EFFECT OF THE EQUAL RIGHTS AMENDMENT ON PROTECTION OF TITLE IX

by

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Abstract

In order to guarantee protections of Title IX by the Education Amendment Act of 1972, it is recommended for Senate Minority Leader Chuck Schumer to support the ratification of the Equal Rights Amendment. Title IX of the Education Amendments Act attempts to eliminate the gender discrimination apparent throughout society. The protections offered by Title IX are in jeopardy. Secretary of Education Betsey DeVos and the Trump administration have twice annulled protections offered by this act since the Trump administration has been in office. The ratification of the ERA would guarantee equal protection and the enforcement needed for gender equality. The goal of ratifying the ERA is to guarantee the stability and protections offered by Title IX. Additionally, the goal of ratifying the ERA is to restrict what can be changed to Title IX by future administration’s Department of Education. Proposing this amendment to the Constitution is important to maintaining and guaranteeing a safe education environment, free from sexual harassment. The advisor for this capstone project is Professor Paul Weinstein.
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Figure 1, page 5. Six Charts that Explain Assault on College Campuses. Chart from Libby Nelson, Vox, May 9, 2014.
Action Forcing Event:

Christine Blasey Ford’s testimony and accusation of sexual assault of then-nominee Brett Kavanaugh represented the women and men who have experienced the trauma associated with sexual violence, and unable to gain the confidence to speak of the incident. However, the confirmation of Brett Kavanaugh to the Supreme Court demonstrates the inability of a credible testimony to dissuade the power of a man’s word, not only in American politics, but also across the United States.¹

Statement of the Problem:

The lack of consequence and acceptance for sexual harassment shows the power and stature of women in the United States is still far below that of their male counterparts. In the United States, it is estimated “one in five women… are sexually assaulted during their college years” and only 12 percent of those cases are reported, with an even smaller number of offenders are held accountable for their actions.² Title IX of the Education Amendments Act of 1972 attempts to eliminate the gender discrimination apparent throughout society. The protections offered by Title IX are in jeopardy. Secretary of Education Betsey DeVos and the Trump administration have twice annulled protections offered by this act since the Trump administration has been in office; once in September 2017 and again in November 2018. Reducing Title IX protections effect men and women within the education system, creating societal problems within the United States.

The United States Congress passed Title IX of the Education Amendments Act in 1972, prohibiting gender discrimination in schools and other educational programs. Title IX benefits both males and females, ensuring schools are gender-equitable by maintaining and upholding practices that ensure gender equality. Since the inception of Title IX, the protections have expanded to “compel schools to address sexual violence against women” although “neither sexual harassment nor sexual assault were mentioned in the law itself, courts has already recognized that such acts could constitute sex discrimination.”\(^3\) The annulment of protections guaranteed by Title IX will change fundamental aspects of the act and those effected by sexual assault and discrimination.

Title IX protections have been reduced by the Trump administration and the Department of Education twice since September 2017. The guideless set in September 2017 formally withdrew guidance from the Obama administration on how sexual assaults were handled by schools under the federal law. The guidelines created interim guidance and a “Question & Answer” regarding the protections provided by Title IX.\(^4\) This guidance also included the department formally withdrawing from the guidance created in the Obama-era “dear colleague letter,” criticizing the Obama administration for going too far. Secretary DeVos and the Department of Education announced this interim guidance regarding Title IX stating “her department was concerned that previous


guidance denied proper due process to those accused.” The standards established in the September 2017 announcement by the Department of Education was the standard for the major provisions to Title IX legislation introduced in November 2018.

The major provisions documented in the November 2018 guidance changed fundamental aspects of Title IX. These changes included defining “conduct constituting sexual harassment for Title IX purposes,” and changed the conditions and obligations of the recipient within the complaint processes. Secretary DeVos plans to roll back protections by reducing school liability through narrowing how sexual harassment is defined and expanding religious exemptions, allowing schools to identify the burden of proof required for sexual assault cases, regulations which may dissuade survivors’ from reporting, and potentially bolstering accused students’ rights over those of survivors. These new regulations “attempt to reduce school liability in sexual assault…[creating] imbalances between the rights of accused students and survivors, and potentially dissuade survivors from reporting sexual assault,” which are direct counterparts to the importance of the protections of Title IX. The fundamental changes to Title IX protections “reversed decades of progress for students, schools, and survivors,” according to Nancy Pelosi. Pelosi further explained the “proposal enables schools to shirk responsibility, completely

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8 Yuen, Ahmed, “4 Ways.”
ignores harassments, denies survivors due process, and discourages survivors’ from coming forward,” which “makes schools unwelcoming and less safe.”

The impact of Title IX is inclusive to both men and women within education, promoting equal access to higher education and a legal obligation to fight sexual harassment. The legal obligation to fight sexual harassment is an important component to Title IX because “sexual violence on America’s college campuses is a serious health and safety problem” due to the number of individuals affected by sexual violence and the societal effects of those events. A report from the National Institute of Justice reported about one in five women are victims of completed or attempted sexual assault while in college. Further analysis identifies an estimated 12 percent of assaults are reported and “only a fraction of the offenders are held accountable.” Although these numbers represent women on college campuses affected by sexual harassment, incidences are also documented at public high schools and with male survivors.

10 Pelosi, “Pelosi Statement.”
Approximately 6.1 percent of males were victims of sexual assault during college. Sexual assault is not limited to college campuses. During the 2007-2008 school year, “800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries” occurred at public high schools. The impact of reduced title IX protections will be recognized throughout society due to the prevalence of incidences for males and females, creating societal and financial costs.

Limiting protections of Title IX will have both societal effects and education effects on students. Through the change in provisions, survivors of assault may choose not to report “out of fear of retaliation or privacy concerns,” which may “undermine society’s advances toward increased gender equality in educations and professional spaces.” These experiences will have detrimental effects on students during their education as well as throughout their later lives and careers. The reduced protections will
force costs onto society because “gender-based violence has costs, and these costs constitute a discriminatory, gender-based barrier to educational access.”

Data related to sexual violence reveal societal costs associated with assaults. In 2008, a study was conducted to determine the societal cost per-offence of rape and sexual assault. Their findings found a per-offense cost of $240,776 in 2008 dollars, or $265,400 in 2015 dollars. A study conducted in 1996 revealed that due to “lost productivity, medical and mental health care, property loss, and lost quality of life,” each offense cost the survivor $143,678 in 2015 dollars. Despite the societal costs and costs to the survivor, the Department of Education and Secretary DeVos have elected to remove protections guaranteed by Title IX.

Removal of protections from the Title IX of the Education Amendments Act is a societal problem because the effects of cases of sexual violence effect both men and women, and create lasting impacts on the survivors and the community. The revised guidance will negatively impact society and will force costs onto both society and the survivor. These fundamental changes will reduce protections previously guaranteed by Title IX and reduce the guarantee of a gender equitable school environment.

**History/ Background:**

Title IX of the Education Amendments Act in 1972 created a solution to the issue of sexual harassment through the medium of education. Sexual harassment is not restricted to schools; however, this legislation is able to protect survivors of harassment because of federal funding provided to education institutions. Title IX evolved from its

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19 Bolger, “Gender Violence.”
20 Bolger, “Gender Violence.”
original intent to protect survivors of sexual harassment through its ability “to withhold funds from educational institutions allowing sexually discriminatory practices, and to protect victims from such practices.”21 Despite other protections of sexual harassment in areas such as the workplace, Title IX gives protections for instances which interfere with the right to receive an equal educational opportunity. This legislation offers protections and instruction necessary to fight sexual harassment because “schools may be training grounds for the insidious cycle of domestic violence.”22 The issue of sexual harassment is important because of its prevalence in society and its impact on survivors.

Sexual harassment is “not limited to tangible or physical forms of discrimination, but could arise from the atmosphere generated by such things as lewd posters or sexist language.”23 Street harassment is a form of sexual harassment, existing in the public world between strangers.24 This type of sexual harassment is both verbal and nonverbal, an invasion of privacy without consent, and reflects the “power differential between the genders.”25 Actions of sexual harassment depicted in a syndicated teenage advice column, “Ask Beth,” includes letters from survivors of street harassment and sexual harassment, describing experiences of sexual harassment at school. In one of the letters, an 11-year-old describes receiving attention from a boy, including chasing, hits and kicks on the behind, stomach, and legs, and slapping. When the student reported this behavior, the teacher “laughs and tells him, ‘if you like her so much ask her for her phone

23 Miller, “Title VI and Title VII.”
24 Woman in the street
25 Woman in the street
Title IX is attempting to prevent this type of response to sexual harassment, preventing this behavior and educating society on prevention and recovery and the seriousness of these types of incidents. Although protected by the first amendment, street harassment intimates’ victims into silence, restricting the resources available to reduce sexual harassment in society.

The many definitions, and vagueness of the definitions, of sexual harassment represent part of the underlying issues of sexual harassment within society. In addition to the vague definition, the unwillingness to report sexual harassment incidents may be a result of lack of knowledge on how to report the incident, the feeling of powerless in relation to the incident, embarrassment, feeling of blame, lack of desire to “rock the boat,” or the assumption the reporting will not make a difference. These experiences of sexual harassment incidents and questions of reporting have plagued the education system in the United States. In a survey conducted of girls and boys in the eighth to eleventh grades, eighty-five percent of girls surveyed reported they had been sexually harassed, and seventy-nine percent reported sexual harassment by a peer. When sexual harassment occurs in schools, it “is unwanted and unwelcomed behavior…that interferes with the right to receive an equal equational opportunity.” The effects of these forms of sexual harassment often include “bouts of depression, decreased participation in the classroom, and overall poorer academic performance,” decreasing the educational value.

26 Stein, “Sexual Harassment in School.”
27 Stein, “Sexual Harassment in School.”
28 Woman in the street
29 Miller, “Title VI and Title VII.”
31 Stein, “Sexual Harassment in School.”
of their studies. Although Title IX was not intended to reduce sexual harassment within education, Title IX was passed in 1972 with little controversy.

Title IX of the Education Amendments Act was passed in 1972. The Department of Health, Education, and Welfare finished drafting regulations for Title IX in 1975. Although sexual harassment protection was not initially intended to be included in protections of Title IX, the legislation was intended to “prohibit sex discrimination in educational institutions that received federal financial assistance,” which was later interpreted to include sexual harassment protection. Prior to Title IX, no protection existed for sexual harassment in schools. Unlike other protections for sexual harassment such as the Equal Employment Opportunity Commission, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, and the Violence Against Women Act, schools are the correct mechanism for dealing with sexual harassment.

Schools are effective in decreasing the number of sexual harassment incidents because “they have the power and duty to ‘inculcate the habits and manners of civility’ in children,” and “have established discipline procedures to enforce their rules and regularly control students’ behavior.” Schools are also inclined to address sexual harassment incidents because sexual harassment presents “a significant threat to the institution’s reputation and legal liability depending on the adequacy of its response.” Generally, schools will be held liable for sexual harassment claims in a Title IX case when “it has

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32 Hochberg, “Protecting Students.”
34 Hochberg, “Protecting Students.”
adequate notice of discrimination in its programs or activities,” the discrimination is “so severe, pervasive, and objectively offense” that is deprives an educational opportunity from the victim, and the failure of the school to “remedy the situation because of its ‘deliberate indifference’ to the discrimination.”

Due to the notoriously vague writing and instruction provided in Title IX, primarily centered around discrimination “on the basis of sex,” this legislation has been able to have a broad scope and interpretation. The “purposeful intent to maintain a broad scope for the statute” has enabled Title IX to “become an effective weapon against peer harassment.” Title IX is authorized pursuant to the spending clause of the constitution; Article 1 Section 8 of the Constitution grants Congress the power to tax and spend. The Supreme Court has previously authorized this interpretation of the use of the spending power, upholding Congress’ legislation “that falls outside Congress’s other enumerated” powers. Opponents argue the constitutionality of the Office of Civil Rights authority to enforce Title IX. Additionally, opponents “have held that a school cannot be held liable for peer sexual harassment” because Title IX was passed pursuant solely to the Spending Clause and not Section 5 of the Fourteenth Amendment, deviating from the traditional methods of “statutory interpretation.” Through Title IX’s evolution since its original inception and intent, clarification has been provided by the Office of Civil Rights (OCR), a division of the Department of Education, and from decisions made by the court system.

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36 Rammell, “Title IX and the Dear Colleague Letter.”
37 Miller, “Title VI and Title VII.”
38 Hochberg, "Protecting Students."
39 Hochberg, "Protecting Students."
OCR developed “Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties” in 1997. This guidance proclaimed sexual harassment is a discrimination based on sex, which is prohibited under Title IX. Additionally, this guidance required schools to have grievance procedures for survivors of sexual harassment, “provide for prompt and equitable resolution of sex discrimination complaints,” publicize these procedures and policies, monitor employees to avoid liability, and provided definitions of quid pro quo and hostile environment sexual harassment. OCR revised the sexual harassment guidelines in 2001, responsible in part due to the Supreme Court decisions in *Gebser v. Lago Vista Independent School District* and *Davis v. Monroe County Board of Education*. These revised guidelines reiterated OCR is responsible for enforcing Title IX, instructed schools on recognizing and responding to sexual harassment, and “established the liability standards for private actions and monetary damages for sexual harassment of students under Title IX.” In addition to the guidance provided by OCR, Congress has extended its reach in updating guidance to Title IX three times since the enactment of Title IX in 1972.

Since the enactment of Title IX, Congress has extended the protections offered by this legislation. In 1976, Congress passed the Civil Rights Attorney’s Fees Awards Act, expanding the courts discretion in awarding a successful Title IX plaintiff “reasonable attorney’s fees.” Congress passed Section 1003 of the Rehabilitation Act Amendments of 1986 following a Supreme Court decision limiting the scope of Title IX. This act

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41 Anderson, “A Historical Review.”
42 Anderson, “A Historical Review.”
43 Hochberg, “Protecting Students.”
“enables petitioners to recover against a state in federal court for Title IX violation.”

Following the Rehabilitation Act Amendments, Congress passed the Civil Rights Restoration Act of 1987, which “subjects an entire institution to the requirements of Title IX if any one program or activity within the institution receives federal funds.” The protections offered by Title IX have also been expended through initiatives from the Executive and Judicial Branches.

The Obama administration issued the “Dear Colleague Letter” in April 2011 after decades of inconsistencies and ambiguates as to what was protected by Title IX. However, this guidance was also very vague and left additional questions regarding the expectations of universities. The Dear Colleague Letter was focused on sexual violence, and defined what constituted as sexual violence, expanding its previous definition. Additionally, this letter required more involvement from colleges and universities and expanded their jurisdiction of protection from sexual violence.

Title IX does not explicitly offer protection for sexual harassment in schools, but the Supreme Court created guidelines on particulars of the legislation and particulars related to the survivors of the sexual harassment. In the landmark case of Franklin v. Gwinnett County Public Schools, the court held Title IX prohibits sexual harassment in public schools and ruled the petitioner was entitled to compensation related to the harassment. The ruling in this case acknowledged sexual harassment as a form of discrimination barred by Title IX, and significantly strengthened the plaintiff’s rights.

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44 Hochberg, “Protecting Students.”
45 Hochberg, “Protecting Students.”
47 Hochberg, “Protecting Students.”
under Title IX.\textsuperscript{49} The protections of Title IX were also guaranteed through the crafting of policy and activism of major actors related to Title IX.

Title IX was drafted by Patsy Milk and Edith Green in the US House of Representatives. Patsy Milk was the first woman of color elected to Congress, entering politics to fight gender and racial inequalities.\textsuperscript{50} The original proposal for Title IX is credited to Senator Birch Bayh, “who cited faculty employments, admissions procedures, and scholarships as aspects of school administration.”\textsuperscript{51} Senator Birth Bayh was also a principal architect for the Equal Rights Amendment. Another major actor related to Title IX is Terry Nicole Steinberg, who offered Title IX as a means of protection for sexual harassment. Terry Nicole Steinberg proposed Title IX as a solution to the problem of campus sexual assault, citing the university’s failure to address the problem of sexual assault as a form of discrimination against women students.\textsuperscript{52} These individuals were instrumental in the creation of Title IX and the protections within this legislation, recognizing the lack of protection from sexual harassment within schools. The ideas and actions to write the Title IX legislation were necessary because of the lack of legislation protecting from sexual harassment within schools.

Other areas of law which cover assault, such as in civil law, anti-harassment ordinances, fighting word statues, the tort of intentional infliction of emotional distress, and the tort of invasion of privacy, do not provide a solution for protection against sexual

\textsuperscript{49} Anderson, “A Historical Review.”
\textsuperscript{50} Barbara Winslow, “The Impact of Title IX,” \textit{The Gilder Lehrman Institute of American History} (September 2016).
\textsuperscript{51} Hochberg, “Protecting Students.”
\textsuperscript{52} Tani, “An Administrative Right.”
harassment. Instead, the problem of sexual harassment has been disregarded as a form of flirtation or attention, or simply ignored when survivors of assault came forward with their stories. Survivors of assault want “for some type of acknowledgment and justice,” instead of thinking of sexual assault “as just one of those things” they “have to put up with.” Title IX protects against sexual harassment within schools, an area previously left unprotected from this type of maltreatment. Sexual harassment protections in other areas of society include the Equal Employment Opportunity Commission, Title VII of the Civil Rights Act of 1964, Title VI of the Civil Rights Act of 1964, and the Violence Against Women Act. These protections do not protect against sexual harassment in schools, requiring protection from other legislation.

Current support and praise of Title IX legislation has increased in recent years due to the global #metoo movement. In 2018, the Title IX Office at Harvard University saw a 56 percent increase in disclosures. Harvard’s Title IX Officer, Nicole M. Merhill, credited this increase with training opportunities and the global #metoo movement. However, the movement did not prevent the proposed changes of Title IX protection against sexual harassment. Title IX protection does not offer flawless sexual harassment policy for schools, “its vague policy guidance leaves schools with wide latitude in developing and implementing grievance procedures for resolving sexual harassment.

53 Deborah M. Thompson, “The Woman in the Street: Reclaiming the Public Space from Sexual Harassment,” Yale Journal of Law and Feminism 6, no. 2 (Summer 1994): 313-348
54 Stein, “Sexual Harassment in School.”
55 Stein, “Sexual Harassment in School.”
complaints.” Additionally, compliance checks from the Office of Civil Rights do not ensure compliance at all schools due to their limited checks.

Supporters of the proposed changes to Title IX protections argue “the [new] rules better protect the wrongly accused, by allowing schools to demand more proof of wrongdoing, by allowing schools to demand more proof of wrongdoing, by guaranteeing the right to cross-examine accusers, and by narrowing the definition of sexual harassment.” These supporters from the Families Advocating for Campus Equality insist this legislation is improving the quality over quantity of sexual harassment claims. Although the current protections offered by Title IX are not flawless, the withdraw of key Title IX protections concern school administrators, survivors, and advocates of protection from sexual harassment.

Since the announcement by the Department of Education of the proposed changes, the department has been sent approximately 100,000 public comments regarding the changes. Opponents to the proposed changes to the Title IX protections argue the proposed regulations will “allow schools to avoid dealing with cases of sexual misconduct.” Boston University President Robert A. Brown stated the proposed changes “would deter victims of sexual misconduct from coming forward and undermine the University’s efforts to ‘foster a campus environment that is free of harassment and

59 Smith, “Trump Administration.”
60 Smith, “Trump Administration.”
discrimination.”\textsuperscript{62} Senator Patty Murray expressed similar concerns to the withdraw of protections, concerned “Secretary DeVos’ proposed rule will returns us to a time when sexual-assault survivors were ignored and felt like they had nowhere to turn.”\textsuperscript{63}

Title IX protections against sexual harassment in schools are necessary in order to “prevent potential litigation and [to] create a culture that encourages sound practices in response to allegation of sexual discrimination, including acts of sexual violence.”\textsuperscript{64} The history of sexual harassment and the lack of protections before Title IX portray the importance of enforcing this legislation in schools. Secretary DeVos’ proposed changes to the regulations will resort much of the progress of sexual harassment protections to the early enforcement of Title IX. The outcry of the proposed changes demonstrates the disapproval of the proposal by the general public.

\textbf{Description of Policy Proposal:}

The ratification of the Equal Rights Amendment (ERA) to the United States Constitution is proposed as a solution to the problem of the roll-back of protections guaranteed by Title IX of the Education Amendment Act of 1972. The ratification of the ERA would guarantee equal protection and the enforcement needed for gender equality. The goal of ratifying the ERA is to guarantee the stability and protections offered by Title IX. Additionally, the goal of ratifying the ERA is to restrict what can be changed to Title IX by future administration’s Department of Education. Proposing this amendment to the


\textsuperscript{63} Fields, “DeVos’ Title IX Changes.”

\textsuperscript{64} Rammell, “Title IX and the Dear Colleague Letter.”
Constitution is important to maintaining and guaranteeing a safe education environment, free from sexual harassment.

In addition to guaranteeing the protections offered by Title IX, the ratification of the ERA will protect other statutes and case law which have advanced women’s rights, such as Title VII of the Civil Rights Acts of 1964, Title VI of the Civil Rights Act of 1964, and the Violence Against Women Act, from Congressional amendment or repeals. The ratification of the ERA will also improve the “United States’ global credibility with respect to sex discrimination” because “many other countries affirm legal equality of the sexes in their governing documents.”65 The ERA will change the present legal structure, which currently contains laws excluding women from legal rights, opportunities, or responsibilities.66 Ratifying the ERA will clarify the legal status of sex discrimination for the courts, enacting the strict level of judicial scrutiny for sex discrimination. Currently, the Supreme Court uses the intermediate standard of review for cases of sex discrimination, permitting certain forms of sex discrimination.67 The ERA was first proposed in 1923 and was passed by the Senate in 1972, but was not ratified by three-fourths of the states by the deadline set by the Senate to become an amendment.

The original version of the ERA was proposed in 1923, known also at the Lucretia Mott Amendment. This version of the ERA stated, “Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction. Congress shall have power to enforce this article by appropriate legislation.”68

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67 “Equal Rights Amendment,” Alice Paul Institute.
68 “Equal Rights Amendment,” Alice Paul Institute.
version was rewritten in 1943, renamed the Alice Paul Amendment. This version included the same messaging of the original version but modeled the language to the 19th Amendment, and added a provision for the amendment to take effect two years after the date of ratification. The 1943 version of the ERA was passed by the Senate and the House of Representatives in 1972.

After almost 40 years since the initial proposal of the Equal Rights Amendment, the 1943 version was passed by the Senate and the House of Representatives and sent to the states for ratification on March 22, 1972. The states were given a seven-year deadline, later extended by Congress to a deadline of June 30, 1982, to ratify the amendment. The deadline expired with only 35 of the necessary 38 states to become an amendment. The ERA has been introduced in every session of Congress since 1982, and in 1983 was sent to a House floor vote but failed by six votes. The raised awareness of the ERA, which led to its vote in Congress, was aided by the Supreme Court decision in Reed v. Reed in 1971, which “held that the equal protection clause of the Constitution made laws that distinguish between women and men unconstitutional.” Introducing the 1943 version of the ERA to the House of Representatives and the Senate will guarantee protections offered by Title IX.

Policy Authorization Tool

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69 Equal Rights Amendment: “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.”

70 “Equal Rights Amendment,” Alice Paul Institute.

71 “Equal Rights Amendment,” Alice Paul Institute.

The policy authorization tool would be authorized via an amendment to the Constitution. The authority to amend the Constitution is from Article V of the Constitution. The National Archives and Records Administration is responsible for administering the ratification process. An amendment can be proposed by a two thirds majority vote in both the House of Representatives and the Senate or by a constitutional convention. The proposed amendment will become part of the Constitution after it is ratified by three-fourths of the states.73

Policy Implementation Tool

The ratification of the ERA will guarantee protections offered by Title IX and other protections for women, as well as provide authority for future protections against gender discrimination. This amendment will give constitutional authority to laws and regulations passed in Congress. This amendment, and the laws and regulations produced as a result of this amendment, will be jointly enforced by Congress, and the Department of Justice, the Office of Civils Rights in the Department of Education, and by the Equal Employment Opportunity Commission. According to Section 3 of the ERA, “this amendment shall take effect two years after the date of ratification.” In order for the ERA to become Constitution, the ERA must be ratified by three-fourths of the states.

Depending on how the states decide to vote for the ERA, the cost per precinct of administering a special election may range from $400 to $1,600 per precinct.74 The ERA

will impact women. The ERA will also impact unions, corporations, and nonprofits, because of the future implications of laws and regulations related to gender equality. However, effects from the successful passage of the Equal Rights Amendment may take longer time to enact change within society, rather than an effect after the two-year time allotment. The effects of the Equal Rights Amendment are applied towards government and not private businesses or corporations, and may have little effect to improve the wage gap.

The ERA was reintroduced in the Senate by Senator Robert Menendez (D-NJ) and in the House of Representatives by Representative Carolyn Maloney (D-NY) on January 20, 2017, with slightly different wording from the 1972 version. The alterations clarify the intent of the ERA to make discrimination on the basis of a person’s sex unconstitutional, and clarifies the role of both the federal and state governments in the enforcement. In order to guarantee the protections offered in Title IX, the Equal Rights Amendment is proposed because of constitutional authority and enforcement by Congress.

Policy Analysis:

The ratification of the Equal Rights Amendment in order to guarantee the stability and protections offered by Title IX of the Education Amendment Act of 1972 will be analyzed by its effectiveness, efficiency, equity, and feasibility. Additionally, the successes and failures of Equal Rights Amendments in state’s constitutions and in other

75 2017 ERA:
"Section 1. Women shall have equal rights in the United States and every place subject to its jurisdiction. 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. Congress and the several States 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. “
countries will be examined. Finally, case studies will be assessed, identifying the approval and disapproval rates of the ERA, and the current debate regarding the requirement of women to register for the draft.

Effectiveness

The goals of the ratification of the Equal Rights Amendment to the United States Constitution are to guarantee the stability and protections offered by Title IX as well as to restrict what can be changed to Title IX by a future administration’s Department of Education. Following ratification, the ERA will create a concise and stricter judicial standard for cases involving sex discrimination and provide protection for attempts to decrease women’s rights.\(^7\) The language of the ERA is simple and direct, assuring “permanent, enforceable, and complete equity for women.”\(^7\) Although interpretations of the Constitution may be read to protect women, interpretations and Supreme Court decisions prove the protection of women and women’s rights are not found in the Constitution and instead, “the Supreme Court still speaks from the thoughts processes and the institutions of the Middle Ages.”\(^7\) Once ratified, the ERA may be able to guarantee the protections offered by Title IX without the insecurity of change by a future administrations.

Ratification of the Equal Rights Amendment to the United States Constitution will protect Title IX legislation to guarantee gender equality in education. This input can be measured through qualitative date in universities on their experiences with Title IX

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\(^7\) Walter Mondale, Martha Griffiths, and Bella Abzug, “Should Congress Approve the Equal Rights Amendment?” *Congressional Digest* 98, no. 3 (March 2019): 12-18.
processes and procedures within their schools. This input can also be measured through the amount of resources devoted to Title IX complaints per student at each school. This data can be processed and analyzed through the Office of Civil Rights in order to conclude the effectiveness of the Equal Rights Amendment to enforce protections within the Equal Rights Amendment.

Efficiency

The efficiency of ratifying the Equal Rights Amendment in order to guarantee protections offered by Title IX is measured by its cost or time. Currently, there are multiple laws protecting against sexual harassment, such as the Equal Employment Opportunity Commission, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, and the Violence Against Women Act. However, the multitude of laws without the protection guaranteed by the Constitution causes increased cost and time in order to regulate the laws and determine their constitutionality and relevance within each sexual harassment case, such as litigation involving the Equal Employment Opportunity Commission, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, and the Violence Against Women Act. The processes of “striking down archaic, discriminatory laws in our courts and State legislature for years and years” is not efficient judicial processes.79

The passage of the ERA may benefit men more than women, therefore an unintentional consequence of the ratification. An example of changes to gender discrimination law benefiting men is the Supreme Court Case of Craig v. Boren (429 US 190). This case challenged an Oklahoma law which prohibited the sale of 3.2 percent

79 Mondale, “Should Congress Approve.”
beer to males under the age of 21 and to females under the age of 18. The Supreme Court ruled the Oklahoma law violated the Fourteenth Amendment’s Equal Protection Clause. In this decision, the Supreme Court created the intermediate standard of scrutiny for deciding cases involving gender discrimination cases.

Other examples under current laws and regulations are women who are occasionally given primary benefits, such as in family and custody proceedings. Thus, the ERA would allow for the males to receive equal benefits in certain cases. Additionally, the passage of the ERA may not result in immediate actions or change within society. The actual benefits may be ceremonial; thus, the cost of the ERA must be considered in order to determine its efficiency for protection of Title IX legislation.

Equity

The fairness and equality of the Equal Rights Amendment in order to guarantee protections offered by Title IX is determined the opinions of those who are in favor of the ratification of the ERA and the opponents to its ratification. A public opinion survey conducted in the United States releveled “92 percent of respondents indicated that there should be gender equality in the Constitution, and 72 percent believe it is already in place.” The large support for the ERA, and the presumed protection already offered to women, demonstrate the necessity for this amendment in order to guarantee protections for women and women’s rights. Without this guarantee, inequalities related to women and sexual harassment will not be able to be resolved.

Without the ERA, the inequalities currently established within the hierarchy in the United States will not be resolved. Additionally, those effected by sexual harassment in

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80 Cardin, “Should the States Ratify the Equal Rights Amendment?”
schools are negatively affected by this hierarchy. This hierarchy was documented in the Constitution when the Fourteenth Amendment was ratified in 1868, marking “the first time that the Constitution used the word ‘male,’ thereby specifically excluding women.”

Although there are differences between men and women, the differences are “virtually irrelevant to sex inequality.” Instead, “the vast majority of sex inequality is produced by structural and systemic and unconscious practices in a context of the absence or abdication of laws against them.”

Without legal tools to reverse the diminished equality for women compared to men, violence against women will not be resolved. Under current legislation, sexual violence, such as rape and domestic violence, are not reported anywhere close to their occurrence.

Currently, 9.5% of rapes committed outside of marriage is reported. The underreporting of sexual violence “happens because women know that their reports of sexual assault will likely not be taken seriously and they are more likely to be punished than vindicated.” Legislation has also limited equalities for married women. Inferior treatments include “the right to engage in business, the right to determine domicile, automatic name change, contractual incapacity, management of her property and the marital estate, criminal law, and grounds for divorce.”

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81 Conlin, “Equal Protection Versus Equal Rights Amendment.”


83 Mackinnon, “Toward a Renewed Equal Rights Amendment.”

84 Mackinnon, “Toward a Renewed Equal Rights Amendment.”

85 Mackinnon, “Toward a Renewed Equal Rights Amendment.”

86 Mackinnon, “Toward a Renewed Equal Rights Amendment.”

87 Mondale, “Should Congress Approve.”
legal status of slaves. The present inequalities of women in the United States is not universally accepted by those within the United States.

Historically, there has been resistance to the ratification of the ERA. Observations from the proponents and the opponents of the ERA are aligned with two types of freedoms: freedom for women to do what men do and freedom for women to be protected from not doing what men do. Opponents of the ERA do not see the current status of women as inferior, but protected from men’s place in society.

Primary opposition to the ERA centers around the idea the amendment “would destroy the social structure on which America rests.” According to Senator Sam Ervin, the impact the ERA would have on the social structure of America “would constitute evil.” The denial of equal rights for women “once found its justification in a policy of special of compensatory protection for a presumably weaker sex.” Primary opposition to the ratification of the ERA came from married women who were economically dependent on their husbands, poorly educated males because of their economic self-interests, and some proponents for protective labor laws. The inability of the ERA to become ratified during the 1970s and 1980s is also credited to the low support the amendment had among politically influential groups, thus limited its power to be universally accepted. The ERA also had uneven distribution of support through the United States, with high acceptance in areas and very low support in others. Finally,

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88 Conlin, “Equal Protection Versus Equal Rights Amendment.”
89 Miller, “Phyllis Schlafly’s ‘Positive’ Freedom.”
91 Ervin, “Should Congress Approve the Equal Rights Amendment?”
opposition to the ERA became associated with a “broader right-wing backlash,” which further separated supports and non-supporters of the amendment.94

Overtime, the debate regarding the ratification of the ERA has created a clash between conservative and liberal voters. In particular, the issue of abortion has been the center to this debate.95 Opposition to the ERA have used the legality and access abortion as a key issue for the impact the ERA would have on society.

Married women who were economically dependent on their husbands were opposed to the ERA because of the threat the amendment would place on their current situation. These women saw the ERA as an “expectation that women should work,” and the threat the ERA had on “the ultimate sanctuary of alimony.”96 However, proponents of the ERA argue this amendment “would give new dignity to these important roles…the equal rights amendment can only enhance the status of traditional women’s occupations. For these would become positions accepted by women as equal, not roles imposed on them as inferiors.”97 During the earlier years of activism for the ratification for the ERA, opposition came from progressive reformer Florence Kelley and her allies, for fear the ERA would destroy the protective labor laws Kelley had spent her life fighting for.98 In addition to these groups, those opposed to the ERA were threatened by the ERA and the “concerns on the ERA’s effect on government-funded abortions, the military draft and

97 Conlin, “Equal Protection Versus Equal Rights Amendment.”
combat policies, same-sex marriage, insurance premiums, and private entities.” The opponents to the ERA view the ERA as defeating the current perceived protections of women within society.

Feasibility

The feasibility of ratifying the Equal Rights Amendment has been argued as a bipartisan issue because “victims of sexual assault do not discriminate based on political party.” Resolutions have been drafted containing members from both the Democratic and Republican parties. Currently, states are continuing to support the 1972 ERA. In 2018, Illinois ratified the ERA, becoming the 37th state to ratify the amendment since Congress passed the ERA in 1972. Despite the continued support for the ERA, the feasibility of its ratification is diminished unless Congress extends its 1982 deadline. Representative Jackie Speier introduced a resolution in January 2019 to eliminate the deadline of 1982 for ratification of the ERA. This bipartisan bill has 149 co-sponsors. Despite continued discussions and support for the ratification of the ERA, questions still arise about if there are tangible benefits from the ratification of this amendment. Many are also confused about the “ramifications of the ERA” because “there is not the same exactitude definition.” Although the United States has not been

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100 Cardin, “Should the States Ratify.”
101 Thoet, “One of these states could ratify the Equal Rights Amendment.”
102 Thoet, “One of these states could ratify the Equal Rights Amendment.”
103 Thoet, “One of these states could ratify the Equal Rights Amendment.”
104 Thoet, “One of these states could ratify the Equal Rights Amendment.”
105 Thoet, “One of these states could ratify the Equal Rights Amendment.”
106 Freeman, “Social Revolution and the Equal Rights Amendment.”
able to ratify the ERA, states within the United States as well as countries abroad have had a higher feasibility in creating an equal rights amendment.

**Equal Rights Amendment in the United States and Abroad**

Since the failed ratification of the Equal Rights Amendment by the deadline set by Congress, many states have used their state ERAs for issues related to gender equality, which contain “nearly identical [wording] to that proposed for the federal Constitution.”\(^{108}\) The state use of the ERA has been used in cases of pregnancy classifications constituting unconstitutional sex discrimination, requirement of boys and girls in athletic events, recognizing same-sex marriages, and prohibiting sex classifications in insurance pricing.\(^{109}\) However, the state constitutional right is not self-enforcing, thus other legislation or enforcement must be used in order for the use of the ERA.

In Pennsylvania, “the ERA contributed to a relatively small change in the Commonwealth's social fabric, and that the change may have pragmatically benefited men more than women.”\(^{110}\) However, the Pennsylvania ERA does apply to private entities, validated by the Pennsylvania courts, which prevents potential issues with the ERA and federal overreach.\(^{111}\)

The Texas ERA was passed in 1972, a decade before the federal deadline. During that time, Texas “has not established unisex bathrooms, has not approved marriage between persons of the same sex, has not invalidated sex offenses, has not relieved

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108 Taylor, “The Lost Legislative History.”
109 Taylor, “The Lost Legislative History.”
111 Beck, “An Analysis.”
husbands and fathers of support obligations to their wives and children, has not forced homemakers into the labor force, has not rendered Texans sexless, and has not destroyed the social fabric of the state. The Alamo still stands in San Antonio.”

In addition to states within the United States ratifying the ERA, gender equality exists in approximately 184 out of the 200 written constitutions in the world. Of the 184 countries, 139 have expressions of sex or gender equality, or “express non-discrimination provisions on the basis of sex- the world ‘sex,’ or ‘gender,’ or women and men are in them.” In contrast, former Supreme Court Justice Antonin Scalia said “the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn’t.” The presence of a version of the ERA in state’s constitution’s and in other countries around the world identifies the United States as an outlier in the area of gender equality.

Section 28 of the Canadian Charter of Rights and Freedoms reads, “Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.” The purpose of this section was to transform judicial understating of rights and equality. Since the enacting of this section, there has been approximately 60 cases involving Section 28 in front of Canadian courts. Although its purpose was to “prevent any continuation of sexual discrimination by

113 Mackinnon, “Toward a Renewed Equal Rights Amendment.”
114 Mackinnon, “Toward a Renewed Equal Rights Amendment.”
115 Mackinnon, “Toward a Renewed Equal Rights Amendment.”
affirmative legislative action,” it took “away from legislative bodies the right to perpetrate it in the future.”

Throughout the campaigns to ratify the ERA from 1972-1982, one of the major points for opposition was the inclusion of women in the draft if the ERA was ratified. Recently, a federal judge announced exemption of women from the registration requirement violated the Constitution’s equal protection principles. The continued discussions regarding women’s equality and the Equal Rights Amendment and the increased access of women in society portray how the Equal Rights Amendment would impact women’s equality as well as protections offered by Title IX of the Education Amendment Act of 1972.

**Political Analysis**

The Equal Rights Amendment is proposed to halt the removal of protections guaranteed by Title IX of the Education Amendment Act of 1972. Due to Senator Chuck Schumer’s past support for equal protection and prior versions of the Equal Rights Amendment, this proposal will positively impact the politics of the Senator. Other politicians from New York in support of the ERA include Democratic Representative Carolyn Maloney and Republican Representative Tom Reed. These representatives are cosponsors of an ERA ratification bill. The tactics used by Senator Schumer to rally support for the ERA will be important to the likelihood of the successful ratification of the ERA. Key stakeholders in the successful ratification include: Members of Congress

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117 Froc, “Is Originalism.”
because of their role as policymakers; The Alice Paul Institute because of their advocacy and history with the Equal Rights Amendment; Justice Ruth Bader Ginsburg and her activism for equal rights and the Equal Rights Amendment; and the #MeToo movement because of the rise of the national attention to sexual assault and the inequalities within society. The positive response from the public at large for this issue, and the activism from key stakeholders will aid Senator Schumer’s efforts in the revitalization of the ratification of the Equal Rights Amendment.

*Senator Schumer and the Equal Rights Amendment*

Ratifying the Equal Rights Amendment in order to guarantee the protections of Title IX will help Senator Schumer’s politics because of his history of support for women’s choice. Senator Schumer has also advocated against the proposed changes in Title IX legislation and is a proponent for strengthening protections against sexual assault. Most recently, Senator Schumer documented his opposition to the revocation of the enforcement guidelines in Title IX. On 14 September 2017, Schumer signed a letter addressed to Secretary of Education Betsey DeVos urging DeVos to leave the current guidance of Title IX in place because “rescinding the guidance would be a step in the wrong direction in addressing the national epidemic of campus sexual assault.”

Following the initial guidance from Secretary DeVos, Senator Schumer signed an additional letter with other legislators documenting their displeasure with DeVos’ actions. The letter signed on 27 September 2017 informed Secretary DeVos of their disapproval of her “lack of concern for the many requests of survivors of sexual assault

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and members of Congress,” and to “reinstate the previous guidance and make it clear that survivors’ voices will be heard throughout any rulemaking process.” Senator Schumer has also shown his support for strengthening of protections against sexual assault in other areas because “it is critical that no space be immune to the protections and support we afford of sexual assault.” In addition to Senator Schumer’s resentment towards the changes to Title IX protections, Senator Schumer has also exhibited support for women’s equality and for women’s choice.

Advocating for the ratification of the Equal Rights Amendment will help Senator Schumer’s politics because of his already documented support for women’s equality and freedom to make their own decisions. Senator Schumer has proclaimed his support for women to have power over their healthcare, noting “if a woman wants contraception for either birth control or other health purposes… it is up to that woman, not her employer.” The power for women to have control over their healthcare decisions is a “constitutionally guaranteed right,” according to Senator Schumer. In 2007, Senator Schumer co-sponsored a re-introduction of the Equal Rights Amendment, because “a stronger effort is clearly needed to finally live up to our commitment of full equality.” Senator Schumer acknowledged “the ERA alone cannot remedy all discrimination, but it will clearly strengthen the ongoing effort of women across the country to obtain equal

124 https://votesmart.org/public-statement/1273099/tweet-the-next-supreme-court-justice-may-also-someday-soon-determine-how-much-states-can-restrict-a-womans-constitutionally-guaranteed-right-to-make-her-own-medical-decisions-this-is-whatsatstake#.XKjHP5NKh0s
treatment… [because] women of America deserve no less.”

Because Senator Schumer already supports women’s equality and past introductions of the Equal Rights Amendment, the trade-offs for his support of the proposal are minimal.

Senator Schumer will likely receive backlash from Conservatives for his support of the ERA. However, Senator Schumer’s support for the ERA is not unusual compared to his support of other bills and for women’s equality. Although the current politics indicate a support for the ERA from more liberal politicians, the ERA passed by Congress in March 1972 had strong bipartisan support; “78 percent of Republican members [in the House] voted in favor; 84 percent of Senate Republicans also supported the measure.” Bipartisan support for the ERA was also found in state legislatures of states who had supported the ERA in its first year. Of the 30 states who ratified the ERA in its first year, “one-third of those states had legislatures fully controlled by Republicans. In another five, the GOP either controlled one house of the legislature or shared control with Democrats.”

Current Republican support is at 90 percent, according to a 2016 poll commissioned by the ERA Coalition.

Although the ERA was not ratified because of the STOP ERA campaigners, Republican lawmakers may be more willing to support the ERA because “election results from 2017 and 2018 revealed a sharply widening gender gap benefiting Democratic

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125 Chuck Schumer (@SenSchumer), “The next Supreme Court Justice may also someday soon determine how much states can restrict a woman’s constitutionally guaranteed right to make her own medical decisions. This is #WhatsAtStake,” Twitter, August 21, 2018, https://votesmart.org/public-statement/1273099/tweet-the-next-supreme-court-justice-may-also-someday-soon-determine-how-much-states-can-restrict-a-womans-constitutionally-guaranteed-right-to-make-her-own-medical-decisions-this-is-whatsatstake#.XLEF4ZNKh0t.


127 Cohen, “Is the GOP?”

128 Cohen, “Is the GOP?”
candidates.”

However, a recent bill intended to strengthen protection to female workers and help to decrease the gender wage gap was voted against by 187 House Republicans. The “dangers” of the ratification of the ERA from the STOP ERA campaigners have come to pass without the passage of the ERA, therefore diminishing the rhetoric from the 1972 ratification campaign. Senator Schumer’s support for the ratification of the ERA will be align with his current politics because of the ERA’s “goal of enshrining gender equality in the Constitution.”

Ratifying the ERA will not garner immediate effects. If the ERA were ratified, the effects would depend on the court’s interpretation. In order to ameliorate the cost of the effects of the ERA, Senator Schumer should advocate legislation to be passed once the ERA is ratified. Additionally, Senator Schumer should work with Republican Senators who support the ERA in order to gain support for his legislation and women’s equality rhetoric. Other possible political strategies for Senator Schumer are to advocate for the positive ramifications of the ratification of the ERA and the necessity for its passage, including many Americans assuming it is already ratified and the number of other countries who have memorialized equal rights. Additionally, Senator Schumer should become a co-sponsor of the recent resolutions proposed in the Senate for the removal of the 1982 deadline of the original ERA and for a bill proposing the reintroduction of the ERA. These tactics will help to elevate the importance of the ERA and will improve the politics of Senator Schumer.

129 Cohen, “Is the GOP?”
131 Cohen, “Is the GOP?”
Key Stakeholders and the Equal Rights Amendment

Key stakeholders for the guarantee of women’s protections and for the ratification of the Equal Rights Amendment include members of Congress, The Alice Paul Institute, Ruth Bader Ginsburg, and those who have advocated during the #MeToo movement. With all of the mentioned key stakeholders, conservative opposition will exist. However, when the ERA was passed by the Senate and the House of Representatives in 1972, “only 24 members in the House and eight in the Senate voted against it.”\(^\text{133}\) Much of the backlash and fears from conservatives in the 1970s “has already come to pass, including women joining military combat roles, gender neutral bathrooms, the legislation of gay marriage and abortion protections.”\(^\text{134}\) Additional opposition will come from those who see the ERA as unnecessary because of the laws in place to prevent unequal treatment and other inequalities.

Alice Paul Institute

The Alice Paul Institute (API) “promotes gender equality through educational programs and the development and empowerment of young women leaders,” with the mission to increase awareness of Alice Paul, women suffrage leader and author of the Equal Rights Amendment.\(^\text{135}\) Alice Paul introduced the ERA in 1923 in order to guarantee equality to both genders in the US Constitution because “she understood the importance of constitutional protections for all citizens.”\(^\text{136}\) API uses social media campaigns and advocacy of those who visit the site to campaign for the ERA and


\(^{135}\) Alice Paul Institute, [https://www.alicepaul.org/](https://www.alicepaul.org/).

\(^{136}\) Alice Paul Institute, [https://www.alicepaul.org/](https://www.alicepaul.org/).
women’s equality issues. The API organizes events and programs and has a physical site for advocacy and promotion of its interests. API recognizes “legal discrimination is not yet a thing of the past, and the progress of the last 60 years is not irreversible.”137 The ERA would not change individual and social practices towards gender equality, “but all can be positively influenced by a strong message when the U.S. Constitution declares zero tolerance for any form of sex discrimination.”138 Advocacy from API provides “a strong legal defense against a rollback of significant advances in women’s rights that have been achieved since the mid-20th century.”139 Despite the longevity of the API, opponents exist from conservative and reactionary political voters, notably STOP ERA.

STOP ERA, or “Stop Taking Our Privileges Equal Rights Amendment,” was the conservative campaign which fought the 1972 ERA ratification. The mission of this opposition group “is to enable conservative and pro-family women… with respect for the nuclear family, public and private virtue, and private enterprise.”140 Also dubbed the Eagle Forum, this group was founded by Phyllis Schlafly, and ultimately led to the defeat of the ERA. Although STOP ERA is still an opposition to the ERA, much of its original rhetoric for the ERA to not be ratified is no longer relevant because of the advances of women in society. Both the Alice Paul Institute and STOP ERA’s rhetoric and advocacy can be used by policymakers in order to justify their support or opposition to the ratification of the ERA. However, women’s equality and the guarantee of protections of Title IX should not be a partisan issue.

Justice Ruth Bader Ginsburg

137 Alice Paul Institute, https://www.alicepaul.org/.
138 Alice Paul Institute, https://www.alicepaul.org/.
139 Alice Paul Institute, https://www.alicepaul.org/.
Justice Ginsburg has been an advocate throughout her professional career. Her advocacy for the ERA recognizes the ratification of the ERA will “not result in a dramatic increase in litigation” but instead “the amendment looks toward a legal system in which each person will be judged on individual merit and not on the basis of an unalterable trait of birth that has no necessary relationship to need or ability.”

Justice Ginsburg argues the U.S. Constitution is a fundamental instrument of government, a statement that men and women are of equal citizenship should be included. Opposition to Justice Ginsburg’s activism originated from those who believe the Constitution already protects women’s rights. However, Justice Antonin Scalia has recognized the Constitution does not promote or protect women’s equality. Although Justice Ginsburg provides support for women’s equality and the ERA, opponents argue her activism should be muted due to her role as a Supreme Court Justice and instead should be reserved for members of Congress or the public at large.

Members of Congress

Members of Congress are key stakeholders because of their policymaking abilities. Representative Speier introduced a resolution to eliminate the 1982 deadline for states to continue to ratify to ERA towards an amendment. According to Speier’s office, this bipartisan bill has 149 co-sponsors. A similar bi-partisan resolution was introduced in the Senate by Senator Ben Cardin and Senator Lisa Murkowski, acknowledging “we

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143 Mackinnon, “Toward a Renewed Equal Rights Amendment.”
144 Thoet, “One of these states could ratify the Equal Rights Amendment.”
come from different ends of the spectrum, but we agree that this needs to change.”\textsuperscript{145} An additional re-introduction of the ERA into the House was by Representative Carolyn Maloney. Maloney introduced a bill to restart the ERA ratification process in order to add the word “women” to the amendment.\textsuperscript{146} The efforts by these members of Congress are important to the advocacy of women’s equality as well as to advancing the momentum for the ratification of the ERA. Their tactics include the introduction of their respective resolutions as well as advocating for their resolutions in order to gain co-sponsors and votes for the resolutions. Important to the success of these key stakeholders is public support for the ERA as well as continued media coverage on the issues effecting its ratification.

\textit{The Public at Large and the Equal Rights Amendment}

A renewed interest for the Equal Rights Amendment and for protections from sexual assaults is credited to the #MeToo movement and increasing regulation on women’s access to healthcare and reduced protections from Title IX. A poll was conducted in 2015 to determine support for the ERA, polling a representative sample of 1,017 people. Of those polled, 80\% mistakenly believed an equal rights amendment already existed in the U.S. Constitution.\textsuperscript{147} Overall support for the ERA was polled at 94\%, with 90\% of men and 96\% of women supporting this equality.\textsuperscript{148} When separated by political party, 97\% of Democrats, 90\% of Republicans, and 92\% of Independents support an amendment to the U.S. constitution guaranteeing equal rights for men and

\begin{footnotesize}
\begin{enumerate}
\item Thoet, “One of these states could ratify the Equal Rights Amendment.”
\item Thoet, “One of these states could ratify the Equal Rights Amendment.”
\item “BREAKING: Americans.”
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women.\textsuperscript{149} The advocacy of the key stakeholders and the support from the public at large depict the likelihood of the ERA becoming ratified.

\textit{Likelihood of Ratification}

Although the ERA has identified support from the public, the ratification of the ERA remains a bipartisan issue. The ERA is likely to be passed in the House of Representatives because of its current Democratic majority. However, the Senate has a Republican majority and will prove to be more difficult to pass with a conservative policymaker. Ratifying the ERA in the remaining states will also prove to be difficult because the remaining states are a mostly southern and historically conservative states.\textsuperscript{150}

In order to increase the likelihood of ratifying the ERA, working with a Senator from a state which has yet to ratify the ERA will increase Republican support for the amendment.

Senator Schumer’s support for the Equal Rights Amendment will positively impact his politics as well as the passage of the ERA. Through his support for the ratification, his policies of women’s equality and access to healthcare will be bolstered. The policies advocated by the key stakeholders continue to be important in the continued coverage for women’s equality and the ERA. In addition to impacting women’s equality and the politics of the key stakeholders, the passage of the ERA will ensure protections guaranteed by Title IX remain intact.

\textbf{Recommendation}

\textsuperscript{149} “BREAKING: Americans.”
\textsuperscript{150} The remaining states to ratify the ERA include Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Utah, and Virginia.
In order to guarantee protections of Title IX by the Education Amendment Act of 1972, it is recommended to support the ratification of the Equal Rights Amendment. Current opportunities to show support for this ratification can be for the resolution to eliminate the 1982 deadline for states to continue to ratify to ERA towards an amendment introduced in the Senate by Senator Ben Cardin and Senator Lisa Murkowski.\(^\text{151}\) There is also opportunity to introduce a resolution similar to the resolution by Representative Carolyn Maloney. Maloney introduced a bill to restart the ERA ratification process in order to add the word “women” to the amendment.\(^\text{152}\) Support for both of these measures will insure broader support for the ratification of the ERA in order to protect Title IX.

The positives of ratification of the ERA greatly outweighs any negative ramifications of ratification. The impact of the ERA on guaranteeing protections of Title IX and for other sexual harassment legislations are necessary for society because this is a problem which should not be left unregulated or with less guidance. Once enacted, the ERA will provide a “clearer, stricter judicial standard for deciding cases of sex discrimination,”\(^\text{153}\) and guarantee a “simple, direct and comprehensive method to assure permanent, enforceable and complete equity for women.”\(^\text{154}\) Ratification will guarantee protections against sexual harassment and cases of sex discrimination so future administrations will not be able to alter the protections of Title IX. Without the ERA, inequalities will remain and violence against women will not be protected.\(^\text{155}\) This amendment “looks towards a legal system in which each person will be judged on

\(^{151}\) Thoet, “One of these states could ratify the Equal Rights Amendment.”
\(^{152}\) Thoet, “One of these states could ratify the Equal Rights Amendment.”
\(^{153}\) Cardin, “Should the States Ratify.”
\(^{154}\) Conlin, “Equal Protection Versus Equal Rights Amendment.”
\(^{155}\) Mackinnon, “Toward a Renewed Equal Rights Amendment.”
individual merit and not on the basis of an unalterable trait of birth that has no necessary relationship to need or ability.”156 In addition to the benefits to the addition of the ERA in order to protect Title IX, there is increased support for the amendment in the United States and around the world.

Much of the anti-ERA rhetoric from the 1970s and 1980s are no longer costs of ratifying this amendment. Anti-ERA rhetoric including the risk of women in combat positions, and same-sex marriages, have already become a part of society without the ratification of the amendment. An additional demonstrated cost is the risk to the respect for the nuclear family and traditional familiar roles.157 However, the roles of the family will not be threatened by the constitution acknowledging men and women are equal. The passage of the ERA “will not result in a dramatic increase in litigation,” and will not drastically change our society because of the institutional rules and norms already present.158

Although opponents point to the costs of the ratification of the ERA and the question of its true effect, the ratification of the ERA will guarantee protections from Title IX remain in place despite opinions from administrations and representatives from the Department of Education. The lack of regulation for Title IX protections is a problem that needs to be solved, and should not be denied based on partisan issues. In order to guarantee protections, the Equal Rights Amendment needs to be ratified and support from Senator Schumer will be instrumental in support for its passage.

156 Ginsburg. "The Need for the Equal Rights Amendment."
Curriculum Vita

Marisa Brown

SUMMARY STATEMENT

While earning my undergraduate degree, I focused my studies in International Studies and the Middle East/ North Africa region through coursework in Arabic, Economics, History, and the Political Science of the region. My studies have continued during my coursework for a Master’s degree in Public Management through classes in Financial Management, Public Policy, and Political Theory.

EDUCATION

Bachelor of Arts in Political Science and Middle Eastern Studies, May 2015
Allegheny College, Meadville, PA
Pi Sigma Alpha Honor Society
Senior Thesis: “The Correlation Between Female Participation in Sport and in the Public Sphere: The Case of Iran and Saudi Arabia,” independent research that was presented and orally defended

Courses of Note:

- CLC 120, 130, 190, 192: Arabic Language Study
- FSREL 201: The Quran
- POLSC 453: Politics of Nuclear Deterrence
- ECON 201: Macroeconomic Theory
- POLSC 272: Gender and Globalization
- LITRN 190: Modern Arabic Novels

Presentations of Note:

- “Abraham in the Quran”
- “The Implications of Immigration in Japan”
- “Racism in Track and Field”
- “The Cuban Missile Crisis: No Longer the Thirteen-day Conflict”

Master of Arts in Public Management, Anticipated August 2019
Johns Hopkins University, Baltimore, MD
Capstone: Effect of the Equal Rights Amendment on Protection of Title IX

Courses of Note:

- Public Policy Evaluation & The Policy Process
- Political Debates and the US Constitution
- Economics for Public Decision- Making
- Financial Management & Analysis in the Public Sector
- Political Ideas, Strategy, and Policy Implementation