

# Equal Rights Amendment 28<sup>th</sup> Amendment

What's not to like?

# Origin

- 1923: Alice Paul: It would have provided that “[m]en and women shall have equal rights throughout the United States and every place subject to its jurisdiction”
- Changed to: “SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.
- “SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
- “SEC. 3. This amendment shall take effect two years after the date of ratification.”
- 86 Stat. at 1523.

# Congress passes

- 1972: Rep. Martha Griffiths: Passed Congress by 2/3, Article V (broads)
- 49 years after introduced
- No AZ Senator or Representative voted for it.
- Timeline - 7 years in preface
- 50 years to pass 3/4<sup>th</sup> of the states

# States Ratify

Hawaii ratified in 30 minutes

35 states had ratified by 1979

Timeline extended to 1982 - passed by majority not 2/3, arguments pro and con

Koch Brothers funded Phyllis Schlafly and anti-ERA group

No new ratifications between 1979 and 1982

# Arizona Attempts

- 1972 – failed in 1972, 1975, 1979,
- never voted on again, O'Connor & Sister Claire Dunn
- Introduced off and on over the 1980s and 1990's
- But then every year in both houses since 2000s
- Never assigned to committee
- Never assigned to agenda
- Floor maneuvers in 2017
- Motion to discharge in 2018, House and Senate
- Motion to waive rules in House May 19, 2021

# National Three- State Strategy

- 2017 - Nevada
- 2018 – Illinois
- 2020 – Virginia
- We now have the required 3/4<sup>th</sup> states i.e. 38.
- Nevada and Illinois are stated as having ratified
- Virginia ratified in Jan 27, 2020; went into effect Jan 27, 2022.
- Refusing to publish Virginia due to DOJ/Barr memo – OLC Biden memo

# OH Predictive AZ Poll in 2019 - Knowledge

ERA Report - Toplines

Created by OH Predictive Insights

Generated on June 27, 2019

Q1) Were you aware that the Arizona state legislature has recently been debating if Arizona should ratify the Equal Rights Amendment?

	Total
Sample Size	600
<b>Yes</b>	
Count	160
Column %	27%
<b>No</b>	
Count	322
Column %	54%
<b>Don't Know</b>	
Count	117
Column %	20%
<b>Refused</b>	
Count	1
Column %	0%







# OH Predictive - Support

ERA Report - Toplines

Generated on June 27, 2019

Created by OH Predictive Insights

Q2) Section 1 of the Equal Rights Amendment states: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." Would you be in support of or opposed to this amendment being added to the U.S. Constitution?

	Total
Sample Size	600
<b>In Support of</b>	
Count	375
Column %	63%
<b>Opposed to</b>	
Count	111
Column %	19%
<b>Undecided or DK</b>	
Count	112
Column %	19%
<b>Refused</b>	
Count	2
Column %	0%

# OH Predictive – Support by gender/region/age/party

ERA Report - QxDemos

Generated on June 27, 2019

Created by OH Predictive Insights

Q2) Section 1 of the Equal Rights Amendment states: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." Would you be in support of or opposed to this amendment being added to the U.S. Constitution?

	Gender		Region			Age		Party Affiliation		
	Female	Male	Maricopa	Pima	Other	54 or Less	55+	Dem	Ind	Rep
Sample Size	308	292	362	96	142	253	347	203	163	234
<b>In Support of</b>										
Count	198	177	222	62	91	174	201	161	112	102
Column %	64%	61%	61%	65%	64%	69%	58%	79%	69%	44%
<b>Opposed to</b>										
Count	46	65	62	21	28	44	67	16	21	74
Column %	15%	22%	17%	22%	20%	17%	19%	8%	13%	32%
<b>Undecided or DK</b>										
Count	63	49	76	13	23	35	77	26	29	57
Column %	20%	17%	21%	14%	16%	14%	22%	13%	18%	24%
<b>Refused</b>										
Count	1	1	2	0	0	0	2	0	1	1
Column %	0%	0%	1%	0%	0%	0%	1%	0%	1%	0%

# OH Predictive – support by age +

ERA Report - QxDemos

Generated on June 27, 2019

Created by OH Predictive Insights

Q2) Section 1 of the Equal Rights Amendment states: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." Would you be in support of or opposed to this amendment being added to the U.S. Constitution?

	Gender / Age				Region / Age						Party Affiliation / Age					
	Female		Male		Maricopa		Pima		Other		Dem		Ind		Rep	
	54 or Less	55+	54 or Less	55+	54 or Less	55+	54 or Less	55+	54 or Less	55+	54 or Less	55+	54 or Less	55+	54 or Less	55+
Sample Size	129	179	124	168	153	209	40	56	60	82	83	120	68	95	102	132
<b>In Support of</b>																
Count	92	106	82	95	107	115	26	36	41	50	71	90	52	60	51	51
Column %	71%	59%	66%	57%	70%	55%	65%	64%	68%	61%	86%	75%	76%	63%	50%	39%
<b>Opposed to</b>																
Count	20	26	24	41	22	40	9	12	13	15	6	10	7	14	31	43
Column %	16%	15%	19%	24%	14%	19%	23%	21%	22%	18%	7%	8%	10%	15%	30%	33%
<b>Undecided or DK</b>																
Count	17	46	18	31	24	52	5	8	6	17	6	20	9	20	20	37
Column %	13%	26%	15%	18%	16%	25%	13%	14%	10%	21%	7%	17%	13%	21%	20%	28%
<b>Refused</b>																
Count	0	1	0	1	0	2	0	0	0	0	0	0	0	1	0	1
Column %	0%	1%	0%	1%	0%	1%	0%	0%	0%	0%	0%	0%	0%	1%	0%	1%

# Lawsuits

- Alabama – before VA even passed, dismissed
- Boston MA – January 2020 before passed by EME, defendant responded with a motion to dismiss based on standing and timeline. Dismissed on standing, appealed to Supreme Court refused and told to go through process. Appeal on standing was heard on May 5, 2021.
- Washington DC – Jan 30, 2021 by 3 Attorneys General of NV, IL, VA, dismissed on timeline on March 5, 2021; appealed on May 3, 2021, lost but stated that not a court decision and do not need to publish to be in Constitution.

# Legal Arguments – DOJ Memo

- ACTION – letter to Attorney General Merrick Garland to withdraw DOJ memo, issue new one, and be on the right side.
  - U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

# Legal Arguments

- Timeline – completely up to Congress, previous cases not harmed, 27th A = 200+ years
- Recission – 5 purported, not allowed in several previous suits
- Do not need Congress or president or publication – only Constitution, Article V

# Affirm Ratification & Timeline removal – forced discharge

- House H.J.Res 25 – 210 sponsors, want 218
- Senate S.J. Res 4 – 53 sponsors
- Both AZ Senators have signed, all AZ Democrats have signed.
- **ACTION ITEM:** Write your senators to thank them and your representative to thank or chastise.



# Ratified, enforceable, publish

- HJR 82 – 83 sponsors ,
- ACTION ITEM: Stanton only one not on it. He claims he will he just hasn't.
- SJR 39 – 22 sponsors,
- Congress welcomes passage of ERA and disavows any timeline.

# ACTIONS TO TAKE NOW

- . **Shout for Equality:** On International Women's Day, launched the exciting new [Shout for Equality](#) campaign, brainchild of Carolyn Maloney and designed by [Ogilvy](#), a major worldwide ad and PR agency, will fully launch.
- . This campaign will help us grow the number of signers on the [Sign4ERA petition](#), which is at nearly 92,000. signatures.

# Pressure from States

- State affirmations – CA, IL, MN, HI, MD, NY, NC
  - Az – Tribal Association
- State ERA – MD, NY, MN
- States doing audits for compliance
  - FIRST was AZ
  - Others working on NC, IL
  - Winston & Strahn doing nationwide

# UPCOMING

- **April 12** - Columbia Law School and Georgetown Law School, [The Present and Future of the Equal Rights Amendment: The ERA as a new source of equality rights in the Constitution](#) will gather distinguished legal scholars with members of Congress, lawyers, advocates, and organizers to sharpen a vision and strategy for the future of the ERA.
- **May 9:** What the constitution means to me: Phoenix Little Theatre, State NOW PAC
- **May 31** - June 1: ERA Coalition, the California Commission on the Status of Women and Girls, and Mount St. Mary's University Center for the Advancement of Women at Mount St. Mary's University in Los Angeles, CA. Two-day "The Cost of Not Having the Equal Rights Amendment (ERA)"

# What difference will it make?

- Constitutional Equality
- Standard of analysis at court will be “strict scrutiny” – the highest standard used now only for race, color, national origin, and religion
- Standard now is “intermediate scrutiny”
- Cannot be ignored or repealed
- Applies to both women and men

# But the 14<sup>th</sup> Amendment?

*Affirmative Action v. Harvard* – held that 14<sup>th</sup> amendment does not ONLY apply to formerly enslaved to end discrimination but to white men to maintain it.

*Dobbs v. Jackson* – said clearly women are NOT in the constitution so doesn't cover.

*Minor v. Happersett*, 88 U.S. 162, 22 L.Ed. 627, 21 Wall. 162 (1874) - said women are not covered by the 14<sup>th</sup> amendment and cannot vote. That's why we needed the 19<sup>th</sup> amendment to vote.

*Minneapolis v. St. Louis Railroad & Beckwith* - court ruled that corporations are persons for purposes of application of the equal protection and due process clauses of the Fourteenth Amendment. [9 S.Ct. 207, 129 U.S. 26, 32 L.Ed. 585 \(1889\)](#)

From 1869 to 2000, a period of 131 years, women brought ten cases under the Fourteenth Amendment and men brought nine. Women won six and lost four; thus women have a 60% chance of winning.

Men won seven and lost two; thus men have a 78% chance of winning.

# Get courts to do it like *Brown v. Bd of Ed*

- Brought cases to build rulings to finally get women strict scrutiny.
- But in *U.S. v. Virginia Institute*, Ginsberg destroyed it. (1996)
- **“The heightened review standard our precedent establishes does not make sex a proscribed classification.** (emphasis added) Supposed "inherent differences" are no longer accepted as a ground for race or national origin classifications. See *Loving v. Virginia*, 388 U.S. 1, 18 L. Ed. 2d 1010, 87 S. Ct. 1817 (1967). Physical differences between men and women, however, are enduring: "The two sexes are not fungible; a community made up exclusively of one [sex] is different from a community composed of both."
- Why you might ask?
- ERA only method left.

# Equal Pay Laws

FIGURE A

## Little to no progress in closing the gender wage gap in three decades

Regression-adjusted gender wage gap, 1979–2023

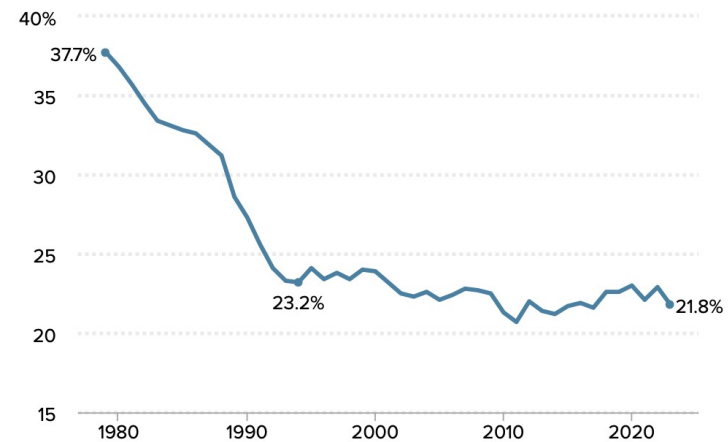


Chart Data

**Notes:** Wages are adjusted into 2023 dollars by the CPI-U-RS. The regression-based gap is based on average wages and controls for gender, race and ethnicity, education, age, and geographic division. The log of the hourly wage is the dependent variable.

**Source:** Author's analysis of Current Population Survey, Outgoing Rotation Group (CPS-ORG), 1979–2023, and Economic Policy Institute, Current Population Survey Extracts, Version 1.0.48 (2024), <https://microdata.epi.org>, 1979–2023.

Economic Policy Institute



# Equal Pay

## HOW MUCH WOMEN WORKING FULL TIME, YEAR ROUND LOSE TO THE WAGE GAP, BY RACE/ETHNICITY 2022

Women by race/ethnicity	What women were paid for every dollar paid to white, non-Hispanic men in 2020	Typical monthly losses	Typical annual losses	Typical losses over a 40-year career	Age to which women must work to make as much as white, non-Hispanic men by age 60
Asian American, Native Hawaiian, and Pacific Islander (AANHPI) women	\$0.93	\$391	\$4,690	\$187,616	63
Black women	\$0.69	\$1,843	\$22,120	\$884,800	78
Latinas	\$0.57	\$2,538	\$30,450	\$1,218,000	90
Native American women	\$0.59	\$2,396	\$28,747	\$1,149,880	88
White, non-Hispanic women	\$0.80	\$1,195	\$14,340	\$573,600	70

*Source: Figures for Black women, Latinas, and white, non-Hispanic women are NWLC calculations using Table PINC-05, U.S. Census Bureau, Current Population Survey, 2023 Annual Social and Economic Supplement, <https://www.census.gov/data/tables/time-series/demo/income-poverty/cps-pinc/pinc-05.html>. Figures for Native women are NWLC calculations based on 2022 Community Survey (ACS) tables B20017C and B20017H. Figures for AANHPI women are NWLC calculations based on 2022 ACS microdata, <https://www.census.gov/programs-surveys/acs/>. Respondents to both surveys self-identify their sex as either male or female and self-identify their race and whether they are of Hispanic, Latino, or Spanish origin.*

# Violence against women

- *U. S. v. Morrison* - did not have “hook” in constitution to have civil law suing for violation of civil rights (2000)
- *U.S. V. Nagarwala* - FGM – no “hook” (2018)

# Religion

- Protected because in Constitution
- Alabama –2024, frozen zygotes protected
- Arizona – 2019 “personhood” law – only one religion believes that

# State examples

- *New Mexico Right to Choose/NARAL v. Johnson*, 975 P. 2d 841 (1998) ordered that the state pay for medically necessary abortions because NM has chosen, by the passage of its ERA, to give women more protection than the federal constitution.
- *Simat v. AHCCCS* (2001) - AZ on equal protection and disparate treatment (2002) strict scrutiny because is a fundamental right – health and life of mother, “medically necessary”
- *Planned Parenthood v. South Carolina* (2023) – abortion covered under privacy clause of state constitution
- *Allegheny Reproductive Health Center et al v. Pennsylvania Dept of Health Services* (2024) – ruling on abortion based on state ERA
- *Silver State Hope Fund v. Nevada DHHS* (2024) – passed state ERA 2022; ruled Medicaid must cover all medically necessary abortions based on state ERA