

Q&A ON THE EQUAL RIGHTS AMENDMENT

Q: Why not just pass more legislation if you want to protect women further?

A: Legislation can be rolled back. Congress can repeal legislation with a simple majority vote. Critical provisions such as the right for women to vote and the end of slavery were put in the Constitution so that they could not be taken away easily.

A: We feel that to suggest legislating instead is to say that equal rights between men and women are not important enough to be protected and upheld in the Constitution. Other Constitutional amendments that currently exist include compensation for members of Congress (27th), prohibition and the repeal of prohibition (18th and 21st), and state immunity. Few would argue that these provisions are more important than equal rights for all.

Q: Doesn't the 14th amendment provide enough protection against discrimination for women?

A: The 14th Amendment was ratified after the Civil War to address race discrimination. It has only been applied to sex discrimination since 1971, and the 14th Amendment Equal Protection Clause has never been interpreted to grant equal rights on the basis of sex in the same way that the ERA would.

A: Currently, when courts analyze sex-based classifications, they use intermediate scrutiny. The intermediate standard has been criticized by lower court judges, commentators, and Supreme Court justices as being too vague. We need a clearer and stricter federal judicial standard for deciding cases of sex discrimination.

Q: What are the different strategies for ratifying the ERA, and why is there more than one?

A: There are two strategies for trying to ratify the ERA. This bill initiates the “starting over” strategy of passing the ERA through Congress and then seeking ratification by $\frac{3}{4}$ of the states. Another bill has traditionally been introduced each year which pursues the so called “three state strategy.” The three state strategy is based on the fact that the Madison amendment concerning congressional pay raises went to the states for ratification in 1789 and reached the $\frac{3}{4}$ goal in 1992. That this 203 year ratification period was accepted has led some to propose that Congress has the power to maintain the legal viability of the 35 existing ratifications of the ERA.

A: Because it is hard to know if the three state strategy will be considered constitutional by the courts, most lawmakers support the starting over strategy as well as the three state strategy. Bills pursuing both strategies are introduced each year with the idea that this increases the chances that the ERA will finally be included in the Constitution.

Q: Won't this just increase litigation?

A: The 14th Amendment has generated litigation, and few would argue that we should not have enacted that amendment. If the ERA does increase litigation, it will be because individuals are claiming their rights that have been violated, a claim that each person has a right to make.

A: The ERA could actually lower the amount of litigation over time, by providing a clearer standard for the courts.

Q: Critics of the ERA have called the second section a "federal grab." Does the ERA shift power from the states to the federal government?

A: No. The ERA would not transfer any power from the states to the federal government.

A: The second section of the ERA states that "the Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." Some variation of this phrase appears in 8 other Constitutional amendments.