



GENERAL TALKING POINTS

Key Messages

1. ERA Coalition polling finds that 94% of respondents would support an amendment to the U.S. Constitution to guarantee equality for women and men, including 99% of millennials and Gen-Z.
2. Near-universal support crosses party lines. The public understands that the ERA is an important protection for sex equality and every member of society.
3. All recent votes that have been taken on ratification of the ERA, both at the state and federal level, have had broad and bi-partisan support.

Why do we need the ERA now? What would the ERA do that we don't already have now?

Among other protections, the ERA would:

1. Create additional avenues of legal recourse for people who face discrimination under the law on the basis of sex, and ensure that the Supreme Court applies the same standard of review for sex discrimination cases as it applies to cases of discrimination based on race and national origin.
2. Give Congress more power to enact laws that ensure better legal protection against sexual assault and domestic violence.
3. Confirm the rightful place of sex equality in all aspects of life.

Positive arguments to make in favor of the ERA

It would finally provide an explicit guarantee of protection against discrimination on the basis of sex in the U.S. Constitution.

It would make a critically important statement about equality. The Constitution reflects our most cherished values as a nation, and putting sex equality in the Constitution will have broad impacts on all aspects of our society.

It would send a particularly important message to children, who are growing up in a world that is more diverse.

It would bring the United States up to par with the rest of the world. Most developed nations (and all new constitutions adopted in the world since World War II) provide some kind of equal rights guarantee.

It would provide additional tools to protect against sex-based violence and discrimination in the enforcement of laws and legislation.

It would provide additional tools to combat discrimination in government employment, including in education, law enforcement, and the military.

What is the status of the ERA?

The ERA has already satisfied all the requirements set forth in Article V of the Constitution. It was proposed by a vote of two-thirds of the Congress in 1972, and as of January 27, 2020, it has been ratified by the legislatures of three-quarters of the states.

What about the time limit?

Opponents of the ERA point to the time limit for ratification contained in the introductory statement to Congress's 1972 joint resolution. There are two paths to resolve this issue: legislation and litigation. ERA advocates are pursuing both. There is no inconsistency between the proposed legislation and the litigation.

1. **First, Congress could act now to remove the time limit.** There are bipartisan resolutions pending in both Houses of Congress today that would eliminate any question that the validity of the ERA depends on the criteria in Article V, not the 1972 joint resolution. If Congress had the power to impose a time limit, it also has the power to remove it.
2. **Second, a court could hold that the time limit is ineffective.** There is nothing in the U.S. Constitution that says anything about time limits. Article V provides that an amendment becomes valid when ratified by three-quarters of the states. The Attorneys General of Virginia, Illinois, and Nevada have filed a lawsuit that makes this argument, seeking a court order requiring the National Archivist to publish the ERA as valid, consistent with his obligation under federal law. Although the court recently held that the time limit is effective, that decision will not be the last word on the matter. And the court left open the possibility that Congress can remove the time limit now.

What about the "recissions"?

Opponents also point to the fact that in the 1970s, the states of Nebraska, Tennessee, Idaho, Kentucky, and South Dakota voted to rescind or limit their prior ratifications. But a ratification is something that happens at a moment of time; it either happened or it didn't. Once a state ratifies, it can't take its ratification back.

There is strong historical precedent for this. The 14th Amendment became part of the Constitution even though two states had attempted to rescind prior ratifications—and those states were included on the list of ratifying states. This issue will likely be resolved in the courts.

Won't the ERA interfere with all government distinctions that are based on sex?

No constitutional right is absolute. Even the First Amendment right to free speech can be limited if there's a compelling reason for the government to do so. That means that even under the ERA, the government would be able to draw distinctions based on sex if it has a compelling reason. For example, it may be able to limit a battered women's shelter to women to protect them from continued trauma.