

Equality Throughout a Nation: The Equal Rights Amendment is the Key to Protect All Citizens

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Abstract:

The Equal Rights Amendment (ERA). A policy that was drafted over 50 years ago with the intention to provide a constitutional guarantee that all current and future laws shall not infringe on the rights of citizens on account of sex. Recently, the $\frac{3}{4}$ of states' threshold of ratification on ERA was met. Despite this support, the ERA has not been made the 28th amendment of these United States. While the ERA has not been made the 28th amendment, the concept that these United States. This failure does not mean that the United State should not continue to strive to be a more perfect union. This essay will examine not only why the country needs to secure the rights of cis women, but of all women and LGBTQ+ folk who would be protected under the ERA's definition of protection on the basis of sex. In doing so, it will review the history of the ERA and why it was proposed, analyze why protections are needed for both cis women and LGBTQ+ people, and speculate of about what could occur if the ERA were made the 28th amendment based on legal precedents and the current political climate.

TABLE OF CONTENTS:

Section I: Understanding the Need for the Equal Rights Amendment.....1

A: The Historical Need for Amendments Guaranteeing Protection.....1

B: Current Civil Rights Issues Pertaining to Cis Women..... 3

Section II: Broadening the Scope of the ERA..... 5

A: Transgender and LGBTQ+ Citizens Left Unprotected..... 5

B: Status Quo of Discrimination to “Protect” Citizens..... 7

i. Trans-Athlete Bans..... 7

ii. Bathroom Checks..... 9

iii. Imprisonment..... 10

iv. Adoption..... 11

C: Health Care Access for LGBTQ+ Citizens..... 12

Section III: Clarification to Prevent Discrimination..... 15

A: Solidify Positive Supreme Court and Past Legal Precedent..... 15

B: ERA and Equality Act Working Together..... 16

Conclusion..... 19

Acknowledgements..... 20

Citations..... 21

Section I: Understanding the Need for the Equal Rights Amendment

A: The Historical Need for Amendments Guaranteeing Protection

From the founding of this nation to today, very little has been done to ensure that women in the United States are equal in the Constitution. It wasn't until 1920, a little over a century ago, that women finally got the right to vote. This was after over 70 years of women formally coming together and fighting for the right to vote in Seneca Falls in 1848, though even then they didn't advocate for suffrage for all women but excluded Black women. Women have been fighting for a long time, but since our founding only one Constitutional amendment has directly addressed women, the 19th amendment. Historically, the question of women's rights has fallen upon legislators and United States Supreme Court (SCOTUS) justices, predominantly cis white males. Even with women voting, this has systematically hindered their overall protections and rights. This continues to occur because the male leaders in legislative and executive positions attempt to "protect" women with legislation that ultimately gives men more control. This continued heavily until the 1960s and 1970s when the Supreme Court began to change and began being the check for legislators passing restrictive and abusive laws. The first major example was *Griswold v. Connecticut* which allowed the use of contraceptives. This was changed with the decisions *Eisenstadt v. Baird* (allowing couples to purchase contraceptives freely), and *Roe v. Wade* (allowing women's right to an abortion). The American Civil Liberties Union (ACLU) categorized over 140 SCOTUS decisions between 1964-2022 that affected the rights of women for the better or worse. Shifting Supreme Court composition and the resulting shifts in how the Constitution is interpreted means that the rights and protections of women have historically rested on a seesaw. This lack of consistency can lead to legal precedents that hurt the rights of

women. So, when historically the Court is inconsistent and lawmakers often vote against the rights of women, the ERA became a consideration of congress.

While the language of the original ERA, stated “Men and women shall have equal rights” the version passed in 1972 read “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”. Only after almost 50 years after the ERA was passed did it finally get the ¾ majority of states’ ratification. Even after this threshold was met, it still wasn’t added to the Constitution, because the Office of Legal Counsel for the U.S. Justice Department stated that this amendment was invalid because it missed the 10-year deadline for ratification established by Congress (an initial seven-year deadline was later extended by three years). The legitimacy of this deadline has been argued by constitutional lawyers and scholars, as it has never been a part of Section V of the constitution, and thus not a legitimate rule for the constitutional amendment process, meaning that this decision fell into the hands of the Office of Legal Counsel, who is composed of members picked by the executive branch. The ERA amendment reached the threshold to be made an amendment during the Trump administration, which during its tenure blocked many legal protections for women and thus the Office of Legal Counsel made of Trump appointees denied the amendment In 2022, the Office of Legal Counsel announced alongside President Biden that it supports the Equal Rights Amendment, and thus the question once again falls on Congress to pass a bill that both codifies the protections proposed by the ERA and pass a bill to extend the deadline for the ERA, rather than restarting the process of states ratifying the ERA.¹ This would allow in the short term for citizens to be protected by law while the bill regarding the extension of the deadline is passed through Congress.

¹ *Statement from President Biden on the Equal Rights Amendment*. The White House

B: Current Civil Rights Issues Pertaining to Cis Women

In the last half of a decade, large issues pertaining to the rights of women, especially cis women, have come to the fore. The National Organization of Women finds the following topics to be of concern: Reproductive Rights (Freedom to Choose Abortion and Contraceptives), Economic Justice (Equality Through Pay and Opportunity), Ending Violence Against Women (Domestic Violence; Sexual Assault and Harassment), LGBTQ+ Rights, and Racial Justice.² What it deems most important in addressing these issues is passing the Equal Rights Amendment deadline extension thus codifying protection of equal rights, on which other protections can be built. This year alone, because of the Supreme Court making a rapid ideological change, a woman's right to choose whether or not to bear a child has been revoked. With the overturning of *Roe v. Wade*, a sharp alarm was sounded, warning that many other protections established by the Supreme Court over decades may come crashing down. This is why, in this new era of a Supreme Court that is interpreting the Constitution in a way that strips away the rights of women, the duty of the current administration and lawmakers is to ensure that the ERA is added to the Constitution, which would then change the legal landscape of the courts and shape future Supreme Court decisions. But why should the current administration and lawmakers pass the ERA? Because it is a political action that most Americans want to be enacted. In January of 2020, 74% of Americans favored the ERA.³ In the Summer of 2020 there was an increase of 4% in favor of the ERA.⁴ Such widespread support should encourage politicians to push for the ERA.

² *Core issues - national organization for women*. National Organization for Women

³ *Women making history: Polls on the Equal Rights Amendment*. American Enterprise Institute

⁴ *Most Americans support gender equality, even if they don't identify as feminists*. Pew Research Center

Previously, pushback stemmed from the Stop ERA movement, arguing that it would “take away the privileges” of women.⁵ These including benefits from Social Security, gendered bathrooms, and being exempt from the military draft. While some of the arguments for Social Security and the military draft could be valid, many of the arguments made by STOP ERA and Phyllis Schlafly have lost their merit as society progressed. These arguments haven’t aged with time; as a Heritage Foundation article explained that writes, passing the ERA would lead to “government-financed abortion, state nurseries, same-sex marriage, and the elimination of female stereotypes in school textbooks.”⁶ With many of these concerns being addressed in legislation in 2022. Continuing to be resolved in many states, other states are going in the opposite direction, removing many rights that STOP ERA sought to keep in law decades ago., it is in no way guaranteed. Thus, passing the ERA can help avoid the backsliding that we have seen historically. Just because these rights are secured right now does not mean they will always be concrete. For examples, the recent Supreme Court decision in *Dobbs v Jackson Women’s Health Organization* removed the right to bodily autonomy from women, and the conservative court has now switched their crosshairs to address contraceptives and same sex or LGBTQ marriage. As Justice Thomas wrote in the opinion that the Supreme Court should “correct the error” established in *Griswold v. Connecticut* (contraceptive access), *Lawrence v. Texas* (same sex sexual activity), and *Obergefell v. Hodges* (gay marriage)⁷. The passing of the ERA, at the very least would help prevents the backsliding of Supreme Court decisions, but at its greatest potential can be a stone to build a more perfect union.

⁵ *Phyllis Schlafly's Stop Era Campaign Against Women's Equality*. ThoughtCo

⁶ *Ignore "Mrs. America." Here's the true story of Phyllis Schlafly*. The Heritage Foundation

⁷ *Dobbs v. Jackson Women's Health Organization*. Supreme Court of the United States

Section II: Broadening the Scope of the ERA

A: Transgender and LGBTQ+ Folk Left Unprotected

In conversing with LGBTQ+ members of Marshall University, it has become increasingly clear that LGBTQ+ people feel concerned for their rights. The ERA could provide concrete legal protection for those in the LGBTQ+ community. In the first three months of 2022 alone, almost 238 pieces of anti-LGBTQ+ legislation were filed. This wasn't just in the conservative states, but in all fifty states, which all had at least one anti-LGBTQ+ legislation filed within their legislative branch.⁸ Of the 238 filed, sixteen were enacted within the first half of 2022.⁹ That's almost the same amount of anti-LGBTQ+ legislation filed for the entire year of 2021; but of the over 250 pieces of legislation filed in 2021, 15 were enacted the same year. These included four religious refusal laws, two anti-LGBTQ+ education bills, and seven anti-trans sports bans (one of the states being our state of West Virginia).¹⁰ State and local legislators who are pushing for anti-LGBTQ+ legislation have increased their efforts, as the political landscape and talking points have switched to targeting culture war scapegoats rather than focusing on policies addressing the issues felt by many of their constituents. Looking at my home state of Florida, which recently passed the "Don't Say Gay" Bill, which was a massive blow to LGBTQ+ people across the state. The legislation bans teachers or schools from talking about anything regarding LGBTQ+ people out of fears of being sued, as well as making schools out LGBTQ+ students to their.¹¹ This is a lack of care for LGBTQ+ students, because outing them could lead to increased harassment at school and abuse at home. It

⁸ *Nearly 240 anti-LGBTQ bills filed in 2022 so far, most of them targeting trans people.* NBCNews

⁹ *Sixteen laws restricting the LGBTQ community passed in 2022.* USAFacts

¹⁰ *2021 officially becomes worst year in recent history for LGBTQ state legislative attacks as unprecedented number of states enact record-shattering number of Anti-LGBTQ measures into law.* Human Rights Campaign

¹¹ *Florida's governor signs controversial law opponents dubbed 'don't say gay'.* NPR.

also fails to protect teachers, allowing parents to sue teachers for speaking about LGBTQ+ experiences or being part of the community, and can lead to being fired or denied promotion. Multiple lawsuits across the nation are currently taking place because in 28 states, similar “Don’t Say Gay” bills have been enacted. As more right-wing candidates accuse LGBTQ+ resources or education as “grooming” students for abuse, those in the LGBTQ+ community painted by these horrific statements continue to receive harassment. Not only does it continue through law but becomes mainstream politics, as it amps up the right leaning base. In the aftermath of the “Don’t Say Gay” bill, online anti-LGBTQ+ rhetoric surged 400%.¹² This assault on LGBTQ+ rights and identity has gotten so bad that as this essay is being written, a new political PAC was formed just to try to combat anti-LGBTQ+ politicians.¹³ Moreover, with many Republicans taking a stand against LGBTQ+ rights and the community as a whole, it’s no surprise that all this legislation is being enacted now.

Yet, the little protections that are allotted to members of this marginalized community are being torn down bit by bit, rather than expanded in most states across this nation. This effort rests on the idea that by banning LGBTQ+ education and eliminating many of their protections, LGBTQ+ people will somehow go away, and that their existence is a perversion and an idea that is being taught in schools or being promoted by other LGBTQ+ people. It is almost always in the name of protecting people by removing protections for another group. It’s the same logic used against racial minorities in our nation's history that is now being militarized against the LGBTQ+ community.

¹² *After 'don't say gay' bill passed, LGBTQ online hate surged 400%.* NBCNews.

¹³ *New political PAC launches to take down Anti-LGBTQ candidates.* Forbes.

B: Status Quo of Discrimination to “Protect” Women

Currently, across the nation legislation is being passed to “protect” women. This notion that the government needs to push one person down to protect another is ethically and morally corrupt to begin with, but in the eyes of those in legislative power, it is as a net good to protect cis women from the other: trans women or men being “groomers”, to quote House Representative Marjorie Taylor Greene.¹⁴ This homophobic and transphobic policy and rhetoric is not pushed because they want to protect against “groomers,” it’s a rallying cry to strengthen a base against people who are different, thus helping a politician’s campaign. Human Rights Watch explains this phenomenon:

recently, a number of sweeping anti-LGBT laws have proved particularly popular as political tools. Legislation that bans "propaganda," "promotion" or even expressions of support for LGBT groups is an effective ban on ideas, affiliations and social activities as well as public expressions of identity and affection. As a consequence of their vague legal language, these laws give sweeping powers to governments wishing to curb opposition. It's easy to criminalize one's political opponents by accusing them of violating moral laws.¹⁵

This transphobia and homophobia being weaponized is why an amendment that protects against the active or inactive maliciously acting government officials is necessary. So, with that in mind, we can turn to what legislation has gone into effect to harm LGBTQ+ people across this nation.

i. Trans-Athlete Bans

Currently, eighteen states have enacted laws to ban trans athletes from competing to “protect” women competitors, and another ten have legislation that could pass by the end of the year.¹⁶ The idea that trans athletes are less “women” than their cis counterparts, even after hormonal treatment is absurd. The argument that cis women would be put at an unfair

¹⁴ *Marjorie Taylor Greene's transphobic Twitter Tantrum deemed 'hateful conduct'*. The Daily Dot.

¹⁵ *Homophobia as a political strategy*. Human Rights Watch.

¹⁶ *Transgender athletes face bans from girls' sports in 10 U.S. states*. The New York Times.

disadvantage to trans women competing in the same category is not backed by science. A joint study from researchers at the University of Loughborough and University of Nottingham, titled “Sport and Transgender People: A Systematic Review of the Literature Relating to Sport Participation and Competitive Sport Policies”, found that “Currently, there is no direct or consistent research suggesting transgender female individuals have an athletic advantage at any stage of their transition (e.g. cross-sex hormones, gender-confirming surgery) and, therefore, competitive sport policies that place restrictions on transgender people need to be considered and potentially revised.”¹⁷ Thus, the only reason politicians are so against trans athletes isn’t because they care about women’s sports, it’s because they are transphobic, or see political advantage in promoting such laws. This transphobia harms trans and intersex people.

Barring trans athletes from sport impacts trans community in several ways: they lose all the benefits of being an athlete, including fun physical activity, confidence, a decrease in anxiety, depression and suicide.¹⁸ Sports can be the cure for the high depression (51.4% for transgender women; 48.3 for transgender men), anxiety (40.4% for transgender women; 47.5% for transgender men)¹⁹ and other mental health issues present in the transgender community. While 68% of cis students are involved in sports, for trans students, it’s only 10 to 15%, which likely would decrease with more bans.²⁰ These laws also make trans folk across the nation outsiders, people who can’t participate in the American Dream of watching their kids play in Little League or play soccer. The fact that K-12 track meets have stricter regulations than the Olympics is absurd.

¹⁷ *Sport and transgender people: A systematic review of the literature relating to sport participation and competitive sport policies*. National Library of Medicine: Sports medicine.

¹⁸ *Physical activity and sports-real health benefits: A review with insight into the public health of Sweden*. National Library of Medicine: Sports (Basel, Switzerland).

¹⁹ *Anxiety and depression in transgender individuals: The roles of transition status, loss, social support, and coping*. Journal of consulting and clinical psychology.

²⁰ *A doctor explains why banning trans people from sports is wrong*. Them.

Even at the highest levels of competition, non-scientifically backed bans have been issued. Most notoriously, Lia Thomas, a competitive trans college swimmer, who was banned from competing even though she was on hormone treatment for a long enough time that she was indistinguishable in testosterone level from her competitors.²¹ If there is not a competitive advantage, the banning of trans athletes by the FINA, the governing body for swimmers, offends the idea of equality and comradery through sport.²² Overall, these trans bans blatantly target individuals for further harassment, just for being different.

ii. Bathroom Checks

In 2022, a school district in Virginia voted on a policy that gives it control over what bathroom a trans person can use, determined on a case-by-case basis. The *Richmond Times-Dispatch* August 30th, 2022 reported that the rule “will require transgender students to submit a written request to school administration asking for access to the schools’ facilities that align with the students’ gender identities. The School Board will have final say in the decision.”²³ Giving that power to a board and also making K-12 students show documentation to use the bathroom if they aren’t cis, violates their rights and equal treatment under the law. Yet this is only one example: the US District Court for the Eastern District of Kentucky made it so that trans students and workers must use the bathroom matching the sex assigned at birth, rather than what they identify with, forcing them to use public spaces that they do not conform to.²⁴ This can have devastating consequences on trans people; most notably on their mental health and ability to

²¹ *Why the data shows Trans Swimming champion Lia Thomas didn't have an unfair advantage.* The Independent.

²² *The world swimming body effectively bans transgender women from women's events.* NPR.

²³ *Hanover School Board passes policy to give board final say over each transgender student's access to bathroom.* Richmond Times-Dispatch.

²⁴ *Judge temporarily blocks White House directives on transgender use of bathrooms.* New York Post.

function day-to-day activities, as they feel invalidated and unseen by their peers.²⁵ While some states have adopted the total ban or restriction/monitoring of trans people in bathrooms, while others have looked at a different approach: a separate bathroom. It seems that history repeats itself, because this idea of “separate but equal” is the same exclusionary policies that were in place to separate minorities from their white counterparts. Similarly, by setting up separate bathrooms for transgender people, it reinforces the idea that people who are transgender are either harmful or less than their cis counterparts and must be segregated from the public. Both policies that have been sweeping the nation have incredibly harmful effects on trans people and can cause mental health illness that can even lead to physical harm.

iii. Imprisonment

Most states in the union have similar policies in place for the imprisonment of trans people: they are put in the prison that corresponds to the sex assigned at birth. This action leads to increased harassment and assaults on transgender individuals in the prison system. The ACLU notes in a specific case that “Jules Williams, a transgender woman, suffered sexual and physical assault and harassment multiple times while detained at the Allegheny County Jail between 2015 and 2017 in Pittsburgh. Even though she is a woman, which the state recognizes on her identification card, Ms. Williams was processed and incarcerated with men”²⁶ Ms. Williams isn’t the only one. Across the United States prison system, transgender inmates put in the prison system with the gender assigned at birth have a 35% chance in prisons and 34% chance in jails to be victims of sexual assault at the hands of guards or inmates within the first year of being in the

²⁵ *Misgendering: What it is and why it matters*. Harvard Health.

²⁶ *Transgender prisoners face sexual assault and discrimination at Pittsburgh Jail: News & Commentary*. American Civil Liberties Union.

system.²⁷ These statistics are alarming but not shocking, because these inmates are either put in the general prison population for a gender to which they do not belong, or something even worse, solitary confinement for their own protection. Solitary confinement is a mental and physical health nightmare. It strips inmates of humanity, isolates them from human interaction, and puts them in cells often smaller than parking spaces. Long periods of time of this is mentally incredibly destructive. Studies have shown that solitary can change personalities and cause permanent changes to the brain, including the physical shrinking of the brain's memory centers.²⁸ Solitary confinement also causes "social pain" from being deprived of human interaction, which affects the brain in the same way as physical abuse.²⁹ This is why it is no surprise that suicide rates of those held in solitary confinement increase astronomically. One study found that while solitary confinement inmates only make up 6%-8% of the prison population, they make up half of prison suicides.³⁰ Combine solitary confinement effects with the previous low mental health often present in the transgender community, and you have an deadly mix. While the solution is clear, lawmakers who are transphobic and see trans people by their sex at birth will ultimately make the issue worse for transgender prisoners, for the sake of "protecting" the rest of the prison population.

iv. Adoption

Starting a family "presents a challenge for many in the LGBTQ+ community; often adoption solves that challenge. Recently, adoption discrimination has been given the stamp of approval by the Supreme Court. In *Fulton v. City of Philadelphia*, the opinion of the court was

²⁷ *Survey: Transgender inmates more likely to be victims of sexual assault*. CBS News.

²⁸ *Law & neuroscience: The case of solitary confinement*. American Academy of Arts & Sciences.

²⁹ *The Science of Solitary: Expanding the harmfulness narrative*. (n.d.). Northwestern Law.

³⁰ *The research is clear: Solitary confinement causes long-lasting harm*. Prison Policy Initiative.

that “the refusal of Philadelphia to contract with CSS (Catholic Social Services) for the provision of foster care services unless CSS agrees to certify same-sex couples as foster parents violates the Free Exercise Clause of the First Amendment.”³¹ This court ruling has opened the doors for states and organizations to prevent same sex couples or other LGBTQ+ couples from adopting. While recent Supreme Court precedent has allowed LGBTQ+ individuals to not be denied marriage, and thus also adopt from state run institutions (If the state does not ban them), private organizations such as religious groups can now ban them from adopting. Not only that, but if the right-leaning court was to have its way, it would ban LGBTQ+ marriage and adoption, as Justice Thomas stated in the opinion of *Dobbs v. Jackson Women’s Health Organization*.³²

C: Healthcare Access for LGBTQ+ Citizens

Access to healthcare is something that everyone should be able to have, like clean drinking water healthy abodes; yet in the United States, these basic principles seem to be quite foreign. Most Americans as it stands have difficulty getting access to healthcare, with 1 in 5 Americans not having ready access.³³ Yet American policymakers and healthcare providers look to make that statistic worse by denying LGBTQ+ patients’ treatment or giving patients subpar treatment in comparison to straight patients. A 2017 study by the Center for American Progress lays out the discrepancies and outright disregard from healthcare providers when they state:

8 percent of lesbian, gay, and bisexual respondents and 29 percent of transgender respondents reported that a healthcare provider had refused to see them because of their sexual orientation or gender identity in the past year, 21 percent reported that healthcare providers spoke to them using abusive language, and 12 percent of transgender patients were denied gender transition care by their provider. Interviewees also described being denied counseling and therapy, refused fertility

³¹ *Fulton v. Philadelphia*. Cornell Law School Legal Information Institute.

³² Supreme Court of the United States. *Dobbs v. Jackson Women’s Health Organization*

³³ *New study: 56 million Americans lack access to basic medical care*. Robert Graham Center for Policy Studies in Family Medicine & Primary Care.

treatments, denied a checkup or other primary care services, and in one instance, told that a pediatrician's religious beliefs precluded her from evaluating a same-sex couple's 6-day-old child.³⁴

This denial of basic healthcare creates a stigma for LGBTQ+ Americans who want to get checkups with their local doctors. A 2020 Center of American Progress study finds that:

discriminatory experiences have also prevented LGBTQ Americans from seeking medical assistance: 15 percent of respondents overall, including 28 percent of transgender respondents, reported postponing or avoiding needed medical care when they were sick or injured due to disrespect or discrimination. Sixteen percent of respondents overall, including 40 percent of transgender respondents, reported postponing or avoiding preventive screenings due to discrimination.³⁵

These discriminatory experiences that lead to postponing or avoiding needed medical care can have serious mental and physical consequences.

When LGBTQ+ Americans are denied or treated poorly by their healthcare provider on the basis on being a member of the LGBTQ+ community, this discrimination in itself has been associated with higher rates of mental health issues and suicide, with LGBTQ+ adults more than twice as likely to experience a mental health condition than straight adults, while transgender adults are nearly four times as likely.³⁶ This likely means that there are LGBTQ+ people in this nation who are suffering from mental health issues, but simply will not go out to get adequate treatment because they feel or know their provider will not provide them with any. This discrimination only exacerbates the many mental health issues that are plaguing the LGBTQ+ community and manifesting into physical harm.

When LGBTQ+ Americans do not seek treatment, their physical health is negatively affected. A Human Rights Watch report that "LGBTQ individuals can struggle to find services such as HIV prevention and treatment, hormone replacement therapy, and even basic primary care where they live. Reports of refusal of care are not uncommon within the LGBTQ+

³⁴ *Discrimination prevents LGBTQ people from accessing health care.* Center for American Progress.

³⁵ *The state of the LGBTQ community in 2020.* Center for American Progress.

³⁶ *LGBTQI.* National Alliance on Mental Illness

community.”³⁷ Without access to healthcare services, preventive measures against HIV infection becomes more difficult to receive. With LGBTQ+ people having the greatest need, drugs such as PrEP can significantly reduce their risk of an HIV infection. With over 1.1 million Americans living with HIV, access to newer preventive strategies such as PrEP and HIV treatment is necessary to reduce the risk of HIV transmission.³⁸ Not only should LGBTQ+ people have readily available access to drugs that prevent deadly disease, transgender people should also have access to resources to help with transition, such as puberty blockers, hormones, and/or gender-affirming operations. By providing equality through healthcare access, the U.S. physically changes the landscape LGBTQ+ people can not only live in, but also thrive in.

³⁷ *US: LGBT PEOPLE FACE healthcare barriers*. Human Rights Watch.

³⁸ *HIV by the numbers: Facts and statistics*. Verywell Health.

Section III: Clarification to Prevent Discrimination

A: Solidify Positive Supreme Court and Past Legal Precedent

Historically, many of those in opposition to the ERA look at it from a cis straight women perspective. This perspective leads to the argument that the ERA is no longer needed because of previous statutes such as Title VII, Title IX, and other legislative acts, as well as the 14th Amendment which states that no person should be denied equal protection under the law. In practice, however, the application of the 14th amendment is left to interpretation. As explained by ERA Education Project “(the 14th Amendment) allows courts to interpret the ruling as they see fit, with absolutely no guarantees of consistency from case to case. Courts also evaluate cases of governmental sex discrimination under an “intermediate” standard of review, and not under “strict scrutiny,” the highest level of judicial review that applies to cases of race bias. Claims of sex discrimination typically require extremely persuasive evidence to stick.”³⁹ This issue of courts only sometimes ruling to the benefit of those who have had their rights undermined can be resolved by passing the ERA. The ERA will protect cis straight women, and all women and LGBTQ+ people by defining sex to encompass sexual orientation and or gender.⁴⁰

Many could have a reasonable speculation that sex wouldn't be all encompassing to gender or identity. This argument is present most notably and recently in the Supreme Court's 2020's, *Bostock v. Clayton County* decision. The court ruled in favor of Bostock, a gay man who worked for Clayton Country Child Welfare Services at the Juvenile Court and also played softball in a gay league. Clayton County later fired him because of his participation in the league and his sexual orientation. This decision prohibited employment discrimination based on sex at

³⁹ *Doesn't the 14th amendment already guarantee women equal rights under the law?* ERA Education Project

⁴⁰ *The Equal Rights Amendment and the Equality Act: Two equality measures explained.* The Equal Rights Amendment and the Equality Act: Two Equality Measures Explained | The Center for Gender and Sexuality Law Columbia University

the government level, which extended to sexual orientation and gender.⁴¹ Ratifying the ERA would ensure equality through the public sector and public laws, and every American would have equal protection under the law, securing their rights. This broad definition makes sure that Supreme Court decisions regarding sex are solidified, and overall Americans are better protected against oppression from the federal, state, and local governments. You might ask, if the Supreme Court has become increasingly volatile, what stops the Supreme Court from removing these protections established by *Bostock v Clayton County*? The answer is quite simple, a Constitutional amendment. If the ERA were a Constitutional amendment, the Supreme Court must rule based on the Constitution and its amendments. The definition set in place by the ERA would guarantee these protections not just for straight cis men and women, but all individuals, which the LGBTQ+ community is a part of. But to ensure that American Courts do not misinterpret the ERA, passing the Equality Act is critical to solidify the rights of all Americans.

B: ERA and Equality Act Working Together

One of the main issues is the ERA's ratification as a Constitutional amendment. It got the necessary 38 state approval only a couple years ago, but even after that, issues of its legitimacy have come about. More notably, whether the ERA deadline for implementation is Constitutional, and if so how would a deadline work. The other Constitutional question is whether the states have the right to rescind their ratification of an amendment. These questions will ultimately, if Congress does not get involved, fall into the hands of the Supreme Court to decide.⁴² While this issue could fall under the political question doctrine which allows federal courts to refuse to hear a case if they deem it to present a political question, thus be denied by the Supreme Court, there

⁴¹ *Bostock v. Clayton County, Georgia*. Cornell Legal Information Institute

⁴² *Will the Supreme Court strike down the Equal Rights Amendment?* The Hill.

are currently legal battles being held in Federal District Courts in Nevada, Virginia, and Illinois regarding the National Archivist's refusal to make the ERA a Constitutional amendment based on amendment ratification deadline having expired.⁴³ The other argument (with less legal and logical credibility) is the idea that states can rescind ratifications for Constitutional amendments. This concept is incredibly flawed in nature as if this were possible, states could move to rescind Constitutional protections, a devastating blow for the creation of a more perfect union.

The way to combat this is through Congress. This should occur in a two-pronged approach: passing the Equality Act and removing the deadline for the ERA. Just as it was politically advantageous for President Joe Biden to forgive student loans, the Democrats need to pass the Equality Act through the Senate while they have the majority because, as polls show, most Americans support the ERA. The Equality provides a more encompassing definition than the ERA. It states

This bill prohibits discrimination based on sex, sexual orientation, and gender identity in areas including public accommodations and facilities, education, federal funding, employment, housing, credit, and the jury system. Specifically, the bill defines and includes sex, sexual orientation, and gender identity among the prohibited categories of discrimination or segregation.⁴⁴

This legislation would give the same protections in the short term to Americans while the issues with the ERA get resolved. The other, more permanent solution, in tandem to the Equality Act is to pass in the Senate House Joint Resolution 17 which removes the deadline for the ratification of the Equal Rights Amendment. When it comes to both the Equality Act and the ERA, Democrats are united as one, with Joe Manchin, who is often a swing voter on Democratic proposals, publicly stating his support for the Equality Act and the ERA.⁴⁵ This means that if the Senate were to pass this legislation, it would in turn remove the issue of a deadline, which was

⁴³ *The Equal Rights Amendment: Recent Developments* - Congressional Research Service.

⁴⁴ *H.R.5 - 117th Congress (2021-2022): Equality act.*

⁴⁵ *Manchin statement on the Equality Act.* U.S. Senator Joe Manchin of West Virginia.

the best contention for not making the ERA the 28th amendment, and allow for it to finally be made the 28th amendment. Passing the Equality Act sets a broader, more encompassing definition than the ERA, preventing its misinterpretation long term, and allowing for protections to come quickly into effect while the ERA finalizes the process of being made a Constitutional amendment. Before the next election, Democrats should be tasked with passing the ERA and Equality Act in the Senate to ensure that the rights of all Americans shall be protected.

Conclusion

The best way our democracy can continue to thrive is to provide robust overarching protections for all, especially groups that continue to be marginalized at the hands of those in power at all levels of government. The way we can ensure a future that is just, allows for freedom of expression, and does not threaten any citizen, is to pass the Equal Rights Amendment. It also goes without saying that passing legislation that provides extra protections or clarifies existing ones would ensure that those holding political power are not able to misinterpret the laws set forth. If people have the means of power, it should be our goal to both provide impenetrable shields of protection to all and to prevent future backsliding. By passing the ERA, the nation sets in stone that nobody will be denied equality on any basis: not race, class, sex, or gender identity or expression, a stride that would be a large step in the march for a more perfect union.

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