

# From 19th Amendment to ERA

## Constitutional Amendments for Women's Equality

Tracy A. Thomas

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The Nineteenth Amendment to the U.S. Constitution guaranteeing women's right to vote was passed by Congress one hundred years ago on June 4, 1919. [Many](#)[JD1] states quickly ratified the amendment, though it would be a close call when the final state, Tennessee, pushed the amendment into law in August 1920. When first proposed, the vote or "suffrage" was just one of many civil and social rights demanded by women. But it became the primary focus of the women's rights movement in the late nineteenth and early twentieth centuries, fueled by political allegiances with conservative temperance women and supported by focus on the vote as the primary right of citizenship as embodied in the new Fourteenth and Fifteenth Amendments.

One year after the passage of the Nineteenth Amendment, women's rights leaders resurrected the demands for gender equality in aspects of society by proposing the first Equal Rights Amendment (ERA) in 1921. The ERA would have guaranteed that civil and legal rights cannot be denied "on the basis of sex." From the beginning, however, the ERA was met with opposition including from women themselves, with conservative women concerned about impact on the family and progressive women concerned about impact on labor and union rights. It would take another fifty years before both national political parties would endorse the ERA, and Congress passed the ERA in 1972 guaranteeing that "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." The necessary two-thirds of the states, however, failed to ratify the ERA, even after an extension of the deadline.

A modern movement has renewed efforts to pass the ERA, still believing in the necessity of a constitutional guarantee of the broad legal and social equality of women first advanced 171 years ago. This essay traces the history of the women's constitutional demands for equality, from its origins in Seneca Falls, the adoption of the Nineteenth Amendment, the proposed ERA, and modern efforts for a new amendment to secure gender equality.

## Seneca Falls: More than the Vote

Women's first demand for the right to vote is usually traced to the convention held in Seneca Falls, New York on July 19 and 20, 1848. There, in upstate New York in the Wesleyan Church, emerging leader Elizabeth Cady Stanton demanded the "elective franchise" to ensure women's political participation in the lawmaking process. Her anti-slavery colleagues, who made up a large part of the meeting, including mentor Lucretia Mott and her husband Henry Stanton, were suspicious of the demand for suffrage because these moralistic and religious reformers believed that politics was corrupt and that the way to obtain reform was outside the political arena. Women had previously held the right to vote in colonial New Jersey from 1787 to 1807, and six women from Jefferson County, New York, had petitioned the New York Constitutional Convention in 1846 for the right to vote, but Seneca Falls became the touchpoint for women's first demand for suffrage. The National Women's Rights Historical Park in Seneca Falls now commemorates this historic event, and Stanton's words in her "Declaration of Sentiments" are carved into the waterfall outside the visitor's center.

The Declaration of Sentiments, however, included eighteen demands for women's rights, much more than the sole demand for the vote typically remembered. Stanton demanded freedom from gender discrimination in four broad areas of society, including the state, the family, the workplace, and the church. These broad, specific demands reached all areas of women's lives in both the public and private spheres, and were intended to provide women with full and equal opportunity for happiness and success. The broad platform of women's civil and social rights including issues of equal marital property, mother's guardianship of children, and no-fault divorce continued until the Civil War.

Grassroots state women's rights groups proliferated after Seneca Falls, including meetings in Salem, Ohio in 1850, Akron, Ohio in 1851, and Worcester, Massachusetts. Women then began to meet each year in national conventions during which they organized, drafted petitions, wrote letters, and lobbied legislatures. Women would continue this laborious political activism for the next 72 years, as efforts to obtain the vote were slow and met with opposition.

## The Nineteenth Amendment

A constitutional amendment to protect women's right to vote was first proposed by Stanton and Susan B. Anthony in 1866. Their idea for a sixteenth amendment responded to the failure of the

universal suffrage movement to advocate universally for voting rights for all, which had splintered into a separate movement focused on black male suffrage. Stanton and Anthony split from their former colleagues and formed their own National Woman Suffrage Association (NWSA) dedicated to advocating for women's suffrage. This dedication was zealous, and included sometimes racist opposition to the Fifteenth Amendment guaranteeing suffrage regardless of race, because that amendment excluded women. Other women's groups advocated for suffrage as well, with the American Woman Suffrage Organization led by Lucy Stone working first for black suffrage, then women's, and by the Women's Christian Temperance Union (WCTU) which advocated the vote for women's moral participation in making laws including prohibition of alcohol.

After passage of the Fourteenth Amendment in 1868, women's suffrage leaders believed that the vote had been obtained. They argued that the privileges and immunities of the Fourteenth Amendment guaranteed citizens the privilege of voting. In a strategy called "The New Departure," women began attempting to vote at the polls, and Susan B. Anthony was famously arrested for her attempt. The U.S. Supreme Court, however, struck down this interpretation of the Privileges and Immunities Clause in the 1875 case of *Minor v. Happersett*, holding that voting was a privilege of state law, not federal citizenship. Women then renewed efforts to pass a constitutional amendment.

Republican Representative George W. Julian introduced the first women's Federal Suffrage Amendment into Congress in March 1869 that would have guaranteed the right of suffrage "based on citizenship" and "without any distinction or discrimination whatever founded on sex." Little legislative action, however, was taken, with the amendment being introduced again in 1878, and debated once in 1887, and otherwise languished in committee where contingents of women annually appealed for action. Meanwhile, suffrage leaders increased efforts to pass suffrage state by state. Anti-suffrage opposition came from many fronts; women's suffrage was opposed by mainstream churches preaching women's place as subordinate and in the home, by male voters concerned their votes would be diluted, by women who feared the loss of their family role, and by the liquor industry who feared women would vote for prohibition of alcohol. By the turn of the century, suffrage leaders obtained some limited success, with a few states adopting suffrage in school board elections, municipal elections, or presidential elections. Eleven states recognized full suffrage, mostly concentrated in the Western states of Wyoming, Utah, Colorado, Arizona, and California.

The final political push came from Alice Paul, a new leader of the younger generation of suffrage women. Paul adopted the militant activism of English suffrage women, and began to publicize women's demand for suffrage through media displays like suffrage parades and pickets of the White House. She and her colleagues were arrested for picketing President Woodrow Wilson at the White House. Their subsequent mistreatment in the D.C. prisons from solitary confinement and brutal forced feedings, depicted in the movie *Iron Jawed Angels*, finally captured public sympathy and shifted the political tide. President Wilson reluctantly gave his support, joining both Republican and Progressive leaders in favor of what was renamed the "Susan B. Anthony Amendment" (even though Anthony was not present at Seneca Falls, but rather joined the movement three years later and went on to decades of national leadership). The first congressional vote for the Nineteenth Amendment was taken in February 1920, and it passed upon its second deliberation in the House of Representatives in May 21, 1919, and in the Senate on June 4, 1919, both by the necessary two-thirds majorities. A few states quickly ratified the Nineteenth Amendment within a week of passage. The final ratification battle came in August 1920, in Tennessee, where votes seemed tied between the supporters of women's suffrage wearing white roses and opponents of women's suffrage wearing red roses was broken by a bachelor legislator, Harry Burn, when he received a letter from his mother encouraging him to vote for the women.

After the Nineteenth Amendment's passage, a few legal challenges tried to stop its implementation. One argument was that granting women the right to vote diluted the male vote, a position the Supreme Court summarily rejected in *Leser v. Garnett*. Another argument was that ratification of any constitutional amendment, like the vote or Prohibition, had to be approved by the public citizenry, rather than the state legislatures, an argument the Court also rejected in *Hawk v. Smith*. Yet, implementation of the Nineteenth Amendment was uneven. In some states, the right to vote did not extend to correlative rights to hold public office or serve on juries. The right to vote also did not extend to women who were black, Asian, or Native American, who were prohibited by other race-based laws from voting. The Voting Rights Act of 1965 removed many of these barriers, as did the 1952 McCarran-Walter Act of 1952 applicable to women of Asian descent, and the 1924 Indian Citizenship Act and subsequent state court cases in the late 1940s applicable to Native American women.

## An Equal Rights Amendment

One year after passage of the Nineteenth Amendment, Alice Paul returned to the broad gender equality agenda that animated the original women's rights movement at Seneca Falls. Women lawyers in Paul's National Women's Party (NWP) had identified over three hundred laws that denied women equality based on their sex, including rights of employment, property, jury duty, and child custody. To address each of these at once, Paul proposed an Equal Rights Amendment that would amend the federal Constitution to guarantee equality in all areas of legal rights without regard to sex. The first ERA said simply that "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction." The objective, Paul said, "is to take sex out of law—to give women the equality in law they have won at the polls."

The ERA, however, was met by instant opposition among women's rights advocates as well as the public. The suffrage leaders had disbanded into several groups, Paul's NWP, the National League of Women Voters dedicated to encouraging women to vote and supporting women for public office, and progressive labor activists seeking protective laws like minimum wages and occupational safety. The more conservative League women did not agree with the platform of employment and workplace equality favored by the professional and business women of the NWP. The social feminists of the labor and union movements were concerned that an ERA would curtail advances made in the area of worker protection, often premised on the need to protect women workers who were weaker than men.

This battle between equality and labor activists was emphasized in the 1923 decision of the U.S. Supreme Court in *Adkins v. Children's Hospital*. In *Adkins*, a new Justice, George Sutherland, one of the "Four Horsemen" who voted to strike down many of the New Deal-era laws, held that the Nineteenth Amendment represented a command of gender equality beyond the vote, and thus invalidated a minimum wage law premised on women's different and inferior status. Sutherland had advised Alice Paul, and he seemed influenced by an amicus brief submitted by Paul. The *Adkins* majority held that the Nineteenth Amendment giving women the right to vote altered the historical structure of coverture, the English common law system which "covered" the legal existence of married women due to their need for protection, and denied them most legal and civil rights. The constitutional amendment, *Adkins* held, was "revolutionary" in its dismantling of the entire system of women's contractual, political, and civil rights. Thus, a constitutional amendment about voting changed the entire system of gendered legal rights, and demanded gender equality in all places including the workplace. It was an amazing win for gender equality, but demonstrated that labor rights seemed to be in direct opposition to gender equality. The *Adkins* case, however, would not stand long, as the Supreme Court would reverse itself over a

decade later in favor of laws protecting women. This battle between labor and equality activists continued until the passage of the federal Fair Labor Standards Act of 1938 which granted labor protections like minimum wage and maximum hours to all workers, both men and women.

The way was finally cleared for Congress to seriously consider an Equal Rights Amendment, but it would take thirty more years until support was obtained. Class-based divisions continued to dominate debate over the ERA, with working class and union advocates, including the American Civil Liberties Union (ACLU) opposed to it, and businesses and professional workers supporting the amendment. It was not until the civil rights era of the 1960s realigned political groups towards a civil rights focus that consensus finally built for an equal rights amendment.

Congress passed the ERA in 1972 in what seemed to be an unobjectionable law endorsed by both parties. However, opposition soon emerged from conservative and religious advocates challenging the ERA for its shift in gender roles in society. Zealous opponents raised concerns about gay marriage, women in combat, single-sex bathrooms, and abortion on demand, all stemming from a bigger concern: the challenge to women's traditional domestic role in the family. The National Women's Conference in Houston in 1978, sponsored by the federal government to create a broad agenda for women's rights and harkening back to the first such conference at Seneca Falls, worked counterproductively to incite this backlash against ERA and the perception that it threatened women and the family.

The ERA failed to receive the necessary ratification by two-thirds of the states, coming in three states short. President Jimmy Carter had extended the seven-year deadline once, but no further states ratified during this time. Growing social conservatism altered the longstanding political support from Republicans, and the ERA did not become law. Many states, however, passed their own mini-ERAs, embodying gender equality into state law and providing some additional legal guarantees of equality.

## **The Modern Movement for an ERA**

Two states recently ratified the ERA: Nevada in 2018, and Illinois in 2019. Several others are actively working toward passage. In May, 2019, the House of Representatives held the first congressional debate on the ERA in thirty-six years. This renewed legislative action was a response to the national politics featuring Women's Marches following the 2018 presidential election and the emerging #MeToo movement raising awareness of the intrinsic problem of workplace sexual

harassment. Supporters of the ERA argue that the constitutional amendment remains viable, and that a “three state strategy” of securing three states, one in addition to Nevada and Illinois, will ratify the ERA into law. They argue that the Equal Rights Amendment remains viable for ratification because the timeline was not mandatory, as it was not included in the text of the amendment but only the preamble, and thus the deadline was merely advisory. Alternatively, they argue that Congress can waive or extend the deadline, requiring some further political consensus on reviving the ERA. This argument also revives a prior debate over whether states could rescind their ratifications of ERA, which one court so held, even though the argument for amendment rescission was rejected in the context of the Fourteenth Amendment.

The question remains as to whether we still need an ERA. During the intervening years, the U.S. Supreme Court adopted a line of jurisprudence under the Equal Protection Clause of the Fourteenth Amendment protecting gender equality. This judicial doctrine effectively provides much of the legal benefit that would be provided by an ERA by scrutinizing laws that attempt to discriminate on the basis of sex. Other federal laws like Title VII for employment and Title IX for education similarly prohibit discrimination on the basis of sex, further codifying legal guarantees of gender equality.

The importance of an ERA, however, remains. At one level, a federal ERA protects against changes in the judge-made law possible with the appointment of new Supreme Court justices. A constitutional amendment would arguably strengthen the judicial standards for scrutinizing gendered laws, mandating that such laws survive strict rather than intermediate scrutiny by the courts. Perhaps more significantly, a federal ERA provides a symbolic level of constitutional promise of women’s equality in our society, an equality supported by the 171 years of women’s rights advocacy since Seneca Falls. For this reason, leading thinkers like Justice Ruth Bader Ginsburg and feminist scholar Catharine MacKinnon actively endorse the ERA. The American Bar Association, as well, issued a resolution in 2016 officially endorsing the ERA, stating that it supported “constitutional equality for women,” and that it would work toward the goal of ratification of the ERA and called on state bar associations to do the same. An Equal Rights Amendment would accomplish the broad scale structural shift identified by the Court in *Adkins*, and envisioned by the first women activists at Seneca Falls. No longer could people say that gender equality is not something important enough to be included in the U.S. Constitution.



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