

THEN AND NOW: THE EQUAL RIGHTS AMENDMENT

*Alice at a
Glance
Curriculum
Packet*



**ALICE PAUL
INSTITUTE**

Education. Empowerment. Equality.

Then and Now: The Equal Rights Amendment

Grades: 11-12

Duration: 2 class periods

OBJECTIVES:

- Students will analyze primary and secondary sources as they compare arguments for and against the Equal Rights Amendment from the 1920s and modern times.
 - Students will evaluate the language and history of the ERA and weigh the values of the ERA in discussion.
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CURRICULUM STANDARDS:

State standards may include the following strands/topics:

America in the World; Active Citizenship in the 21st Century; Civics, Government, and Human Rights; History, Culture, and Perspectives; Literacy in Humanities/Social Studies

MATERIALS:

- Copies of handouts (included)
 - Computer & projector to share the ERA ratification map linked in this lesson (optional)
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PROCEDURE:

After watching *Alice at a Glance*, introduce the idea of the Equal Rights Amendment to students. Have students heard of it before today? What do they know about it? Explain that although great strides have been made for women, women's rights is still a hotly debated topic. The ERA is a perfect example of this.

Distribute copies of the handouts (include). As a class, read through both versions of the Equal Rights Amendment, Source A. Summarize the amendment with students.

Divide the class into five groups: Source B (Pro), Source B (Con), Source C, Source D, and Source E. (Adaptation: If class size is large or if students need a modified assignment, break up Source C, "Chronology of the Equal Rights Amendment" by era. One group can look at the 1920s-1970s, and another can look at the 1980s-1990s.)

In their groups, students should read their document and take margin notes. When finished, they should answer the guiding questions posed for their source on a separate sheet of paper. Give students ample time to analyze their original document.

When all groups have completed working on their original document, use the jigsaw model to regroup the class. Each newly formed group should have a student who has looked at each of the original documents.

Within their groups, students should provide an overview of their sources, share important points that students should note on the source, and discuss the answers to the questions for their source. When they are done, each student should have a few margin notes on every source, understand the highlights of each source, and have notes for each of the guiding questions.

When the groups have completed their review/discussion, begin a whole-class discussion about what the students discovered in the sources. Based on what they read, ask students the following questions in whole-class discussion: In history, who won the ERA debate? (Point out that the debate still continues.) What are the pros and cons of the ERA? What challenges has the ERA faced in the past, and what challenges must it overcome today?

EVALUATION:

Student learning will be evaluated in small group and whole class discussion as well as through their individual notes and analysis of their sources.

ADAPTATIONS:

If class time is short, students may need to complete the analysis of their original source for homework.

Use the web link below to share a ratification map with students for an added visual.

ADDITIONAL RESOURCES:

Numerous additional resources are available at www.equalrightsamendment.org, a joint project of the Alice Paul Institute and the ERA task force of the National Council of Women's Organizations, including:

- [A ratification map of the ERA](#)
- [Resources documenting the work of the League of Women's Voters and the Equal Rights Amendment](#)

NOTES & ASSESSMENT:

Modifications or notes to remember when using this lesson again:

Then & Now: The Equal Rights Amendment

Guiding Questions

Source A: Equal Rights Amendment: as written by Alice Paul in 1923 and as passed by Congress in 1972

Source B: "Is Blanket Amendment Best Method in Equal Rights Campaign?" March 1924

1. Briefly explain each of the reasons given by Alice Paul in favor of a national or "blanket" Equal Rights Amendment.

2. Based on this article, do you think an ERA should be legislated on a state-by-state basis, or on a federal basis through a Constitutional amendment?

3. Briefly explain the reasons given by Mary Van Kleeck against a national ERA.

4. Look at the language of the original ERA (Source A). Evaluate the validity of Van Kleeck's argument that the "vagueness" of the amendment could "jeopardize" what women have already gained.

Source C: "Chronology of the Equal Rights Amendment"

1. Briefly summarize what took place with the ERA in each of the following eras: 1920s, 1960s-70s, 1980s, and 1990s.

Source D: "The Debates About the ERA"

1. According to Phyllis Schlafly, what are three different weaknesses of the ERA? Explain how they could affect women.

2. Look at the language of the revised 1972 ERA. Briefly explain Schlafly's concerns about the ERA and its effects on federal versus state powers.

Source E: "Who Needs and Equal Rights Amendment? You Do!"

1. According to NOW, what are some of the financial implications the ERA could have for women?

2. Name three non-financial ways women would benefit from the ERA and explain specifically how they would help women.

Source A

Equal Rights Amendment as written by Alice Paul in 1923

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

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

Equal Rights Amendment as passed by Congress in 1972

Section 1. Equality of Rights under the law shall not be denied or abridged by the United States or 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.



Images from: (left to right) Eagle Forum, PBS

Source B

The CONGRESSIONAL DIGEST

March 1924

Is Blanket Amendment Best Method in Equal Rights Campaign?

Pro

Alice Paul, Ph.D., LL.B.

Vice President, National Woman's Party

General Counsel, Nat'l Woman's Research Foundation

Former Chairman, National Woman's Party

THE Woman's Party is striving to remove every artificial handicap placed upon women by law and by custom. In order to remove those handicaps which the law can touch, it is endeavoring to secure the adoption of the Equal Rights Amendment to the United States Constitution.

There are a number of reasons for working for a national Equal Rights Amendment instead of endeavoring to establish Equal Rights by state action alone, as has been the course pursued during the past seventy-five years:

(1) A National Amendment is More Inclusive Than State Legislation.

The amendment would at one stroke compel both federal and state governments to observe the principle of Equal Rights, for the Federal Constitution is the "supreme law of the land." The amendment would override all existing legislation which denies women Equal Rights with men and would render invalid every future attempt on the part of any legislators or administrators to interfere with these rights.

(2) A National Amendment Is More Permanent Than State Legislation.

The national amendment would establish the principle of Equal Rights permanently in our country, in so far as anything can be established permanently by law. Equal Rights measures passed by state legislatures, on the other hand, are subject to reversal by later legislatures.

(3) The Campaign For A National Amendment Obviates The Costly And Difficult State Referendums Which Frequently Occur In Securing State Legislation.

Equal Rights measures passed by the legislatures must be submitted to a state referendum, when the existing discriminations are written in the state constitution and can only be removed by amending the constitution. Furthermore, referendums are frequently forced by an initiative petition upon bills which have passed the state legislatures. No referendum is necessary, on the other hand, in the case of a national amendment. Everyone who worked in the suffrage campaign is familiar with the great cost and difficulty of state referendums and the value of a national amendment in obviating this expensive and laborious method of achieving a reform.

(4) The Campaign For A National Amendment Unites The Resources Of Women, Which Are Divided in Campaigns For State Legislation.

In the campaign for a national amendment the strength of the Equal Rights forces is concentrated upon Congress and is therefore more effective than when divided among forty-eight state campaigns.

(5) A National Amendment Is a More Dignified Way To Establish Equal Rights Than Is State Legislation.

The principle of Equal Rights for men and women is so important that it should be written into the framework of our National Government as one of the principles upon which our government is founded. The matter is far too important to our nation's welfare and honor to leave it to the states for favorable or unfavorable action, or for complete neglect, as they see fit.

Con

Mary Van Kleeck

Director, Industrial Studies, Russell Sage Foundation, New York

WE WHO oppose the suggested amendment are heartily in accord with what we believe to be the purpose of its advocates, namely, to free women for largest service in the life of the nation, by sweeping away those man-made restrictions, which are based wholly on out-worn traditions and prejudiced views of the status and capacity of women. We oppose the amendment because we do not believe that it will accomplish that purpose.

We hold that many important steps toward the goal of removing all sex-prejudice are beyond the reach of law and would be unaffected by this amendment, such as the opening

of colleges and universities to women; the enlargement of professional and vocational opportunities; and the abandonment of the social customs which restrict women's activities.

We believe that if this amendment were passed many separate statutes in state and in nation would be required to put its intent into effect. These statutes, we are convinced by experience, can be enacted without any constitutional amendment. A long list of those actually passed since women have had the vote has been compiled by the National League of Women Voters. The time taken to enact and ratify the amendment would only postpone the passage of these laws which we must have anyway.

A vague provision in the Constitution always necessitates interpretation by the courts. If this vague provision for equal rights for men and women were to be included in the Constitution, the time consuming efforts of judges to define its meaning for each new statute may be expected to nullify for the next century the effect of present and future laws designed to open up larger opportunities to women.

Some of our laws which do not apply alike to men and therefore appear to perpetuate legal discriminations against women-- such as mothers' pensions and certain provisions for the support of children-- do so only superficially. Actually these laws are intended to protect the home or to safeguard children. They do not contemplate an artificial segregation of women as a group apart from their social relationships. In sweeping away laws like these on the superficial ground that they perpetuate sex disabilities, we should be deliberately depriving the legislature of the power to protect children and to preserve the right of mothers to be safeguarded in the family group. The wheat and the tares are so close together in all social legislation that we would better let them grow until a skilled gardener can root out the tares one by one; otherwise we may lose our wheat.

The amendment would jeopardize laws like these for women in industry because they do not also apply to men. The proposal to include men in them will indefinitely postpone their extension[.] Yet in the opinion of women in industry these laws which insure tolerable conditions of work should come first in any genuine bill of equal rights for women. Women in industry ask for the substance of freedom. They are unwilling to trust a hoe to those who do not know the difference between wheat and tares.

We hold that the amendment is unnecessary because the right of suffrage has already given women the power to secure legislation and accomplish all that the amendment is supposed to make possible. No constitutional barrier to the enactment of these laws has been interposed, which would be removed by this amendment. We hold that besides being

unnecessary it is dangerous because its vagueness jeopardizes what we have and indefinitely retards what we have still to gain.

Source C

A Chronology of the Equal Rights Amendment by the National Organization for Women (NOW)

The Early Years

1923

Three years after women won the right to vote, the Equal Rights Amendment (ERA) is introduced in Congress by Senator Curtis and Representative Anthony, both Republicans. It is authored by Alice Paul, head of the National Women's Party, who led the suffrage campaign. Anthony is the nephew of suffragist Susan B. Anthony.

1923-1970

Through the efforts of Alice Paul, the Amendment is introduced into each session of Congress. Buried in committee in both Houses of Congress, the ERA awaits a hearing on the floor. In 1946, it is narrowly defeated by the full Senate, 38-35. In 1950, the ERA is passed by the Senate with a rider that nullifies its equal protection aspects.

1967

The National Organization for Women (NOW), a recently founded feminist group, pledges to fight tirelessly for the ratification of the ERA.

1970

February: Twenty NOW leaders disrupt hearings of the U.S. Senate Subcommittee on Constitutional Amendments, demanding the ERA be heard by the full Congress.

May: The Senate Subcommittee begins hearings on the ERA under Senator Birch Bayh.

June: The ERA finally leaves the House Judiciary Committee due to a discharge petition filed by Representative Martha Griffiths.

1971

The ERA is approved without amendments by the U.S. House of Representatives in a vote of 354-24. The National Education Association and the United Auto Workers vote at their annual conventions to endorse the ERA.

1972

March 22: The Equal Rights Amendment is approved by the full Senate without changes — 84-8. Senator Sam Ervin and Representative Emanuel Celler succeed in setting an arbitrary time limit of seven years for ratification. The newly founded National Conference for Puerto Rican Women endorses the ERA, and the League of Women Voters agrees to support it after years of opposition. Phyllis Schlafly establishes the National Committee to Stop ERA.

1973-1975

The ERA wins a powerful ally when the AFL-CIO votes to endorse it in 1973.

1975-1977

Pressure from anti-ERA, right-wing groups begins to surface in state legislatures. Indiana becomes the thirty-fifth state to ratify in 1977. NOW chapters in unratified states are succeeding in electing pro-ERA candidates. But instances of "turncoat voting" on the ERA are also surfacing.

1977

At the first congressionally funded National Women's Conference in Houston, Texas, 2,000 delegates from every state call for ratification of the ERA.

February: NOW publicizes the ERA boycott of unratified states and gathers even more support for the Amendment. The number of pro-ERA groups grows to more than 450, representing more than 50 million Americans.

March: NOW seeks an extension of the deadline for ERA ratification with the argument that the Constitution imposes no time limit for ratification of amendments. Further, the seven year provision of ERA is not a part of the text of the amendment, but rather is only in the resolving clause. Congress has the power to establish and change the time limit.

July 9: Alice Paul, ERA author, dies at age 92.

October: Representative Elizabeth Holtzman introduces a bill calling for an extension of the ERA deadline which had been March 22, 1979.

1978

February: The NOW National Board declares a State of Emergency on the ERA. It pledges full resources to winning the deadline extension and to ongoing ratification campaigns.

February-March: Missouri files suit on antitrust grounds against NOW, claiming it violated the Sherman Antitrust Act by urging groups to boycott unratified states and hold conventions only in ratified states.

July 9: NOW organizes ERA Extension March of 100,000-plus supporters in Washington, D.C. This March for Equality is the largest in feminist history.

August 15: After intense lobbying by a united women's rights coalition, the U.S. House of Representatives approves the ERA deadline extension, 233-189.

October 6: The U.S. Senate joins the House and approves extension by a vote of 60-36. A new deadline of June 30, 1982 is set.

1979

January-June: ERA opponents launch all-out attack by attempting to pass rescission bills in at least a dozen states. Rescission bills are defeated in 12 states.

February: Federal Judge Elmo Hunter rules in the ERA boycott case that NOW's activities are protected by the First Amendment and do not violate antitrust laws. This decision is later upheld by the U.S. Court of Appeals. The Supreme Court in late 1980 declines to hear the case. The ERA Boycott is legal.

May: Legislators from Idaho, Arizona and Washington state file suit in federal court challenging the constitutionality of the ERA extension and seeking to validate a state's power to rescind a prior ratification. The case is assigned to Judge Marion Callister, who at the time the litigation began (and 6 months after) held a high office (Regional Representative) in the hierarchy of the Church of Jesus Christ of Latter-day Saints, commonly known as the Mormon Church. The Church officially and actively opposes the ERA and the ERA extension and supports rescission.

1980

May: NOW organizes 85,000 people to march in Chicago in support of Illinois ratifying the ERA.

July: During platform hearings, the Republican Party reverses its 40 year tradition of support for ERA. NOW organizes 12,000 to march in Detroit at the Republican Convention. The final Republican Platform officially takes no position on ERA, but candidate Ronald Reagan and newly elected right-wing party officials actively oppose the amendment.

August: The Democratic Party reaffirms support for ERA and the ERA boycott. The Platform pledges to withhold campaign funds and assistance from presidential candidates who do not support ERA.

November: Exit polls on election day show that for the first time ever recorded, men and women vote quite differently in the race. AP/NBC News reports that men backed Reagan by a 56-36% edge, but women split their votes 47-45%. Pollsters later indicate that for women, the issue of women's rights and ERA had a significant impact on their votes. By March 1981, leading pollsters are claiming "Ronald Reagan has a woman problem" on ERA.

1981

January: Ronald Reagan becomes the first U.S. President opposed to a constitutional amendment which provides equal rights for women. NOW organizes "ERA YES Inaugural Watch" where some 40,000 ERA supporters remind the new President of the overwhelming pro-ERA sentiments in the nation.

April: NOW sends Feminist Missionaries to Utah, the heart of the opposition to ERA, and the headquarters of the Mormon Church, to take the message of the ERA directly to the Mormon people, door-to-door.

May: NOW files 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 have not ratified ERA.

June: NOW announces Betty Ford as Honorary Chair and Alan Alda as Co-Chair of NOW's ERA Countdown Campaign activities.

June 30: NOW sponsors ERA Countdown Rallies in over 180 cities to draw attention to the ERA deadline of June 30, 1982, and to dramatize the wide support for the ERA.

October: NOW begins the first nationwide advertising campaign for ratification of the Equal Rights Amendment. The television spots focus on sex discrimination and are designed to activate the vast majority of people who support the ERA.

December: On the eve of the opening of crucial legislative sessions in key unratified states, Judge Callister rules the ERA extension illegal and rescission legal. This opinion marks the first time in this country's history that an Act of Congress relating to the amending process

was declared unconstitutional by a federal court. NOW immediately appeals the ruling to the Supreme Court and asks for an expedited hearing.

1982

January: The Supreme Court, just 17 days after NOW appealed the Callister ruling, vindicates NOW's position by entering a rarely granted unanimous stay prohibiting the enforcement of Callister's decision and agreeing to hear NOW's appeal on the merits of the case at a later date. This action negates any legal effect of Callister's decision and removes the cloud of confusion that the ruling had placed over the ratification debate in the states.

June 30: ERA is stopped three states short of ratification. ERA supporters pledge "We'll Remember in November." An analysis of the ERA vote in the four key targeted states, Florida, Illinois, North Carolina and Oklahoma, shows the Republicans deserted ERA and Democratic support was not strong enough to pass the amendment; the analysis makes clear that the single most obvious problem was the gender and racial imbalance in the legislatures, with more than 2/3 of the women, all of the African Americans but less than 50% of the white men in the targeted legislatures casting pro-ERA votes in 1982.

July: ERA is officially reintroduced in the United States Congress.

1983

The U.S. House of Representatives fails to pass the ERA by a vote of 278 for the ERA and 147 against the ERA, only 6 votes short of the required 2/3 majority for passage. Fourteen cosponsors voted NO and three cosponsors did not vote. Only 30% of the Republicans voted YES and 85% of the Democrats voted YES.

1985-present

The ERA is reintroduced into each session of Congress and held in Committee.

NOW's Recent Work on ERA

1993

At its national convention NOW passes a resolution calling for the formation of two committees, one an ERA grassroots committee to survey the chapters and states as to their members' current thinking about the direction the organization should take concerning the ERA. The second committee (the legislative history committee) is formed to study the history of the previous amendment and the impact of state ERAs.

1994

As activists begin to discuss what they want constitutional equality for women and non-discrimination on the basis of sex to mean, interest grows and at the annual conference in July 1994, an ERA Strategy Summit is called for the purpose of developing recommended language for a new ERA. The membership includes in the resolution that any proposed amendment must include the concepts of reproductive rights including abortion and non-discrimination on the basis of sexual orientation.

1995

January: The ERA Summit is attended by the national officers and board, the state presidents, members of the ERA Strategy committee and interested activists to discuss the issue and draft language for a new ERA. At the ERA Summit, NOW President, Patricia Ireland explains that to achieve true equality a paradigm shift is needed. Under the equal protection clause of the 14th Amendment, using a male rather than human standard, the courts have been able to justify discrimination. Our goal of the summit is defined as the need to construct an amendment and develop a strategy that would end women's historic subordination to men and guarantee women full constitutional rights.

July: NOW members, voting in conference, resolve to proceed with an expanded constitutional amendment strategy that would eliminate discrimination based on sex, race, sexual orientation, marital status, ethnicity, national origin, color or indigence. Members also call for further study of age and disability as classes to be included in the struggle for constitutional equality.

1996

The national Constitutional Equality Amendment (CEA) Committee continues to evaluate the working draft of the CEA adopted at the 1995 National NOW Conference. The committee produces and distributes educational and action organizing materials on the proposed amendment. In addition, the committee plans day-long education and action organizing workshops to be held throughout the country.

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from www.now.org

Source D

The Debates About ERA

excerpted from "A Short History of the ERA"

by Phyllis Schlafly

Phyllis Schlafly is president of the Eagle Forum, a national organization, and has spent more than thirty years campaigning against the ERA.

The Equal Rights Amendment was presented to the American public as something that would benefit women, "put women in the U.S. Constitution," and lift women out of their so-called "second-class citizenship." However, in thousands of debates, the ERA advocates were unable to show any way that ERA would benefit women or end any discrimination against them. The fact is that women already enjoy every constitutional right that men enjoy and have enjoyed equal employment opportunity since 1964.

In the short term, clever advertising and packaging can sell a worthless product; but, in the long term, the American people cannot be fooled. ERA's biggest defect was that it had nothing to offer American women.

The opponents of ERA, on the other hand, were able to show many harms that ERA would cause.

- I. ERA would take away legal rights that women possessed - not confer any new rights on women.
 - a. ERA would take away women's traditional exemption from military conscription and also from military combat duty. The classic "sex discriminatory" laws are those which say that "male citizens of age 18" must register for the draft and those which exempt women from military combat assignment. The ERAers tried to get around this argument by asking the Supreme Court to hold that the 14th Amendment already requires women to be drafted, but they lost in 1981 in *Rostker v. Goldberg* when the Supreme Court upheld the traditional exemption of women from the draft under our present Constitution.
 - b. ERA would take away the traditional benefits in the law for wives, widows and mothers.

- II. ERA would make unconstitutional the laws, which then existed in every state, that impose on a husband the obligation to support his wife.
 - a. ERA would take away important rights and powers of the states and confer these on other branches of government which are farther removed from the people.
 - b. ERA would give enormous power to the Federal courts to decide the definitions of the words in ERA, "sex" and "equality of rights." It is irresponsible to leave it to the courts to decide such sensitive, emotional and important issues as whether or not the language applies to abortion or homosexual rights.
- III. Section II of ERA would give enormous new powers to the Federal Government that now belong to the states. ERA would give Congress the power to legislate on all those areas of law which include traditional differences of treatment on account of sex: marriage, property laws, divorce and alimony, child custody, adoptions, abortion, homosexual laws, sex crimes, private and public schools, prison regulations, and insurance. ERA would thus result in the massive redistribution of powers in our Federal system.
- IV. ERA's impact on education would take away rights from women students, upset many customs and practices, and bring government intrusion into private schools.
 - a. ERA would force all schools and colleges, and all the programs and athletics they conduct, to be fully coeducational and sex-integrated. ERA would make unconstitutional all the current exceptions in Title IX which allow for single-sex schools and colleges and for separate treatment of the sexes for certain activities. ERA would mean the end of single-sex colleges. ERA would force the sex integration of fraternities, sororities, Boy Scouts, Girl Scouts, YMCA, YWCA, Boys State and Girls State conducted by the American Legion, and mother-daughter and father-son school events.
 - b. ERA would risk the income tax exemption of all private schools and colleges that make any difference of treatment between males and females, even though no public monies are involved. ERA is a statement of public policy that would apply the same rules to sex that we now observe on race, and it is clear that no school that makes any racial distinctions may enjoy tax exemption.
- V. ERA would put abortion rights into the U.S. Constitution, and make abortion funding a new constitutional right. Roe v. Wade in 1973 legalized abortion, but the fight to make abortion funding a constitutional right was lost in Harris v. McRae in 1980. The abortionists then looked to ERA to force taxpayer funding. The American Civil

Liberties Union filed briefs in abortion cases in Hawaii, Massachusetts, Pennsylvania and Connecticut arguing that, since abortion is a medical procedure performed only on women, it is "sex discrimination" within the meaning of the state's ERA to deny tax funding for abortions. In the most recent decision, the Connecticut Superior Court ruled on April 19, 1986 that the state ERA requires abortion funding. Those who oppose tax funding of abortions demand that ERA be amended to prevent this effect, but ERA advocates want ERA only so long as it includes abortion funding.

- VI. ERA would put "gay rights" into the U.S. Constitution, because the word in the Amendment is "sex" not women. Eminent authorities have stated that ERA would legalize the granting of marriage licenses to homosexuals and generally implement the "gay rights" and lesbian agenda. These authorities include the Yale Law Journal, the leading textbook on sex discrimination used in U.S. law schools, Harvard Law Professor Paul Freund, and Senator Sam J. Ervin, Jr. Other lawyers have disputed this effect, but no one can guarantee that the courts would not define the word "sex" to include "orientation" just as they have defined "sex" 'to include pregnancy.
- VII. In the final years of the ERA battle, two new arguments appeared. Both were advanced by the ERA advocates, but they quickly became arguments in the hands of the ERA opponents.
 - a. ERA would require "unisex insurance," that is, would prohibit insurance companies from charging lower rates for women, even though actuarial data clearly show that women, as a group, are entitled to lower rates both for automobile accident insurance and life insurance. This is because women drivers have fewer accidents and women live longer than men. Most people found it a peculiar argument that "women's rights" should include the "right" to pay higher insurance rates.
 - b. ERA would eliminate veterans' preference. This rests on the same type of legal argument as the abortion funding argument: since most veterans are men, it is claimed that it is "sex discriminatory" to give them benefits. Naturally, this argument was not acceptable to the veterans, and their national organizations lobbied hard against ERA.

Source E

Who Needs An Equal Rights Amendment? You Do!

by the National Organization for Women (NOW)

After more than 200 years of living under the United States Constitution and despite all of the progress we have made, women continue to suffer discrimination in employment, insurance, health care, education, the criminal justice system, social security and pensions, and just about any other area you can name.

Laws to prevent sex discrimination are simply not enough. The bleak reality is that because hard-won laws against sex discrimination do not rest on a strong constitutional foundation, they are essentially ephemeral. These federal laws and regulations contain many loopholes; are inconsistently interpreted, or worse — ignored; and may be weakened by amendment or repealed outright.

Also, women seeking enforcement of these laws must not only convince the courts that discrimination has occurred, but that it matters. A constitutional guarantee of equality would absolutely shift the burden away from those fighting discrimination and place it where it belongs, on those who would discriminate. They would have to justify why discrimination should be allowed rather than women having to explain why we deserve equality.

Discrimination Exists

Women need only examine our own life experiences to know that discrimination on the basis of sex is abundant in our society. A few blatant examples that would be redressed by explicit inclusion of women in the U.S. Constitution are listed:

Employment

Women are underpaid and undervalued in the workforce. In 1994, women still were paid only 74¢ for every dollar paid to men (1). Jobs traditionally held by women remain clustered at the lower end of the pay scale, while traditional men's jobs, even those having similar education requirements and time and effort on the job, are paid more. Thus, secretaries are routinely paid less than truck drivers even if both jobs are of equal importance to a company.

More startling is that even for traditional women's work, women are discriminated against — in 1995 the median income for registered nurses for women was \$35,360 and for men \$

36,868 (2). A 1994-95 survey found that male elementary school teachers had a mean base salary of \$33,800 as compared to \$32,292 for women (3) and women computer operators made almost \$7000 less annually than their male counterparts (4). There is even a large salary differential (20%) for retail store cashiers of which more than 85% are women (see fig. 1) (5).

Issues of pay equity for comparable worth are not addressed by any federal laws. A CEA could remedy these and many other concerns of women in the workforce, including the "glass ceiling" and sexual harassment.

Figure 1. Median Annual Salaries

Registered Nurse	Men	\$36,868
	Women	\$35,360
Elementary School Teacher	Men	\$33,800
	Women	\$32,292
Computer Operator	Men	\$26,000
	Women	\$19,084
Retail Cashier	Men	\$13,728
	Women	\$11,440

Reproductive Rights

Stereotyping of pregnant women and mothers, interference with a woman's right to control her own body and other forms of discrimination intrude on women's reproductive freedom.

Court cases like California Savings and Loan v. Guerra (6) have led to a debate as to whether pregnancy should be accorded special treatment under law since equal treatment has been insufficient protection for pregnant workers' rights. By including a specific statement (Section 3) in the proposed CEA, we make clear that women do not seek preferential, special or protected treatment because of pregnancy. What women do want is recognition that pregnancy is part of the natural human experience and should not be used to put women at a disadvantage.

Despite the provision of Title VII, the Pregnancy Discrimination Act and the Family and Medical Leave Act, pregnant women still face discrimination in the work place. Women on maternity leave, like employees who take sick leave, are not necessarily guarantee job protection and reinstatement when they return to work. Their jobs can be eliminated and the burden of proof requires evidence that the employer intended to discriminate (7).

Since 1973, when the Supreme Court handed down the historic Roe v. Wade decision which legalized abortion, a woman's right to terminate a pregnancy has been under continuous attack. These attacks come in the state legislatures, the U.S. Congress, the courts and at women's health clinics. The latest assault by the Congress has been on the late term abortion technique known as dilatation and extraction (D&X).

This rarely utilized procedure is employed only when the life or health of the mother is at risk or the fetus is severely deformed. This bill, passed by both houses of Congress, would have outlawed the abortion method, with inadequate protection for life and health of the woman (8). The bill was stalled by a presidential veto.

Mandatory pregnancy has become the reality for many young and poor women and, as of 1995, for federal workers and women in the military serving abroad where safe, private facilities are not available (9). The real issue for women is the right to bodily integrity, and without this basic right women can have no true freedom.

Insurance, Pensions, and Social Security

Sex discrimination contributes significantly to the economic plight of older women. Nearly 75% of the nation's 4 million elderly poor are women (10). Older women have just over half the income of older men, and women of color have significantly less income than older white women (see table below) (11). The disproportionate poverty of older women is created by a lifetime of low wages intensified by sex discrimination in pensions, retirement insurance, and social security.

Table: 1992 Median Income for Those 65 and Older

White Men	\$14,548
White Women	\$8,579
Black Women	\$6,220
Hispanic Women	\$5,968

Insurance

State insurance regulators routinely approve the use of selective classifications by sex for premiums and payouts in five types of insurance: automobile, disability income, medical expense, life, and retirement income insurance (pensions and annuities) (see bulleted list below).

Women are frequently required to pay higher insurance premiums than men for the same benefits, or to pay the same as men for less protection or benefits, thereby reducing their take home pay (12). The excuse for this discrimination is that insurance company tables show that more women than men live longer than average or have higher health costs. The Supreme Court found in *City of Los Angeles Department of Water and Power v. Manhart* (13) that the use of sex divided tables violated Title VII's prohibition against sex discrimination in employment. But this ruling applied only to employer-paid insurance policies and not to those purchased by individuals with private insurance companies. In addition, the ruling was weakened by the decision of a New York federal court which exempted certain employer plans from Title VII coverage (14).

If we won equality in insurance prices, coverages, and benefits women would gain over \$2.5 billion annually (12) (see the following bulleted list).

What Women Would Gain from Insurance Equality with Men

- \$150 million per year in increased ANNUITIES paid to retired women, equaling what men get with the same policies.
- \$140 million per year in increased LIFE INSURANCE savings paid out to older women, equaling what men get with the same policies.
- 19 million women charged tens to hundreds of dollars less per year for MEDICAL EXPENSE insurance, with pregnancy covered as fully as any other expense.
- 7.4 million women charged tens to hundreds of dollars less per year for DISABILITY INCOME insurance, with disability due to pregnancy covered as fully as disability due to other causes.
- \$2 billion per year in reduced charges for AUTO insurance. The current pricing scheme is strongly biased against women because it ignores the 2:1 ratio of men's to women's average mileage, and consequent 2:1 ratio of accident involvement. Four of five cars pay unisex "adult" premiums.

Ending sex-divided pricing for young drivers without ending the extreme price bias against below-average mileage drivers simply means continued gross overcharging of women as a class, relative to men. Proportioning premiums to odometer miles actually driven by the insured car — cents/mile for each car in a risk class (territory, car type, etc.) — would reduce women's premiums an average of 30%. Cars driven more than average mileage by either women or men would also pay in proportion to the insurance protection they actually used — true unisex pricing.

Pensions

Women are only half as likely as men to receive a pension, and those who do receive only half as much. Just 22% of women 65 and older reported having received pension income in 1992 based on previous employment, and those that did, received an average of \$5,432 per year. In contrast, nearly half (49%) of men age 65 and older reported having received pension income in 1992 based on previous employment, with an average of \$10,031 per year (15).

Social Security discriminates against women. The policies on which the system was founded in 1940 are reflective of the stereotypical role that women played during those years. Only 14% of women were in the workforce and most women spent their lives as married homemakers. Today, 58.9% of women are in the workforce and the divorce rate has risen. Despite these radical societal changes, the Social Security system holds to the same sex-biased assumptions. Married men receive 100% of their benefits for a lifetime, and since homemakers' contributions to marriage partnerships are not valued fully, wives are considered dependents and as such, receive lower payments. Widows receive only 72% of their deceased husband's benefits, and divorced women receive only half (16).

Since Social Security is the sole income source for many older women, the retrogressive policies are often devastating to women. As of 1990, 33% of unmarried women 65 and older depended on Social Security for at least 90 percent of their income; more than one-sixth had no other income (17). Women of color in this group were at least twice as likely as white women to rely on social security for 100% of their incomes.

Lesbian and Gay Rights

Currently lesbians and gay men are discriminated against in areas as basic as employment, parenting, marriage, and housing rights. Numerous court decisions demonstrate the need to establish a constitutional guarantee of rights regardless of sexual orientation.

Many cases illustrate the pervasive discrimination against lesbians and gay men. One of the most plainly egregious and unfair is the case of a lesbian mother in Pensacola, Florida.

Mary Ward lost custody of her daughter to John Ward, her ex-husband and a convicted murderer. In awarding custody to John Ward, Judge Joseph Tarbuck said, "This child should be given the opportunity and the option to live in a non-lesbian world." The judge made the custody award to John Ward despite his conviction in a brutal murder.

In 1974, John Ward shot and killed his first wife in the parking lot of a Pensacola restaurant. Witnesses said he had been talking with his wife when he shot her six times. He then reloaded the gun and shot the woman six more times. John Ward pleaded guilty to second-degree murder and served his sentence in a Florida prison.

Fully aware of the father's past, the judge said John Ward would provide "decent living accommodations" for his daughter. The judge also stated that the child needed a "stricter environment, more discipline." Currently, there is no federal protection against discrimination based on sexual orientation. Clearly, passage of the CEA would give lesbians and gay men the constitutional standing necessary to challenge unjust laws.

Education

While Title IX has been effectively used to reduce discrimination based on sex in educational programs and activities receiving financial assistance, women and girls are still daily disadvantaged in educational programs. These disadvantages run a wide spectrum from a girls' high school track team (Gulliver Academy, Miami, Florida) being disqualified because of the shorts they wore, to the state supported [Virginia Military Institute](#) (VMI) and South Carolina's Citadel refusing to admit women.

The shorts the high school students wore were the same type used by Olympic runners and not against the state athletic rules. Nevertheless the men of the Florida High School Athletic Association found them too revealing. This decision is blatant sex discrimination — not one male team in history, beginning with the ancient Greeks who ran naked to modern day boys' competitive swimwear, has been similarly disqualified.

VMI has as its stated purpose to develop "citizen soldiers" who would serve the state. VMI graduates are not required to enter the military and only 18 percent choose it as a career (18). Instead the majority of graduates of VMI, and those at the Citadel, fill the halls of power in government and industry of their respective states. The very real harm to women denied access to these prestigious institutions is the deprivation of a life-long influential network. Or as Liza Mundy put it, "Affection, connection, humor, sexism: That to me, is VMI. And when you get down to it, what women are being denied is membership in a powerful, publicly funded men's club. Virginia Women's Institute for Leadership may be a terrific program, but it isn't the club. It is, with all due respect to the women who go there, a ladies' auxiliary, camouflaged in faddish clothing." (18).

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