Opinion
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Women's March, Washington, D.C., Jan. 19, 2019 (Flickr/Cyndy Sims Parr)



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January 14, 2020

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Tomorrow in Virginia, history will be made. Both of the state's houses will ratify the Equal Rights Amendment (ERA). Tens of millions of Americans have waited for this moment since 1982.

The amendment would give women something they have been denied for the entire history of the United States: equal rights under the Constitution. Virginia will be the 38th state required to ratify the amendment under Article 5 of the Constitution.

The ERA is designed to guarantee equal legal rights for all American citizens regardless of sex. Right now, women don't have the right to equal pay. Women are often discriminated against because of pregnancy. Women do not have the right to be free from violence.

The ERA won't automatically give these protections, but it would give a platform upon which Congress can pass laws to protect women's rights. It will also increase the level of judicial scrutiny sex-based discrimination receives, making it easier to fight sexist laws in court.

The amendment would give women an anchor in the Constitution that piecemeal legislation like Title IX and Title X do not offer. The Trump administration's assaults on these protections have demonstrated that they can be stripped away by any new Congress. The ERA would give women permanent protection in the Constitution itself.

Over 80% of Americans actually think the ERA was already ratified and that these constitutional rights were guaranteed to women long ago. They are sadly mistaken.

The ERA was originally introduced by suffragist Alice Paul in 1923. It states, "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Congress passed the amendment in 1972.

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But the push for ratification fell just three states short of the required three-fourths majority and was ultimately killed in 1982 by a congressionally imposed ratification deadline. (Yes, they put a deadline on the progression of women's equality.)

The ERA was so popular in the 1970s that many expected it to pass. Even some U.S. bishops were in favor of it. Six members of the U.S. bishops' conference formed an ad hoc committee on women in church and society to support the amendment in 1978.

In the end, the U.S. bishops rejected it "because of uncertainty as to its legal and constitutional consequences for family life, the abortion issue and other matters." The bishops were lobbying for a constitutional amendment to limit abortion and, they claimed, their legal counsel had discouraged them from supporting the ERA.

The U.S. bishops, of course, were not powerful enough to neutralize the ERA. But one very conservative Catholic woman was: Phyllis Schlafly.

A constitutional lawyer, radical anti-feminist and anti-abortion activist, Schlafly was a culture warrior before the U.S. bishops knew it was cool.

Her grassroots movement called Stop ERA (now known as the Eagle Forum) is largely credited with convincing lawmakers to reject the amendment. Thirty-five states ratified the ERA almost immediately. But when Schlafly's campaign stepped in, she not only stopped some states from ratifying, she convinced five states to attempt to rescind



Phyllis Schlafly pictured in a 2013 photo; she died in 2016 at the age of 92. (CNS/Reuters/Mary F. Calvert)

(In April, a new series, "Mrs. America," about Schlafly's showdown with the feminist movement will premiere on Hulu, with Cate Blanchett playing the conservative crusader. Yeah, it's gonna be good.)

Though Schlafly failed at her two attempts to win elected office in Congress, her skillful anti-feminist talking points gave lawmakers all the ammunition they needed to snuff out a constitutional guarantee of equality for women. The patriarchy never had a better soldier.

Schlafly conjured up fears that the ERA would lead to unrestricted abortion access, force women to be drafted and open the doors to same-sex marriage. Today, of course, women serve in the military at all levels, and marriage equality is the law of

the land. But the fearmongering around abortion is the one argument that Catholic anti-ERA activists still cling to.

So far, the U.S. bishops have remained silent on whether they will continue to reject the ERA, and my repeated requests for comment to the media office at the U.S. bishops' conference were unanswered.

But the response of the Virginia Catholic Conference gives us a clue as to what the bishops' position will be.

"The Equal Rights Amendment hurts women — both born and unborn," the Virginia bishops wrote in a press release in early 2019 as a surging Ratify VA campaign was getting serious traction.

Their argument, of course, is that the ERA "will enshrine abortion rights in the Constitution" and will force states to "require tax-payer funded abortions."

But is the abortion argument really a strong enough reason to fight against an amendment that would have such extraordinary benefits for women and girls across the country?

The reality is the constitutional right to access abortion already exists in this country. Twenty-four states have actually adopted gender provisions similar to the ERA into their state constitutions. Restrictions on abortion access still exist in all of those states, despite having state ERAs.

Restrictions on constitutional rights are permitted, so, for better or worse, there will always be restrictions on women's rights to access abortion care, as long as those restrictions are not unduly burdensome. Even the ERA will not stop restrictions from being placed on abortion access, as long as the government has a compelling reason for the restriction and the law created is narrowly tailored to achieve that end.

Even with Virginia locking in on ratification, the ERA's future is fraught with uncertainty.

Last week, the Department of Justice's Office of Legislative Counsel (OLC) issued a legal opinion saying that any effort to ratify the ERA is in vain since the ratification deadline expired in 1982.

Efforts to remove the deadline have been working their way through Congress, in both the House and Senate. The DOJ's legislative council office opinions are not binding, and they do not impact the courts or Congress. But the DOJ opinion does foreshadow that if the ERA has a chance to become a constitutional amendment, it may have to fight its way through years of litigation first.

The OLC opinion also demonstrates conclusively that the Trump administration won't defend women's constitutional rights. Like so many issues of justice, the 2020 election will be decisive in its impact on the future of women's rights in their own country.

And Attorney General William Barr, a staunchly conservative Catholic, will obviously toe the line. So, for the second time in the ERA's history, we may have a case of a radically right-wing Catholic playing a crucial role in keeping every American woman and girl from constitutional equality. What a legacy.

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