

Virginia Approves the E.R.A., Becoming the 38th State to Back It

Virginia's move is symbolic, and crosses the threshold of three-quarters of states needed for ratification. Yet the fate of the E.R.A. is far from decided.

By Timothy Williams

Published Jan. 15, 2020 Updated Jan. 16, 2020

RICHMOND, Va. — Virginia on Wednesday became the 38th state to approve the Equal Rights Amendment, a symbolic victory for those who for generations have been pushing for a constitutional guarantee of legal rights regardless of sex.

Virginia's decision does not seal the amendment's addition to the United States Constitution. A deadline for three-quarters, or 38, of the 50 states to approve the E.R.A. expired in 1982, so the future of the measure is uncertain, and experts said the issue would likely be tied up in the courts and in the political sphere for years.

But the symbolism of the action in Virginia was significant after a struggle that had been raised, hard fought and, at times, forgotten over nearly 100 years.

"It's just another hurdle, another level of that ceiling that's cracked," said Daphne Portis, 58, an E.R.A. activist who clutched photos of female leaders — Shirley Chisholm, Bella Abzug and Gloria Steinem — as she watched the debate among lawmakers in Richmond.

Women packed the galleries of the State Capitol as the debate unfolded, many of them wearing sashes that read, "Equal rights for women." Some members of the House of Delegates, which for the first time in its 401-year history is led by a woman, Eileen Filler-Corn, brought their young daughters to witness the vote.



Showing support for the Equal Rights Amendment in the Virginia House of Delegates. Julia Rendleman for The New York Times



Women waited to enter the gallery in the House. Julia Rendleman for The New York Times

The E.R.A. was first proposed in 1923, though Congress did not pass it until 1972. To approve the amendment, ratification was needed in 38 states by 1979; the deadline was later extended to 1982. By then, though, only 35 states had done so. For years, and especially during the 1970s, the issue was a matter of intense national debate, the topic of legislative fights and political campaigns. But it faded some as the deadline passed and the national conversation seemed to move on.

The E.R.A. promised equal rights to women, and was aimed at improving pay equity for them, strengthening domestic violence and sexual harassment protections, and blocking discrimination against pregnant people and mothers. The amendment reads, in part: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

In recent years, new efforts emerged to reignite the E.R.A., amid the MeToo movement, efforts to protect abortion rights and as Democrats won control of some statehouses. Slowly, leaders pushed toward the 38-

state threshold despite questions about what it would really mean for the amendment's fate decades after the deadline.

In 2017, Nevada became the 36th state to approve the E.R.A., and a year later, Illinois passed it. That left Virginia, a state that failed to pass the E.R.A. last year, considering it again this year, and with a State Legislature newly dominated by Democrats.

On Wednesday, the vote was 59-40 in the House and 28-12 in the Senate. The governor, Ralph Northam, a Democrat, has said he supports the measure.



Eileen Davis, left, a longtime supporter of the amendment with Delegates Hala Ayala and Jennifer D. Carroll Foy after the vote. Julia Rendleman for The New York Times

John McGuire, a Republican lawmaker who said he had repeatedly voted against the E.R.A. over the years, described the measure as a relic of an earlier time. “The E.R.A. is outdated, it’s expired and it harms women,” he said.

But supporters, like Jennifer Carroll Foy, a Democratic legislator, saw the moment as historic and the measure as timely.

“The question is, which side of history do you want to be on?” she said before the vote. “The world is watching — your mothers, your sisters, your daughters.”

Yet many roadblocks remain.

This month, the Justice Department released an opinion concluding that Virginia's efforts to ratify the E.R.A. had come too late, given the 1982 deadline, and that the entire legislative approval process must be restarted for a proposed amendment to be legally binding. That conclusion however, is only advisory, and the matter is expected to ultimately be decided by federal courts.

Further complicating the matter, five states have over the years rescinded their approvals of the E.R.A. The significance of those decisions, though, was also murky; in some past situations, when states sought to annul legislative votes in support of constitutional amendments, initial approvals were counted anyway, including for the 14th and 15th amendments.

Typically, constitutional amendments do not have ratification deadlines. One amendment, the 27th Amendment, was ratified in 1992 — more than two centuries after Congress passed it. Democrats in the House of Representatives and the Senate have introduced legislation to extend the deadline tied to the E.R.A., although it is unclear whether passage would make it legally enforceable.

Eileen Davis, 65, the founder of Women-Matter, a feminist group, and an advocate for passage of the E.R.A., said she found out in about 2010 that Virginia had never passed the measure, and decided to go to Richmond to alert legislators.

“I was naïve. I thought I would bring it to the powers-that-be and they would take care of it,” she said. “But nobody knew what the E.R.A. was.”

“I thought it was like an ‘I like puppies bill,’ she said. “But I ran into the attitude that, ‘We’ve always done it this way.’”

But in November, Democrats won control of both chambers of the State Legislature for the first time in 25 years and decided that passage of the E.R.A. would be one of their primary objectives.

Opponents of the E.R.A. said they feared it would upend gender norms, ushering in an age in which women would be subject to the military draft and boys and girls would share locker rooms, bathrooms and sports fields. They also said they had concerns about the effects the amendment might have on abortion restrictions.

“Laws protecting women’s interests will be undercut by the radical language of the E.R.A. that strips away from women their unique place in the law,” said Kristan Hawkins, president of Students for Life of America, an anti-abortion group that opposes the E.R.A. Ms. Hawkins added that “the most profound change will be creating a constitutional foothold for abortion.”

But Ms. Davis said her efforts were not designed to safeguard legal abortion rights. She said she simply wanted equality for women.

“One of the things I’d tell legislators is that someone’s going to make a movie about this, and I don’t think you want to have to explain to your granddaughter why you didn’t support equality for women,” she said.