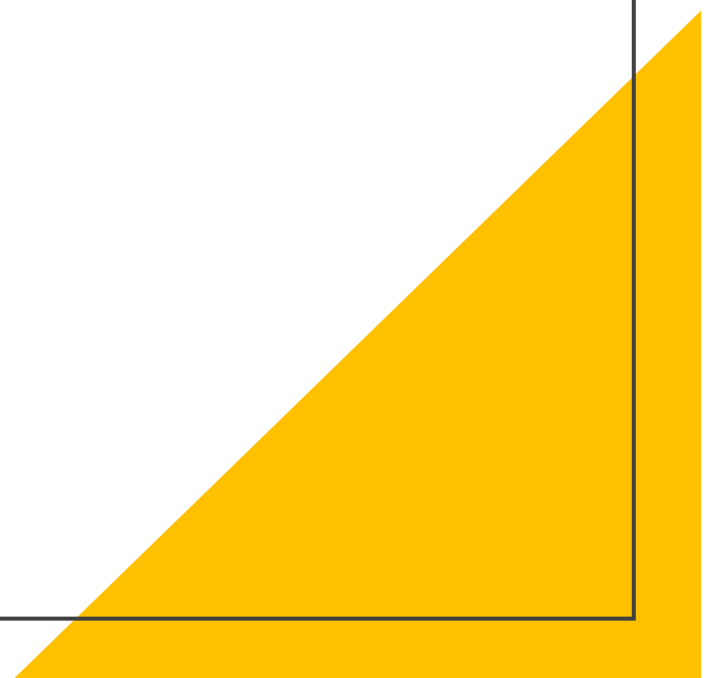

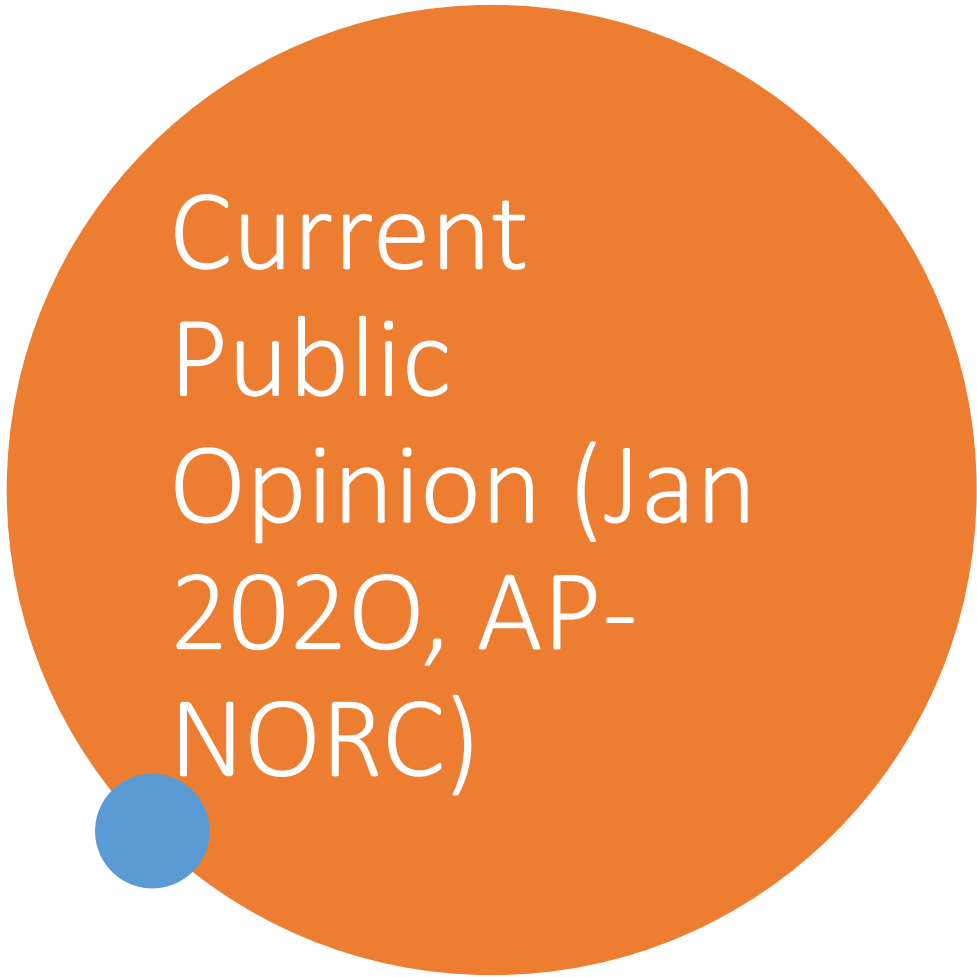


Hard Won, Not Done: The ERA Turns 100

AAUW of Iowa

April 22, 2023





Current Public Opinion (Jan 2020, AP- NORC)

- “As far as you know, does the US Constitution guarantee equal rights for men and women under the law, or not?”
 - 72% yes; 27% no.

Certainly, the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it.

It doesn't. –Antonin Scalia, 2010

Sex and the Constitution

14th Amendment calls for protection of *male citizens'* representation (1868)

- First use of gender/sex specific noun in the Constitution

19th Amendment prohibits the use of sex as an excuse to deny voting rights (1920)

The words “woman,” “women,” and/or “female” do not appear in the Constitution.

Craig v. Boren (1976)



One Solution: The Equal Rights Amendment



1923: First Introduced into Congress

- Alice Paul, National Woman's Party.
- “Men and women shall have equal rights throughout the United States and in every place subject to its jurisdiction.”
- Introduced in some form into every Congress until 1972.

The ERA Debate, 1923-1950s

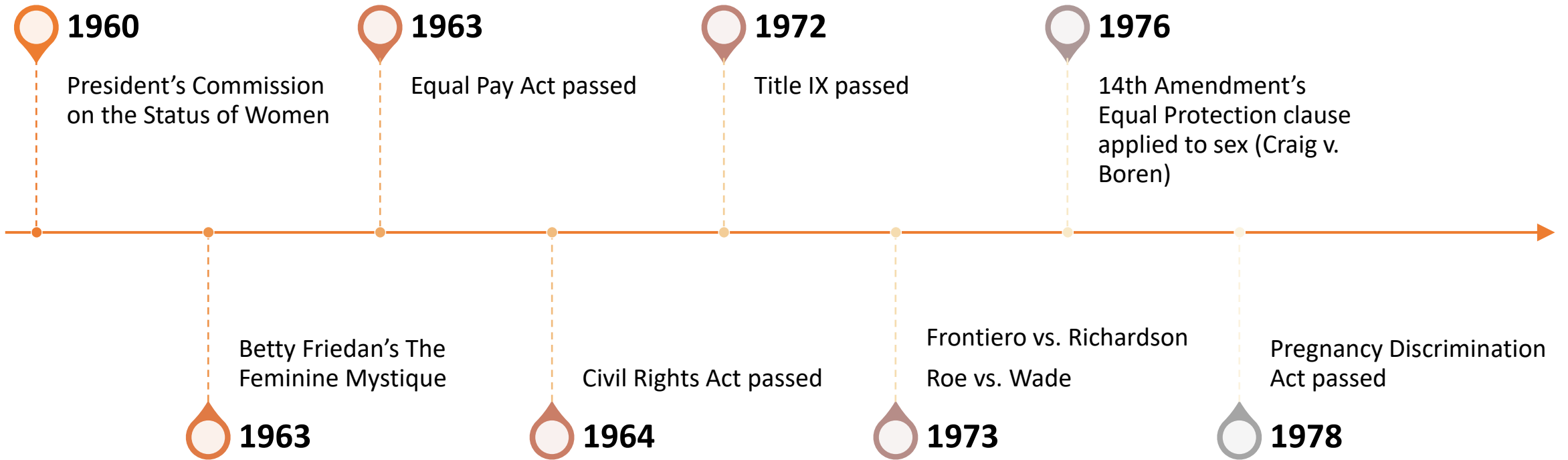
In favor

- Women should have legal equality with men.
- Business interests
- Legislation will allow women to enter professions and participate fully in public life.

Opposed

- Labor Unions
- Other legal protections would disappear: divorce, child custody, alimony
- High profile opponents: Eleanor Roosevelt, progressive reformers; social feminists

Second Wave Feminism

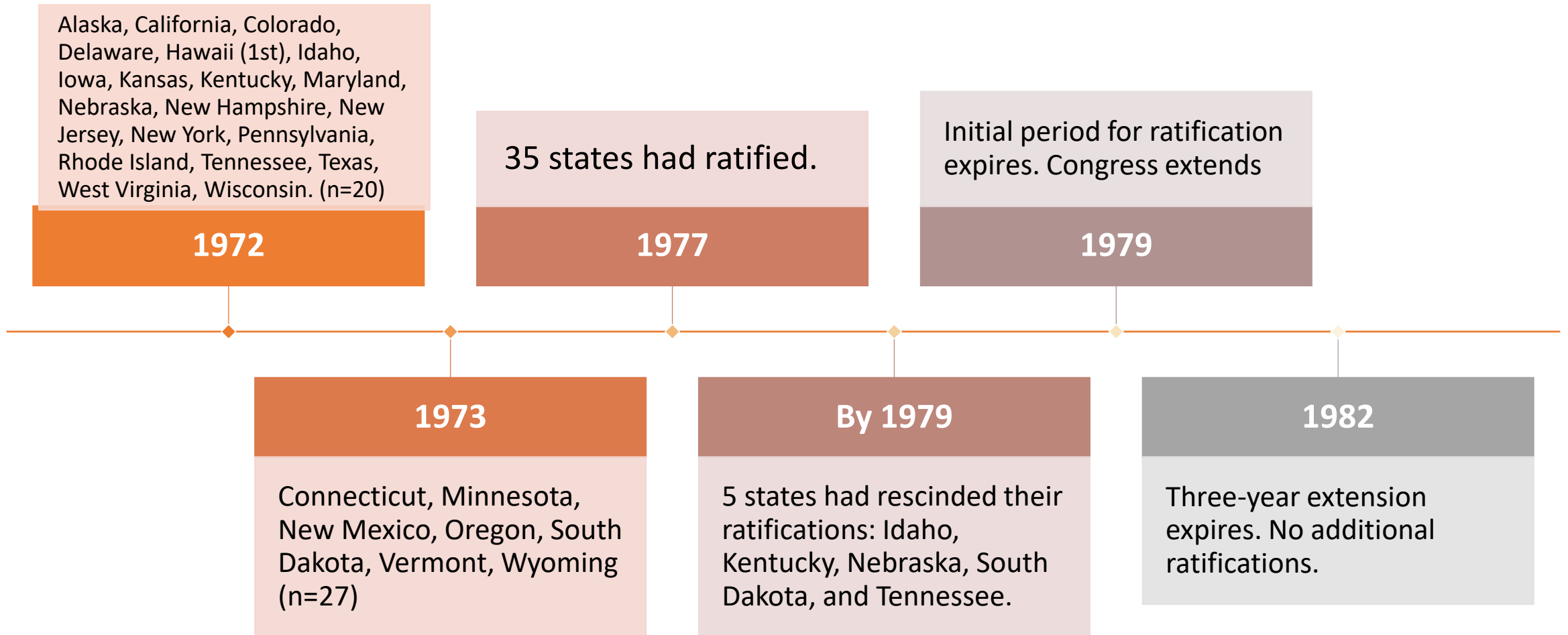


1972

- Martha Griffiths (D-MI) used a Discharge Petition to avoid the Judiciary Committee and bring ERA to the House floor.
- Passed both Houses of Congress in 1972.
- “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 Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.”



Ratification History – 1972-1982



WHO'S WHO

Proponents

- ERAmerica, NOW, National Women's Political Caucus, Girl Scouts, AAUW
- Catholic Health Association, and nuns' organizations
- Professional groups (BPW, Women Lawyers, etc.)
- Labor Unions
- Democratic and Republican Parties (Betty Ford, Patricia Nixon, Rosalynn Carter)
- Always enjoyed majority support in public opinion polls

Opponents

- STOP ERA (Phyllis Schlafly)
- Religious leaders: LDS, Catholic Bishops, Evangelical leaders
- John Birch Society and other conservative groups
- KKK
- Military leaders
- Supporters of traditional families



The ERA Debate: 1972-1982

In favor

- Eliminate the gender pay gap 59¢
- Eliminate sex discrimination in all areas of life
- Elevate sex discrimination to “strict scrutiny” from “intermediate scrutiny”
- Abortion (maybe)
- Provide constitutional protection of sex equality

Opposed

- Not needed
- Discrimination should be handled in courts, legislation, and state ERAs
- Delegates power from states to federal government
- Women in combat/draft
- Unisex restrooms, locker rooms, prisons
- Gay marriage and rights
- Loss of protective labor legislation; alimony, child custody
- Abortion
- Extension is illegal (1979-1982)

The National ERA Resurrected

1992-Present

Third Wave Feminism: 1982-2000 (or so)

- ERA is dead
- Passage of additional state ERAs (8 of 26)
- Focus on local programs:
 - Domestic violence shelters
 - Expansion and reform of rape laws (to sexual assault)
- Violence Against Women Act (VAWA) passed (1994)
- Family and Medical Leave Act (1993)
- Intersectionality
- Slow progress of women in professions, elective office
- Gender pay gap narrowed (71¢ in 2000)

The Madison (27th) Amendment

“No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.”

- Introduced as part of the original Bill of Rights in 1789. Six states ratified by 1791.
 - Ohio ratified in 1873; Wyoming in 1977
 - Gregory D. Watson's college paper in 1982 led to ratification by 1992.

The Three (More) State strategy-- 1997

“Why the ERA Remains Legally Viable and Properly Before the States.”
A. Held, S. Herndon, and D. Stager. *William and Mary Journal of
Women and the Law*. Spring 1997.

Argues that the Madison Amendment shows that there is no time
limit to ratify Constitutional amendments (unless that language is in
the amendment itself).

The ERA’s time limit is in the accompanying resolution (i.e. “Be in
Resolved” clauses), not the amendment. Therefore, it is moot.

Article V of the Constitution
does not discuss time frame

Rescissions are illegal

21st Century Ratifications and Rescission

Nevada

21 Mar. 2017

Virginia

27 Jan. 2020

30 May 2018

Illinois

20 Mar. 2021

North Dakota
rescinds

Department of Justice

- January 2020 (Trump Administration guidance)
 - Directed National Archivist not to accept Virginia's ratification because the time limit passed.
- January 2022 (Biden Administration clarification)
 - Stated that the 2020 guidance does not preclude congressional action. Congress can simply direct National Archivist to add ERA to Constitution.

Now What?

- SJ Res 4 (Cardin)/ HJ Res 25 (Pressley): Resolution that would remove the time limit from the ERA
- SJ Res 107 (Hyde-Smith): ERA is dead.
- *Commonwealth of Virginia vs. Ferriero*: US District Court ruled against IL, NV, and VA in their petition to add ERA to Constitution
 - Virginia withdrew in 2022. Ferrierio retired too.
 - February 28, 2023: US Court of Appeals upheld District Court decision in *Illinois v. Ferrierio*.

1970s Arguments Revisited

Proponents

- Eliminate gender pay gap? (Not entirely)
- Elevate sex discrimination to strict scrutiny. (For sure)
- Ensure that courts don't overturn legislation or precedent on sex discrimination (Yup)

Opponents

- Women's advantage in alimony, divorce and child custody (moot)
- Women in combat (moot)
- Gay marriage (moot)
- Unisex bathrooms (probably not; also somewhat moot)
- Lose protective labor laws (moot)
- Women's selective service registration (Yes)
- Constitutional protection for gays and lesbians (Yes)
- Abortion (Probably)

Public Opinion again

(2020 NORC)

- “Do you favor, oppose, or neither favor nor oppose the Equal Rights Amendment, also known as the ERA, which is the proposed constitutional amendment that would guarantee equal rights for men and women under the law?”
 - Strongly/somewhat favor: 73%
 - Neither favor nor oppose: 22%
 - Strongly/somewhat oppose: 4%

Public Opinion (con't)

- “If the Equal Rights Amendment is ratified and added to the US Constitution, do you think it would have a positive impact or a negative impact on each of the following, or wouldn't it make much difference?”
 - The Country Overall: Positive, 53%; Not much, 37%; Negative, 9%
 - Women in the US: Positive, 63%; Not much, 29%; Negative, 7%
 - Men in the US: Positive, 26%; Not much, 55%; Negative, 5%
 - You Personally: Positive, 32%; Not much, 62%, Negative, 5%



Let's Talk

Thank you

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