

The Equal Rights Amendment: Why All U.S. States Have Not Ratified

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Final Draft Due: 12/19/18

Introduction:

Enacted legislation for the equality of men and women in the United States currently does not exist. Despite many advancements, as of 2018, the equality of men and women is not explicitly stated in the U.S. constitution. There has been a long history of discrimination against women in the U.S., and for some time now, there have been pushes toward constitutionalizing equality based on Sex. One such push came in 1923, shortly after women were granted the right to vote and The Equal Rights Amendment (ERA) was first introduced. It was not until 49 years later, in 1972, that the ERA was approved by the U.S. Senate and could finally be sent to the states for ratification (The Editors of Encyclopaedia Britannica, 2018). In 2017 and 2018 two additional states, Nevada and Illinois, respectively, ratified the amendment, many years after the original wave of passage. This leaves just one remaining state necessary for the amendment to become law.

The question posed in this paper is: why after over 30 years since the deadline has passed, have Illinois and Nevada ratified the Equal Rights Amendment? And why haven't 38 states ratified this amendment already? To answer our question, we considered five potential alternatives. The first was political partisanship; evaluating whether democrats support the amendment and republicans oppose the amendment based on the relationship between the partisanship of states and their status of passage. The second potential solution was a general lack of public support from American constituents which we evaluated through polling data on support for the amendment. The third potential solution was political theater, or the passage of the amendment solely for the image it would reflect on the state when passed, which we evaluated based on rhetoric in the news around the amendments' passage. Fourth, we considered the gender makeup of state legislatures and the representation of women when making decisions about the ERA. Finally, we considered the effects of social movements and counter protests on both the grassroots and national level lead by public citizens and political leaders. In the end, we

concluded that Illinois and Nevada recently passed the ERA for a combination of two reasons. When states have more than a token 15% representation of women in their state legislatures, they are more likely to reintroduce and discuss the amendment within their governments. Then, once it is being discussed within state legislatures, a combination of national social movements such as #MeToo, local grassroots activism in the states, and political activism from political leaders pushes the ERA over the edge towards passage. This paper will specifically be evaluating the effects that each of these factors had on the sudden ratification of the ERA in Nevada and Illinois.

History:

The original proposed amendment read as follows:

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.

When the 19th Amendment was passed, women finally won the right to vote. Although this was a major victory for women's rights at the time, the push to place equality into the constitution still felt necessary. Alice Paul, a suffragist during the time, introduced the equal rights amendment as the next step in achieving "equal justice under the law" (Alice Paul Institute, 2018). Since then, great strides have been made regarding the increase in the legal rights of women, including: The Equal Pay Act (1963), the Civil Rights Act (1964), the approval of the use of medicinal birth control for women, the Supreme Court decision of *Roe V. Wade* (1973), the passage of Title IX (1972), and others. All of these have developed despite the

constitution lacking explicit language about the equality of the sexes (Soroptimist International of the Americas, 2018). Today, notwithstanding the political strides women have made in the U.S., women still face high levels of inequality in every aspect of their lives. Women are making on average 77 cents on the dollar that men earn for the same work, are paying higher premiums and having harder times qualifying for mortgages and loans. Their reproductive rights are frequently under attack in many states as well, and women only make up approximately 20% of the government across the country, despite making up over 50% of the population (Valente, 2017). Women are still faced with many challenges regarding equality with men, and there is no constitutional right to equality. The Equal Rights Amendment would explicitly make women and men equal in the eyes of the law, and its ratification by 38 states is the necessary component to achieve this equality.

Originally, the Equal Rights Amendment was supposed to be ratified by the requisite majority of 38 states within 7 years by March 22, 1979 (Neale, 2015), although that deadline was extended until June 30, 1982. At the expiration of this deadline, only 35 states ratified the ERA, so the amendment was not added to the constitution. Since then, five states- Idaho, Kentucky, Nebraska, Tennessee, and South Dakota have voted to rescind their ratification of the ERA (Alice Paul Institute, 2018). The extension itself was widely contested by opponents of the ERA and argued that it was in violation of the spirit and letter of the amendment process. Supporters countered with the claim that because the original deadline for ratification was placed not in the amendment, but in its preamble, the extension on the amendment itself was ratified (Neale, 2017). So, this leads to the question of why there is still deep belief in the feasibility of this amendment.

There are two arguments to be made about the future viability of the amendment, the “three state strategy” or the “fresh start” approach. Supporters of this strategy believe that since Congress did not include time limits within the amendment text itself, it would remain eligible

for ratification indefinitely, and they have the authority to repeal the original ratification time limit and its 1979 extension, as well as restart the ratification clock at the current 35-state level. Alternatively, the fresh start approach would require the introduction of a new amendment, which would avoid the debate on the three-state strategy, and instead would need two-thirds support in the House and Senate, as well as $\frac{3}{4}$ of the states. A newly worded amendment made the amendment much more explicit regarding the enforcement of the constitutional prohibition of sex discrimination, and it stated that it would be a function of both federal and state levels of government (Alice Paul Institute). The ERA has been reintroduced in Congress every year since 1982, although Congress has not yet voted on this piece of legislation (ERA Coalition, 2016). More recently, there has been legislation introduced in the 113th Congress that would support both approaches to ratification (Neale, 2015). Since 1982, only two more states have ratified; Nevada in 2017 and Illinois in 2018. (ERA Coalition, 2016). With the ratification of these two states, only one more state would need to ratify the amendment for it to be added to the constitution. With 37 States having ratified the amendment, that leaves 13 that have not. These 13 states are: Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Utah, Virginia.

Table 1- Ratification of ERA

*Five states have voted to rescind or otherwise withdraw their ratification of the ERA

State	Status of Ratification	Year of Ratification
Alabama	Not Ratified	
Alaska	Ratified	1972
Arizona	Not Ratified	
Arkansas	Not Ratified	
California	Ratified	1972
Colorado	Ratified	1972
Connecticut	Ratified	1973
Delaware	Ratified	1972
Florida	Not Ratified	
Georgia	Not Ratified	
Hawaii	Ratified	1972
Idaho*	Ratified	1972
Illinois	Ratified	2018

Indiana	Ratified	1977
Iowa	Ratified	1972
Kansas	Ratified	1972
Kentucky*	Ratified	1972
Louisiana	Not Ratified	
Maine	Ratified	1974
Maryland	Ratified	1972
Massachusetts	Ratified	1972
Michigan	Ratified	1972
Minnesota	Ratified	1973
Mississippi	Not Ratified	
Missouri	Not Ratified	
Montana	Ratified	1974
Nebraska*	Ratified	1972
Nevada	Ratified	2017
New Hampshire	Ratified	1972
New Jersey	Ratified	1972
New Mexico	Ratified	1973
New York	Ratified	1972
North Carolina	Not Ratified	
North Dakota	Ratified	1975
Ohio	Ratified	1974
Oklahoma	Not Ratified	
Oregon	Ratified	1973
Pennsylvania	Ratified	1972
Rhode Island	Ratified	1972
South Carolina	Not Ratified	
South Dakota*	Ratified	1973
Tennessee*	Ratified	1972
Texas	Ratified	1972
Utah	Not Ratified	
Vermont	Ratified	1973
Virginia	Not Ratified	
Washington	Ratified	1973
West Virginia	Ratified	1972
Wisconsin	Ratified	1972
Wyoming	Ratified	1973

Alice Paul Institute. (2018). *ERA*. Retrieved from <http://www.equalrightsamendment.org/>

Political Partisanship:

Some of the popular arguments made about why the ERA has not passed are based on the premise of Political Partisanship. In reading literature which discusses the ERA, a general theme is Democratic support for the amendment and Republican opposition of the amendment. Serena Mayeri, in a 2009 *Northeastern University Law Review* titled, *A New E.R.A Or a New Era? Amendment Advocacy and the Reconstitution of Feminism*, discusses the impact of partisan

politics on the ERA. She explains that when the amendment was introduced there was not really a partisan element. Many supporters were stark conservatives such as Strom Thurmond, while some liberals opposed the amendment because of its potential to influence labor protection legislation. Later however, Mayeri explains that the issue became deeply partisan when the Reagan administration outwardly opposed it and it became a battle of democrats and republicans; democrats portraying it as supportive of their feminist base, and republicans framing its consequences around changes in reproductive rights, women in the military, and traditional family dynamics (Mayeri, 2009). The general argument is that Republicans are less likely to vote to ratify the ERA and Democrats are more likely to ratify the ERA. This explanation, however, fails to acknowledge that even though a state may tend to reflect Republican or conservative ideals, that does not necessarily mean that they do not want the equality of men and women in the eyes of the law. If the dominant political party was the most explanatory reason that states did not ratify the ERA, then Republican leaning states such as Alaska or Indiana would not have ratified the ERA at all. Another counterargument to this idea is that until 2018- Illinois, a Democratic state had not ratified the amendment (Alice Paul Institute, 2018).

Public Support:

Public Support is also a factor to consider when establishing why all 50 states have not yet ratified the ERA, and why Illinois and Nevada so recently did. An online poll taken in October 2015 on behalf of the ERA Coalition for Women's Equality (2016) used a representative sample of 1,017 people to test public support for the ERA. This poll found that 94% of respondents would support an amendment to the U.S. Constitution guaranteeing equal rights for men and women. It also found that 80% of respondents had already thought that men and women were already guaranteed equal rights in the Constitution (textualist argument- constitution does not require discrimination on the basis of sex; it does not prohibit discrimination either. Look to the wording of the constitution- (he, his, man)). The polling data also compared the support for

the amendment between men and women and found that the amount of support was generally consistent between the sexes, 90% of men and 96% of women (figure 1).

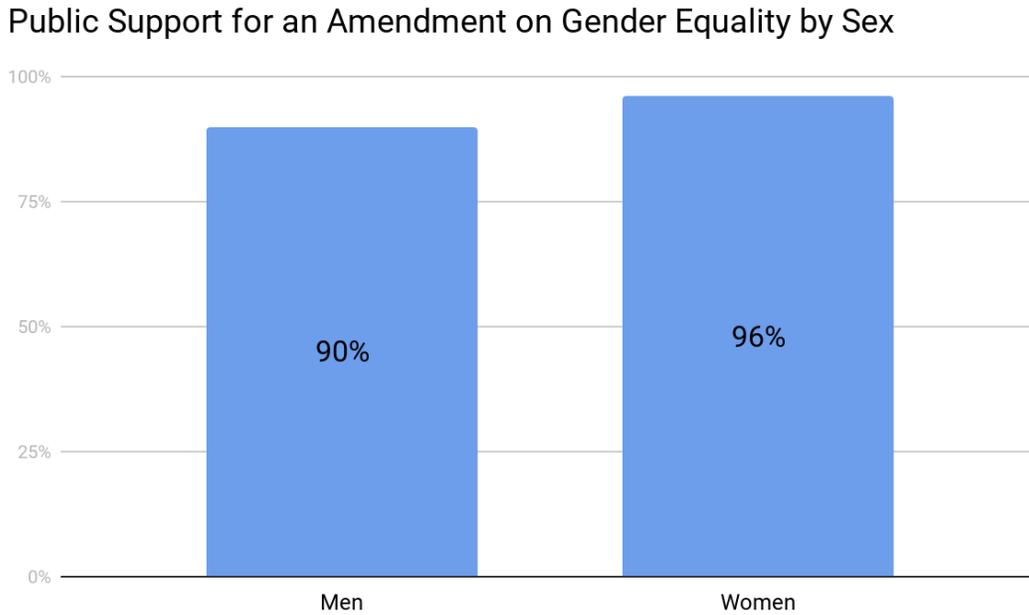


Figure 1

ERA Coalition. (2016, June 17). *BREAKING: Americans--by 94%-- Overwhelmingly Support the Equal Rights Amendment (ERA)*. Retrieved from <https://www.prnewswire.com/news-releases/breaking-americansby-94--overwhelmingly-support-the-equal-rights-amendment-era-300286472.html>

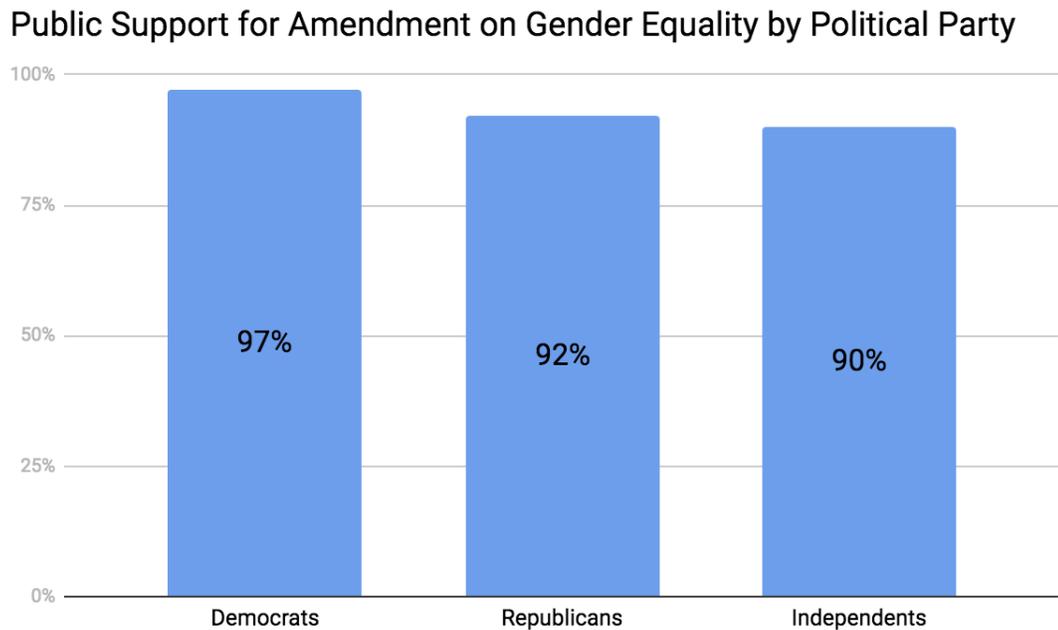


Figure 2

ERA Coalition. (2016, June 17). *BREAKING: Americans--by 94%-- Overwhelmingly Support the Equal Rights Amendment (ERA)*. Retrieved from <https://www.prnewswire.com/news-releases/breaking-americansby-94--overwhelmingly-support-the-equal-rights-amendment-era-300286472.html>

Furthermore, as shown in figure 2, when the respondents were identified by political party, 97% of Democrats, 90% of Republicans, and 92% of independents voiced their support for the ratification of such an amendment to guarantee equal rights (ERA Coalition, 2016).

Additionally, there are numerous organizations that support the ERA, including the National Organization for Women (NOW), the YWCA, Unitarian Universalist Association, and many more. The ERA is the only current piece of legislation being circulated throughout the states that would guarantee equality for men and women at the federal level but even with the support from the public, something is still holding the ERA back.

Political Theater:

The next factor that we will be discussing is an argument about the intentions behind ratifying. Arguments made in Illinois during the time of ratification argue that the only reason it was passed in this state was for the political image of doing so during an election year. In times of turmoil with the election of Donald Trump, it was argued that an image of equality and unity for the state was a driving factor behind the resurgence of support for the amendment.

Interviewed after the vote, State Representative Margo McDermed explained that she did not vote in an act of protest. This is because she believed that coming up during an election year, this passage was a disingenuous attempt to improve the image of the state, arguing that the passage of the amendment was unlikely at the national level and the only reason it was passed was an act of political theater (Valente, 2017). This argument does not fully explain why this amendment was passed by new states recently because Nevada passed it during a non-election year in 2017 so there must be some broader reasoning for the recent surge of support by new states for the

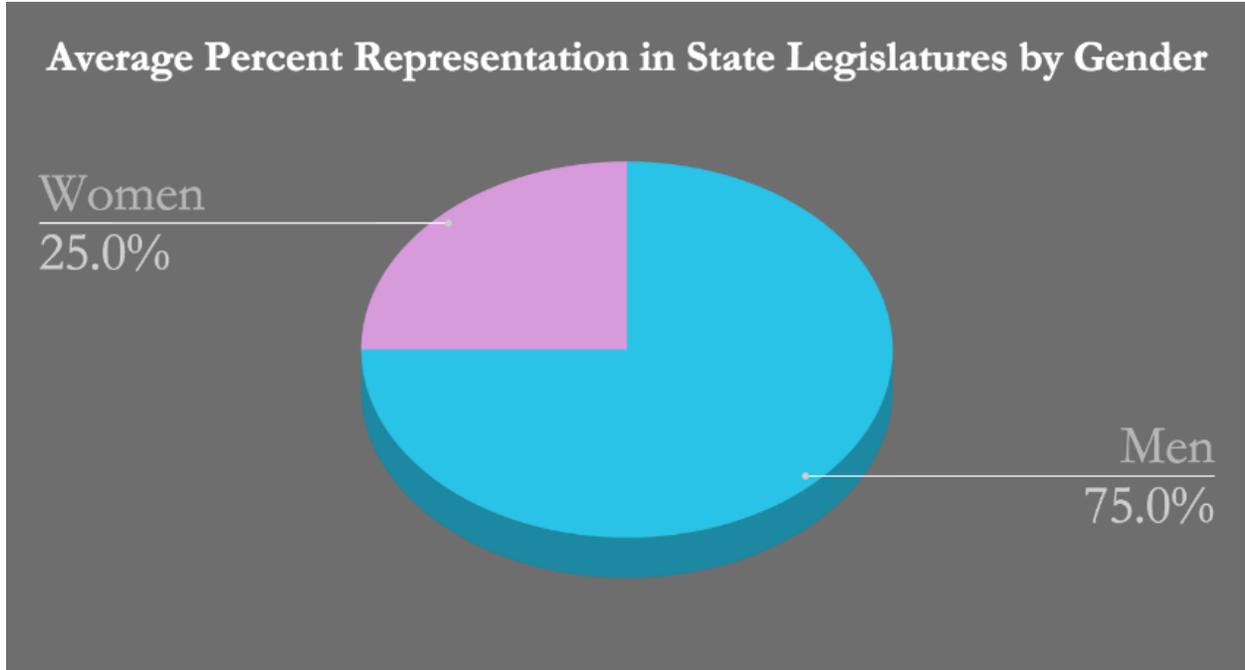
amendment. While this may have been a contributing factor, something deeper is going on beyond political theater.

State Legislatures:

An additional factor which may be behind the recent ratification of the ERA involves the makeup of state legislatures and the representation of women who more readily understand the insistence of gender inequality based in personal experience and the continued need for reform. Representation of women in the state legislature is an important element in the passage of women's rights legislation such as the ERA because although it is defining equality of the sexes in its wording, women have experienced higher levels of inequality than men throughout history as shown above. For legislation representing the equality of women to men, representation of women in the government is important. The national average for representation of women in a state legislature is 25% as shown in figure 3. The average amount of women in state legislatures for states that have not yet ratified the ERA is 21.4% (figure 4). The average for states that have ratified is 27.63% (figure 4). The average for the five states that ratified and rescinded their ratification is 22.12% (figure 4). Illinois and Nevada both have representation at least 10% higher than that of the national average; Illinois being 35% women and Nevada being 38.1%. These averages are based on current status of ratification. Six other states of the 13 that have not yet ratified have seen efforts in the past few years to reintroduce the legislation. Florida, and North Carolina reintroduced the bill in 2015 and Arizona, Missouri and Virginia reintroduced it in 2016, all around the time that Nevada and Illinois, who have since passed it, also reintroduced the amendment. The average of women in the state legislature for states that have recently reintroduced the amendment but have not yet passed it is 28.04%. For states that have not passed

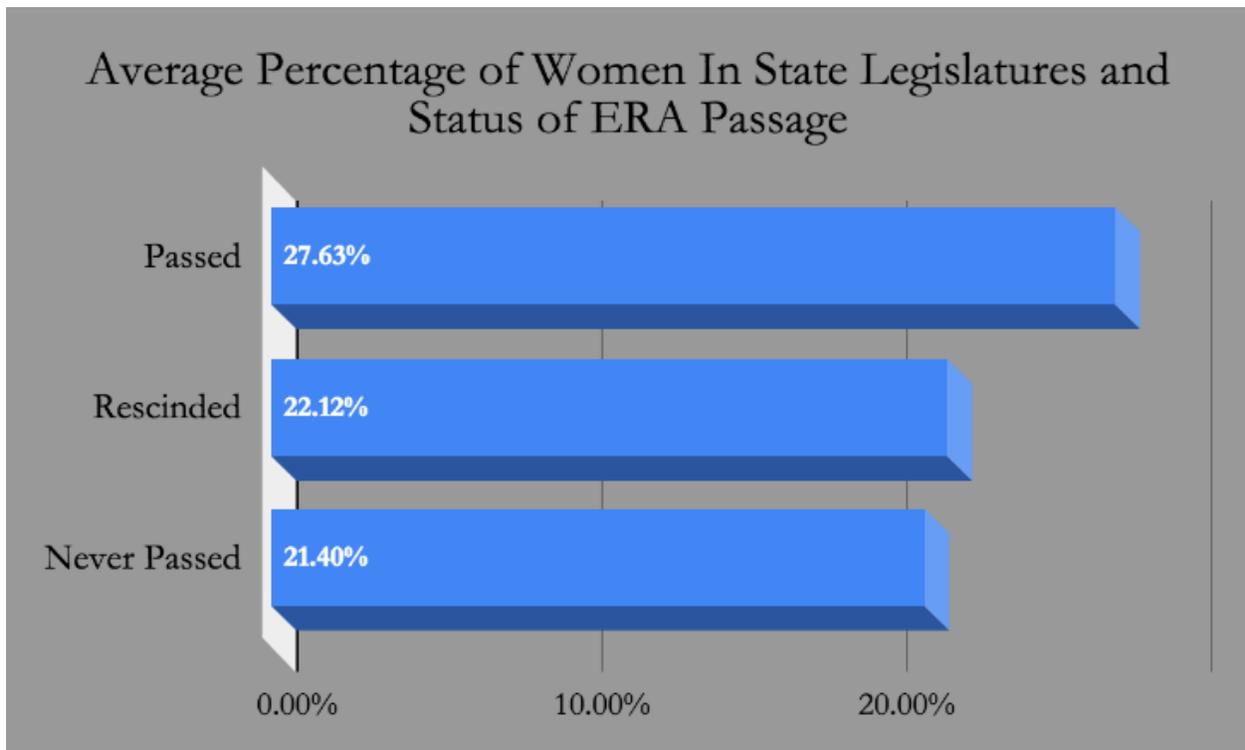
it and have not recently introduced it in their state legislatures, their average representation of women in the state legislature is 17.4% (NCSL Women, 2018).

Figure 3



Center for American Women and Politics. (2018, October 19). Women in State Legislatures 2018. Retrieved from <http://www.cawp.rutgers.edu/women-state-legislature-2018>

Figure 4



National Conference of State Legislatures (NCSL). (2018). *State Partisan Composition*. Retrieved from <http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx>

National Conference of State Legislatures (NCSL). (2018). *Women in State Legislatures for 2018*. Retrieved from <http://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/women-in-state-legislatures-for-2018.aspx>

Jocelyn Crowley, in *Moving Beyond Tokenism: Ratification of the Equal Rights Amendment and the Election of Women to State Legislatures*, concludes that state legislatures with more than around 15% female representation allow women to more effectively influence policy. These women, when only 15% of a group, labeled tokens in this piece, experience hardship in their positions whether it be in representation in politics and government or in companies and other occupations. These women are said to have experienced higher pressure to perform well, are left out of certain networking opportunities and are often driven to performing within gender specific roles by the majority. For states with higher representations of women however, they experience higher levels of self-efficacy and more power in influencing policy (Crowley, 2006). This logic follows with current state data. For states that have higher levels of women within their legislatures, the bills have been recently introduced or recently passed, such as in Nevada and Illinois. Since all states with higher than average levels of representation of women within their legislatures have not ratified the amendment, this factor does not do enough to fully explain why Nevada and Illinois recently passed it. What it does do however, is explain what it takes to get the legislation on the radar within state governments, and states with more women present have had more legislative discussion on this issue recently. What remains now, is to find out what pushes this legislation over the edge into ratification.

Table 2- Partisanship of States and Makeup of Legislatures

State	State Partisan Composition (2018) ¹	Electoral Voting Result (2016) ²	% of State Legislature Women (2010) ³	% of State Legislature Women (2018) ⁴
Alabama	Republican	Republican	12.9	15.0
Alaska	Republican	Republican	20.0	31.7
Arizona	Republican	Republican	32.2	40.0

Arkansas	Republican	Republican	23	19.3
California	Democrat	Democrat	27.5	25
Colorado	Split	Democrat	38	38
Connecticut	Split	Democrat	32.1	27.3
Delaware	Democrat	Democrat	25.8	21
Florida	Republican	Republican	23.8	25.6
Georgia	Republican	Republican	19.1	26.7
Hawaii	Democrat	Democrat	32.9	28.9
Idaho*	Republican	Republican	24.8	30.5
Illinois	Democrat	Democrat	28.2	35.0
Indiana	Republican	Republican	21.3	20.0
Iowa	Republican	Republican	23.3	23.3
Kansas	Republican	Republican	30.3	28.5
Kentucky*	Republican	Republican	15.9	16.7
Louisiana	Republican	Republican	16.0	14.6
Maine	Split	Democrat	29.0	33.9
Maryland	Democrat	Democrat	31.4	33.5
Massachusetts	Democrat	Democrat	26.0	24.5
Michigan	Republican	Republican	25.0	25.0
Minnesota	Republican	Democrat	34.8	31.8
Mississippi	Republican	Republican	14.4	14.9
Missouri	Republican	Republican	22.3	22.8
Montana	Republican	Republican	26.0	28.0
Nebraska*	Nonpartisan	Republican	20.4	26.5
Nevada	Democrat	Democrat	31.7	38.1
New Hampshire	Republican	Democrat	37.0	28.8
New Jersey	Democrat	Democrat	28.3	30.8
New Mexico	Democrat	Democrat	30.4	30.4
New York	Split	Democrat	24.1	28.2
North Carolina	Republican	Republican	25.9	24.7
North Dakota	Republican	Republican	17.0	18.4
Ohio	Republican	Republican	22.0	22
Oklahoma	Republican	Republican	11.4	12.8
Oregon	Democrat	Democrat	28.9	33.3
Pennsylvania	Republican	Republican	15.4	19.4
Rhode Island	Democrat	Democrat	22.1	31.9
South Carolina	Republican	Republican	10.0	15.9
South Dakota*	Republican	Republican	20.0	21.0
Tennessee*	Republican	Republican	18.9	15.9
Texas	Republican	Republican	23.2	20.4
Utah	Republican	Republican	21.2	20.2
Vermont	Democrat	Democrat	37.2	39.4
Virginia	Republican	Democrat	19.3	27.1
Washington	Democrat	Democrat	32.7	37.4
West Virginia	Republican	Republican	16.4	14.9
Wisconsin	Republican	Republican	22.0	24.2
Wyoming	Republican	Republican	16.7	11.1

The New York Times. (2017, August 9). *Presidential Election Results: Donald J. Trump Wins*. Retrieved from <https://www.nytimes.com/elections/2016/results/president> ¹

National Conference of State Legislatures (NCSL). (2018). *State Partisan Composition*. Retrieved from <http://www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx> ²

National Conference of State Legislatures (NCSL). (2018). Women in State Legislatures for 2018. Retrieved from <http://www.ncsl.org/legislators-staff/legislators/womens-legislative-network/women-in-state-legislatures-for-2018.aspx> ³

Center for American Women and Politics. (2018, October 19). Women in State Legislatures 2018. Retrieved from <http://www.cawp.rutgers.edu/women-state-legislature-2018> ⁴

Social Movements:

As it is still contested today, there was also a vast amount of controversy surrounding the ERA during its ratification period. A prominent figure against the ratification of the ERA was Phyllis Schlafly, a conservative activist and founder of “STOP ERA” (Haag, 2018). She led many groups of women to combat the amendment and employed “femininity tactics” such as baking and handing out pies and bread to state legislators to reinforce the traditional ideals of women. She managed to brand the ERA movement as “anti-family” and she portrayed feminists as anti-housewife, which disregarded their advocacy for displaced homemakers, equitable pensions, and access to social security- which would help the women that the conservative activists claimed the ERA would hurt. Such movements led by Schlafly and others alike, proved successful in preventing the ratification of the ERA by 1992 (Boris, 2015). The influence of Schlafly on the anti- ERA activists however, came to a halt in 2016 when she passed away. Shortly after her passing, pro-ERA movements encompassed Illinois, which then passed the ERA in 2017 (Stewart, 2018). To contrast this, however, there have been several political/social movements and events that have rebranded the feminist movement and reignited the flame of the ERA. It appears that 2015 was the year that brought the dialogue of the ERA back to many tables. From the reintroduction of a newly worded amendment to Congress, Hillary Clinton’s campaign for the Presidency, the outspokenness of prominent celebrities, Women’s Marches, or the rise of the #MeToo movement, there were many mechanisms working to bring the ERA to the public’s attention. One such example of political action to garner attention was taken by actress Meryl Streep, who mailed every member of Congress a copy of *Equal Means Equal: Why*

the Time for an Equal Rights Amendment Is Now, in which she included a letter that said "stand up for equality-for your mother, your daughter, your sister, your wife or yourself-by actively supporting the Equal Rights Amendment" (D'Amore, 2017).

Many lawmakers attribute the newly found momentum for the Equal Rights Amendment to the election of Donald Trump as President, the #MeToo movement, and the push from legislators. Roberta Madden, the co-president of the ERA-NC Alliance in North Carolina believed the #MeToo movement focused attention on the many inequalities that women face every day and the growth of such a movement provided the push to get everyone talking. Rep. Lou Lang sponsored the resolution to ratify the ERA in the House in Illinois, and Eden Nissani, outreach coordinator for Illinois state also believed that there was an influx of energy in 2017 for the amendment and that the documentary *Equal Means Equal* by Kamala Lopez also contributed. (Stewart, 2018). It was Senator Pat Spearman who championed the movement in Nevada, however, in which she introduced a resolution to ratify the Equal Rights Amendment and rallied the assembly to pass it (Patricia Spearman for Nevada, 2018). She even travelled to Illinois to continue pushing for the ratification of the ERA, working simultaneously with over 50 organizations in Illinois to pressure lawmakers (Stewart, 2018).

Specific grassroots movements also impacted the passage of the ERA in both Nevada and Illinois. Once the amendment was reintroduced within state governments, rallies within the states helped tip public opinion and garner support within the state legislatures for the passage of the amendment. In Illinois, the week before the vote, supporters and political leaders rallied at the Capitol in favor of the ERA. The rally included chants, songs and speeches by then Democratic candidate for Governor J.B. Pritzker as well as celebrity model and actress Lizzy Jagger. They hoped to convince the legislature to pass the amendment that week (Kwiatkowski, 2018). This also happened in Nevada. Before its passage, Nevada residents rallied out front of the Nevada Legislature in support of the ERA. Local activists came out to display their support for the

amendment and a student, Jocelyn Diaz started the Northern Nevada Chapter of the National Organization of Women in order to support the passage of women's rights policy (Carson City News- Carson Now, 2014). Shortly after these grassroots movements and others like them occurred, passage of the amendment in these states followed.

Conclusion:

Without explicit language in the constitution regarding the equality of men and women, women have been fighting for decades to see the passage of the Equal Rights Amendment. This has not been without retaliation however, and after the original introduction of the amendment, 13 states have yet to ratify it despite widespread public support (ERA Coalition, 2016). In the past few years however, two states, Illinois and Nevada have successfully passed the amendment. This passage came not solely because of partisanship behavior or political theater, but for a combination of two main reasons. Representation of women in state legislatures has been increasing in recent election cycles, and for states with higher than around 15%-18% women, the Equal Rights Amendment has recently been reintroduced by the state government. As more women become a part of the legislature, the discussion of the ERA returns to the table (NCSL Women, 2018). The introduction of the discussion however is not enough to get it passed. What has helped push ratification in Nevada and Illinois is the combination of a more gender diverse legislature as well as national and local social movements. With the feminist #MeToo movement surfacing in the past few years as well as heightened discussion of women's roles in this nation surrounding recent elections, the call to arms for the passage of the ERA has become fiercer. Celebrities have come out in strong support of the amendment and women across the country have again made it a goal. Additionally, in both Illinois and Nevada, grassroots movements of rallies and protests in support of the ERA happened before the votes, propelling public support and encouraging local politicians to vote in favor of their constituents.

This combined conclusion represents important implications for the way that democracy in the United States functions. On a large scale, as the government becomes increasingly more diverse in representation, it is able to pass diverse policy which is increasingly more reflective of the people it represents. On an individual level, this solution highlights the importance of activism and demonstrations in affecting policy and politics; showing that to some degree individuals have control over their own democracy as well. This combined effort has allowed the ERA, which began so long ago, to take hold again in the United States. Now, with other states putting it back into circulation in their states and continued nationwide feminist movements, we may be on the cusp of a final state passing it with others to follow, forcing the national government to reconsider such a historic amendment to finally place gender equality explicitly in the constitution. Once this feat has been achieved, other policies encouraging gender equality may be propelled forward by the women in power and may be passed following the outcries of an American people demanding heightened levels of equality.

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