

ERA FACT SHEET SUMMARY

By Roberta W. Francis

We need the ERA because we do not have it yet. Even in the 21st century, the U.S. Constitution still does not explicitly guarantee that all of the rights it protects are held equally by all citizens without regard to sex. The first – and still the only – right that the Constitution specifically affirms as equal for women and men is the right to vote.

We need the ERA because the 14th Amendment's equal protection clause has never been interpreted to grant equal rights on the basis of sex in the same way that the Equal Rights Amendment would. The 14th Amendment has been applied to sex discrimination only since 1971, and the Supreme Court's latest decision on that issue in 1996 does not move us beyond the traditional assumption that males hold rights and females must prove that they hold them.

We need the ERA because until we have it, women will have to continue to fight long, expensive, and difficult political and judicial battles to ensure that their rights are constitutionally equal to the rights automatically granted to males on the basis of sex. And in a few cases, men will have to do the same to ensure that they have equal rights with females (usually in areas of family law).

We need the ERA because we need its protection against a rollback of the significant advances in women's rights over the past 50 years. Congress has the power to replace existing laws by a majority vote, and even judicial precedents can be eroded or ignored by reactionary courts responding to a conservative political agenda. With an ERA in place, progress already made in eliminating sex discrimination would be much harder to reverse.

We need the ERA because we need a clearer and stricter federal judicial standard for deciding cases of sex discrimination. Lower-court decisions in the various circuits and states (some with state ERA's and some without) still reflect confusion and inconsistency about how to deal with sex discrimination claims. Sex discrimination should get the same judicial scrutiny as race discrimination.

We need the ERA because we need to improve the standing of the United States globally with respect to equal justice under law. The governing documents of many other countries specifically affirm legal equality of the sexes (however less than perfect that ideal may be implemented). Ironically, some of those constitutions – for example, in Japan and Iraq – were written under the direction of the United States. Our image is also tarnished by the fact that the Senate has still not ratified CEDAW (UN Convention on the Elimination of All Forms of Discrimination Against Women).

We need the ERA because we need to move beyond the struggle for it. We need to free the energies of the women and men who have spent countless hours, years, and even lifetimes working for this basic human right of equal constitutional protection. When we can redirect that energy and those resources to work on the many other challenges we face in common, we will truly have fulfilled the vision of suffragist leader and ERA author Alice Paul.