

## **EQUAL RIGHTS AMENDMENT**

### **SUMMARY OF NOW ACTIONS IN SUPPORT OF THE ERA, 1966 – 2018**

**and**

### **ERA FREQUENTLY ASKED QUESTIONS (FAQs)**

**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.

**A short history about the leading role taken by National Organization for Women (NOW) over many years to add an Equal Rights Amendment to the U.S. Constitution**

The National Organization for Women (NOW) is the largest grassroots organization of feminist activists in the United States and has been known since its founding in 1966 for its long fight against sex discrimination and for its tirelessly working for ratification of the Equal Rights Amendment (ERA). A formal resolution advocating for an amendment to the U.S. Constitution was adopted at NOW's second conference in 1967. Since then, the organization has mounted countless actions on many fronts to promote, achieve and protect the equal rights of women and girls in all aspects of social, political, and economic life.

In 1921, the National Woman's Party (NWP) announced their intention to campaign for an amendment to the U.S. Constitution to guarantee women equal rights with men and proposed a brief text. Alice Paul, the famed suffragist and leader of the NWP, proposed a different text for the amendment in 1923 known as the Lucretia Mott Amendment, but in 1943 revised this to reflect the text of the Fifteenth and Nineteenth Amendments. And it is this text that appears in the ERA that was passed by Congress in 1972. The general objective of the amendment was to end legal distinctions between men and women as related to divorce, property, employment and other matters.

The ERA was introduced in Congress every succeeding session, with little success until in the 1970s.

In February of 1970, 20 NOW leaders disrupted hearings of the U.S. Senate Subcommittee on Constitutional Amendments, demanding that the ERA be considered by the full Congress. A hearing on the proposed amendment was held in May in the Senate, with NOW president Aileen Hernandez and NOW member U.S. Rep. Shirley

Chisholm (D-N.Y.) testifying in support. On the House side, Rep. Martha Griffiths (D-Mich.) filed a discharge petition in June to force the ERA bill out of the House Judiciary Committee where it had been blocked for many years. It was with extensive lobbying that passage on October 12, 1971 of the Equal Rights Amendment by the U.S. House of Representatives was secured (354-24). The Senate followed and on March 22, 1972 approved it by 84-8 vote without changes. Sen. Sam Ervin (D-N.C.) and Rep. Emanuel Celler (D-N.Y.) succeeded in setting an arbitrary time limit of seven years for ratification.

Consideration of the ERA then moves to the states where ratification by three-fourths (38) of the states is required by Article V of the Constitution. NOW state and local chapters pressed state legislatures to ratify the ERA and a rapid succession of states follow suit. By 1977 35 states have ratified, leaving the Amendment short of three states in meeting the required three-fourths of the 50 states for ratification. The fifteen unratified states are primarily in the more conservative 'Sun Belt' states, including Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.

Thereafter, NOW chapters in unratified states were not successful in gaining additional ratification, but were successful in helping to electing pro-ERA legislative candidates.

An opposition movement emerged during this time with right-wing activists spreading false claims about what the ERA would do, such as requiring same-sex restrooms, sending women into combat, repealing employment laws protective of women and other such claims. Led by the outspoken conservative, Phyllis Schlafly, their campaigning was successful enough to slow down momentum for ratification. A number of states voted to rescind their earlier ratification votes. However, Article V of the U. S. Constitution does not provide for rescission – ratification is final.

In 1977, NOW advocated for a boycott of unratified states and gathered even more public support for the Amendment. The number of pro-ERA groups grew to more 450 organizations representing more than 50 million Americans. NOW leaders sought a five-year extension from Congress for the ratification deadline with the argument that the U.S. Constitution imposes no time limit for ratification of amendments. Further, the seven-year provision is not a part of the text of the Amendment, but rather is only in the resolving clause and can therefore be revised or deleted.

1977 also marked the year that Alice Paul died, at age 92. Reportedly, Paul burst into tears when she heard in 1972 that a seven-year deadline had been placed on the ERA ratification process. She felt that this would doom the amendment.

In 1978, the state of Missouri brought a lawsuit on antitrust grounds against NOW, claiming the organization violated the Sherman Antitrust Act by urging groups to boycott unratified states and hold conventions only in ratified states. The NOW national board declared a State of Emergency on the ERA. On July 9, 1978 NOW organized an ERA extension march of 100,000-plus supporters in Washington, D.C. This March for

Equality was the largest in feminist history at the time. Both U.S. House and Senate then approve ERA extension with a new deadline of June 30, 1982.

In 1979, states debated rescission bills and a dozen such bills were defeated. Federal Judge Elmo Hunter, of the District of Eastern Missouri, ruled in the ERA boycott case that NOW's activities are protected by the First Amendment and do not violate antitrust laws. This is upheld by the U.S. Court of Appeals. The U.S. Supreme Court in late 1980 declines to hear the case. The ERA boycott is legal.

NOW organized 85,000 activists in 1980 to march in Chicago in support of Illinois ratifying the ERA. The Republican Party reversed its 40-year tradition of supporting the ERA. In response, NOW organized 12,000 supporters to march in Detroit during the Republican National Convention. The final Republican platform officially took no position on ERA, but presidential nominee Ronald Reagan and party officials actively opposed the Amendment. The Democratic Party reaffirmed its support for ERA and the ERA boycott. It was then that election day exit polls showed that for the first time ever reported, men and women voted quite differently. Pollsters later indicated that for women the issue of women's rights and ERA had a significant impact on their votes. News reports claim "Ronald Reagan has a woman problem" related to the ERA.

The year 1980 opened with NOW organizing some 40,000 ERA supporters to remind the new President Reagan of the overwhelming pro-ERA sentiments in the nation. NOW sent 'Feminist Missionaries' to Utah, the heart of the opposition to ERA, and the headquarters of the Mormon Church and to other unratified states. NOW filed a \$10 million lawsuit against the Attorney General of Missouri charging that he intentionally injured NOW, the Equal Rights Amendment campaign and the women's rights movement by suing NOW for its convention boycott of states which had not ratified ERA.

NOW sponsored ERA Countdown Rallies in over 180 cities to draw attention to the deadline of June 30, 1982, and to dramatize wide support for the ERA. The "Last Walk for ERA" raised close to a million dollars. NOW launched the first nationwide advertising campaign for ratification of the Equal Rights Amendment, focusing on the problem of widespread sex discrimination.

In 1980, U.S. District Court Judge Marion J. Callister, of the District of Idaho, ruled the ERA extension illegal and rescission legal in the case of *Idaho v. Freeman*. This ruling marks the first time in this country's history that an Act of Congress relating to the process for amending the U.S. Constitution was declared unconstitutional by a federal court. NOW immediately appealed the ruling to the Supreme Court and asked for an expedited hearing. Just 17 days after NOW appealed the Callister ruling in early 1981, the Supreme Court vindicated NOW's position by entering a rarely granted unanimous stay prohibiting the enforcement of Callister's decision. In January 1982, The Court agreed to hear NOW's appeal on the merits of the case at a later date, thereby negating any legal effect of Callister's decision and removing the cloud of confusion on ratification

in the states. But as the deadline for ratification passed on June 30, the question became moot.

Seven NOW members held a dramatic 37 day hunger fast in Illinois Legislature in May 1982, resulting in several hospitalizations -- but to no avail for a successful ratification vote. On June 30, ERA progress stopped three states short of ratification. ERA supporters pledged "We'll Remember in November." The hopes of tens of thousands of NOW activists and allies were crushed. Many were angered.

An analysis of ERA votes in the four key targeted states, Florida, Illinois, North Carolina and Oklahoma, showed that the Republicans deserted the ERA and Democratic support was not strong enough. The analysis makes clear that the single most obvious problem was the extreme gender and racial imbalance in the legislatures: more than 2/3 of the women and all of the African American lawmakers voted for ratification, but less than 50 percent of the white male members in the targeted legislatures cast pro-ERA votes in 1982.

In 1983 and every year thereafter, ERA has been officially reintroduced in the U.S. Congress. Rep. Carolyn Maloney (D-NY.) and the late Sen. Ted Kennedy (D-Mass.) routinely introduced the bills. In the 1990s and 2000s a number of approaches were advocated including new language for the ERA which specified women as the ones most often discriminated against. The language of the 1972 is gender neutral in its prohibition against discrimination based on sex. Additionally, a bill introduced by Sen. Ben Cardin (D-Md.) and Rep. Jackie Speier (D-Calif.) suggested a three-state solution which would remove the 1972 deadline (simultaneously removing the 1982 deadline as well). NOW organized several standing-room-only Congressional briefings over that period to discuss the legislation and the continuing need to have an Equal Rights Amendment in our Constitution.

In the early 1990s, NOW held a conference to explore additional protections that might be included in a new equal rights amendment, resulting in a draft that covered a wide variety of protections. However, there was little energy to promote that version.

Since 1995, ERA supporters have advocated for passage of ERA ratification bills in a number of the 15 "unratified" states, with bills introduced in 12 of those states (Arizona, Arkansas, Florida, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, Utah, and Virginia).

In 2000, the national NOW conference endorsed multiple strategies aimed at achieving ratification of a constitutional equal rights amendment. NOW's Political Action Committee, along with state and local PACs and NOW campaign activists, continued to work to elect feminist candidates. In 2004, NOW Foundation undertook campaigns to register voters, particularly women voters, achieving over seven million voter contacts.

Since the 1982 deadline, advocates for the Equal Rights Amendment have had an opportunity to gain a better understanding of what the ERA, if ratified and became part of the U.S. Constitution, would do for women – and men.

The Equal Rights Amendment would provide a fundamental legal remedy against sex discrimination for both women and men. It would guarantee the rights affirmed by the U.S. Constitution are held equally by all citizens without regard to their sex. For the first time, sex would be considered suspect classification, as race currently is. Governmental actions that treat males or females differently as a class would be subject to strict judicial scrutiny and would have to meet the highest level of justification – a necessary and compelling state interest – to be upheld as constitutional. (This statement is from *Equal Rights Amendment: Frequently Asked Questions* by Roberta W. Francis, ERA Education Consultant, Alice Paul Institute, and which is attached to this summary.)

Major efforts for ERA ratification are ongoing in Virginia, North Carolina, Arizona and Georgia. Nevada ERA activists and their allies produced a stunning ratification victory in 2017, to be followed by Illinois in 2018 with the help of seasoned ERA campaigners from NOW. Those two states gave the ERA the 36<sup>th</sup> and 37<sup>th</sup> states. Just one more to go!

Over the years, the Virginia Senate has passed a ratification measure five times, but the more conservative House of Delegates failed to follow through. Elections in 2017, however, produced an impressive number of victories by feminist and progressive candidates who defeated conservative legislators. A hearing was held on January 9<sup>th</sup> in the Senate Privileges and Elections Committee and the ERA was voted out of committee. A vote by the full Senate is expected soon. Next comes consideration – perhaps -- by the more conservative House of Delegates where committee chairmen have blocked the ERA for many years. We are hoping that the outcome this time will be more positive.

NOW activists everywhere are hoping that Virginia, in 2019, may become the 38<sup>th</sup> state to ratify.

### **ERA FREQUENTLY ASKED QUESTIONS (FAQ)**

The following history and resources are organized by frequently asked questions and used with permission of the Alice Paul Institute, [www.equalrightsamendment.org](http://www.equalrightsamendment.org). The website has additional ERA related information.

[add Alice Paul Institute 11 page FAQ here.]