

The American Bar Association urges implementation of the Equal Rights Amendment

By Anastasia Law, Equality Now

NEW YORK, NY, UNITED STATES, October 31, 2024 /EINPresswire.com/ -- The U.S. Constitution does not explicitly prohibit discrimination on the basis of sex, leaving critical gaps in legal protections across many areas, including employment, healthcare, and reproductive rights.



To address this, the American Bar Association (ABA) has adopted a new resolution endorsing the Equal Rights Amendment (ERA), a constitutional amendment that would ensure “equality of rights under the law”, regardless of sex.

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Informed by constitutional law experts, the [ABA's Resolution 601](#) affirms that the ERA has achieved every requirement for ratification, paving the way for it to become the 28th Amendment to the U.S. Constitution.

With its 400,000-strong membership of legal professionals, the ABA plays a unique role in influencing laws and public policy in America. The organization is urging the legal community and government at federal, state, local, territorial, and tribal levels to support the full implementation of the ERA, finally ensuring gender equality under the law.

Equality Now, an international human rights organization that focuses on using the law to protect the rights of all women and girls, has produced a [factsheet distilling the ABA's key arguments](#) and outlining how legal professionals can use the ERA to strengthen gender equality

under U.S. law.

WITHOUT CONSTITUTIONAL PROTECTION, WOMEN'S RIGHTS ARE VULNERABLE

Currently, U.S. laws that protect people from gender discrimination are fragmented, inconsistent, and open to varying interpretations that are influenced by shifting political landscapes. This makes it easy for discriminatory laws and policies to persist or even be introduced, leaving women, girls, and members of the LGBTQ+ community vulnerable to entrenched biases and politically motivated retraction of their legal rights.



ERA Centennial Convention Seneca Falls, New York, July 22, 2023. Photo credit - Equality Now

The U.S. has no federal law guaranteeing equal pay for work of equal value. Women earn less than men in over 90% of occupations (i), and this gender pay gap is even greater for women of color. Shockingly, child marriage remains legal in 37 states (ii), while abortion bans in 20 states have stripped millions of women of control over their own bodies (iii).

This lack of legal protection points to one undeniable truth: the law, as it stands, is not enough. The ERA could change this by enacting a specific guarantee of gender equality directly into the U.S. Constitution, providing ironclad protections that the current patchwork of federal and state laws fail to deliver.

First introduced in 1923, the ERA states that “equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.” While the ABA has supported the ERA since 1972, this is the first time it has unequivocally established a legal position. Equality Now’s factsheet outlines reasons why the ABA is calling for the ERA’s implementation:

1. GENDER INEQUALITY NEEDS A CONSTITUTIONAL FIX

Anti-discrimination laws are vulnerable at the state and federal levels to political rollbacks, including by the repeal or enactment of laws by Congress and executive orders by the Executive Branch, and interpretations of laws in court. By explicitly embedding gender equality in the Constitution, the ERA would ensure the legal rights of all women and LGBTQ+ individuals are shielded, irrespective of what political party is in office.

The ERA would help ensure consistent, enforceable protections nationwide, and could help to

prevent unequal treatment in areas such as economic rights, reproductive healthcare, and gender-based violence. By giving lawyers, judges, and campaigners the rock-solid legal foundation needed to challenge gender inequality, the ERA could strengthen legal recourse as all law or policy infringements would face heightened scrutiny.

2. THE CURRENT SYSTEM OF LEGAL PROTECTION FOR WOMEN IS A “PATCHWORK” AT BEST

The ABA describes how “existing federal and state laws prohibiting sex discrimination are – at best – a patchwork.” These laws can be gutted, repealed, or narrowed at any time by the courts, congress, and the executive branch.

Protections like Title VII, which guards against employment discrimination, and Title IX, which prohibits sex-based discrimination in education, are fragile. Even rights currently protected under the 14th Amendment, the last refuge for sex equality claims in court, are in danger because originalist interpretation states that the Amendment was never intended to guarantee equal protection of the law for women at all.

3. DEMOCRACY IS AT STAKE

The absence of the ERA leaves a hole in democracy. Recent Supreme Court decisions, like *Dobbs v. Jackson Women’s Health Organization* which overturned the right to abortion because no part of the Constitution explicitly or implicitly protects this right, reveal just how fragile sex equality currently is. Without the ERA, reproductive and other rights will always be at risk.

As the ABA - the largest voluntary association of lawyers globally - has made clear, the time for debate is over. The ERA is needed now, not just for the sake of women’s rights but for the health of American democracy itself. The longer we wait, the more rights can be chipped away.

4. THE ERA HAS ALREADY PASSED

The ABA explains that because 38 states have already ratified the ERA, it should automatically be part of the Constitution. Although six states later tried to take back their ratification, the ABA points out that the Constitution gives no power to reverse a state’s decision. Additionally, experts agree that there’s no deadline in the Constitution for approving an amendment.

5. THE U.S. IS IN VIOLATION OF INTERNATIONAL HUMAN RIGHTS LAW

The ABA’s endorsement of the ERA is about more than domestic reform; it is about the U.S. honoring its obligations under international law and commitments made to meet international human rights standards by aligning its laws with global principles of equality.

The International Covenant on Civil and Political Rights (ICCPR) mandates that countries must ensure equal rights for men and women, including protections against gender discrimination.

Despite ratifying the ICCPR in 1992, the U.S. remains in violation due to the absence of explicit constitutional protections against sex and/or gender discrimination. While 85% of United Nations member states have constitutional equality, the U.S. remains a “global outlier,” with the United Nations highlighting this stark failing in 2023.

HOW LAWYERS CAN USE THE ERA TO ADVANCE EQUALITY

Equality Now’s factsheet illustrates for lawyers how the ERA would revolutionize their work.

□ A Stronger Legal Foundation: The ERA would provide a constitutional cornerstone for gender equality cases, making arguments more robust and defensible.

□ Fewer Legal Ambiguities: Courts have been inconsistent in their rulings on gender equality. The ERA would cut through the noise, providing clear, enforceable protections.

□ Expanded Protections: The ERA could broaden the scope of legal protections for sex-based discrimination, including gender-based violence, making it easier to access justice.

□ Judicial Precedent: The ERA would push courts to interpret laws through a stricter lens, devoid of sex discrimination, creating precedents that would protect rights for generations to come.

□ Systemic Change: The ERA would give lawyers constitutional backing to challenge deep-seated inequalities in existing and proposed law.

REFERENCES:

i)Women earn less than men in over 90% of occupations -

https://equalitynow.org/news_and_insights/gender-pay-gap-in-the-u-s-widens-for-the-first-time-in-20-years/

ii) child marriage remains legal in 37 states - https://equalitynow.org/news_and_insights/only-13-of-50-us-states-have-passed-legislation-banning-child-marriage-we-still-have-a-long-road-ahead/

iii) abortion bans - <https://www.nytimes.com/interactive/2024/us/abortion-laws-roe-v-wade.html>

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