



Democracy Dies in Darkness

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The Equal Rights Amendment has been dead for 36 years. Why it might be on the verge of a comeback.

Women now have the tools to overcome opposition.

By Allison Lange

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Actress Alyssa Milano, center, standing behind the Fearless Girl statue on Wall Street in New York City, speaks in favor of the adoption of the Equal Rights Amendment to the Constitution at a news conference on June 4. (Mark Lennihan/AP)

On May 30, Illinois became the 37th state to pass the Equal Right Amendment (ERA), which says, "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Next, advocates aim to secure the final state needed to ratify the amendment. They will probably target Virginia, North Carolina or Georgia.

True, the deadline to ratify the ERA came and went in 1982. But that may not be a dealbreaker. Some legal strategists [argue](#) that since other amendments had no time limit for ratification, the ERA should not have had one, either. Others argue that Congress simply needs to extend the deadline.

Suddenly, almost a century after it was first proposed, the ERA might be within reach.

The law is overdue, culturally and legally. [Many Americans assume](#) that the United States already has gender-equality rules. After all, the Civil Rights Act, Title IX and the Equal Pay Act all offer protections against discrimination. But these are pieces of legislation. New laws and Supreme Court rulings can diminish their power.

An amendment, by contrast, would force a constitutional reckoning for sex-based discrimination. Hillary Clinton's historic presidential campaign, the sexist responses to it and the election of Donald Trump prompted a wave of women's activism that has resurrected this once-dead amendment.

But the question remains: Can women's rights activists overcome entrenched racial and class divides to unite on a single issue the way they once did on suffrage? Will divisions among feminists provide fodder for conservative opponents? Or will women who believe the law threatens their position as mothers mobilize yet again to prevent the ERA's passage?

These divisions undermined, and ultimately prevented, the passage of the amendment during the 20th century. Proposed first by the National Woman's Party in 1923, the ERA has long sparked controversy among

In 1920, after the National Woman's Party fought for the ratification of the 19th Amendment to give women the vote, the uneasy coalition of male and female suffragists collapsed. Alice Paul, leader of the National Woman's Party, quickly redefined the group's platform to focus on the ERA. The party viewed the ERA as a means for helping women as a class, just like the 19th Amendment did.

Black leaders like Mary Church Terrell, however, pressured the group to focus on protecting the vote for women of color at the state level. Paul refused. While Terrell recognized that her racial identity could not be separated from her sex, the privileged white organizers of the National Woman's Party did not.

Working women did not want the National Woman's Party to promote the ERA, either. They feared that the amendment would strike labor laws that protected only women. In the 1908 case of *Muller v. Oregon*, the Supreme Court upheld a law that limited women to a 10-hour workday. Based on research presented by future Supreme Court justice Louis Brandeis, the Court **declared** that "as healthy mothers are essential to vigorous offspring, the physical well-being of woman becomes an object of public interest and care to preserve the strength and vigor of the race." Progressive Era reformers like Florence Kelley hailed the decision as a women's rights victory. And so, when Paul proposed the ERA, Kelley, once a leader in the suffrage movement, led efforts to oppose equal rights.

The ERA, thus, faltered because it failed to take into account the needs of working women and women of color.

drawing supporters from a range of backgrounds and experiences in other social justice movements. The activists lobbied, marched, went on strike and persuaded Congress to pass the amendment in 1972. Within just two years, 34 states ratified it.

Then the momentum faltered again.

This time, activist Phyllis Schlafly organized conservative Christian women across the country into the STOP ERA movement. The group's members highlighted their status as mothers and wives at protests by bringing props like homemade pies. They posed hypothetical arguments to prompt fear and doubts about the ERA's promises. Advocates convinced lawmakers that the amendment would force women to sign up for the draft, decriminalize rape, allow for same-sex marriages, give men permission not to support their families and require Americans to use unisex toilets.



Phyllis Schlafly, an opponent of the Equal Rights Amendment, holds up a booklet of what she called sexual discrimination during a Senate Labor and Human Resources Committee hearing on April 21, 1981. (Harrity/AP)

The STOP ERA movement recalled the Supreme Court's powerful argument about the importance of protecting women as mothers of the white race

and the other social movements on the left that threatened traditional American values. The amendment failed to secure ratification from the four additional states needed before 1982, the expiration date set by Congress.

The ERA failed, but supporters of women's rights persevered and passed a range of legislation. Advocates brought cases to the Equal Employment Opportunity Commission to enforce the Civil Rights Act's ban against sex discrimination. In 1972, activists lobbied for the passage of Title IX to end discrimination in education and related activities such as sports. They advanced research into women's health and, in 1973, won their case in *Roe v. Wade* to protect abortion rights.

During the 1970s, the women's rights movement also spurred the founding of the field of women's history. The STOP ERA movement promoted the idea that traditional American women preferred the role of wife and mother, but these scholars detailed a history of women who had far more varied roles. Their work transformed our knowledge of women's political activities and demonstrated the centrality of women to the founding and development of the United States. This generation of historians reclaimed the lives of women whose names rarely appeared in existing records, adding portraits of women like Harriet Tubman alongside those of the white men that line museum halls. Now, a generation of Americans has grown up learning about Abigail Adams's call to "remember the ladies." Their revision of the "traditional" notion of American womanhood might have won enough support to finally secure the ERA's passage.

Furthermore, the hypothetical fears that the STOP ERA movement put forward have proved unsubstantiated. Women now serve in military combat roles. Laws criminalize the rape of men and women, so the ERA should not dissolve any gendered protections. A [poll](#) from March found that 49 percent of the nation's working women already identify themselves — not a male partner — as the breadwinner. Even without the ERA, *Obergefell v. Hodges* ruled that states must recognize same-sex marriages.

Still, passing the ERA will not be easy. Fierce opposition has long accompanied feminist surges, and this is already happening today. In Illinois, Republicans largely spoke out against the amendment. The dominant party could block the ERA's path at the federal level, and other states could rescind their decades-old ratification. **"Trad wives"** — conservative, white supremacist traditional wives — may emerge with a modern STOP ERA organization. Securing the final state to pass the ERA **will probably prove as challenging as it was to secure the final state** to pass the 19th Amendment a century ago.

Fortunately, the history of American women can prove as inspiring as it is depressing. Unlike past generations of ERA advocates, today's activists can learn from the successful suffrage campaign, which demonstrates the strength of single-issue movements, and from past failed pushes for the ERA. They can note that, in the 1970s, activists took advantage of the momentum provided by similar social justice movements and collaborated with them. Black Lives Matter, NoDAPL, the Women's March and #MeToo could provide momentum for the ERA today. Current leaders need to prepare for the opposition as well. They must analyze why the STOP ERA movement was so successful and craft a strategy in advance of their opponents. Advocates must demonstrate why the amendment is necessary in 2018 to convince voters that concerns are misguided.

History tells us that the time is not always right to pass legislation like the ERA, but now we have a chance. It's time to start lobbying.

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