

The Case for and against ERA

Read the ERA amendment. Then read the two opposing views of the ERA, and complete the chart and question that follow. Be prepared to debate your views with others in the class.

Proposed Equal Rights Amendment, 1972

- Section 1. Equality of rights under law shall not be denied or abridged by the United States or by any State on account of sex.
- Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
- Section 3. This amendment shall take effect two years after the date of ratification.²

For the ERA: Marlow W. Cook, 1973

In a 1776 letter to her husband, Abigail Adams requested that U.S. laws be formulated to no longer treat women as "vassals." She wrote: ". . . and by the way in the new Code of Laws which I suppose it will be necessary for you to make I desire you would Remember the Ladies, and be more generous and favourable to them than you ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If particular care and attention is not paid to the Ladies we are determined to foment a Rebellion, and will not hold ourselves bound by any Laws in which we have no voice, or Representation."

Two hundred years later, America has finally begun to take Mrs. Adams' request seriously. Congress has proposed, and 30 states have ratified the Equal Rights Amendment . . . To become law, the Amendment must be ratified by 38 states. . . .

I believe there is practical unanimity among Americans that women should be extended equality of status, rights and opportunities in our laws. What controversy there is concerns extending equal responsibilities to women. As a matter of simple justice and common sense, equal rights and *responsibilities* must be extended to all citizens without discrimination.

I say this for a number of reasons, the primary being that one is not possible without the other. Any exceptions used to escape the responsibilities of citizenship can be just as easily used to deny equality of rights of citizenship.

Another reason that equal rights and responsibilities should be extended to women is the psychology of inferiority that results when classes of persons otherwise equally capable are not treated equally. The Supreme Court recognized this psychological effect in *Brown v. Board of Education* with regard to race. . . .

The important point is that the current trend in formulating and interpreting our laws is that the sex characteristic bears no relation to ability to perform or contribute to society. This means that nearly every argument opposing the Equal Rights Amendment overlooks the present trend toward equality which could accomplish much of what the ERA will. Those who would opt for "protecting" women have already lost the war. . . .

We need a more definite standard by which judges, legislatures and public officials can act. We need a standard which cannot be abrogated by future courts or public officials. . . .

²Congressional Record, 92nd Cong., 2d sess., 1972, 118, pt. 8:9598.

The ERA would become effective two years after the date of ratification. During those two years, the federal and state legislatures would have a tremendous incentive to re-examine their laws in light of the new and definite standard of equality for women and men. . . .

The purpose of the amendment is simply to end the unequal treatment under the law to which women have been subjected since the Constitution was first adopted. It is important to note that the only kind of sex discrimination which this would forbid is that which exists in law. Interpersonal relationships and customs of chivalry will, of course, remain as they always have been, a matter of individual choice.

It has been stated by some, that the ERA would deny women the "automatic" right to support, custody and alimony in the area of domestic relations law. These rights under present law are often illusory if they are granted at all. . . .

The Equal Rights Amendment will require laws that discriminate on the basis of sex to be rewritten, but not drastically changed. Rather, the rights of spouses and parents will simply be viewed more equitably under the ERA than under present laws.

In other areas of domestic relations law, women stand to gain a great deal: the right of a separate domicile, the right to contract when married, the right to consortium, the right to one's own name, and the right to marry or divorce on an equal basis with men. . . .

A second area of supposed "protections" that women would lose under the Equal Rights Amendment concerns the draft-exempt status that women have held up to this time. This is indeed a policy question, just as drafting of men is. The Senate Report and Senate floor debate in defeating riders to the Equal Rights Amendment make clear that any draft law under ERA could not discriminate on the basis of sex. . . .

Much of the wind has been sucked from the sails of the opponents of the ERA by the outstanding performance of our military women in combat areas of Southeast Asia. . . .

Without a draft, women would have to be allowed to volunteer for service on an equal basis with men. Assignments of personnel would remain as they always have been, on the basis of individual capability and the needs of the service.

One recurring "red herring" opponents have argued is in the area of the right to privacy. As the Senate Report states and floor debate further attests to, the legislative intent of the ERA is that the right to privacy in private bodily functions such as sleeping, disrobing, and bathing will remain, even if this means separation of the sexes in state dormitories, prisons, military barracks or ships. . . .

Under the ERA, any state would be free to enact legislation that truly protects persons from dangerous working conditions and courts could extend benefits to discriminated classes of workers, rather than denying benefits (if they are truly beneficial) to men.

In the area of criminal law, it has been said that women will lose the protection of rape laws under the ERA. The legislative history of the Amendment is clearly contrary to that opinion. . . .

Women have faced widespread discrimination in the areas of education and stand to lose no "protections" here. Discrimination in admission to college, graduate and professional schools is widespread, as is discrimination against women in every level of the teaching profession. . . .

Congress, through legislation, has already taken steps to assure equality in schools receiving federal funds, with limited exceptions. But it is time to assure, through a constitutional amendment, that no one will be denied equal educational opportunity by the state. . . .

Once the effects of the ERA are understood, it can be readily seen that no real "protections" will be lost by women, but many rights and opportunities will be gained.³

Against the ERA: Trudy Camping, Arizona State Senator, 1975

Is the Equal Rights Amendment needed, or will it bring even more problems to be solved?

The most important point to remember is that when the State Legislatures ratify the ERA, they are not merely agreeing with the symbolic and philosophical issues of women's rights, they are establishing legal language which must be strictly adhered to. If the U.S. Constitution contained the sentence, "Equality of rights under the law shall not be denied or abridged by the United States or by a State on account of sex," the language itself would admit to no exceptions. It would be an indiscriminate amendment, forcing completely equal treatment of the sexes when that is not particularly advantageous or desired. Such a rigid requirement of equality would be unworkable and would lead to greater injustices for women and men.

To examine the consequences of ratification, Virginia established a task force to study the effects of the ERA on that State's laws. The final report concluded that women's position would be extensively damaged by the ERA because it would all but destroy the protective legislation that has been enacted to help them. Statutory rights or exemptions now given women concerning employment, marital and child support, alimony, rape, seduction, and military draft would be completely invalidated rather than being extended to men. Separate sleeping and toilet facilities would not be legally justified if the ERA were ratified. Women cannot afford to lose these laws which have given protection in special areas of need. . . .

Section 2 says that "Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." If the ERA was ratified, it would preempt the present right of individual States to legislate in this area and should not be allowed. It is essential that the States retain their right to enact laws for women. A federal, congressionally influenced set of equal rights for the sexes is not in the best interests of the States or the women and men living in them. In some instances, a national law has been useful, such as in civil rights, employment, or other legislative areas, but women's rights should be kept to the States. . . .

³Marlow W. Cook, "For the ERA," *Trial* 19 (November/December 1973), in *Documents of American Constitutional and Legal History*, ed. Melvin Urofsky (New York: Alfred A. Knopf, 1989), 414-19.

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Date _____

State legislation has many advantages, the most significant being that it could relieve a known problem without producing any undesirable side effects. . . .

Some progress has been made with state action and court decisions. Litigation has expanded and will continue to expand definitions for women's occupational and marital rights and several States have enacted equal rights legislation. For example, the Arizona Legislature in 1973 enacted two bills dealing with employment, providing equal pay for equal work and allowing an employee to collect triple damages for wages wrongfully withheld. Another measure was an extensive piece of legislation providing equality under the law for both sexes. In 1975, several bills were introduced to amend the state constitution to conform with the antidiscrimination laws previously passed.

Other States should follow this example and enact positive equal rights legislation. The danger in the ERA is its potential to radically change established, time-proven family and sexual relationships. Something as basic as the American family cannot be altered without some expectation of profound disturbances of the Nation's foundation. No one can deny the need for equality between men and women, but the ERA is not the way to achieve it.⁴

List arguments for each side in the chart below.

For ERA	Against ERA

Which side presents the best argument? Why?

⁴*Congressional Record*, 91st Cong., 2d sess., 1975, in *Great Issues in American History: From Reconstruction to the Present Day*, ed. Richard and Beatrice Hofstadter (New York: Vintage Books, 1982), 483-85.