA would ensure that both groups have access to and receive the appropriate funding for necessary services.

The opposition to the ERA has relied primarily on the second argument—that the ERA is redundant because women are already provided equal rights under the Fourteenth Amendment. The wording of the Fourteenth Amendment certainly suggests the inclusion of women; however, the courts have repeatedly interpreted the amendment to exclude women and favor men.

The U.S. Supreme Court consistently finds discriminatory laws towards men as unconstitutional under the Fourteenth Amendment, while denying constitutional protection to groups of women that bring similar discriminatory claims to the court. One exception to this pattern is *Reed v. Reed* (1971), where the court ruled that women had the same rights to administer an estate of a deceased relative as a man did, but few other examples exist. The cases of *Fitzgerald v. Bitzer* (1976) and *Arizona v. Norris* (1983) exemplify the predominant pattern of exclusion of women in equal protection rulings. In *Bitzer*, the court found it unconstitutional to deny men back pay when they had received unequal retirement pay based on sex, but just

seven years later in *Arizona v. Norris*, the court ignored this precedent in an almost identical case, saying that it was not unconstitutional to do the same for women.

Beyond cases where the court favors men's equal protection rights over women's, there are many rulings that demonstrate the exclusion of women from the protections afforded by the Fourteenth Amendment. The rulings have applied to issues ranging from reproductive health where the court ruled in *Geduldig v. Aiello* (1974) that it was not considered unlawful sex discrimination to deny women disability coverage during pregnancy, to labor rights where the court ruled in *Mangelkoch v. California et al.* (1968) that it was constitutional to deny women the right to equal labor hours laws in California.

Given the history of the Court's rulings on whether to include women in the Fourteenth Amendment protections, and the Court's interpretation that gender is not subject to strict scrutiny in the same way as race, the WEA is necessary to ensure that the protections afforded to women will not disappear. The amendment is just as important today as it was when first introduced. Having a constitutional amendment in place would make many of the current legislative and judicial battles over equal pay, abortion rights, and family leave less arduous and uncertain. The WEA would guarantee that all of the rights that men are afforded under the Fourteenth Amendment are also afforded to women. Furthermore, the WEA would make current rights less vulnerable to erosion and elimination, and would enable future campaigns for additional rights to be waged with greater ease.

The most important reason for the WEA is that we must send a clear, credible message that women are equal citizens in this country. It signals to our daughters and sons that no longer will we debate the merits of equality, nor squabble over interpretations of words, but will simply take as a given that women are full and equal citizens.

The Women's Equality Amendment reads:

**Section 1:** Equality of Rights under the law shall not be denied or abridged by the United States or 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.