
Speech presented at Women's Equality Day Event in Livonia, Michigan, Aug. 27, 2022

ERA Update

by Laura Carter Callow

Good afternoon. It's good to be back in person. I am delighted to see so many long time friends but also so many new people. Thank you all for coming.

I have to tell you, after all these years, I find it hard to believe I am still talking about the Equal Rights Amendment. And, I never expected to publicly discuss the meaning of the word 'sex'.

That's just one of things I am going to talk about today. But first, I want to bring you up-to-date on the status of the ERA.

The Equal Right Amendment is fully ratified. Virginia became the 38th and last state needed to ratify the Amendment in 2020. However, it is not yet part of the Constitution. David Ferriero, the former Archivist, refused to publish the amendment without a Court order because the Justice Department, under the Trump administration, issued a brief that upheld the time-limit. Several states have sued him for refusing to sign. That case is now on appeal before the D.C. Circuit Court. (*State of Illinois, et al., v. David Ferriero*)

Meanwhile, the Biden Justice Department continues to defend the Archivist. Their brief repeats President Biden's statement that he supports the Equal Rights Amendment "loudly and clearly" and, in his view, nothing stands in the way of Congress taking action to recognize the ERA as fully ratified. In short, the President is tossing the ball to Congress.

The U.S. House of Representatives has taken action. A bill to remove the ERA time-limit was passed by the House with bi-partisan support. There is also a bi-partisan majority ready to pass a companion bill (S Res. 1) in the U.S. Senate—but it is not enough to overcome an expected filibuster.

A new bill (H Res 891) to simply recognize the Equal Rights Amendment as fully ratified was introduced into the U.S. House. But it has yet to be voted on.

Meanwhile, a women's rights group known as the Elizabeth Cady Stanton Trust has taken note that the Equal Rights Amendment requires all states to amend or abolish any sex discriminatory laws. They have filed suit in Michigan, Rhode Island, and New York, asking courts there to declare the ERA a fully ratified and an enforceable part of the Constitution.

If successful, this suit would require the attorneys general "to identify and repair all sex discriminatory laws, policies and programs in their respective states."

In short, the ERA is fully ratified but still waiting to be signed, sealed, and delivered.

Now, let's discuss the word "sex".

The word first appeared in the Constitution with ratification of the 19th Amendment, which granted women the right to vote. It is also in the Equal Rights Amendment.

When those two amendments were written the word sex had two meanings. It was a noun that referred to the "sex you are – male or female" vs. "the sex you do" which is a verb.

Opponents of the Equal Rights Amendment, appealing to prejudice, claimed that the ERA would legalize gay marriage. Supporters believed, in all honesty, that it didn't because the word 'sex,' as used in the amendment was a noun and referred to gender not sexual activity.

However, there are people who are far more clever with words than me. They said, "Yes, it was sex discrimination because banning same-sex marriage is based on the sex or gender of the people wishing to marry."

This is the reasoning the Supreme Court used in the case that struck down laws banning gay marriage. (*Obergefell v. Hodges-2015*)

Something similar happened with the issue of abortion. When opponents claimed that the Equal Rights Amendment would legalize abortion, ERA proponents truly believed that it did not because only women can have abortions. And *Roe v. Wade* made abortion legal under privacy, a different part of the Constitution.

This logic was rendered obsolete by a court case in New Mexico which has a state Equal Rights Amendment. In that case, a woman receiving Medicaid needed an abortion to save her life. The state court ruled that if New Mexico used all medical means necessary to save the life of a man, then all medical means necessary to save the life of a woman must be used. (*New Mexico Right to Choose/NARAL v. Johnson 1998*)

With that decision, abortion was redefined as health care—and the Equal Rights Amendment will protect it.

I personally welcome the protection the Equal Rights Amendment would give to abortion, and same-sex marriage. It would also protect Title IX of the 1964 Civil Rights Act, which opened classroom doors and sports for women.

But the Amendment would protect more than existing laws. It would protect against sex discriminatory legislation being enacted in the first place because such proposed laws would be seen as unconstitutional.

The Equal Rights Amendment is also an economic issue. It is about Equal Pay. Companies make money by paying women less, or charging them more as the Insurance industry has done. And that is the reason I believe the ERA has been fought for all these years.

In preparing for this speech, it occurred to me that the Equal Rights Amendment has made great strides forward two times in this century-long struggle.

The Equal Rights Amendment was introduced into Congress in 1923 and into each succeeding Congress for the next 49-years. It appeared to be going nowhere.

The first of these strides forward occurred during the Second Wave of Feminism in the 1960s. A new generation of women began organizing for enforcement of Title VII of the 1964 Civil Rights Act – legislation which banned discrimination in employment.

They became aware of the Equal Rights Amendment and brought activism and a critical mass of support. I was part of that movement, and I believe that most of you in the audience were too.

In 1972 we were able to get Congress to approve the ERA overwhelmingly. Thirty-five States ratified during the next 10 years. We would have secured the three additional states if opponents hadn't added the time limit and run out the clock. In 1982 pundits declared the Amendment was dead.

For 10 years it appeared that they were right. At that time, it was believed that ERA supporters would have to start-over. That is, reintroduce a new Amendment, get it approved by two-thirds of Congress then ratified or re-ratified by 38-states. There just wasn't the will, and probably not the money to mount a new campaign.

However, a dozen die-hard supporters from eight states formed an ad hoc committee they called the ERA Summit. I was part of this group. Our sole purpose was to find a way to jumpstart a push for a new Equal Rights Amendment. We met regularly in Washington D.C. for two years to strategize but could think of no way to do this.

Then, in 1992, a constitutional amendment, known as the Madison Amendment was ratified. This Amendment, concerning congressional pay-raises, was first proposed in 1789 and finally ratified 203-years later.

ERA Summit members were dumbfounded and furious. The Madison Amendment was allowed over two centuries for ratification, while the Equal Rights Amendment was limited to a mere ten years. Since the ERA time limit is in the proposing clause of the Equal Rights Amendment, not in the Amendment itself, we wondered if it could be ignored.

In search of an answer, the ERA Summit sought a legal opinion which concluded, in part, that there is no time-limit in the Constitution for ratifying amendments. Thus was born the Three-state Strategy; that is, simply ratify three more states. (*"The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly Before the States"*, Allison L. Held, Sheryl L. Herndon, Danielle M. Stager)

ERA Summit members were able to get a resolution introduced into the U.S. House saying that Congress would recognize the ratification of three more states. (*H.Res. 432 103 Congress, 1994*) With this we jump-started the new push for the ERA. This resolution was later changed to simply remove the time limit. (*S.J. Res. 39 and H.J. Res. 47, 2012*)

ERA supporters in several non-ratified states, including Illinois, Virginia and Florida immediately began lobbying legislators in their states to introduce ratification bills. Later, more non-ratified states joined this effort, including Nevada.

Each year following, supporters of the Equal Rights Amendment faithfully repeated the same process, lobbying to get ratification bills introduced into their state legislatures and then out of committee.

This ritual went on for 23 years. It appeared that the Equal Rights Amendment was going nowhere. Then the #Me Too movement burst onto the scene, and the ERA made its second great stride forward. Nevada ratified in 2017, followed by Illinois in 2018 and Virginia in 2020.

The #Me Too movement helped raise awareness and brought a critical mass of support that contributed to these victories. That said, these victories were made possible because two generations of ERA activists had been laying the ground work by lobbying their state legislators for nearly a quarter of a century.

Though I don't know when, I believe there will be another great stride forward. It is quite possible that the overturning of *Roe v. Wade* could be that catalyst.

If enough women, nationally, don't want government to limit their health care options, or if they object to turning this country into a theocracy where the government enforces certain religious beliefs, their voices and their efforts could become the next critical mass that pushes the Equal Rights Amendment over the finish line.

To do so we women must get out and vote. And we must vote consistently for candidates who hold the high principle of equality of rights for women, and also support that principle being enshrined in the Constitution.

The right to vote is a powerful tool that our foremothers gained for us. We must use it.

At the same time, we must keep believing the words of Susan B. Anthony. "Failure is impossible."

Thank you.