

Issue: VA ERA/Kirk Cox/HD66

Suffocating the Vote on the Equal Rights Amendment

“Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”
Equal Rights Amendment¹

During the three decades Republican Kirk Cox (R-Colonial Heights, HD66) has served in the Virginia House of Delegates (1989-present), he has done little, if anything, to support women’s rights, specifically withholding his support for the Equal Rights Amendment (ERA). As recently as the 2019 legislative session, his political maneuvering as Speaker of the House kept the ERA bill from the floor and prevented the House from voting on the Amendment, thus insulating the Delegates from any political fallout had the vote ensued. By not forcing a vote to the floor and upholding the negative vote by the Republican-run subcommittee that he selected to consider the resolution, Cox essentially kept Virginia—and the nation—from ratifying the ERA amendment.²

Background

Speaking before a U.S. House Judiciary Subcommittee in April of this year, Senator Pat Spearman noted, “While women enjoy more rights today than they did when the ERA was first introduced in 1923 and when it was approved by Congress in 1972, hard-won laws against sex discrimination can be inconsistently enforced or even repealed.”³ Ratification of the ERA by the states—as required by the U.S. Constitution—would clarify the law for the lower courts, whose decisions on sex discrimination claims still reflect confusion and inconsistency.

According to EqualRightsAmendment.org, “The need for a federal Equal Rights Amendment remains as compelling today as it was in 1978, when now 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.”⁴

The 14th Amendment to the U.S. Constitution, which was ratified in 1868, guaranteed all citizens equal protection under the law. In 1971 the 14th Amendment's equal protection clause was first applied to sex discrimination, yet it has never been interpreted to grant equal rights on the basis of sex in the consistent and inclusive way the ERA would. It has been over 20 years since the last major Supreme Court decision on sex discrimination dealing with admission of women to the Virginia Military Institute (VMI) in 1996, and we have yet to move past the assumption that men are assumed to have these rights and women, if treated unequally, must prove that they do. The ERA would eliminate that assumption.⁵

Complicated Path to Ratification

For the ERA to be ratified into the U.S. Constitution, 38 states must approve the amendment. By 1970 it had been ratified by 35 states, well ahead of the 1982 deadline. However, the Constitution does not specifically give Congress the right to impose a deadline on ratification and, in the last two years, Nevada and Illinois have both ratified the ERA, bringing the total to 37. At the same time, however, five states that previously ratified the amendment have since rescinded their votes, but no court has ruled on whether that is permitted.⁶ As a result, even if the required 38 states do vote for ratification, there would likely be court battles over whether the original amendment is still valid.

The Story in Virginia

On January 15, 2019, the Virginia Senate passed a resolution sponsored by Glen Sturtevant, R-Richmond, ratifying the Equal Rights Amendment. The measure was approved by a 26-14 vote, with seven Republican senators joining the 19 Democrats voting to ratify. Yet while the ERA Amendment has passed in the Virginia Senate four times, it has never passed in the House of Delegates.

This year, the House Privileges and Elections subcommittee appointed by Speaker Kirk Cox to consider the resolution voted to kill it. The members split along party lines, with the four Republicans voting in the majority against bringing the amendment to the House for a vote. Supporters, seeking to have Virginia become the 38th and technically the last state necessary to ratify the amendment, argued that if the measure reached the floor, it would pass. Several newly elected Democratic congresswomen wrote to Speaker Cox urging him to allow the amendment to come to the floor for a vote by the full House. “There is one man, and one man only, standing in between 160 million women across the country [and] their ability to finally be enshrined as human beings equal to men in the United States Constitution,” State Delegate Jennifer Carroll Foy (D-Prince William) said. “Virginia has the opportunity to lead.”⁷

The House went on to vote on the question of whether to have a full vote on the amendment. One Republican, David Yancey (HD94), crossed party lines but the vote was 50-50, one short of the required majority. Critics of the amendment, led by socially conservative groups, argued that passage of the ERA would make it harder to limit abortions and illegal to separate sexes in bathrooms, college dormitories and school sports⁸, thus conflating the issue of equal rights with a plethora of other conservative causes.

As stated above, by killing the ERA resolution and preventing a full vote on the House floor, the GOP majority—with Kirk Cox at the helm—helped protect their Republican delegates up for re-election in moderate districts. If they had voted yes on the ERA, they would be going against party leadership, while if they voted no, their more progressive constituents could hold that vote against them when it came time to go to the polls.⁹ So it would appear, yet again, that the equal rights of women were cynically sacrificed for political exigency.

Why the ERA is Important

While the need to ensure equal rights for women at this time would seem obvious to many, there are multiple reasons why the passage of the ERA is important, including those identified by EqualRightsAmendment.Org:¹⁰

- “Without the ERA, the U.S. Constitution does not explicitly guarantee that the rights it protects are held equally by all citizens without regard to sex. The first—and still the only—right that the U.S. Constitution specifically affirms and applies equally to women and men is the right to vote.
- The equal protection clause of the U.S. Constitution's 14th Amendment was first applied to sex discrimination only in 1971, and it has never been interpreted to grant equal rights on the basis of sex in the uniform and inclusive way that the ERA would.
- The ERA would provide a clearer judicial standard for deciding cases of sex discrimination. Not every state in the U.S. has ratified the Equal Rights Amendment, and therefore federal

and state courts are inconsistent in their rulings regarding claims of sexual discrimination claims. The ERA would help clarify sex discrimination jurisprudence and conclusively invalidate the claim of late Supreme Court Justice Antonin Scalia that the Constitution, specifically the 14th Amendment, does not protect against sex discrimination (reported in *California Lawyer*, January 2011).

- The ERA would provide a strong legal defense against a rollback of the significant advances in women's rights that have been achieved since the mid-20th century.
- Without the ERA, women regularly — and occasionally men — have to fight long, expensive, and difficult legal battles in an effort to prove that their rights are equal to those of the other sex.”

The fact that passage of the ERA Amendment has been stymied under Kirk Cox’s leadership in the Republican-led House is something that every woman—and man—in Virginia should be made aware of; that it stands unratified in the twenty-first century is beyond comprehension. As stated by Rep. Don Beyer (D-Va.), at a news conference on January 29, 2019¹¹: “There can be no reason to oppose the ERA other than fear. I ask every secure, confident man to join me in support.”

Ed. Note: For a topic-by-topic summary of bills introduced in the VA Legislature and subsequently killed by the Republican majority including healthcare, abortion and reproductive rights affecting women, see: https://www.localmajority.org/wp-content/uploads/2019/05/VA.Legislation_Report-including-2019.0509.JR_Full_Report.pdf

¹ <https://now.org/resource/chronology-of-the-equal-rights-amendment-1923-1996/>

² https://pilotonline.com/news/government/politics/virginia/article_8e7afd72-20bc-11e9-a7ae-3b8642122004.html

³ <https://docs.house.gov/meetings/JU/JU10/20190430/109330/HHRG-116-JU10-Wstate-SpearmanP-20190430.pdf>

⁴ Allison L. Held, Sheryl L. Herndon, and Danielle M. Stager, The Equal Rights Amendment: Why the Era Remains Legally Viable and Properly before the States, Volume 3, Issue I, Article 5, *William & Mary Journal of Race, Gender, and Social Justice*, <https://scholarship.law.wm.edu/wmjowl/vol3/iss1/5/>.

⁵ <https://www.equalrightsamendment.org/why>

⁶ https://www.richmond.com/news/virginia/government-politics/general-assembly/house-panel-rejects-era-on--vote-after-va/article_45e46ed7-fc84-5e5a-a68d-4dfabdb487c3.html

⁷ <https://beyer.house.gov/news/documentsingle.aspx?DocumentID=1200>

⁸ https://www.washingtonpost.com/local/social-issues/era-activists-seek-to-rally-support-from-millennial-women/2019/01/28/21e8242a-2321-11e9-ad53-824486280311_story.html?utm_term=.27b9c95a4d3a

⁹ https://pilotonline.com/news/government/politics/virginia/article_8e7afd72-20bc-11e9-a7ae-3b8642122004.html

¹⁰ <https://www.equalrightsamendment.org/why>

¹¹ https://www.washingtonpost.com/local/social-issues/era-activists-seek-to-rally-support-from-millennial-women/2019/01/28/21e8242a-2321-11e9-ad53-824486280311_story.html?noredirect=on&utm_term=.92b3ea91cd34