

## What Is the Equal Rights Amendment?

### Equal Rights Amendment

Currently, the Constitution does not guarantee that all the rights it protects are held equally by all citizens without regard to sex. With 24 words, the **Equal Rights Amendment** would change that. It would provide that “[e]quality of rights under the law shall not be denied or abridged by the United States or any State on account of sex.” It would also give Congress the power to enforce that constitutional guarantee by passing legislation.

The Equal Rights Amendment was passed by Congress in 1972 and sent to the states for ratification. Only 35 of the necessary 38 states ratified it before the deadline passed in 1982. In March 2017, Nevada became the 36th state to ratify the amendment. On April 11, 2018, the Illinois Senate voted to ratify the ERA, and on May 30, 2018, the Illinois House joined the Senate and made Illinois the 37th state to ratify the amendment. In January 2020, Virginia became the 38th state.

The final step will be to address the time limit that Congress placed on ratification in the 1970s, in the joint resolution that introduced the ERA. In February 2020, the House of Representatives voted to remove the deadline, and a similar bill is now pending in the Senate, with bipartisan sponsorship. And at the same time, the Attorneys General of Illinois, Virginia, and Nevada have sued the federal government in federal court to challenge its position that the time limit is effective.

### What Does the ERA Do, and Why Is it Important?

Today, the U.S. Constitution does not guarantee equal rights for women. According to the late Justice Scalia, “Certainly the Constitution does not **require** discrimination on the basis of sex. The only issue is whether it **prohibits** it. It doesn’t.”

The ERA would change that. It would guarantee that “[e]quality of rights under the law shall not be denied or abridged by the United States or any State on account of sex.” It would make equal rights for men and women a core constitutional value in our nation.

# Why Is the ERA Necessary, in Light of the Constitution’s Equal Protection Clause?

The Fourteenth Amendment says that the government may not “deny to any person within its jurisdiction the equal protection of the laws.” But these protections do not apply to sex in the same way they apply to race or national origin. And while the Supreme Court has held that the Fourteenth Amendment provides **some** protection against sex discrimination, some justices (like the late Justice Scalia) believe those decisions are wrong, because the framers of the Fourteenth Amendment did not have sex discrimination in mind. So, as the Supreme Court changes, the victories won for equality under the Fourteenth Amendment could be rolled back.

Ratification of the ERA would resolve this issue. It would enshrine equal rights for men and women as a core value in the Constitution. And it would change the standard for evaluating claims of discrimination by the government. Today, when a court considers a challenge to a law that discriminates based on sex, it will uphold the law as long as it bears a “substantial relationship” to an “important government purpose.” This is called **intermediate scrutiny**. The ERA would require **strict scrutiny**—the same test that applies to race discrimination. Under that test, the law must be “narrowly tailored” to achieve a “compelling government interest,” and be the “least restrictive means” of doing so. This means that the court would strike down the law if the goal behind it is not appropriate and compelling, or if there is a less discriminatory way to accomplish it.

## How Would the ERA Differ from the Protections Already Provided under the Law?

There are a variety of local, state, and federal laws that prohibit discrimination. For example, Title VII is a federal law that prohibits employers from discriminating based on sex, race, color, national origin, or religion. It protects employees who work for corporations over a certain size, as well as federal and state employees. Title IX is a federal law that (with certain exceptions) requires any school that receives federal funds to give students equal opportunities regardless of sex. The ERA addresses discrimination from a different perspective: it would prohibit discrimination by the government, including in statutes, regulations, employment, and law enforcement. And it would enshrine these rights in the Constitution, which cannot be changed as easily as these laws can.

Read about [Winston’s commitment](#) to securing equal rights for women through ratification of the Equal Rights Amendment to the United States Constitution.