

Section 2. History

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Yixi Zhang,
student at Rutgers Preparatory School

THE FAILURE OF THE EQUAL RIGHTS AMENDMENT

Abstract. Proposed in the Congress in 1923, The *Equal Rights Amendment* seeks to end the legal distinctions between men and women in terms of divorce, property, employment, and other matters. Until 1982, it was still 3 states short of the vote, signaling the failure of the *Equal Rights Amendment*. So why the *Equal rights Amendment (ERA)* failed to pass? By examining the existing laws protecting women's rights in the 20th century, speeches and activities of anti-feminists, this paper concludes that *ERA* failed to pass because many existing legislation already guaranteed women's right, so many women believed that the *ERA* was unnecessary and because many conservative women protest against the *ERA*, changing the political climate in enough states.

Keywords: The Equal Rights Amendment, feminism, Phyllis Schlafly, Shirley Chisholm, Alice Paul

American White women achieved the right to vote in 1920, and they began to look for job opportunities and educational resources; however, most women in the United States could not work outside the home then. In the early 20th century, only 20 percent of women received an income while only 5 percent of married women received wages from employment [19]. In the 1920s, women also faced gender bias in financial matters, as they could only obtain a credit card if they had their husband's signature [6]. To end the legal distinctions between men and women in terms of divorce, property, employment, and other matters, a famous women's rights activist, Alice Paul, introduced the first version of the *Equal Rights Amendment (ERA)* in 1923 [2]. For the next sixty years, feminists such as Shirley Chisholm and Alice Paul campaigned for the *ERA*, and in March 1972, both houses of Congress passed the *ERA* with victory in sight. Thirty-five states legislatures passed

the *ERA*, three states short of the deadline, which Congress extended from 1979 until 1982. By 1982, the requirements were still not met, and this constitutional amendment campaign failed, meaning that in the future, if one still wanted to pass the *ERA*, one would have to start the process again by introducing a bill in the Congress. There is still no hope of passing the *ERA* in the short term. Why can't such a seemingly just amendment be passed? Aside from the fact that the constitutional amendment was challenging to ratify, there are two other significant reasons. First, many women at that time believed that the *ERA* was unnecessary because existing legislation already guaranteed their rights. Second, those women also thought that the *ERA* would take away gender-specific privileges enjoyed by women, which was dangerous to society.

Congress enacted many laws to protect women's rights before the proposal of the *ERA*; therefore, the

existing laws have already guaranteed gender equality. For example, *the Equal Protection Clause of the 14th Amendment* states that no state can “deny to any person within its jurisdiction the equal protection of the laws,” which guarantees people of all genders equal treatment and protection under the laws (*The 14th amendment and the evolution of title IX* 1). Ratified on August 18, 1920, the 19th amendment legally enfranchised White women [20]. 1). Being able to vote is a fundamental right of citizenship, and granting White women the right to vote means that they have their voice in what is essential and what they want their lives to be. In addition to women’s rights to vote, their wage inequality was also addressed in the 1960s. *The Equal Pay Act of 1963* requires employers engaged in commerce or in the production of goods for commerce to give male and female employees equal pay for equal work, which protects against wage discrimination based on gender [4] 1). *The Civil Rights Act of 1964* further gave women more independence in the workplace and the right to expect equal treatment by prohibiting sexual discrimination in hiring, promoting, and firing [7] 2). As a result of these laws to protect the rights of women in the workplace, more women joined the workplace. In 1920, women made up around 20 percent of all workers in the labor force; however, about 43 percent of women ages 16 and older were in the labor force in 1970 [5]. The treatment of women at work has also improved dramatically: in 1920 the starting wage for male factory workers on federal contracts was 40 cents per hour, while the starting wage for women was 25 cents; however, *the Equal Pay Act of 1963* enables women to receive the same salaries as men under the same conditions [18]. Therefore, many conservative women believed that the *ERA* was unnecessary because current laws already adequately protect their rights.

Another prominent dissenting voice argued that the *ERA* may lead to unintended consequences, unleashing direct harm on women. Under *the 1948 Military Service Act*, men must register under the

military service system on their 18th birthday, and those on this list may be drafted into the military if the government authorizes the draft [8]. However this act only required males to register, and women were excluded from combat work in the last century; thus, many conservative women of the time thought it was a female privilege that would insulate them from the risks of war. Women fear that they must sign up in the Draft, which makes them dangerous, because the *ERA* states that the United States may not restrict or deny equal rights under the law based on gender. As Phyllis Schlafly said, “*ERA* means abortion funding, means homosexual privileges, means whatever else” [9]. Proponents of the *ERA* believed that by guaranteeing equal rights for all citizens, regardless of sex, the amendment could be used to challenge *the Hyde Amendment*, a legislative provision that bars federal funding for abortion procedure, and other restrictions on access to abortion. (*Hyde Amendment Codification Act* 1) Anti-feminists also argued that *ERA* would make gender-segregated bathrooms illegal in public buildings, put government-funded female institutions at risk, and eradicate restrictions on abortion [15]. Women’s shelters were also at risk of being discontinued because of the equal power of men and women advocated by the *ERA*. These potential harms led conservative women to oppose the *ERA*.

The Equal Rights Amendment also represented a serious threat to the family. As *ERA* seeks to end the legal distinction based on gender in terms of property, employment, and other matters, *ERA* would thrust mothers into military combat and could even make wives responsible for providing half of the financial support of their families, which changed the responsibilities of men and women and harmed traditional gender roles and family. According to Phyllis Schlafly, “the most precious and important right of” women is the right “to keep her own body and to be supported and protected in the enjoyment of watching her baby grow and develop” [6]. Conservative women believed that Judeo-Christian civilization

imposed a duty on a man to provide financial support for his children and his wife. The *ERA* is the opposite of what most women are looking for as “most women want to be wife, mother and homemaker – and are happy in that role,” while *ERA* forces them to leave their roles and take on the financial strain, undermining their role as homemakers and caretakers [12]. When all women have to work outside of the home, they cannot devote all their energy to their husbands and children. As a result, the children can’t have the mother’s care all the time, and the men have the burden of taking care of the family in addition to their work, which harms women, men and even children.

The *Equal Rights Amendment* failed also because traditional women’s protests against it changed the political climate in enough states. Phyllis Schlafly organized the “STOP ERA” campaign from a variety of existing groups. The members lobbied state Governments, handing out homemade bread with the slogan, “Preserve Us From a Congressional Jam; Vote Against the E.R.A. Shan” [11]. The “STOP ERA” campaign helped prevent the passage of the *ERA*. When Schlafly started her campaign in 1972, 28 states had already ratified the amendment. After she began her protests, seven more states approved the amendment, but five withdrew their previous ratifications. The *ERA* did not reach the required number of states, in large part because of Schlafly’s campaign, since she and her members successfully exploited the nation’s fear of losing traditional gender roles. In addition to the campaign’s protest, the American Federation of Labor and other labor unions feared the *ERA* would invalidate protective labor legislation. Another dilemma facing the *ERA* was the failure to have 38, or $\frac{3}{4}$ of the states, ratify the proposed amendment by the deadline set by Congress in 1979 (Blair 2). Many *ERA* advocates appealed to Congress for an indefinite extension of the time limit, and the National Organization of Women organized a march

of 100,000 proponents in Washington, DC [3]. Even though Congress extended the deadline to 1982 due to public pressure, no new states signed on, so the *ERA* failed to meet the requirements.

The *ERA* did not reach the requirement for ratification until 2020, when Virginia became the 38th state to ratify it [2]. To this day, many organizations still fight for the passage of *ERA*. It is worth noting that the failure to pass the *ERA* was not because Americans do not agree with gender equality, but many believe this is an unnecessary law. The prerequisite for passing the *ERA* is that men and women are not equal under the *Constitution*, in which case the amendment would be meaningful. With the *Nineteenth Amendment* guaranteeing the right to vote, there is no longer any place in the *U. S. Constitution* where “inequality between men and women” is explicitly or implicitly stated, where men and women are already equal in constitutional terms. Under these circumstances, even if the inequality between men and women still existed throughout the country, there is no good reason to believe that it is a result of the *Constitution* and, more importantly, no reason to think that another constitutional amendment would improve the situation, let alone solve it. The *ERA* fails to guarantee women’s rights, and it could even jeopardize women’s equality since *ERA* may prohibit the government from acting based on gender and, therefore, from acting on or responding to gender inequality. Namely, the government would have to ignore gender, including gender inequality. Despite the *ERA*’s failure to effectively guarantee women’s rights, the *ERA* has far-reaching implications for public policy, particularly in the areas of employment, education, and reproductive rights. By understanding the reasons for its failure, we can identify the areas where further action is needed to advance gender equality and improve public policy.

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