

# Inquiring Minds topic – 10 January 2020

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## Is It Finally Time to Pass the ERA?

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

It's baaaack!!! The Equal Rights Amendment, seemingly dead when a Congressionally imposed deadline expired in 1983, is being revived and may be on the verge of passage. Why is it re-emerging? Is it needed? Why or why not? What are the main obstacles to its passage? Will it garner bi-partisan support? Or, could it emerge as a “wedge issue” in the 2020 campaign?

Alison Thoet, **“Equal Rights Amendment edges closer to reality”** PBS News Hour (Nov 22, 2019)

In the shadow of last week's impeachment hearings, the House Judiciary Committee paved a path for the ratification of the Equal Rights Amendment in the first full congressional hearing on the measure since 1983.

The committee voted 21 to 11 in favor of a resolution to eliminate a deadline for the ERA, a measure that would guarantee equal rights for women, which are currently not spelled out in the Constitution. The move could allow Virginia to become the 38th state to ratify it and bring the measure across the three-fourths threshold required by Article V of the Constitution, a whopping 96 years after it was first proposed.

“We are on the verge of a breakthrough for equality in this country, despite all the obstacles in our current political and social climate,” said House Judiciary chairman Rep. Jerrold Nadler, D-N.Y. “Alice Paul's Equal Rights Amendment was introduced in both houses of Congress in 1923, but 96 years later, the United States Constitution still does not explicitly declare that women have equal rights under the law.”

Congress passed the ERA in 1972 and attached a seven-year deadline for 38 states to ratify it in the proposing language. That deadline was later extended by a vote in Congress to 1982, and the deadline passed three states shy of ratification amid fierce opposition from vocal conservative activists. They fought the measure state by state, led by Phyllis Schlafly of STOP ERA.

But proponents never stopped fighting for it. Nevada ratified the amendment in 2017 and Illinois in 2018, leaving it just one state shy of becoming the law of the land.

Rep. Jackie Speier, D-Calif., proposed a House resolution last year to extend the deadline, allowing time for one more state to ratify the amendment. Sen. Ben Cardin, D-Md., and Sen. Lisa Murkowski, R-Alaska, introduced a companion bill in the Senate, which has yet to set a date to vote on the resolution.

## The fight in Virginia

In January of this year, there was some support to get Virginia to be the 38th state, since the state Senate had passed an ERA resolution six times since 2011. But the Republican-controlled legislature stopped the bill from going to a full House vote.

Now, after Virginia voters flipped the state legislature and gave Democrats unified control for the first time in 26 years, there is renewed hope for ERA supporters. Congressional proponents hope to lift the deadline before Virginia votes on the ERA when it returns to session in January.

“Congress is trying to send a message to the Virginia legislature that the issue of the deadline will be taken care of in Congress and that they are free to go ahead and be the 38th state to ratify,” said Kate Kelly, an attorney for the advocacy group Equality Now.

Other states besides Virginia are considering efforts to ratify and become the 38th state, including Arizona, Georgia, North Carolina and Utah, but Virginia’s newly Democratic-controlled status puts the state in a prime position.

Some candidates in Virginia’s recent election even ran on an ERA platform. Democrat Clinton Jenkins campaigned in favor of it and successfully ousted Republican Delegate Chris Jones, who helped block the initiative from moving forward last year.

Now, efforts in the state are already underway to get the ball rolling.

“Virginia has been on the wrong side of history so many times that for us to be the state to put the ERA over the top and in the year we’re celebrating one hundred years of women getting the vote would just be poetic justice, and I’m excited to be a part of that,” State Senator Jennifer McClellan told the *NewsHour*.

Delegate Jennifer Carroll Foy is carrying the resolution in the House of Delegates for the second year in a row. Carroll Foy, who was one of the first women to graduate from the Virginia Military Institute, takes the ERA passage personally. “I understand discrimination firsthand and to be told I was inferior because I was a woman and be blocked from attending because of my gender,” she told the *NewsHour*. “We have laws in the book to address sex discrimination, but those promises of equality won’t be fulfilled unless we have a Constitutional anchor. With all of those things in mind I decided to lead the charge to pass the ERA.”

For the first time in over 400 years, Virginia’s speaker of the House is a woman, which means it would be speaker-designee Eileen Filler-Corn, who would preside over the Virginia vote to ratify the ERA.

## The ratification process

Procedurally, once the 38th state ratifies, the ratification is sent to the National Archives and Records Administration, where the archivist will certify that the amendment is valid and has become part of the Constitution.

If Congress doesn’t extend the deadline first, supporters expect legal challenges. Cardin noted that “there is nothing in the Constitution that requires time limits, in fact, it might not be necessary for a resolution, but we want to remove the doubt.”

## What would be challenged?

The largest argument is that the ratification would be coming well past the original 1982 deadline. In fact, in last week's hearing, Rep. Mike Johnson, R-Iowa, said that for the ERA to be added to the Constitution, the entire ratification process must be restarted. In his opening statement, Johnson criticized the ERA and how it could be interpreted to apply to transgender or other non-traditional gender identities.

"The result would be to require doctors to perform treatments and surgeries on minors that render them permanently infertile without parental involvement, the requiring of biological men to invade the private spaces of women, and the domination of biological males in female sports," Johnson said. "And in doing so, the Equal Rights Amendment would – ironically and tragically – completely erase women's protections under the law."

Ann Cori, chairman of Eagle Forum goes further. "One reason why ERA is brought up today and that's because of abortion," Cori said. "I think there are a lot of people in favor of abortion that are worried the Supreme Court will chip away at *Roe v. Wade* and are pushing for the ERA to ensure abortion rights in the Constitution. In fact, I call the ERA the 'Everything Related to Abortion Act,'" she said. Eagle Forum, a self-described "pro-family" organization, was founded by Schlafly, Cori's mother.

Some states have fought to rescind their ratification, including Idaho in 1982, calling into question the ability for states to undo their vote. Nadler addressed that last week, saying the committee had previously rejected that move.

## ERA in 2020 races

Democratic presidential candidates have already committed support to the ERA ahead of the primaries. Proponents hope the centennial of women's suffrage in the U.S. will bring the issue back into the national dialogue. Will it be enough to push the long-debated amendment past the finish line?

"It's going to enter the public consciousness in a new and exciting way in 2020 for all of these reasons," Kelly said. "I like to quote Susan B. Anthony, who said 'failure is impossible.' Failure of the Equal Rights Amendment is impossible. It will happen, the question is when, and I think given all of the circumstances, given everything it's been through, given it was written in 1923, almost 100 years ago, that its time has come."

## Alex Cohen and Joshua Kohal, "Is the GOP Warming Up to the Equal Rights Amendment?" Brennan Center for Justice, March 19, 2019

. . . When the extended deadline for ratification expired in March 1982, ERA proponents conceded defeat. But in March 2017, a full 35 years after the lapsed deadline, Nevada unexpectedly **ratified the amendment**, rekindling a national debate over the viability of the ERA. Since then, the measure has won the support of the Illinois legislature too.

The March 2017 ratification vote in Nevada was a mostly party-line affair, with only one Republican joining unanimous Democrats in either chamber. But there was a

significant uptick in GOP support in the Illinois vote one year later, thanks in part to the efforts of State Representative Steve Andersson, a conservative Republican who energetically supported ratification. When the Illinois Senate voted to ratify in April 2018, eight of 13 GOP senators – a solid majority – joined their Democratic counterparts. In the May 2018 House vote that followed, ten of 51 GOP members – nearly one-fifth of the caucus – voted with Democrats to make the Land of Lincoln **the 37th state to ratify**.

The Nevada and Illinois legislatures are both controlled by Democrats, who had the power to set the agenda. But this year, following a midterm election that saw a record number of female candidates running for office and winning, the ERA advanced – for the first time since the early 1970s – in a legislative chamber controlled by Republicans. The GOP-controlled Virginia Senate **voted** to ratify in January, with seven of 21 Republicans joining the Democratic minority. Glen Sturtevant, a Republican state senator, was a key sponsor. While the bill **failed to advance in the state’s House of Delegates**, other efforts have sprung up in Republican-controlled legislatures in **Georgia** and **South Carolina**.

There are a number of reasons why Republican lawmakers today may be increasingly willing to support the ERA. First, as election results from 2017 and 2018 revealed a sharply widening gender gap benefiting Democratic candidates, **especially among young women**, support for the ERA is a good way to appeal to female voters. It’s worth noting that 90 percent of Republicans support the amendment, according to a **2016 poll** commissioned by the ERA Coalition. Second, the anti-ERA rhetoric that stalled the ratification campaign of the 1970s may have lost its force. Many of the “dangers” that the STOP ERA campaigners warned about, from women in combat to same-sex marriage to unisex bathrooms, have come to pass *without* the ERA. Third, at a time of resurgent women’s activism, from the women’s marches to the #MeToo movement, the goal of enshrining gender equality in the Constitution strongly resonates with women (and men). Rep. Andersson, in his remarks at a November 2018 **Brennan Center symposium on the ERA**, noted that a key Republican legislator switched his vote because “[his] daughter never forgave him for voting against gay marriage” and he “wasn’t going to make that mistake again.”

The political climate around the ERA isn’t just changing in state capitals. We are also seeing green shoots of bipartisan interest in Congress. In January, Sens. Ben Cardin (D-MD) and Lisa Murkowski (R-AK) **introduced Senate Joint Resolution 6**, a bipartisan bill to eliminate the ERA’s ratification deadline. While many supporters of the amendment say that **the post-deadline ratifications are valid**, it will surely be contested and the decision will ultimately rest with Congress and the courts. But this bipartisan measure sends a powerful signal to the 13 states that have not yet ratified. Upon the release of SJR 6, the two senators **penned a *Washington Post* op-ed**, in which they insist that gender equality “is not a partisan issue but one of universal human rights.” As we’ve seen across the country from Illinois to Virginia, it looks like more and more Republicans are getting on board with that message.