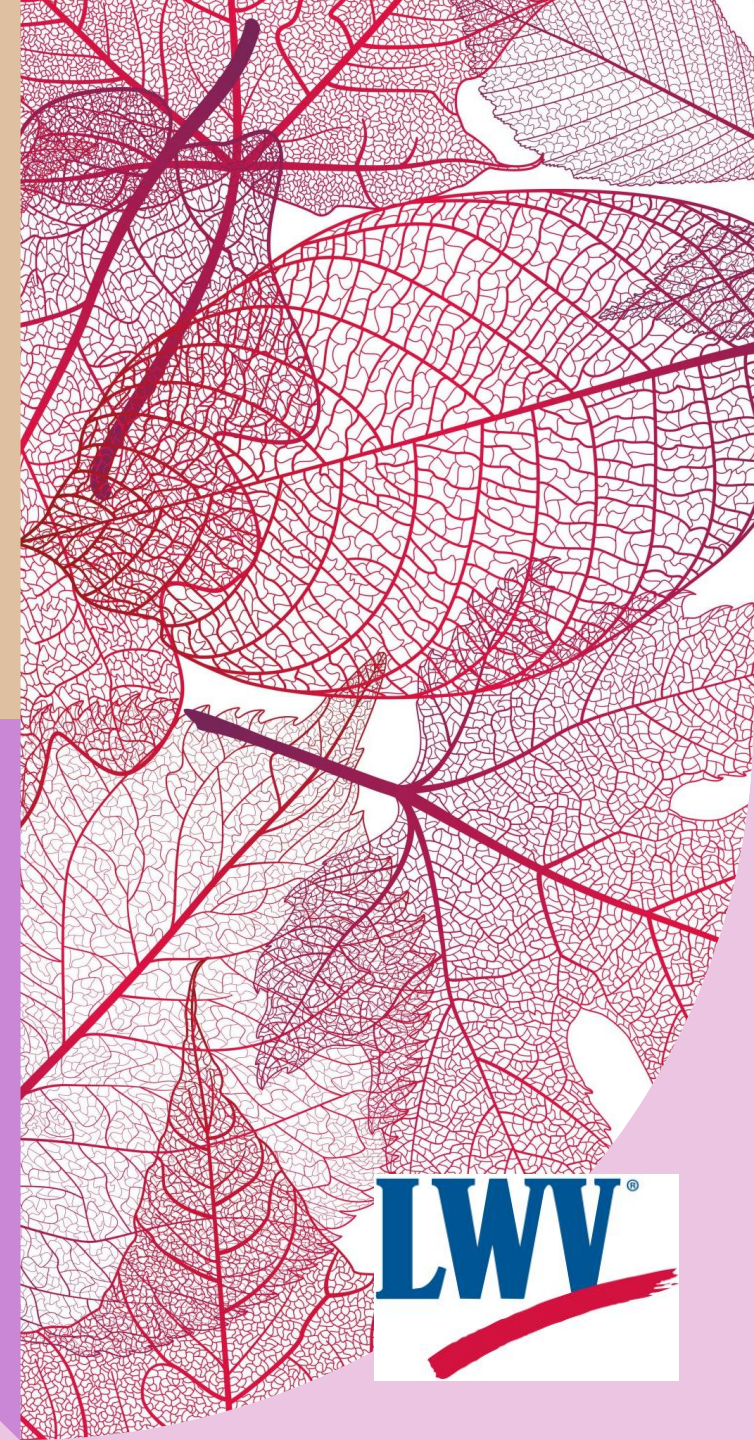


Reproductive Rights Committee Update - Reproductive Rights and the ERA Amendment

League of Women
Voters of Metro St. Louis

April 2023



The League's Position on Reproductive Rights

- Statement of the Position announced by the National LWV Board, January 1983:
- The League of Women Voters of the United States believes that public policy in a pluralistic society must affirm the constitutional right of privacy of the individual to make reproductive choices.



League History on Reproductive Rights

- 1983 LWWUS successfully pressed for defeat of S.J. Res.3, a proposed constitutional amendment that would have overturned 1973 Roe v. Wade, the U.S. Supreme Court decision that declared the right of privacy includes the right of a woman, in consultation with her doctor, to decide to terminate a pregnancy.
- The League joined as an amicus in two successful lawsuits challenging proposed regulations by the federal Dept. of Health and Human Services, thus thwarting attempts to implement regulations requiring parental notification by federally funded family planning centers that provide prescription contraceptives to teenagers.



Continue League History

- 1990 LWWUS joined the national Pro-Choice Coalition and began work in support of the *Freedom of Choice Act*, designed to place into federal law the principles of Roe v. Wade. LWWUS continued to work for passage in 1991, 1992 and 1993.
- 1993-2004 LWWUS lobbied Congress over multiple attempts to limit reproductive freedom, including opposing amendments denying Medicaid funding for abortion for victims of rape and incest.
- March 2004. LWWUS lobbied in opposition to the *Unborn Victims of Violence Act*, which conveys legal status under the Federal Criminal Code to an embryo and fetus, but Congress passed the bill and President George W. Bush signed it!



Continue League History

- 2012, the League successfully fought attempts in Congress to allow any employer or provider who claimed a “religious or moral” objection such as reproductive health care, to be exempted from providing coverage under the Affordable Care Act. The League opposed this exemption which would undermine the ACA premise that all persons should be eligible for health care services, regardless of gender.
- 2019- the Supreme Court ruled in favor of religious exemption in the Hobby Lobby case.
- There have been many other cases where the LWV stood up for reproductive rights



Purpose of the Reproductive Rights Committee

- The St. Louis Committee was established in July 2022 in response to the Supreme Court's decision to overturn Roe V. Wade to stand up for reproductive rights.
- Goals of the committee:
 - To co-ordinate with other groups with similar interests to strengthen our stance, such as Planned Parenthood and Pro-Choice Missouri
 - To monitor reproductive healthcare legislation, and take positions on bills
 - Educate and inform our members about upcoming legislation
 - Inform and incentivize the public about legislative and social issues through rallies, protests and literature



What has the committee done so far? Fall 2022

- We have met with representatives of Planned Parenthood and Pro-Choice Missouri to be able to communicate and support our mutual interests.
- We sponsored a LWV table at the newly formed Lincoln County Reproductive Rights Advocates. Proceeds went to the Missouri abortion fund.
- The LWVMO ERA Chair, at the prompting of members of our committee, convinced the LWVUS to organize a national letter writing campaign to try to get the Senate to vote to extend the timeline for passage of the Equal Rights Amendment. Unfortunately, time ran out in the last congress before the bill could be brought to the floor of the Senate.



Activity in Winter/Spring 2023

- January 22, 2023, LWV sponsored a table at “Bigger than Roe” rally on the 50th anniversary of Roe V. Wade
- Currently monitoring 23 Missouri House and Senate bills affecting reproductive rights, some advocating for reproductive rights and some restricting them
- Bills we support:
 - SB 108 Repeals the trigger law
 - HB 617,618,619: Exceptions for abortion after fetal death (miscarriage), rape or incest, emergency contraception after sexual assault
 - HB 1111 (Weber) Protects abortion until the fetus is viable
 - HB 1112 Abortion excludes birth control and contraceptives used after intercourse to prevent pregnancy



Activity in Winter/Spring 2023

- Bills to Oppose
 - HB 163 (Seitz) and SB 491 (Cierpot) Makes it an offense for distribution of abortion inducing drugs. (Medication abortions account for 53% of all US abortions)
 - HB 167 (Sietz) and SB 356 (Moon) Rights of unborn child begin at conception; Abortion as murder: victim is fetus and defendant is mother. Known as the Abolition of Abortion in Missouri Act.
 - SB 453 (Moon) Establishes cause of action against anyone who performs or induces abortion, anyone knowingly aids and abets, not less than \$10,000 for each violation
 - SJR 19 (Moon) Recognizes that nothing in the MO Constitution shall be construed to secure or protect a right to abortion



Current legislation in MO

- HB 254 (SB 90, SB 45, HB 957)
- Extends MO Healthnet for pregnant and post partum women and their infants from 60 days post partum to 12 months. Passed both the House and Senate. In conjunction with Gov Parson's State of the State trying to reduce the embarrassingly high maternal/infant mortality in MO, WITH AN EXCEPTION FOR WOMEN WHO HAVE POREVIOUSLY HAD AN ABORTION



Current Legislation in MO

- Bills we opposed that passed

SB 160 and SJR 8- No Public funds shall be expended to any abortion facility including MO Healthnet.

- **The implication is gutting Planned Parenthood in MO. Because they are affiliated with Planned Parenthood in other states that provide abortions, they cannot receive any state funding for any services, including cancer screenings, std testing and treatment, etc. 50% of patients on Medicaid rely on Planned Parenthood for these services.**
- **There are not enough providers who take Medicaid so these services will be denied.**



Related or Overlapping bills

- HB 137 Human sexuality teaching in schools: Promotes abstinence; Does not allow any person or sponsor of abortion to offer information.
- SB 39 (and about 15 more) Trans youth sports ban. There are only 4 children in Missouri who would be impacted
- Education Committee is following these



Planned Parenthood Lawsuit April 2023

- Planned Parenthood of the St. Louis Region and Southwest Missouri sued in response to Republican Attorney General Andrew Bailey demanded documents from Planned Parenthood because the clinic provides “life altering gender transition drugs to children with any therapy session ”
 - Actual fact: PP provides gender affirming care to adults and teens ages 16 and older
- Planned Parenthood argued that Bailey doesn't have the authority to investigate the clinic which is inspected by the state health department
- Bailey announced plans to file an emergency rule to restrict health care for transgender children, requiring an 18 month waiting period, 15 therapy sessions and additional mental health treatment before Missouri doctors can provide gender-affirming care to minors



Lawsuit: Abortion Trigger Law Violates the Missouri Constitution's Separation of Church and State

- Filed on January 19, 2023, and sponsored by Americans United for Separation of Church and State and the National Women's Law Center
- Missouri lawmakers established the Trigger Law using the following language:
 - Almighty God is the author of life
 - "being from the biblical side of it, I've always believed that life does occur at the point of conception"
 - " as a Catholic I do believe life begins at conception. That is built into our legislative findings in current law"



MO Constitution has 3 provisions protecting religious freedom

1. The provision against an establishment of religion
2. The provision prohibiting the state from compelling any person to support a particular religious belief
3. The provision against state aid in support of any church, denomination or sect



Who filed the lawsuit?

- Thirteen Christian and Jewish leaders are suing the state and six elected prosecutors to block the abortion ban that took effect upon the defeat of Roe in June 2022
- At a news conference, Rev. Traci Blackman stated, "Our elected officials have violated their oath to uphold the constitution by weaponizing religious beliefs to deny abortion access in a state where studies prove these actions are not the will of the majority of the people."



The Trigger law as well as several others are challenged on the same basis

- 72- hour mandatory delay before abortion
- Medication abortion restrictions
- Trigger law requiring 5-15 years in prison if violated
- MO funds 74 of 114 anti-abortion fake clinics. \$8.66 million state dollars were in the 2022 budget for these clinics



Legislation that has been referred to committees but not voted on yet:

- HB 137-Changes in instruction on. Human sexuality in school: promoting abstinence; does not allow information on abortion from any sponsor of abortion; does not require schools to provide info on sexual orientation or gender identity.
- SB 62- Excludes the use of birth control from the definition of abortion
- SB 108- Repeals prohibition of abortion in MO (trigger law)
- SB 356- Abolition of abortion in MO. Abortion as murder: victim is child and defendant is the mother
- SB 453-Civil actions for violation of abortion laws. Fines not less than \$10,000 for each violation, for anyone who performs, induces, aids or abets in an abortion
- SJR 19- Recognizes that nothing in the MO constitution shall be construed to secure or protect the right to an abortion



Texas Lawsuit

- A Texas lawsuit was filed against the FDA by a coalition of anti-abortion groups, and four anti-abortion doctors. It seeks to overturn the approval nearly 23 years ago of mifepristone, the first pill in a two -drug medication abortion regimen.
- The case was heard on March 15 by a judge who has written critically about Roe v. Wade and worked for a Christian conservative legal organization.
- Over 50% of abortions are obtained via medication, safer than procedural abortions. It is also the drug given after miscarriage to protect the mother from infection.
- If mifepristone is taken off the market, every state, not just pro-life states, will be affected
- April 7-Federal Judge Matthew Kacsmaryk issued a preliminary ruling invalidating FDA approval of mifepristone. He also said it is a violation of the 1873 Comstock Act, which makes it illegal to send contraceptives through the mail.
- Within an hour , federal Judge Thomas O Rice in Washington state issued an injunction prohibiting the FDA from pulling mifepristone from the market. Now likely to go to the Supreme Court



Limiting MO Reproductive Rights

- Most MO bills that protect the reproductive rights of MO women were not referred to committees for hearings.
- 7 of the 9 bills limiting women's reproductive rights have been referred to committees for a hearing

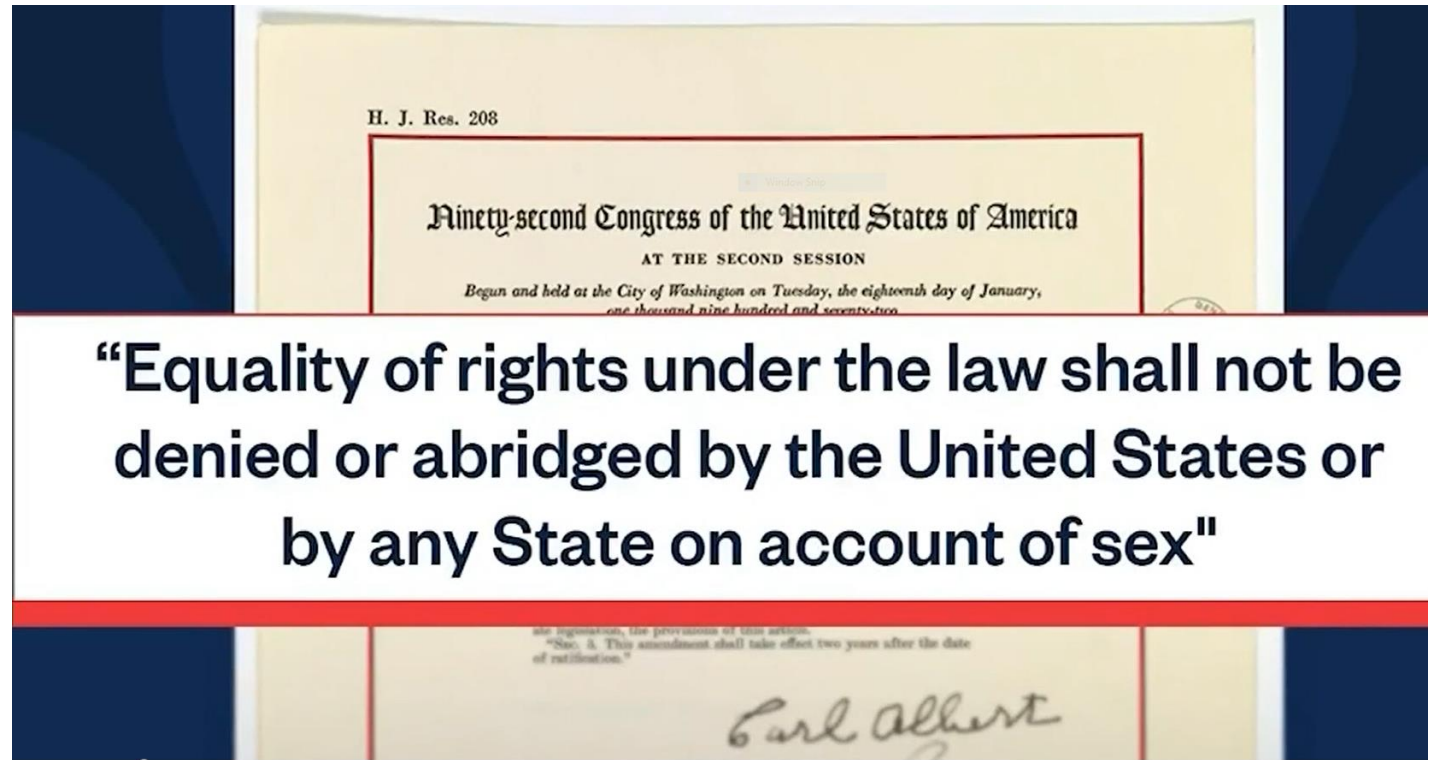




TELL CONGRESS
THAT **EQUALITY**
BELONGS IN THE
CONSTITUTION



**What does the
Equal Rights
Amendment
actually say?**



LWV support of the ERA

- **LWV has fought hard for passage and ratification of the ERA since the 1970s.**
- **LWV seeks to secure equal rights and equal opportunity for all. We promote social and economic justice and the health and safety of all Americans.**
- **LWV supports equal rights for all under state and federal law regardless of sex, race, color, gender, religion, national origin, age, sexual orientation, or disability.**
- **LWV supports final publication of the fully ratified Equal Rights Amendment and efforts to bring existing laws into compliance with the goals of the ERA.**
- **Leagues across the country have worked to engage lawmakers and organize at the grassroots level to ensure equal rights for all, regardless of sex.**



Most Voters Mistakenly Believe Women and Men Are Guaranteed Equal Rights Under the Constitution

As far as you know, are men and women guaranteed equal rights under the U.S. Constitution?



May 18–23, 2022 survey of 1,154 likely voters

DATA FOR PROGRESS

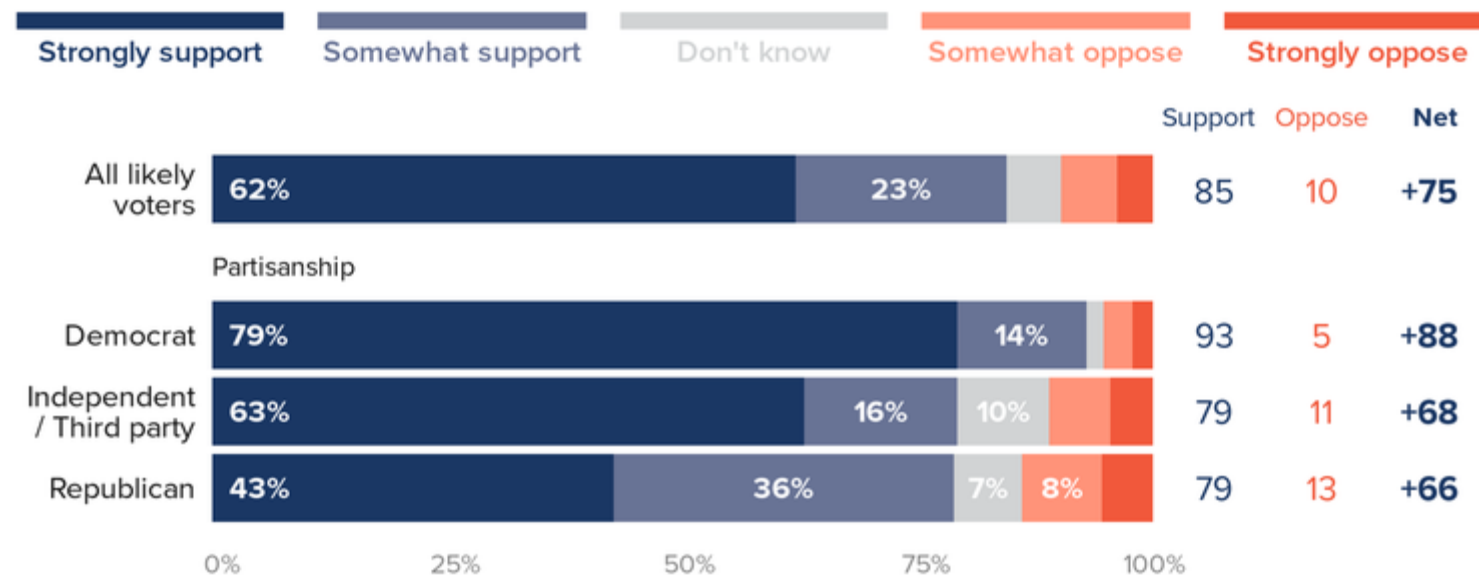
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An Overwhelming Majority of Voters Support Congress Passing the Equal Rights Amendment

The Equal Rights Amendment (ERA) is a proposed amendment to the U.S. Constitution. The ERA would guarantee equal legal rights for all citizens regardless of their sex.

Would you support or oppose Congress passing the Equal Rights Amendment?



May 18–23, 2022 survey of 1,154 likely voters

DATA FOR PROGRESS



Why do we

need the

ERA?

Without the ERA, the U.S. Constitution does not explicitly guarantee that the rights it protects are held equally by all citizens without regard to sex.

The equal protection clause of the U.S. Constitution's 14th Amendment was first applied to sex discrimination only in 1971, and it has never been interpreted to grant equal rights on the basis of sex in the uniform and inclusive way that the ERA would.

The ERA would provide a clearer judicial standard for deciding cases of sex discrimination.

The ERA would provide a strong legal defense against a rollback of the significant advances in women's rights that have been achieved since the mid-20th century.

In an interview reported in the January 2011 California Lawyer, the late Supreme Court Justice Antonin Scalia disregarded 40 years of 14th Amendment precedent when he stated that the Constitution does not protect against sex discrimination. This remark has been widely cited as clear evidence of the need for an Equal Rights Amendment, in order to guarantee that all judges, regardless of their judicial or political philosophy, will have to interpret the Constitution to prohibit sex discrimination.



Don't these Federal laws already provide enough legal prohibitions of sex discrimination?

- "Equal Pay Act (1963)
- Title VII of the Civil Rights Act (1964)
- Title IX of the Education Amendments (1972)
- The Equal Credit Opportunity Act (1974)
- Pregnancy Discrimination Act (1978)
- The Lilly Ledbetter Fair Pay Act (2009)

While these laws do protect women from gender-based discrimination, court rulings over the years since their passage have created legal precedent regarding how the laws can be interpreted and enforced, often to the detriment of what the laws were originally intended to protect women from. Without the ERA, gender-based discrimination is becoming harder and harder to prove in a court of law.



**What the ERA
Amendment
Would NOT
Do: Don't
Listen to the
Fearmongers**

Require	Require women to be drafted into the armed services
Force	Force the sexes to use the same restrooms
Cohab	Cohabitate women and men in correctional institutions
Erode	Erode laws designed to protect women in abusive situations
Undo	Undo any of the laws currently on the books that protect women



Why is it a myth that the ERA would require women to be drafted into military service?



The lack of an ERA in the Constitution does not protect women against involuntary military service. Congress already has the power to draft women as well as men, and the Senate debated the possibility of drafting nurses in preparation for a possible invasion of Japan in World War II.

The Department of Defense's 2015 decision to open all combat positions to women has resurrected the public debate about whether a future draft would include women. It is virtually certain that a reactivated male-only draft system would be legally challenged as a form of sex discrimination, and it would most likely be found unconstitutional, with or without an ERA in the Constitution..

The immediate practical value of putting the ERA into the Constitution would be to guarantee equal treatment for the women who voluntarily serve in the military and to provide them with the "equal justice under law" that they are risking and even sacrificing their lives to defend.

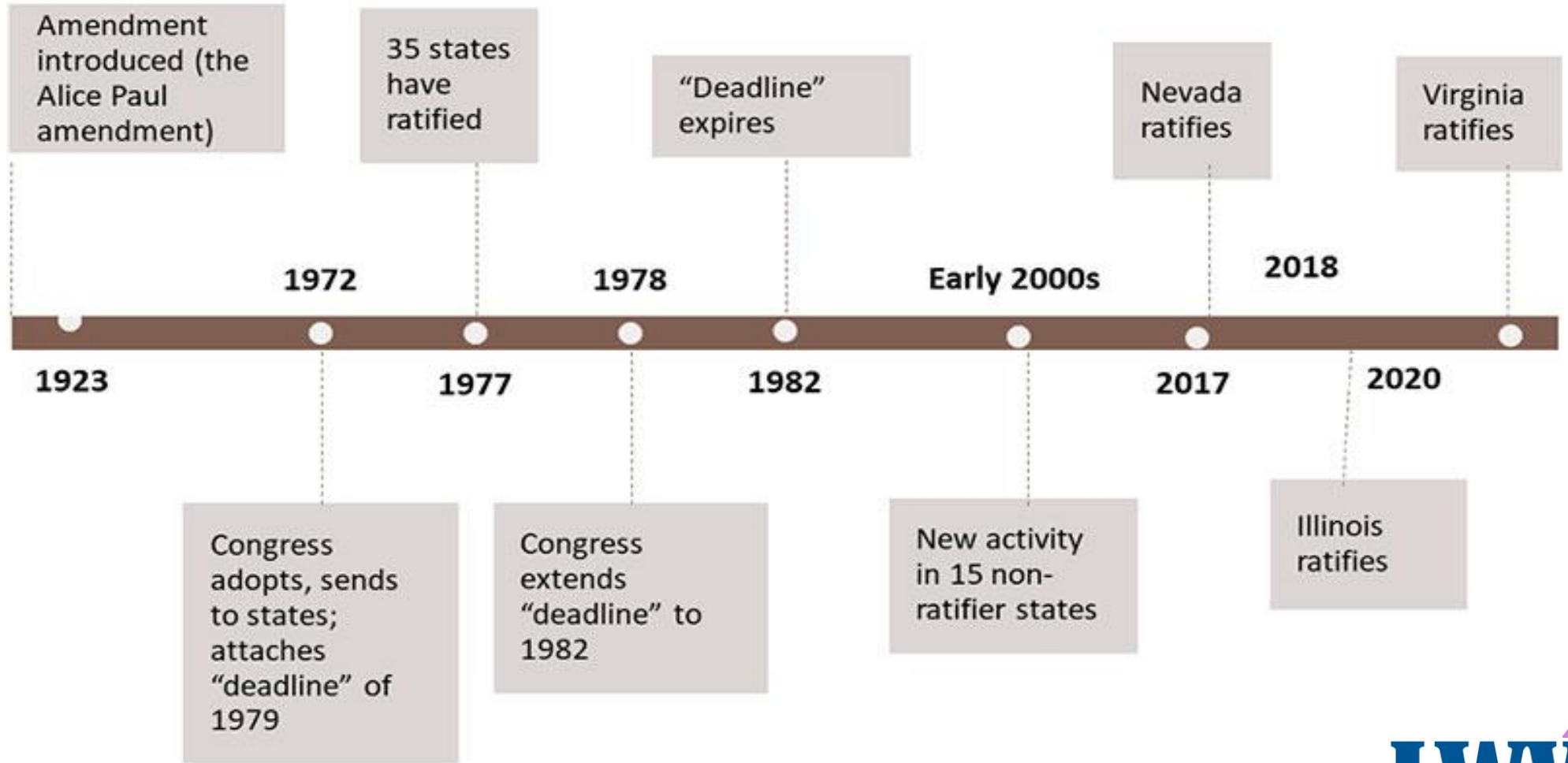
How has the ERA been related to reproductive rights?



- ***The Supreme Court's recent decision in Dobbs v. Jackson Women's Health Organization overturned nearly 50 years of reproductive rights precedent and returned control of abortion law to the states. Pro-choice advocates contend that having the Equal Rights Amendment in the Constitution would provide federal protection for women's equal civil rights and bodily autonomy, including access to legal abortion.***
- In the *Dobbs* decision, Justice Alito stated that abortion restrictions are not sex discrimination. With the Equal Rights Amendment in the Constitution, the legal concept of "gendered citizenship" will be eliminated. Courts will then have to consider abortion litigation in the context of guaranteed equal rights for women and men, including rights to bodily autonomy, health care, religious liberty, equal protection and due process, unenumerated rights reserved to the people, and more.

**Equal
Rights
Amendment**

**The Long
Road to
Ratification**



The ERA was ratified in 2020, why is it not now included in the constitution?

Several circumstances around the long path to ratification created ambiguity that caused the National Archivist to seek advice of the Justice Department OLC before adding the amendment to the Constitution:

- The original deadline for ratification included in the bill or its extension not met
 - Original deadline 7 years or 1978
 - Congress extended deadline by 3 years in 1979 – extension expired with 3 states needed to ratify
 - No other extensions have been passed by the full Congress
- Five states voted to rescind their ratification during the ratification extension period
- The Justice Department Office of Legal Counsel in 2020 informed the National Archivist that he could not certify the ERA as part of the constitution because it was not ratified within the period for ratification set by Congress.



Is there a way forward for the ERA?

Soften the OLC Opinion - This has happened

In January 2022, the JD OLC clarified that nothing in the 2020 opinion stands as an obstacle to Congress's ability to act to extend the deadline for ratification.

This revised OLC response does not give the National Archivist the ability to certify the amendment until Congress acts to extend the deadline for ratification

The revised OLC response does not give the President any role in extending the ratification period

Congress can extend the deadline for ratification now

The House passed extension bills in 2020, 2021 and 2022 to extend the deadline for ratification. The Senate was unable to pass similar bills.

Bills extending the ratification deadline have been introduced in both houses in this Congressional Session (H.J.Res.25 in the House, S.J.Res.4 in the Senate) and referred to the respective Judiciary Committees

The Senate Judiciary Committee held a hearing on the ERA and the bill to extend the ratification period on February 28, 2023.



IF Congress extends, then what?

The ERA Amendment would still have legal hurdles to clear

Since the terms of OLC legal opinion met, the National Archivist should certify the amendment to the constitution - UNLESS enjoined by a judge

Lawsuits will no doubt be brought regarding the validity of the extension by Congress

Lawsuits will no doubt be brought regarding the state recissions



What Can You Do?

Contact

Contact your US Senators and Representatives and tell them to support the ERA ratification extension bills

Clear up

Clear up the misconceptions of your family, friends and neighbors about the ERA

Speak up

Speak up when you hear people misrepresenting the facts

Show up

Show your support when called upon to act



Remember: Women worked for 72 years for their right to vote to be added to the constitution!

1848 - First Women's Conference Held in Seneca Falls to strategize how to obtain women's suffrage nationwide.

1920 - 19th Amendment ratified guaranteeing women (but not all women) the right to vote.

Don't Give Up on the ERA!

