



How to Talk About:
**THE EQUAL RIGHTS
AMENDMENT**

Table of Contents

- 3** Five Key Points
- 4** Misperceptions v. Facts
- 7** Top Takeaways: The E.R.A. Is Expired
- 8** Top Takeaways: The E.R.A. Is Bad for Women
- 9** Quiz
- 10** Quiz Answers
- 10** Social Media Kit
- 13** Other Resources

Five Key Points

- 1 THE E.R.A. IS EXPIRED.** Under Article V of the U.S. Constitution, three-quarters of states (38) must ratify a proposed amendment. In the 1970s, the E.R.A. failed to reach this threshold before the congressionally-imposed deadline passed.
- 2 WOMEN AND MEN ARE EQUAL, BUT WE ARE NOT THE SAME.** Under the U.S. Constitution, as well as state and federal statutes, men and women are already legally equal. Layering the E.R.A. on top of existing protections, will require the government to treat males and females exactly the same in all circumstances, regardless of biology or privacy.
- 3 THE E.R.A. WILL BACKFIRE.** The E.R.A. will jeopardize dozens of programs for women, such as battered women's shelters and WIC (Women, Infants, and Children), and will force the elimination of sex-segregated public facilities, such as women's prisons.
- 4 WOMEN HAVE MADE REMARKABLE PROGRESS WITHOUT THE E.R.A.** Today, women earn the majority of undergraduate degrees, master's degrees, and doctorates, and they comprise a majority of students in law school and medical school. Since 1972, the number of women playing college and high school sports has increased exponentially. Since 1972, women have doubled their share of workplace managerial positions and have vastly expanded their share of business ownership. And female elective office-holding in the U.S. is at an all-time high. All of this progress was achieved without permanently amending the Constitution.
- 5 THE E.R.A. WILL TRANSFER POWER FROM VOTERS TO UNELECTED JUDGES.** Women make up the majority of the electorate in all recent elections and are perfectly capable of exercising political power. The E.R.A. will take political power away from these voters and their elected representatives, establishing a legal standard that doesn't allow for any flexibility.

1. MISPERCEPTION: Women's rights are not protected without the E.R.A.

FACT: Women and men are legally equal under the U.S. Constitution. The Bill of Rights protects the civil liberties of all Americans. A woman's right to vote is protected by the 19th Amendment. Unfair governmental sex discrimination is prohibited by the by the Equal Protection Clause of the 14th Amendment.

FACT: The U.S. Code is replete with prohibitions on sexual violence and sex discrimination by private, as well as public, entities. The Equal Pay Act prohibits employers from paying similarly-situated men and women unequally; Title VII prohibits sex discrimination in employment; Title IX prohibits sex discrimination by recipients of federal money, including all public schools and

almost all private schools; the Equal Credit Opportunity Act prohibits sex discrimination against credit applicants; the Fair Housing Act prohibits sex discrimination in the sale, rental, and financing of housing; the Pregnancy Discrimination Act requires employers to treat pregnant women the same as other similarly capable employees. And the Office on Violence Against Women within the Department of Justice authorizes grants to state, local, and tribal law enforcement entities to investigate and prosecute violent crimes against women.

FACT: State laws often go further than federal law, providing additional remedies and alternate avenues for redress from discrimination or sexual violence.

2. MISPERCEPTION: Adding the E.R.A. to the Constitution will eradicate the wage gap and end rampant sexual harassment against women in society.

FACT: By its terms, the E.R.A. prohibits federal and state government from distinguishing between people on the basis of sex; it does not apply to private companies or organizations.

FACT: Wage discrimination and sexual harassment are already illegal under Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, and Title IX of the

Education Amendments of 1972, among other laws.

FACT: The so-called wage gap isn't a measure of discrimination. In fact, the much touted 80-cents-on-the-dollar statistic is based on a raw comparison of the average yearly pay of all female workers and all male workers—

continued >>

irrespective of profession, job category, experience, training, college major, hours worked, or whether the employee is the primary caregiver of children. Today, more men than women still choose careers in high-skill or high-risk industries such as plumbing, commercial fishing, mining, and law enforcement; more women than men

take time out of the workforce or go part-time to care for children; and women with children put in fewer hours, on average, than their male counterparts. The E.R.A. will have no impact on the choices that men and women make and, therefore, will do nothing to eradicate the wage gap.

3. MISPERCEPTION: The E.R.A. is a symbolic way of “putting women into the Constitution.”

FACT: The Constitution is gender-neutral and applies equally to all Americans. Although the document does not explicitly reference women, neither does it explicitly reference men. The 19th Amendment does, however, explicitly forbid jurisdictions from denying the franchise on the basis of sex.

FACT: Proponents of the E.R.A. want it both ways: they want to claim that the E.R.A. is merely a symbolic way of recognizing women, but then they go on to claim that the E.R.A. will mandate a laundry list of unpopular policy priorities.

4. MISPERCEPTION: There are no downsides or dangers to passing the E.R.A.

FACT: By requiring that government *a/ways* treat males and females the same, the E.R.A. jeopardizes dozens of programs for women, such as battered women’s shelters and WIC (Women, Infants, and Children).

FACT: The E.R.A. jeopardizes sex-segregated public facilities, such as public hospital rooms, women’s prisons, and sex-specific sports teams at public schools.

FACT: The E.R.A. would almost certainly be interpreted to require that women, upon turning 18, register for the Selective Service, be subject to the military draft,

and sent to the frontlines for combat in equal numbers to men.

FACT: The E.R.A. is likely to be interpreted to *require* taxpayer funding of abortion, and prohibit states from enacting reasonable restrictions on late-term abortions.

FACT: The sweeping language of the E.R.A. gives unelected judges wide latitude to short-circuit a number of policy debates that should be settled by the people through the democratic process.

continued >>

5. MISPERCEPTION: An amendment can be ratified by states over a very long period of time.

FACT: The Supreme Court has held that ratification of a constitutional amendment must take place “at relatively the same period” in order to demonstrate a “sufficiently contemporaneous” consensus of the people.

FACT: When Congress passed the E.R.A. and sent it to the states for consideration in 1972, it imposed a strict ratification deadline of seven years. That deadline passed more than four decades ago.

FACT: In 1972, Hawaii became the first state to approve of the E.R.A. Almost five decades later, in 2020, Virginia approved the E.R.A. This cannot reasonably be said to indicate a “sufficiently contemporaneous” supermajority of support.

Top Takeaways:

The E.R.A. Is Expired

THE PROPOSED EQUAL RIGHTS AMENDMENT EXPIRED LAST CENTURY

- Under Article V of the U.S. Constitution, three-quarters of states (38) must ratify a proposed amendment before it can be adopted. These state ratifications must be reasonably contemporaneous in order to reflect the will of the people in one general time period.
- In the 1970s, the E.R.A. failed to gain approval from 38 states before the congressionally-imposed deadline for ratification expired.
- E.R.A. supporters, nevertheless, have sued to demand that it be added to the Constitution. They argue that the E.R.A. was resurrected when three states approved the measure this century—decades after the ratification deadline passed.
- Supporters of the fifty-year-old proposed amendment should not be allowed to bootstrap it to the Constitution with a handful of recent endorsements.

A LOT HAS CHANGED SINCE 1972

- In 1972, when Congress sent the E.R.A. to the states, the world was a different place.
- Since then, American women have achieved full legal equality with men,

and they have made incredible social and economic progress without the help of a constitutional amendment.

- Moreover, in 2020, the phrase “on account of sex” contained in the proposed amendment is likely to be interpreted differently than it was in 1972. Today, there is a vigorous debate about whether sex and gender are separable, biological, and/or socially-constructed. These are not issues that people in the 1970s were thinking about when casting their votes for the E.R.A.

ADDING THE 1972 E.R.A. TO THE CONSTITUTION NOW WOULD UNDERMINE REPRESENTATIVE DEMOCRACY

- More than 62 percent of eligible voters in 2020 were not born or were too young to vote when Congress sent the E.R.A. to the states in 1972.
- These voters have not had a chance to consider the consequences of the proposed E.R.A. or to weigh in, through their elected representatives, on whether it should be adopted.
- Adding the E.R.A. to the Constitution now would now undermine the right of today's voters to participate in the amendment process as required by Article V.

Top Takeaways:

The E.R.A. Is Bad for Women

THE E.R.A. IS A BAIT AND SWITCH

- E.R.A. proponents say it provides basic legal equality, but women and men are already legally equal under the Constitution and state and federal law, rendering the E.R.A. unnecessary. Instead, the E.R.A. would usher in a legal standard of “sameness” rather than basic equality. It would take away the flexibility that protects women’s privacy, or even their safety.
- Unfair sex discrimination is already unconstitutional under the Equal Protection Clause of the 14th Amendment, and numerous federal and state laws also prohibit unequal treatment on the basis of sex.
- By layering the E.R.A. on top of existing constitutional protections, backers of the E.R.A. hope it will require the government to treat men and women exactly the same in all circumstances. That may sound nice, but in reality, it creates serious dangers for women and girls.

THE E.R.A. COMES WITH CONSEQUENCES

- Benefits to women: The E.R.A. jeopardizes dozens of government funded programs for women, such as battered women’s shelters and WIC (Women, Infants, and Children).
- Draft and combat: The E.R.A. will likely require women to register for the military draft and require them to serve in combat.
- Sex segregation and safety: The E.R.A. jeopardizes the existence of sex-segregated public facilities, such as public hospital rooms, public school restrooms, single sex sports teams at public schools, and prisons.
- Abortion: The E.R.A. could constitutionally require the government to spend taxpayer money on abortions.
- Taking power away from voters: Women make up the majority of the electorate in all recent elections. Ironically, the E.R.A. would take decision-making power out of the hands of voters and give it to unelected judges.

Quiz: The Equal Rights Amendment

1 Which constitutional rights apply equally to men and women?

- A.** First Amendment protections for freedom of speech, assembly, and religious liberty.
 - B.** The Sixth Amendment right to a jury trial if accused of a crime.
 - C.** The right to equal protection under the law in the 14th Amendment.
 - D.** All of the above.
-

2 Which of the following situations are constitutionally permissible without the E.R.A.?

- A.** Separating male and female prisoners in jail for safety purposes.
- B.** Denying admission to women at a public law or military school.
- C.** Allowing women to purchase beer at age 18, and men to do so only at age 21.
- D.** Challenging on the basis of sex the seating of a juror in a trial.

3 How many states have ratified the Equal Rights Amendment since 1979?

- A.** Zero
 - B.** Three
 - C.** 38
 - D.** 42
-

4 Which of the below are likely consequences of the Equal Rights Amendment?

- A.** Required taxpayer funding for abortion services.
- B.** Private companies required to pay men and women equally for equal work.
- C.** An end to government grants to any organization or service aimed only at women, such as female-only domestic violence shelters.
- D.** Requiring sports teams at public universities to allow qualified athletes of either sex to join the team.
- E.** A, C, and D, but not B.
- F.** All of the above.

Quiz Answers

Q1 ANSWER: D

The Constitution applies equally to men and women, and the rights it guarantees, including the three listed in the question, are guaranteed to all. The 14th Amendment specifically prohibits unequal treatment by the government.

Q2 ANSWER: A

Currently, government policies that treat men and women differently are reviewed under the Equal Protection Clause of the 14th Amendment, using an *intermediate scrutiny* standard. The policies described in B, C, and D have been held unconstitutional by the Supreme Court. However, separating male and female prisoners is currently constitutionally permissible. The flexibility available under the Equal Protection Clause allows judges to make exceptions for limited situations in which biological differences or safety concerns warrant different treatment. The E.R.A. would remove that flexibility, forcing the law to treat women and men identically in *all* circumstances.

Q3 ANSWER: B

Just three states—Nevada, Illinois, and Virginia, have ratified the Equal Rights Amendment since 1979. Proponents of the E.R.A. argue that these three modern-day approvals should be counted alongside

ratifications from nearly 50 years ago—despite the fact that many voters today *weren't even born* when the E.R.A. was first considered by the states. Such a process undermines Article V of the Constitution, which seeks overwhelming consensus on an issue before adding it permanently to our governing charter.

Q4 ANSWER: E

In some states that have adopted their own versions of the E.R.A., courts have ruled that the amendment *requires* taxpayer funding of abortion and requires that boys be allowed to play on women's sports teams (such as field hockey). If the E.R.A. is added to the federal Constitution, *any* government grant or program designed to benefit women would be constitutionally suspect. Battered women's shelters that do not serve men could be excluded as grant recipients, and even facially-neutral programs such as Spousal Social Security, could be threatened. Because the E.R.A. prohibits government discrimination, it would likely not apply to private companies and their office payrolls. Nor would it impact the life choices that are the true driver of pay. However, actual pay discrimination is illegal under the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964.

Social Media Kit

WHAT YOU CAN DO: Speak up! Post the below messages, videos, and graphics to social media and make your voice heard.

Tag us so we can RT/Share your post:

- @IWV (Twitter)
- @IndependentWomensVoice (Facebook)
- @IndependentWomensVoice (Instagram)

Hashtags to include:

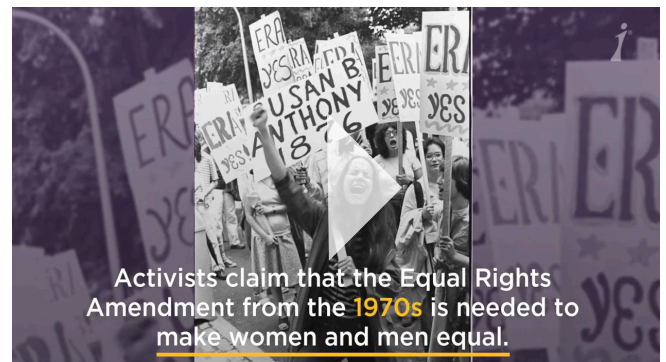
#StopERA #AlreadyEqual #EqualNOTSame #ERAExpired
#TheyDIdntAskMeAboutTheERA

VISUALS: Include these visuals with any Twitter, Facebook or Instagram posts.

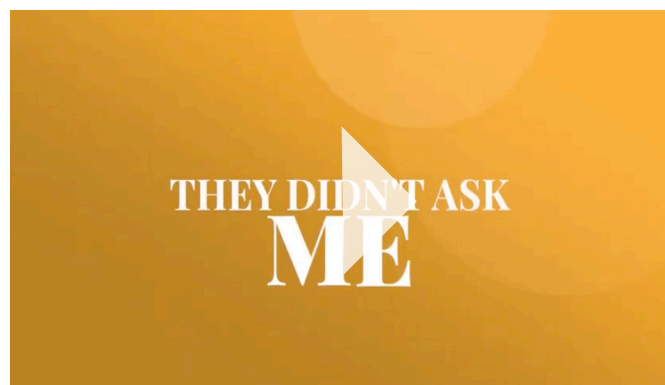
Videos: (3)



THE ERA: Don't Fall for It



Do We Have a Say on the ERA?









They Didn't Ask Me

Graphic: [Download](#) to include with any Twitter, Facebook or Instagram posts.

the situation

UNDERSTANDING THE EQUAL RIGHTS AMENDMENT

- 1 The Equal Rights Amendment sounds like a commonsense plan to ensure that women are treated fairly.
 
- 2 But it could come with unintended consequences for women.
 
- 3 For example, because it would remove legal distinctions between the sexes, it could force women to register for the military draft.
 
- 4 Public school restrooms or prisons could all become mixed-sex under the ERA.
 
- 5 The ERA's broad language would inevitably be interpreted by courts, meaning judges, not voters, would make critical decisions about what it means.
 
- 6 Fortunately, other Constitutional Amendments, including the 14th and 19th Amendments, already protect women's equal rights. Women don't need the ERA.
 

Visit IWW.ORG for more information on the Equal Rights Amendment

iww.org **Independent Women'sVoice®**

IWF RESOURCES:

- [IWF Policy Focus: The E.R.A.](#) by Inez Feltscher Stepman
- [Two Truths and a Lie: Equal Rights Amendment](#) by Inez Feltscher Stepman
- SheThinks Podcast: [Is the ERA Constitutional?](#) with Tom Jipping
- Independent Women's Law Center [Amicus Brief](#) in *Virginia v. Ferriero*
- [How the left is trying to resurrect the unnecessary Equal Rights Amendment](#) (Inez Feltscher Stepman) | *New York Post*, January 2, 2020

OTHER RESOURCES:

- [Phyllis Schlafly vs. Betty Friedan on the ERA](#)—Good Morning America
- [Mona Charen reiterates Schlafly's arguments](#)—C-SPAN