

The Democratic Party of Virginia

Supports Ratification of the Equal Rights Amendment

Whereas,

The Fifth and Fourteenth Amendments to the United States Constitution limit the power of the federal and state governments to discriminate.

Fifty-one percent of Virginians and Americans are women who do not enjoy permanent, constitutional protection from discrimination.

The Equal Rights Amendment was first introduced into Congress in 1921, and was passed with bipartisan support in 1972 with ratification required by 38 state legislatures. To date, 37 states have ratified the Equal Rights Amendment setting the stage for Virginia to be the 38th and final state needed for the Equal Rights Amendment to be included in the US Constitution.

Despite gains over the past century, women's health, employment, reproductive, and civil rights continue to be under attack.

Without the Equal Rights Amendment, the statutes and case law that have produced major advances in women's rights are vulnerable to being ignored, weakened, or even reversed.

The Equal Rights Amendment is necessary to make our Constitution conform with the promise engraved over the entrance to the Supreme Court – "Equal Justice Under Law."

Therefore, be it Resolved that the **Democratic Party of Virginia:**

1. Reiterates our support for passage, ratification and implementation of the Equal Rights Amendment so that women are guaranteed equal rights under the law that shall not be denied or abridged by the United States or by any state; and
2. **Urges** all members of the **Virginia General Assembly** to:
 - a. Support in the 2019 session the passage of HJ 579, Sponsored by Delegate Jennifer Carroll Foy;
 - b. Enjoin Speaker Cox to ensure that the Equal Rights Amendment receives a full vote on the House floor;
 - c. Enjoin the Senate of the Commonwealth of Virginia continue to reaffirm their support for ratification of the Equal Rights Amendment; and
 - d. Vote in support of this legislation.

Background

Text of the Equal Rights Amendment

Section 1. Equality of rights under the 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

The Facts:

- The Fifth and Fourteenth Amendments to the United States Constitution limit the power of the federal and state governments to discriminate. The Fifth Amendment has an explicit requirement that the federal government does not deprive individuals of "life, liberty, or property", without due process of the law. The Fourteenth Amendment explicitly prohibits states from violating an individual's rights of due process and equal protection.¹
- Nowhere in the federal constitution is gender considered a protected class. [HELP this is nuanced and I don't understand it. It IS a protected class b/c of the Equal Pay Act and the Civil Rights Act of 64, but for some reason it's not... binding enough for Supreme Court judicial review?
- "Without the ERA in the Constitution, the statutes and case law that have produced major advances in women's rights since the middle of the last century are vulnerable to being ignored, weakened, or even reversed. Congress can amend or repeal anti-discrimination laws by a simple majority, the Administration can negligently enforce such laws, and the Supreme Court can use the intermediate standard of review to permit certain regressive forms of sex discrimination... The ERA is necessary to make our Constitution conform with the promise engraved over the entrance to the Supreme Court – "Equal Justice Under Law."²
- Equal Rights Amendment was written by Alice Paul and Crystal Eastman in 1921, introduced to congress in 1923, and passed out of Congress with broad support in 1972, but was never fully ratified by the states.
- 37 states have since voted to ratify ERA, with the most recent being Illinois' state legislature in May of 2018. One final state is needed in order to have the 38 states for completing a constitutional amendment.
- Each year between 2011 and 2016, Virginia State Senate passed joint resolutions to ratify the ERA but couldn't get it out of committee in the House. Privileges and Elections is usually the committee that hears this legislation.
- On August 13, 2018, Delegate Jennifer Carroll Foy (HD 2) pre-filed legislation for Virginia to ratify the text of the Equal Rights Amendment, notwithstanding the 10 year ratification period. This legislation has not yet been assigned to a committee.
- RBG on the ERA: "Supreme Court Justice Ruth Bader Ginsburg wrote in the Harvard Women's Law Journal: "With the Equal Rights Amendment, we may expect Congress and the state legislatures to undertake in earnest, systematically and pervasively, the law revision so long deferred. And in the event of legislative default, the courts will have an unassailable basis for applying the bedrock principle: All men and all women are created equal."³

¹ https://www.law.cornell.edu/wex/employment_discrimination

² <http://www.equalrightsamendment.org/faq.htm#q10>

³ http://www.equalrightsamendment.org/ratification.htm#Three_state_strategy

- 51% of Virginians and Americans are women⁴ and our rights are under attack/precarious and not promised
- Implications:
 - “The ERA will create a permanent, uniform, and national standard for eliminating sex discrimination by government at all levels and would raise the level of judicial review for gender discrimination to match that for discrimination based on race and religion.
 - Without this guarantee, women in the U.S. do not have Constitutional equality. Laws furthering women’s rights, such as the Violence Against Women Act and the Lilly Ledbetter Fair Pay Act, can be repealed by a simple majority vote in Congress.”⁵

⁴ http://www.vdh.virginia.gov/content/uploads/sites/10/2017/02/DEMOGRAPHICS_FINAL.pdf

⁵ <https://varatifyera.org/background/>