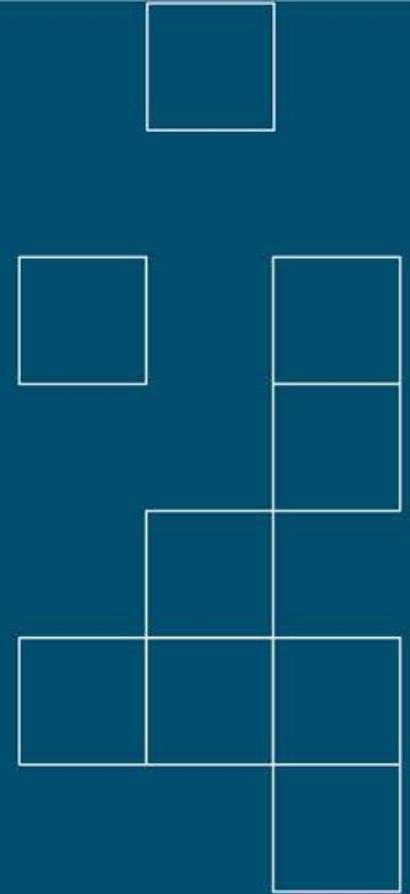


# The Equal Rights Amendment:

## Legal Issues and Implications



IN THE HOUSE OF REPRESENTATIVES.

DECEMBER 13, 1923.

Mr. ANTHONY introduced the following joint resolution; which was referred to the Committee on the Judiciary and ordered to be printed.

**JOINT RESOLUTION**

Proposing an amendment to the Constitution of the United States.

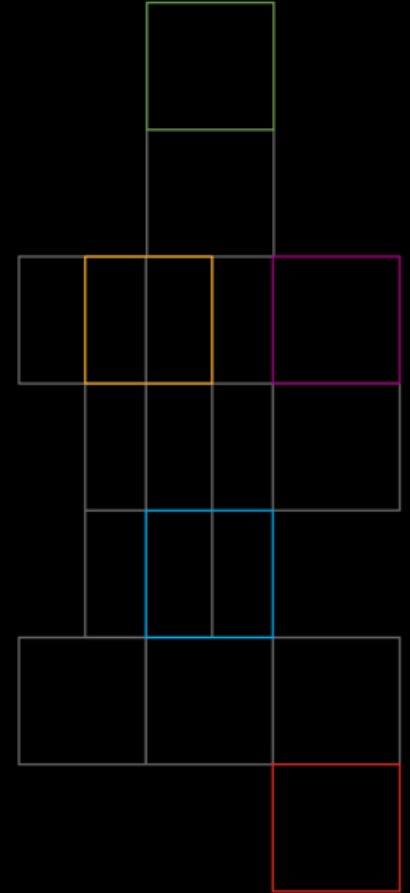
1 *Resolved by the Senate and House of Representatives*  
2 *of the United States of America in Congress assembled*  
3 *(two-thirds of each House concurring therein),* That the  
4 following article is proposed as an amendment to the Con-  
5 stitution of the United States which shall be valid, to all  
6 intents and purposes, as part of the Constitution when  
7 ratified by the legislatures of three-fourths of the several  
8 States:

ARTICLE XX.

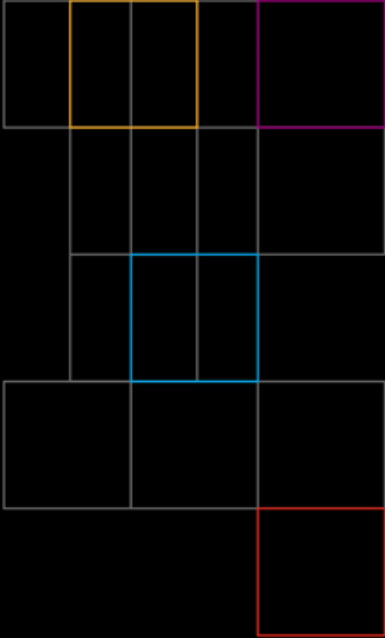
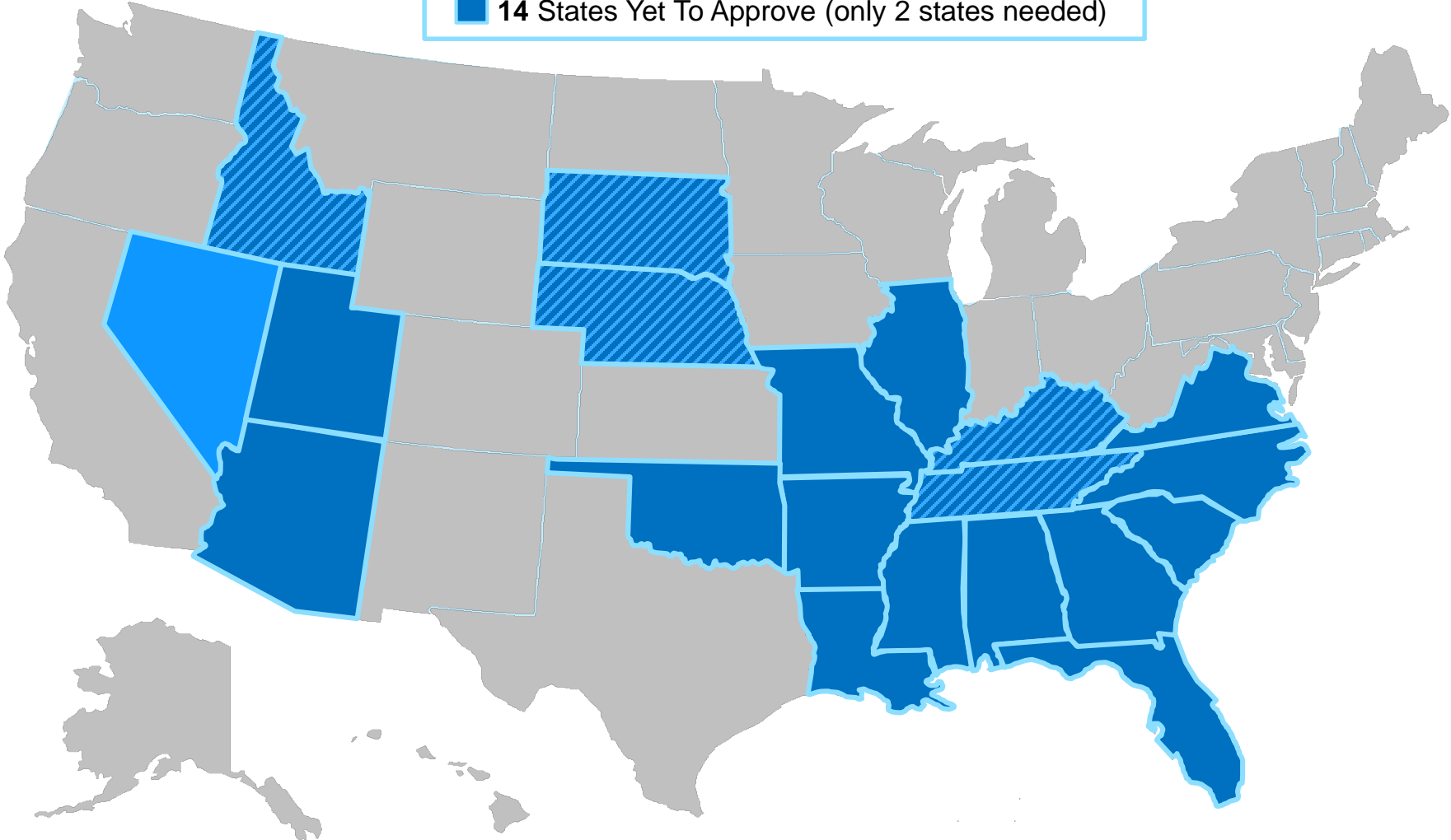
10 "Men an women shall have equal rights throughout  
11 the United States and every place subject to its jurisdiction.

12 "Congress shall have power to enforce this article by  
13 appropriate legislation."

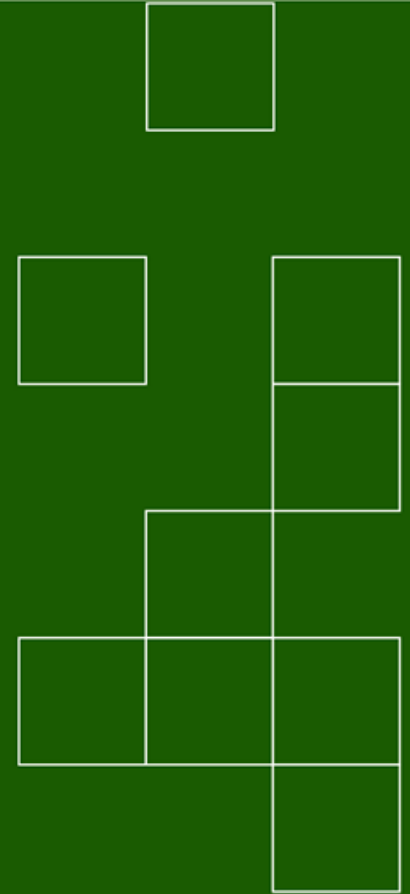
**“Equality of rights  
under law shall not be  
denied or abridged by  
the United States or  
any State on account  
of sex”**

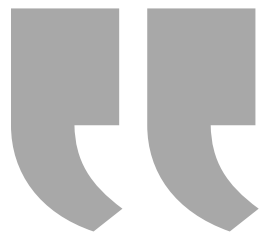


# Where We Stand



# What is the ERA?

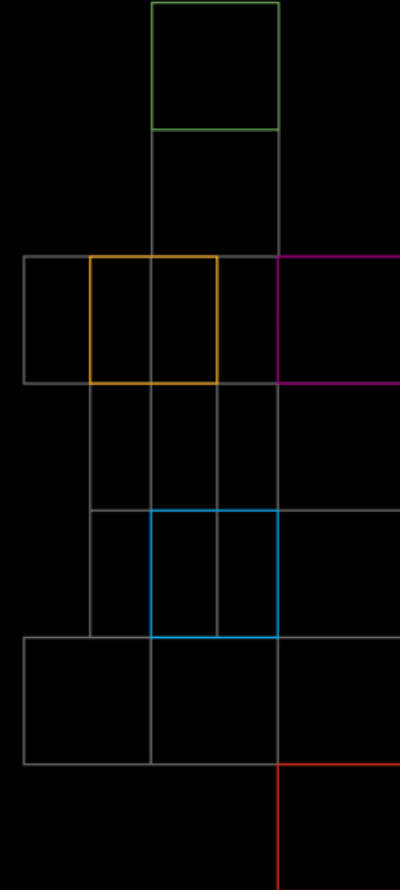




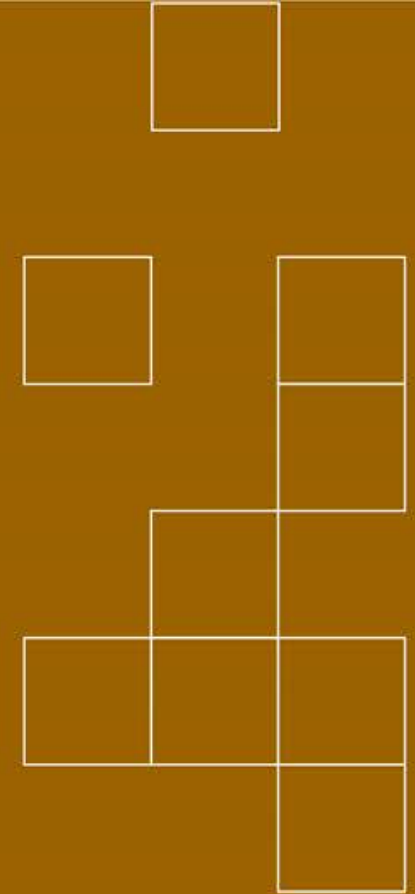
Equality of rights under law shall not  
be denied or abridged

[1] by the United States or any State

[2] on account of sex



# Current Legal Framework





## The 14<sup>th</sup> Amendment

“... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

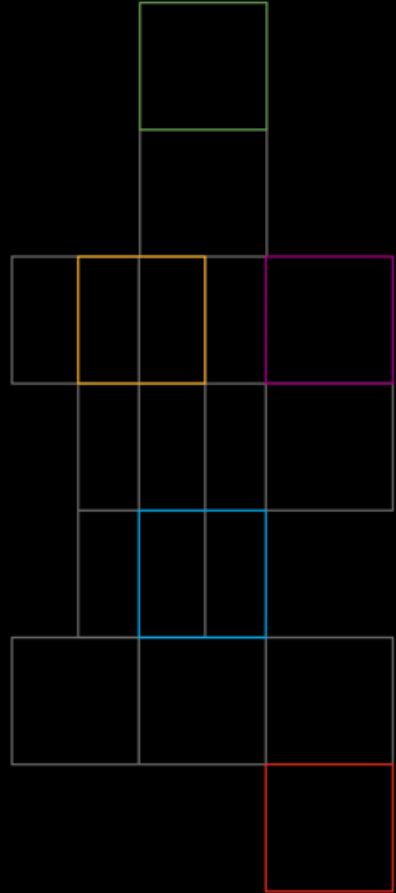
14<sup>th</sup> Amendment, § 1

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# Current Protections For Protected Classes

Level of Scrutiny	Protected Classes	Constitutional Standard
<b>Strict</b>	<b>Race, National Origin, Religion</b>	<b>Narrowly tailored to achieve a compelling government interest</b>  <b>Least Restrictive Means</b>
<b>Intermediate</b>	<b>Gender</b>	<b>Substantially related to important government purpose</b>





# Existing Federal and State Laws

## F E D E R A L

Title VII

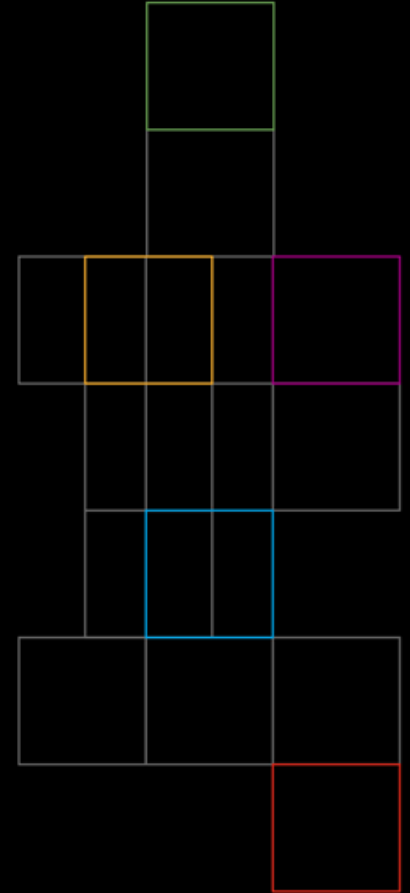
Title IX

Pregnancy Discrimination Act

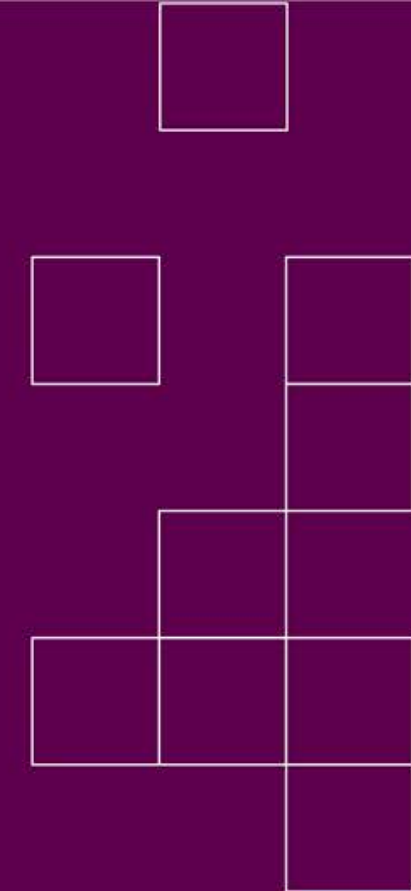
## S T A T E & L O C A L

State constitutions

State and local laws prohibiting  
certain kinds of sex discrimination



# Why Do We Need The ERA?



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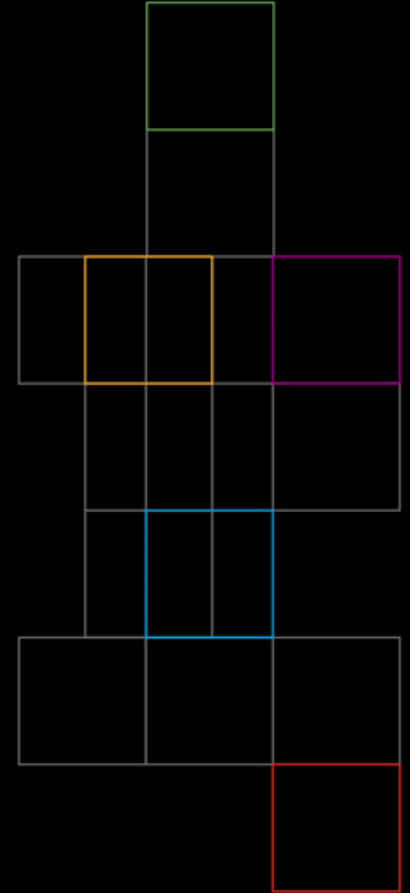
# Current Protections are Inadequate

The government generally can discriminate based on sex as long as the action meets **intermediate scrutiny**.

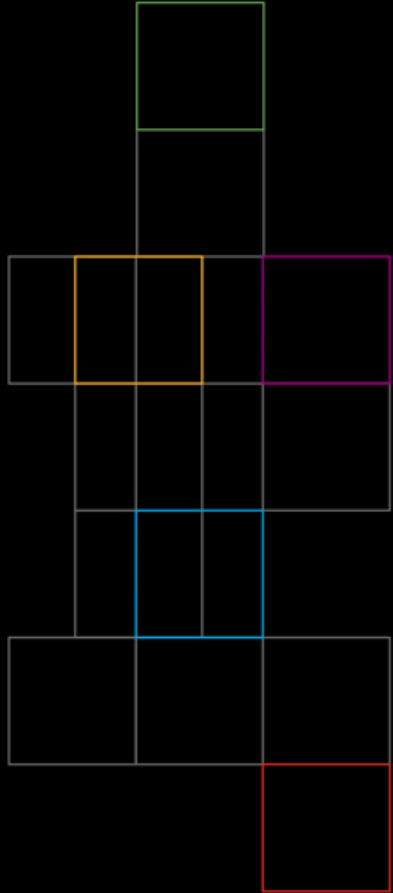
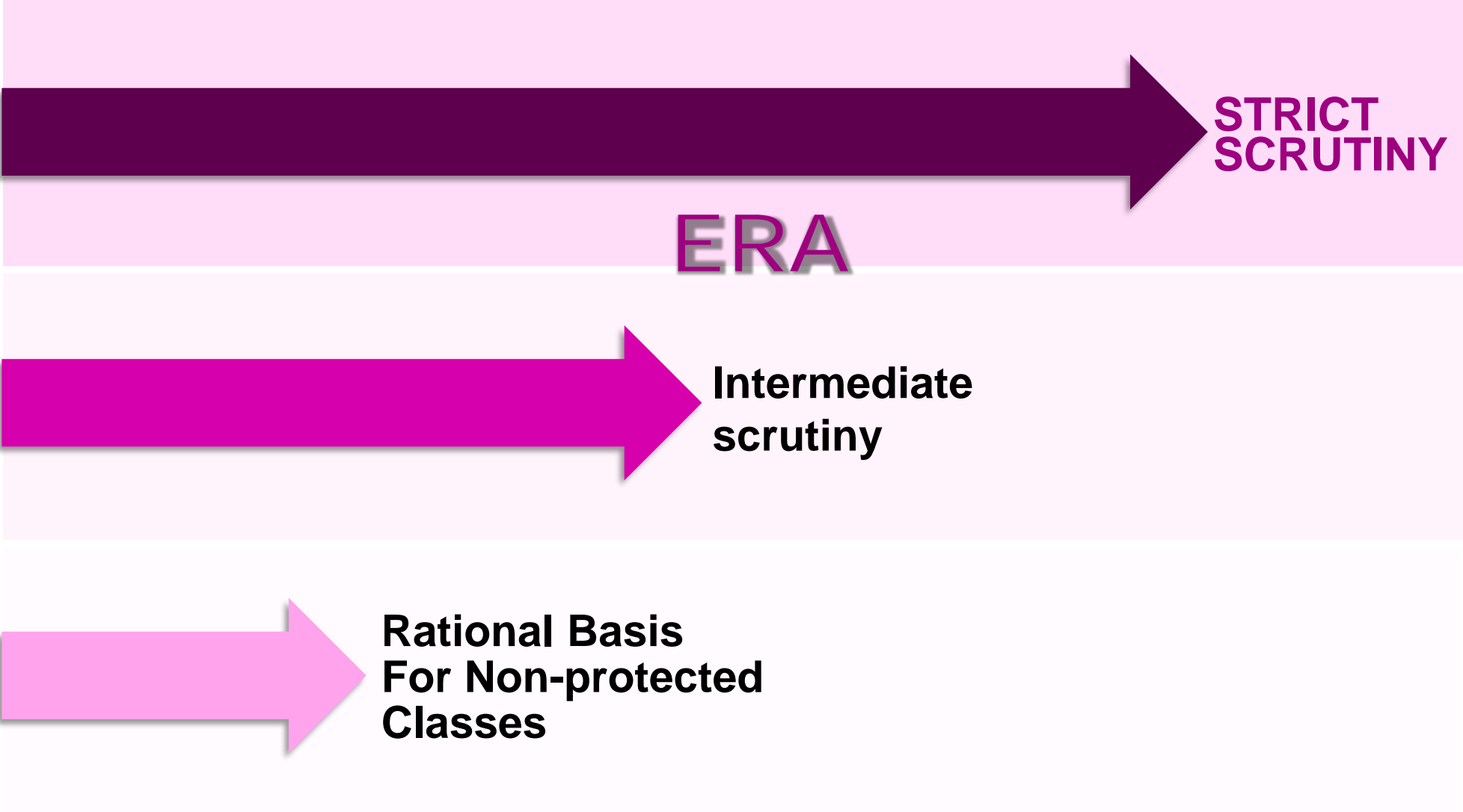
Some states do not have Equal Rights Amendments.

State statutes and constitutional provisions do not apply to federal government action.

Current statutes can be amended, not renewed, etc.



# ERA: Raises the Level of Scrutiny



# Nguyen v. INS: Level of Scrutiny in Action

OCTOBER TERM, 2000

53

Syllabus

TUAN ANH NGUYEN ET AL. v. IMMIGRATION AND  
NATURALIZATION SERVICE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FIFTH CIRCUIT

No. 99-2071. Argued January 9, 2001—Decided June 11, 2001

Petitioner Tuan Anh Nguyen was born out of wedlock in Vietnam to a Vietnamese citizen and copetitioner Joseph Boulais, a United States citizen. Nguyen became a lawful permanent United States resident at age six and was raised by Boulais. At age 22, Nguyen pleaded guilty in a Texas state court to two counts of sexual assault on a child. Subsequently, respondent Immigration and Naturalization Service initiated deportation proceedings against him based on his serious criminal offenses. The Immigration Judge ordered him deportable. Boulais obtained an order of parentage from a state court while Nguyen's appeal was pending before the Board of Immigration Appeals, but the Board dismissed the appeal, rejecting Nguyen's citizenship claim because he had not complied with § 1409(a)'s requirements for one born out of wedlock and abroad to a citizen father and a noncitizen mother. On appeal, the Fifth Circuit rejected petitioners' claim that § 1409 violates equal protection by providing different citizenship rules for children born abroad and out of wedlock depending on whether the citizen parent is the mother or the father.

**Held:** Section 1409 is consistent with the equal protection guarantee embedded in the Fifth Amendment's Due Process Clause. Pp. 59-73.

(a) A child born abroad and out of wedlock acquires at birth the nationality status of a citizen mother who meets a specified residency requirement. § 1409(c). However, when the father is the citizen parent, *inter alia*, one of three affirmative steps must be taken before the child turns 18: legitimization, a declaration of paternity under oath by the father, or a court order of paternity. § 1409(a)(4). The failure to satisfy this section renders Nguyen ineligible for citizenship. Pp. 59-60.

(b) A gender-based classification withstands equal protection scrutiny if it serves important governmental objectives and the discriminatory means employed are substantially related to the achievement of those objectives. *United States v. Virginia*, 518 U.S. 515, 533. Congress' decision to impose different requirements on unmarried fathers and unmarried mothers is based on the significant difference between their respective relationships to the potential citizen at the time

- The Supreme Court upheld laws related to the U.S. citizenship at birth for children born out of wedlock outside the United States to an American parent
- Under **intermediate scrutiny**: It was valid for the law to have a more restrictive citizenship requirement for children born to American fathers and a non-citizen mother
- ***What if the standard had been strict scrutiny?***

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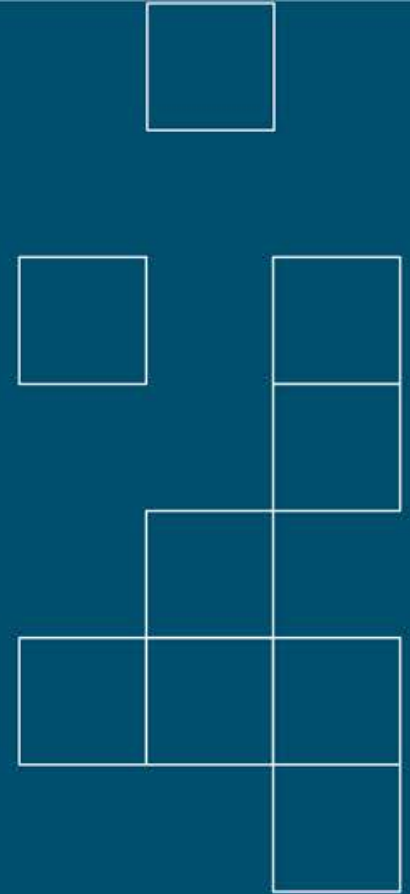
# Potential Challenges Under the ERA



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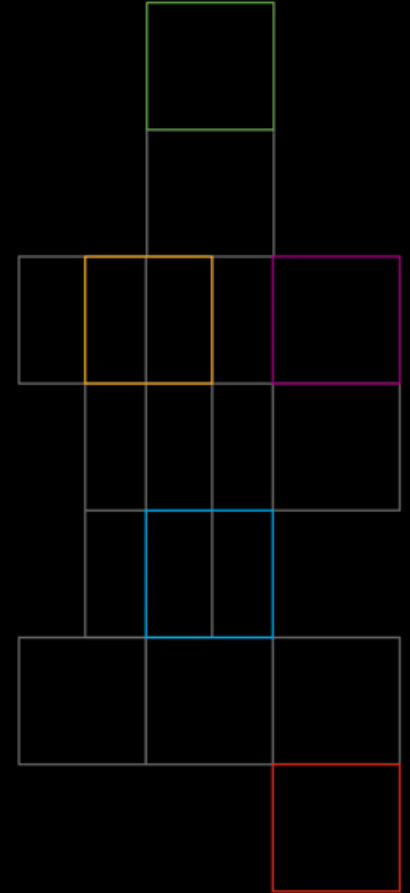
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# Myths About The ERA



# Myth #1:

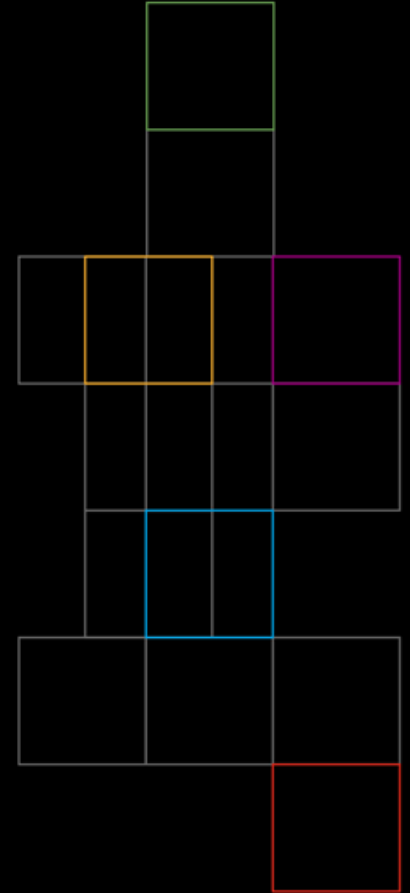
“The ERA will  
overturn laws that  
benefit women”





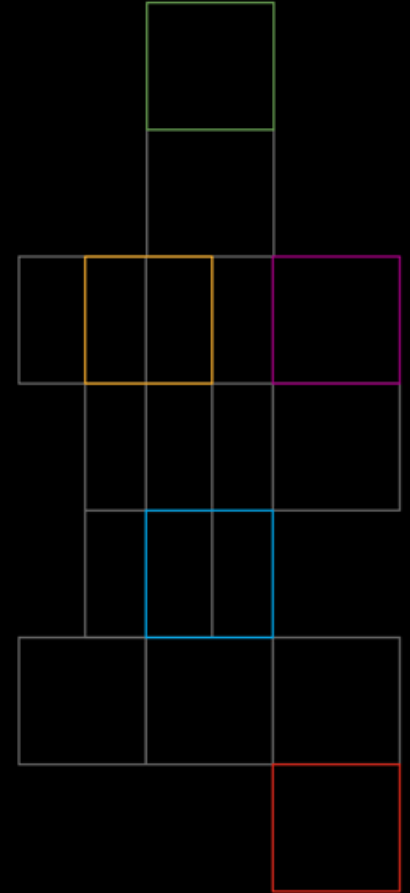
# Myth #2:

“The ERA will take power away from the states on laws impacted by gender”



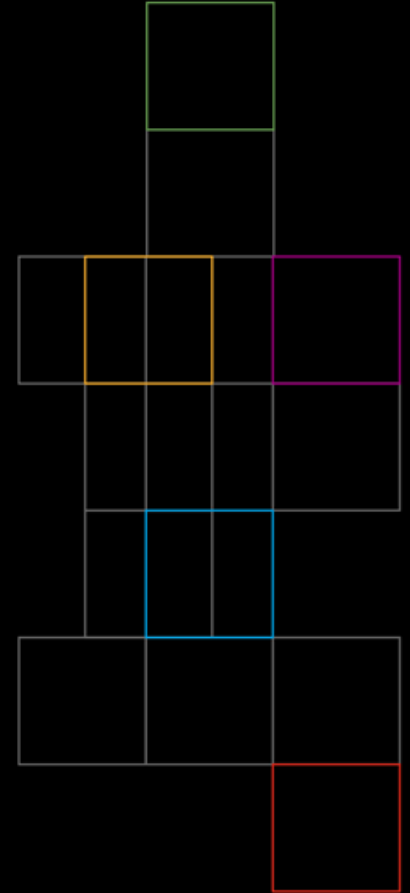
# Myth #3:

“The ERA is about changing the law on abortion.”



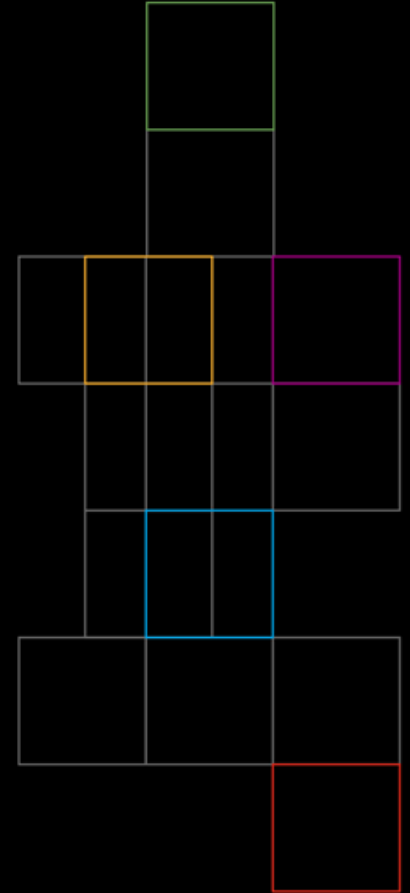
# Myth #4:

“If the ERA is ratified, gender designations would have to be removed from bathrooms, locker rooms, jails, and hospitals.”

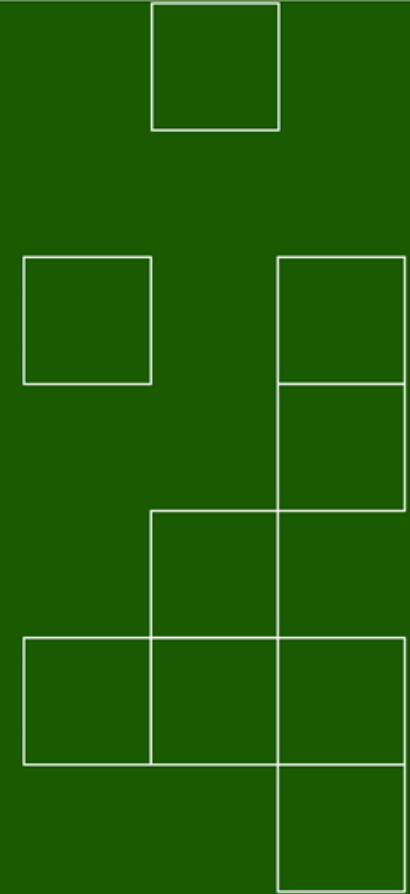


# Myth #5:

“The ERA will be  
costly and burden  
businesses”



# Path to Ratification

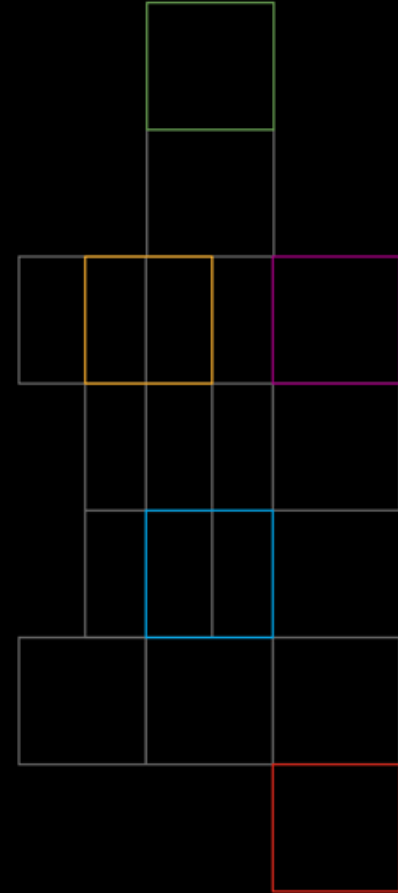




## The Ratification Process

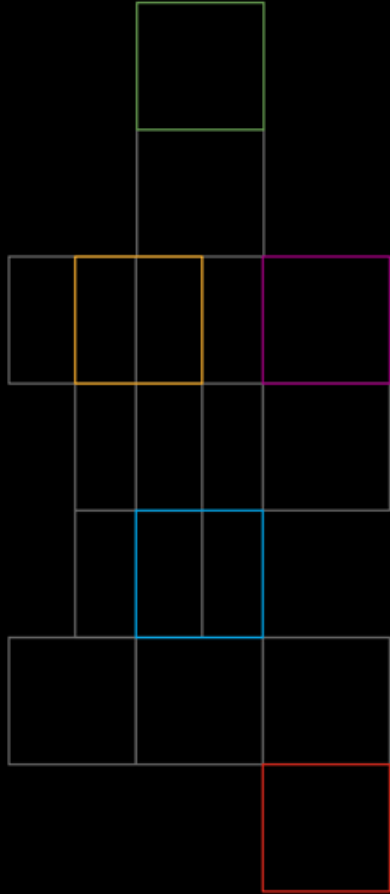
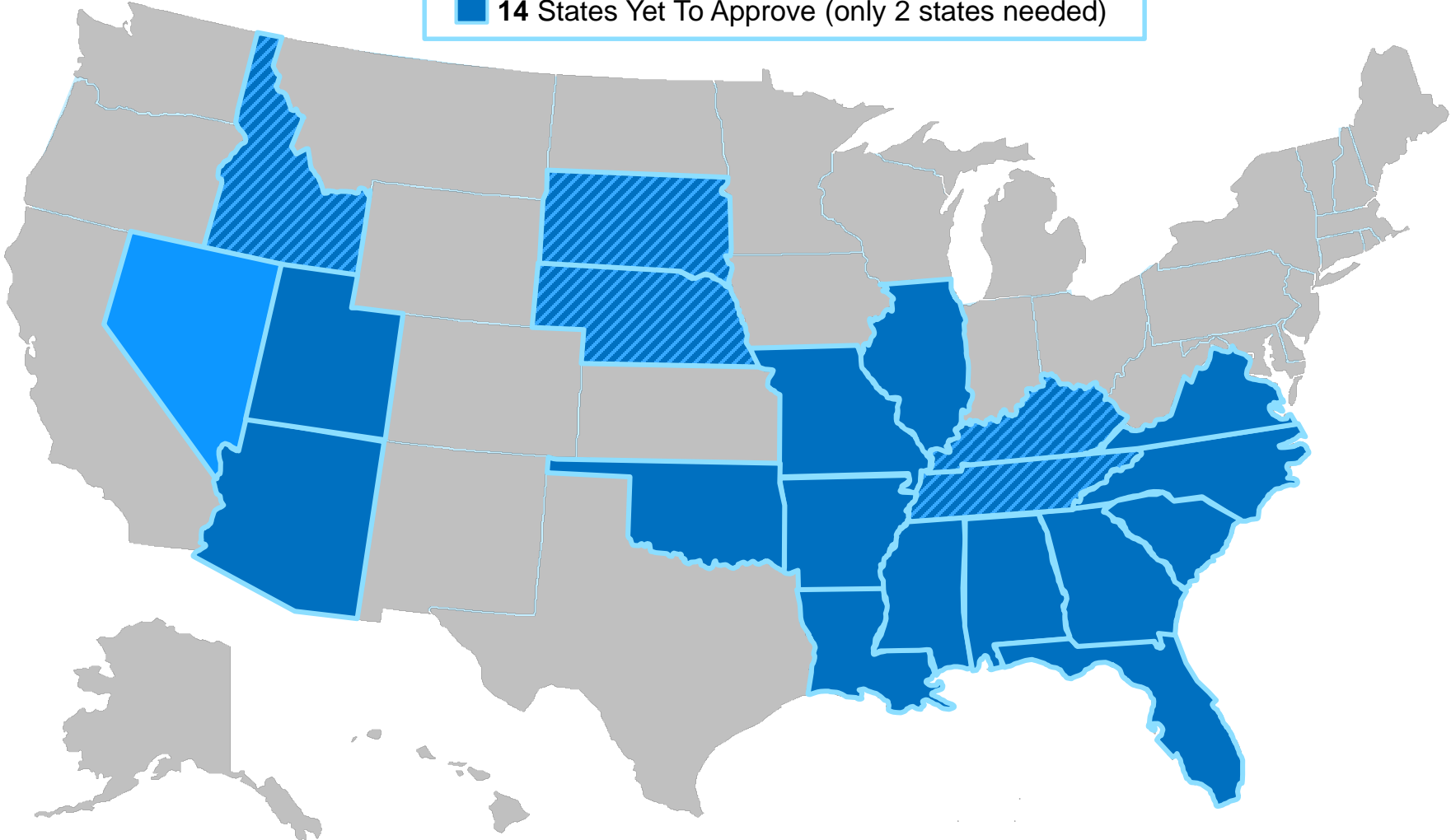
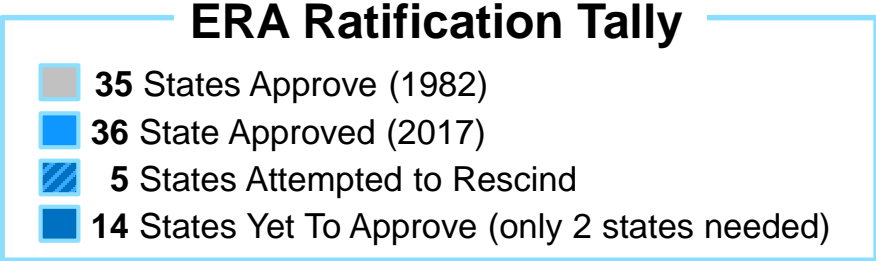
“The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution . . . Which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof..”

U.S. Constitution, Article V

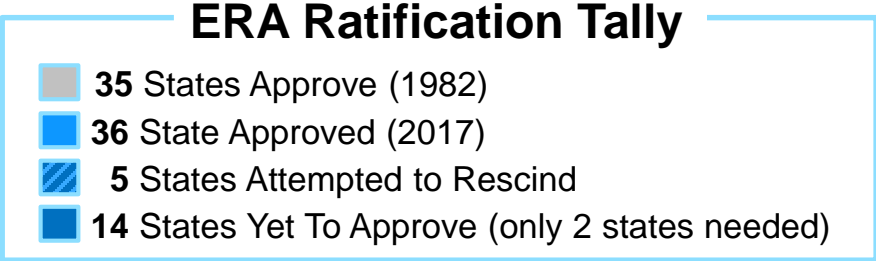


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# Ratifying the Equal Rights Amendment

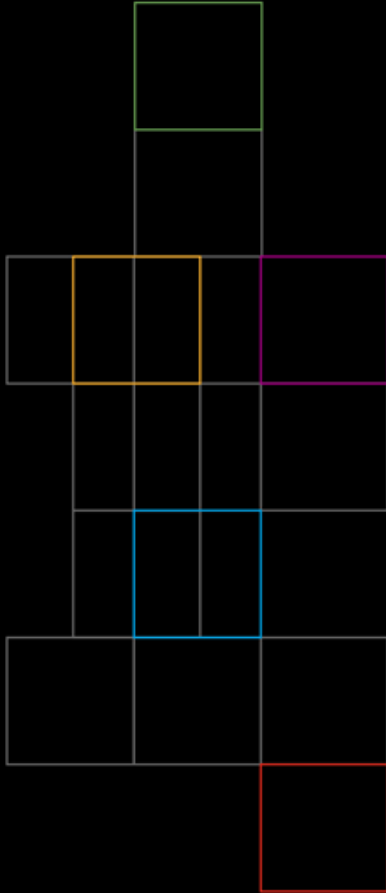


# Ratifying the Equal Rights Amendment



**NEVADA**  
36<sup>th</sup> State to Ratify ERA

**ILLINOIS**  
2003: Illinois House  
2014: Illinois Senate





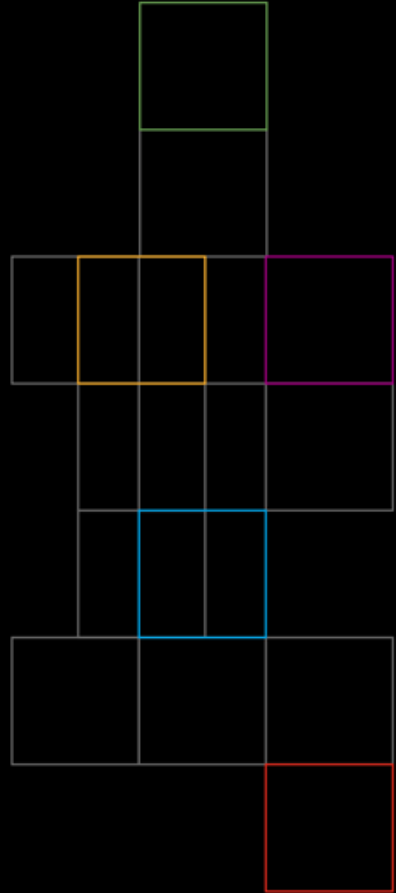
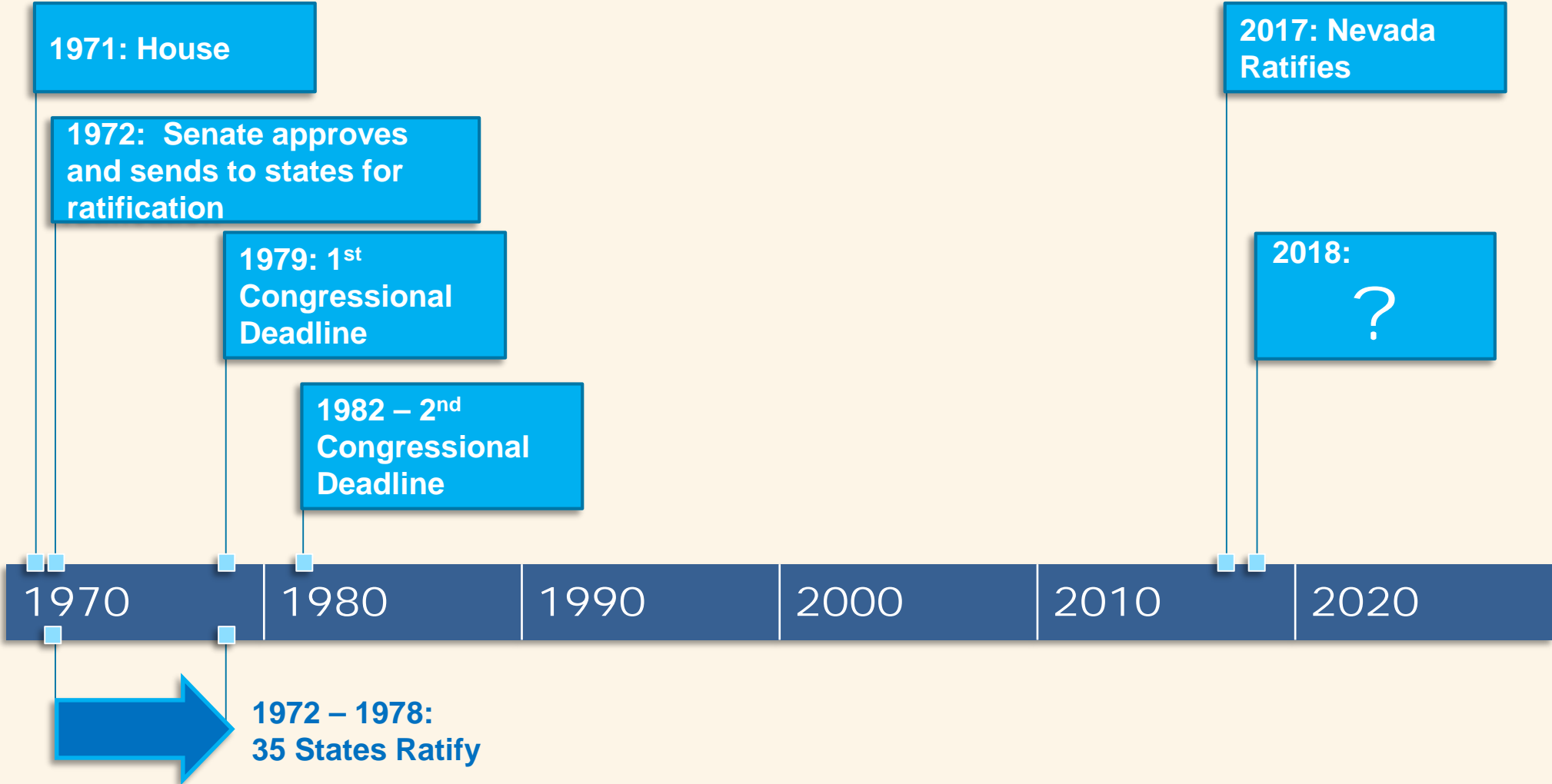
# Recent Efforts in Illinois



**NEVADA**  
36<sup>th</sup> State to Ratify ERA

**ILLINOIS**  
2017: Bills introduced in both the House and the Senate  
April 2018: Bill passed in the Senate

# Ratification: Out of Time?



# Once a State Ratifies...

**ERA Ratification Tally**

- 35 States Approve (1982)
- 36 State Approved (2017)
- 5 States Attempted to Rescind
- 14 States Yet To Approve (only 2 states needed)

**IDAHO**



**S. DAKOTA**



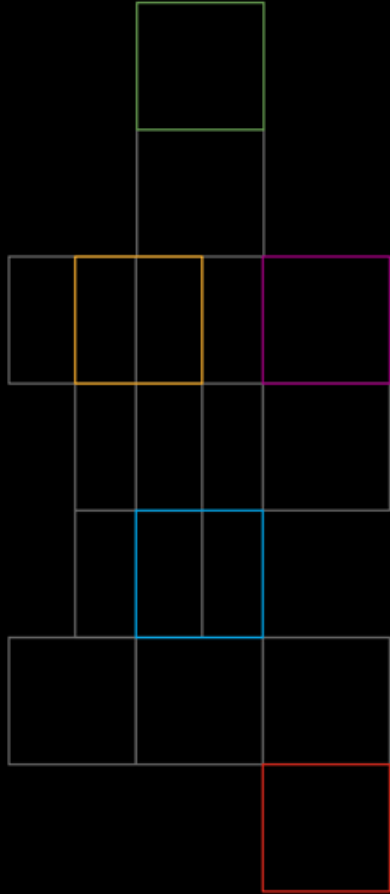
**KENTUCKY**



**NEBRASKA**



**TENNESSEE**

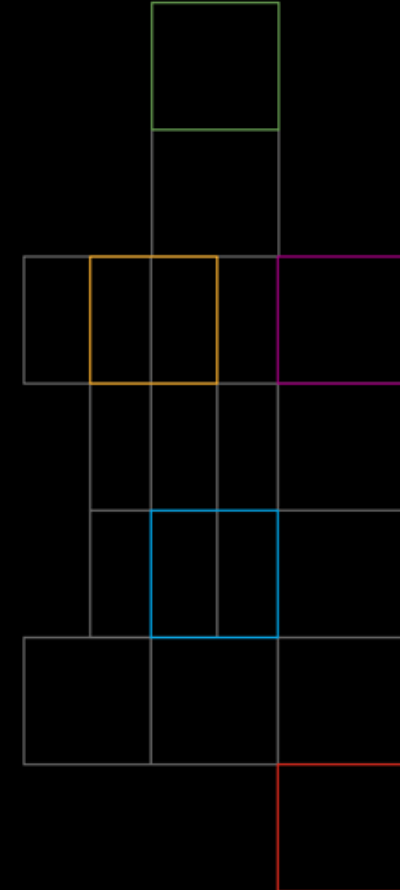




## After 38 States Ratify

“ . . . Which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof...”

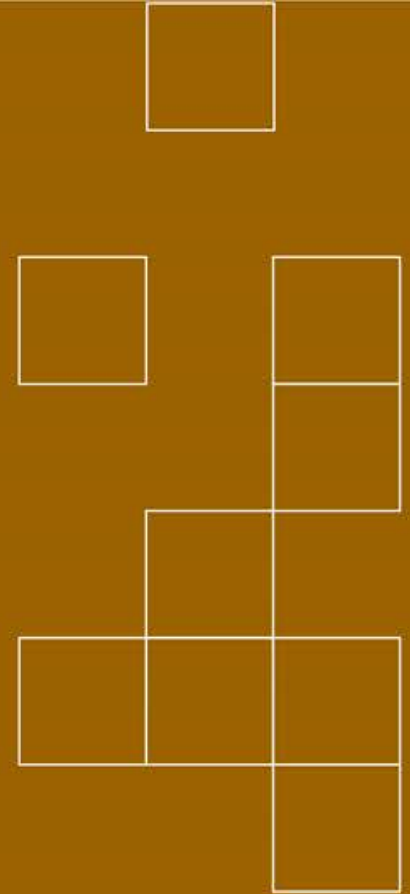
U.S. Constitution, Article V



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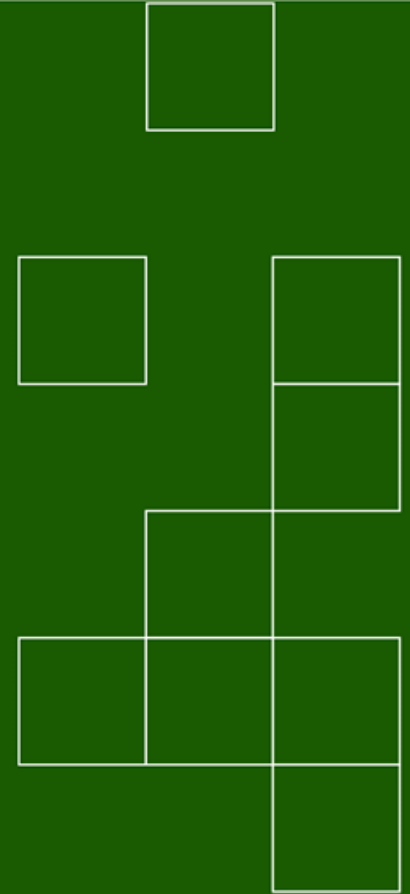
# Questions?



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**For More Information:**

**[Winston.com/en/equal-rights-amendment.html](https://www.winston.com/en/equal-rights-amendment.html)**



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