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New Drive Afoot to Pass Equal Rights Amendment

By Juliet Eilperin, Washington Post Staff Writer

Federal and state lawmakers have launched a new drive to pass the Equal Rights Amendment, reviving a feminist goal that faltered a quarter-century ago when the measure did not gain the approval of three-quarters of the state legislatures.

The amendment, which came three states short of enactment in 1982, has been introduced in five state legislatures since January. Yesterday, House and Senate Democrats reintroduced the measure under a new name – the Women’s Equality Amendment – and vowed to bring it to a vote in both chambers by the end of the session.

The renewed push to pass the ERA, which passed the House and Senate overwhelmingly in 1972 and was ratified by 35 states before skidding to a halt, highlights liberals’ renewed sense of power since November’s midterm elections. From Capitol Hill to Arkansas, legislators said they are seizing a political opportunity to enshrine women’s rights in the Constitution.

“Elections have consequences, and isn’t it true those consequences are good right now?” Sen. Barbara Boxer (D-Calif.) asked a mostly female crowd yesterday at a news conference, as the audience cheered. “We are turning this country around, bit by bit, to put it in a more progressive direction.”

The amendment consists of 52 words and has one key line: “Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.” That sentence would subject legal claims of gender discrimination to the same strict scrutiny given by courts to allegations of racial discrimination.

Although more states are considering ratifying the ERA now than at any other time in the past 25 years, activists still face serious hurdles. Every statewide officeholder in Arkansas endorsed the amendment this year, but the bill stalled in committee last week after Eagle Forum President Phyllis Schlafly came to Little Rock to testify against the measure.

In the 1970s, Schlafly and others argued that the ERA would lead to women being drafted by the military and to public unisex bathrooms. Today, she warns lawmakers

that its passage would compel courts to approve same-sex marriages and deny Social Security benefits for housewives and widows.

“It’s very retro. It had 10 years of debate, very passionate debate for 10 years, and it was defeated,” Schlafly said in an interview yesterday. “Anytime you get a fair forum where both sides are heard, we win.”

The ERA, originally introduced in Congress in 1923, gained popularity in the mid-1960s. In March 1972, it cleared the first of two hurdles: passing both chambers of Congress by the required two-thirds vote.

Thirty state legislatures ratified it the next year. Congress extended by three years its seven-year deadline for ratification, but the decade passed without approval by the required 38 states. ERA backers have since introduced the resolution in every Congress, but only now do they believe they have a realistic chance of success.

Legal scholars debate whether the 35 state votes to ratify the amendment are still valid.

In 1997, three professors argued in the *William and Mary Journal of Women and the Law* that the ERA remained viable because in 1992 the Madison Amendment – which affects congressional pay raises – became the 27th constitutional amendment 203 years after it first won congressional approval. Under that precedent, advocates say, the ERA should become part of the Constitution once three-quarters of the states ratify it, no matter how long that takes.

Even backers of the amendment such as Rep. Jerrold Nadler (D-N.Y.) expect a legal battle on that question. They are reintroducing the amendment in Congress and hope to start the ratification process again from scratch.

Idella Moore, executive officer of Atlanta-based 4ERA, said she and other supporters are trying to convince Americans that it makes sense to adopt the amendment, even though people have not focused on the issue for years.

“It’s a hell of a challenge,” Moore said. “We’re trying to reposition it back into the mainstream.”

ERA backers have enjoyed limited success so far – Florida’s House speaker has yet to assign the bill to committee and the Arkansas House Committee on State Agencies and Governmental Affairs deadlocked 10 to 10. But the drive has sparked a new national discussion on women’s rights.

“I think we’ve made a lot of people think about this and say, ‘Yes, this is the right thing to do,’” said Arkansas state Rep. Lindsley Smith (D), who sponsored the ERA and has vowed to bring it up again when the legislature reconvenes in 2009. “The question I get most frequently is ‘Lindsley, I thought this already was in the Constitution.’”

Jay Barth, a professor of politics at Hendrix College in Conway, Ark., said the recent debate shows both the advances the women's movement has made in the South and its limitations.

"Gender equity has definitely become a no-brainer aspect of Democratic Party ideology, even in Southern states. Thirty years ago, that was not the case," Barth said. But he added that when it came to ratifying the amendment this year, "it certainly wasn't a priority for Democratic Party officials."

Opponents warn that enacting the amendment could produce unintended consequences. Arkansas state Rep. Dan Greenberg (R) said he opposes the measure because courts in two states have ruled that equal-rights amendments in state constitutions justify state funding for abortion.

"The more general language you have in a constitutional amendment, the more unpredictable the policy impact will be," Greenberg said.

Caroline Fredrickson, who directs the Washington office of the American Civil Liberties Union, said that "it's hard to predict" how courts would interpret the amendment. But she said it is more likely the ERA would allow women to sue for higher pay and other benefits.

"It has really hampered women's ability to get fair treatment in the workplace and other aspects of their lives," she said.

It remains unclear whether the amendment – which has 194 House co-sponsors and 10 Senate co-sponsors and no longer includes a deadline for ratification – can get a two-thirds vote in Congress. Nadler, who chairs the Judiciary subcommittee on the Constitution, civil rights, and civil liberties, said the bill will receive its first hearing in more than two decades and "is going to be one of the items at the top of the agenda."

In many ways, yesterday's news conference on Capitol Hill underscored how much has changed since Congress last voted on the ERA. As Digital Sisters Inc. chief executive Shireen Mitchell announced that her online site is working to marshal support for the bill, Feminist Majority President Eleanor Smeal quipped: "The last time around, we didn't have Digital Sisters."

Staff researcher Rena Kirsch contributed to this report.