SCR 392/HCR 239

Equal Rights Amendment

An Unnecessary Measure

The Equal Rights Amendment was penned in the 1920s, when women didn't have the right to vote or own property, but eventually gained traction toward the end of the civil rights movement. When Congress approved the measure in 1972, advocates then pursued the next step; 38 states had to ratify the proposal. However, they missed the deadline to meet that crucial goal — not once but twice (it was extended from 1979 to 1982).

Now about 50 years later, supporters of the ERA have relaunched their campaign, urging the Florida Legislature to ratify the amendment. But women already have equal rights under the law, the deadline has passed, and the status of women in 2019 compared with the 1920s is shockingly different — all for the better.

Women and men are already guaranteed equal rights through the 14th Amendment and equal protection clause of the Fifth Amendment to the U.S. Constitution. The ERA, as written, may restrict any law or practice that makes a distinction based on sex. If it passed, a constitutional provision would then supersede protections for women that have been written into law.

Published February 11, 2020

FAST FACTS

FALSE NARRATIVE

The ERA is the only way to guarantee equal legal rights regardless of sex.

THE FACTS

The 14th Amendment already guarantees equal protection under the law for men and women.

FALSE NARRATIVE

The ERA will end the different treatment of men and women. Conservatives don't care about women's rights, and that's why they don't like this.

THE FACTS

The ERA was written decades ago; fortunately we've made great strides so that women now have equal rights. The ERA could do great harm by superseding protections for women already in the law.

FALSE NARRATIVE

Without the ERA, the statutes and case law that have produced advances in women's rights since the middle of the last century are vulnerable to being ignored, weakened, or even reversed.

THE FACTS

Congress could amend anti-discrimination laws, but history proves that it hasn't (and there's no evidence it will). The U.S. Supreme Court has consistently ruled that the equal protection clause of the 14th Amendment ensures equal rights for all people.

Frequently Asked Questions

Q: What are some examples of the Court upholding equal rights?

A: Since the 1970s, the U.S. Supreme Court has repeatedly ruled in favor of gender equality under existing law, proving the ERA is unnecessary and redundant. Two examples of this include United States v. Virginia, 518 U.S. 515 (1996), where the Court ruled that the all-male Virginia Military Institute's discriminatory admissions policy violated women's equal protection rights; and Young v. United Parcel Service, Inc., 135 S.Ct. 1338 (2015), where the Court held that the Pregnancy Discrimination Act requires employers to provide pregnant workers with the same on-the-job accommodations, such as light duty, as they do for men who are similarly unable to work.[1]

Q: What about the gender pay gap — wouldn't the ERA address that?

A: The gender pay gap was addressed by the Equal Pay Act of 1963, which prohibits sex discrimination in pay. Discrimination in employment on the basis of sex is also prohibited under Title VII of the Civil Rights Act of 1964. The ERA would not add any additional protections concerning the gender pay gap that don't already exist in the law.

Q: The ERA has already been ratified by several states — why shouldn't Florida be one of them?

A: The ERA does not do what it's presented as doing; in fact, it could invalidate protections specifically for women that have been written into law. Also, the deadline for ratification by three-fourths of the states expired in 1982, so the ERA would likely need to be passed by Congress again before states can properly ratify it.

Q: The 27th amendment passed more than 200 years after it was first approved by Congress in 1789; therefore, wouldn't Congress have the authority to extend the deadline and count the current ratifications as proper?

A: The 27th amendment did have a unique path, but keep in mind that it didn't originally have a ratification deadline.[2] Given the enormous cultural shifts the country has seen since 1982, and the fact that a handful of states have since retracted their ratification,[3] the ERA should have to go through the traditional process prescribed by the U.S. Constitution for proposed amendments.

Q: How does the ERA apply in an America where non-normative genders are the new norm?

A: Keeping in mind that the ERA was first penned in the 1920s, the impact of it is unclear when considering transgender and gender non-conforming individuals. In fact, it brings up more questions than answers. Under the ERA, would a transgender woman be able to enter and stay at a shelter for battered women? Would single-sex shelters even be permitted? What about locker rooms? Schools? The ERA opens the door for ambiguity and unintended consequences.

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[1] Other examples available at https://www.aclu.org/sites/default/files/field_document/101917a-wrptimeline_0.pdf

[2] The Sleeper Wakes: The History and Legacy of the Twenty-Seventh Amendment, 61 Fordham L. Rev. 497 (1992). Available at: http://ir.lawnet.fordham.edu/flr/vol61/iss3/1, citing Don Phillips, Proposed Amendment, Age 200, Showing Life, Wash. Post, March 29, 1989. Available at: https://www.washingtonpost.com/archive/politics/1989/03/29/proposed-amendment-age-200-showing-life/7fb96c2c-4058-41f5-89ec- a635adc51422/.

[3] The five states are: Nebraska: March 15, 1973; Tennessee: April 23, 1974; Idaho: February 8, 1977; Kentucky: March 20, 1978; South Dakota: March 5, 1979.