

Proposal for a Thesis
in the Field of Government
in Partial Fulfillment of the Requirements for
the Master of Liberal Arts Degree

Harvard University

Extension School

May 9, 2016

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I.

Tentative Title

I propose to title my thesis: “The Equal Rights Amendment Used as a Political Tool for Almost a Century.”

II.

Research Problem

The Equal Rights Amendment (ERA), a proposed joint resolution to establish women’s equality in the U.S. Constitution remains un-ratified because it has been used as a political tool for nearly a century. The last congressional hearing for the ERA was in 1984, when Republican Senator Orrin Hatch announced he was holding the hearings to permanently defeat the ERA.¹ Since then, Republicans have stopped supporting the ERA while introducing vast amounts of legislation to restrict women’s rights that might otherwise be protected under an ERA. Republicans have also been introducing legislation that challenges women’s status as “persons.”² During this same time period Democrats have intensified their support for the ERA with a new three-state strategy.³ However, the polarization on the ERA remains. The 2014 Oregon ERA was passed overwhelmingly by

¹ U.S. Congress, Committee on the Judiciary, *The Impact of the Equal Rights Amendment: S.J. Res 10, 98th Congress, First Session, May 26, 1983* (Washington, DC: U.S. Government Printing Office, 1985), 2.

² “Legislation of the U.S. Congress,” Library of Congress, accessed May 13, 2016, <http://www.congress.gov> (“Human Life Protection Act,” H.J.Res.394, 1993-1994, “Sanctity of Human Life Act,” H.R. 426, 2015-2016, “Declaration of Personhood Act” H.R. 623 1989-1990).

³ “Legislation of the U.S. Congress,” Library of Congress, accessed May 13, 2016, <http://www.congress.gov> (“Removing the deadline for the ratification of the equal rights amendment,” H.J.Res 51 and S.J.Res.15).

the people of Oregon via direct initiative. Passing state ERA's on a state-by-state level may be the approach needed to build support for passage in Congress.

My thesis will address the questions: To what extent have elected officials prevented the ratification of the ERA since the last hearing in 1984? Have elected officials drawn on the same arguments for and against the ERA since 1984 and is that a reflection of the political obstacles in the life of the ERA? Would removing the ERA from the hands of partisan elected officials clear a pathway for passage at a state level via initiative helping gain support in Congress?

My hypothesis is that in the hands of Congress the ERA remains polarized because both parties are able to serve their political bases without moving the ERA forward. The Republican Party successfully used opposition to the ERA since 1984 to help create a conservative political base to ensure office holder incumbency and majority control and they are now dependent upon the strategy. In the life of the ERA the Republican opposition is part of the overall issue of women's equality threatening the status quo power structure. Because Congressional passage of the ERA requires two-thirds in each chamber, the Democrats have taken into account the total loss of Republican support on the ERA, and decidedly have chosen not to pursue a battle they deemed they could not win. As a result, no hearings are held no matter whether the Democrats or Republicans are in the majority in Congress.

The evidence used to test my hypothesis will be drawn from a collection of data, the Oregon State ERA campaign primary documents, primary source documents from government archives and agencies (Library of Congress, National Archives, and State Archives). Theoretical texts from political scientists, social psychologists and historians,

will be used to aide in analysis. Interviews with public officials will provide context as well.

The significance of my research is my focus on elected officials and the inside political strategies used to secure individual re-election. My focus will be on the final decision maker, the elected official. My research will provide a better understanding of the apparent lack of commitment to the ERA in Congress. Most of the public thinks the ERA is already part of the U.S. Constitution or they are totally unaware of the ERA altogether, which has also allowed for other movements to nudge it from the limelight leaving women vulnerable to assaults on their rights. Both parties win by protecting their bases and the messages the public receives.

III.

Definition of Terms

Co-Sponsors/Sponsors: Representatives or Senators who formally sign on to support a measure. Only the first-named Member is the sponsor, all others are cosponsors.

Congressional Session: When referring to a time-period (e.g., the 114th Congress which convened on January 6, 2015) rather than the legislative branch generally, a Congress is the national legislature in office (for approximately two years).

Discharge Petition: A discharge petition is a petition signed by the members of the House of Representatives to bring a bill from committee to the floor for consideration, when the committee's leadership is unwilling to do so. A discharge petition requires the signature

of an absolute majority of the members, (218 members). Discharge petitions are used when the committees delays the reporting of bills thus making it not possible to discuss in the Congress. A successful discharge petition discharges the bill without a report from a Committee.

Direct Initiative: A process that allows private citizens to amend the state constitution and or make or amend laws. Sixteen states allow the direct initiative to amend a state constitution. The Chief Petitioner is responsible for collecting the required signatures and following state rules to place proposed amendment on the ballot for voters to consider.

ERA Language: The ERA language that was first introduced in SJR 21 on Dec. 10, 1923 and HJR 75 on Dec. 13, 1923 was known as “The Lucretia Mott Amendment,” which read: "men and women shall have equal rights in the United States and every place subject to its jurisdiction.” The language introduced between 1943-1972 was “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex,” which was and remains the language used today and is known as the “classic,” language. In the 1972 version section 2 and 3 were added: The Congress 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.”

ERA Resolutions: A form of legislative measure used to propose changes in law, or to propose an amendment to the U.S. Constitution. Depending on the chamber of origin, they begin with a designation of either H.J.Res. or S.J.Res.

Ratified: (or to ratify) Under Article V of the U.S. Constitution: Passing a constitutional amendment with two-thirds vote in Congress and three-quarters of the states passing the same amendment shall amend the U.S. Constitution.

IV.

Background Problem

Most of the scholarly work on the Equal Rights Amendment appeared after the ERA failed to be ratified by the 1982 ratification deadline. Two of the most notable authors on the ERA provide insight into the entire ERA journey up to the mid 1980s. Some of the arguments are that the American public was not ready for gender role changes. There was confusion as to how the ERA would create change and what the changes would be. Homemakers were threatened by the loss of special privileges in divorce. They both concluded that the pro ERA organizations were not as organized or on the same message and that the political climate needs to change for legislators to successfully pass the ERA.⁴

The scholarly work on the institutionalization of political parties and realignment of partisanship have been critical to understand the era of change and turbulence in the 1960s that led to the two decades of stability up to the 1980s.⁵ Understanding how parties built power from the Congressional level to current state and local levels provides context as to how women's rights gained power leading up to the passage of the ERA in 1972

⁴ Jane J. Mansbridge, *Why We Lost the ERA* (Chicago: University of Chicago Press, 1986); and Mary Frances Berry, *Why ERA Failed* (Bloomington: Indiana University Press, 1986).

⁵ John A. Aldrich, *Why Parties?* (Chicago: University of Chicago Press, 1995), 262-263.

and how they lost rights once the conservative front moved in after the 1980s.

Within my research and professional experience on the ERA, I haven't come across work that is solely focused on the elected officials capacity to hold hearings, questions as to why the status quo is acceptable with respect to signifying support by introducing and sponsoring legislation. Because the 2014 Oregon ERA is the only ERA to amend a constitution via direct initiative, this experience can only be documented from the inside by the founder and person who ran the campaign which is the author of this thesis.

In the life of the ERA, there has been bi-partisan support and opposition from 1923 to the 1980s. During the early years there were hearings in the 1930s and the 1940s that demonstrated opposition from labor unions arguing the need to "protect" women from working late hours and lifting too much weight. There was testimony from women who were doctors and lawyers arguing to be set free from these restrictions and arguing not for specific rights, but rather equal status of citizenship, arguing to be considered a "person" as opposed to a woman as that comes with all the discriminations.

When the ERA passed Congress it's one and only time in 1972, the vote in the House of Representatives (in 1971) was 354 to 23. The vote in the Senate (in 1972) to complete passage was 84 to 8.⁶ Passage of the ERA required two-thirds vote in each chamber and although the Democrats were the majority party in each chamber, they had to rely on votes from Republicans to pass the ERA. After congressional passage of the ERA it was sent to the states for ratification but failed to gain the required thirty-eight states needed to amend the U.S. Constitution with the ERA.

⁶ Mansbridge, *Why We Lost the ERA*, 11-12.

Since the passage of the ERA, there have been hearings in 1984. Republican Senator Orrin Hatch held eleven days of hearings on the ERA and each day was a different topic: “Constitutional overview, private education, the military, abortion rights, veterans programs, social security, defining discrimination and homosexual marriage, family law, exceptions and the state experience.”⁷ Senator Hatch held the ERA hearings to illuminate what he deemed were negative consequences of the ERA. In the beginning of the hearings he stated “One thing, certainly, is that the more the equal rights amendment has been exposed to the light of serious legislative discussion and debate, the less successful it has been.”⁸ The reflection on the outcome of the hearings from one academic scholar was “it quickly became evident that the issues aired during ratification debates has poisoned the congressional well.”⁹ Senator Hatch’s own reflection on the hearings was “the purpose of the ERA was to transform the social order and to establish a new and radically different period of human relations.”¹⁰

The introduced ERA resolutions after the 1984 hearings demonstrate the drop in support from Republicans. Two ERA resolutions were introduced the following session in 1985-1986 and they had approximately 45% of Republicans co-sponsorship.¹¹ Since

⁷ U.S. Congress, *The Impact of the Equal Rights Amendment*, III-VI.

⁸ U.S. Congress, *The Impact of the Equal Rights Amendment*, 2.

⁹ Berry, *Why ERA Failed*, 102.

¹⁰ U.S. Congress, *The Impact of the Equal Rights Amendment*, Part 1, 979.

¹¹ “Legislation of the U.S. Congress,” Library of Congress, accessed on May 10, 2016, <http://www.congress.gov> (S.J. Res.10 in the 99th session, 1985-86. H.J. Res. 2 in the 99th session, 1985-86, search in Adv Q: term “equal rights amendment” and “equal rights”).

that time the Republican support rests at around 2% support for the ERA.¹²

Maybe the real question we should pose is how did the ERA pass Congress taking into account the challenges? At the peak of women's rights Congresswoman Martha Griffiths from Michigan pulled a discharge petition to force the ERA out of eighty-two year old Democrat House Judiciary Committee Chairman Emanuel Celler's committee.

Congresswoman Griffiths outflanked the Chairman by freeing the ERA resolution from twenty-two years of committee captivity without a hearing. Congresswoman Griffiths successfully filed the discharge petition with the required two-hundred and eighteen signatures from both Democrats and Republicans, which is what led the ERA to the floor of the House and Senate where it passed Congress.¹³

In reality, the ERA was never "given" a hearing. Instead, a congresswoman had to take a major political risk by working around one of her own Democrat colleagues to pull the ERA to the floor of Congress. Congresswoman Edith Green from Oregon, held hearings on "Discrimination Against Women," at the same time. The colleagues who signed Congresswoman Griffiths discharge petition did so because there was another committee germane to the ERA, which was Congresswoman Green's committee. Congresswomen Griffiths and Green took risky and aggressive measures to gain traction on legislation they believed was needed. Congresswoman Green was the Chairwoman of the Education Committee and was therefore in a position of leadership to determine what legislation could move forward.

¹² "Legislation of the U.S. Congress," Library of Congress, accessed on May 10, 2016, <http://www.congress.gov> (using Adv Q search "equal right," and "equal rights amendment").

¹³ Gilbert Y. Steiner, *Constitutional Inequality* (Washington DC: Brookings Institution, 1985), 13-16.

The Congressional sessions in the 1970s have been referred to as the “chaotic” period because the chairmen and chairwomen of the Committee had full discretion on what legislation to hear. The 1980s have been considered the “post-reform” era where there was less independence given to the chairs and subcommittee chairs to set their own agendas and propose legislation. The committee chairs during the 1970s had more freedom to choose what legislation they wanted to hear. The 1970s were categorized as the period where “unchecked individualism,” prevailed and the 1980s bore a more moderate climate of “tempered individualism.”¹⁴

The Supreme Court decision of *Roe v. Wade* was decided January 22, 1973, less than a year after the ERA passed Congress.¹⁵ Abortion was included in a long list of reasons to not support the ERA in testimony before the Court decision and after. Yet, the ERA still passed in 1972 and was ratified by thirty-five states. Some states rescinded their ERA ratification and some might argue it was due to the Court decision on abortion and tying the ERA to abortion.¹⁶

Coming off the Barry Goldwater campaign in 1968 when the Republican Party gained new vitality, the Republican Party rebounded from their weaker position in the 70s to a newly revived party angry over banned prayer in schools and abortion.¹⁷

¹⁴ Smith, *The American Congress*, 22.

¹⁵ United States Supreme Court, “*Roe v. Wade*, (1973), No. 70-18, accessed May 13, 2016, <http://caselaw.findlaw.com/us-supreme-court/410/113.html>.

¹⁶ Elizabeth Nancy Baker, “Too Much To Lose, Too Little To Gain: The Role of Rescission Movements in the Equal Rights Amendment Battle, 1972-1982” (PhD diss., Harvard University, 2003).

¹⁷ Donald Green and Bradley Palmquist, *Partisan Hearts & Minds* (New Haven: Yale University Press, 2002), 158-161.

Because the ERA had been tied to abortion, ERA supporters argue that Republicans used the Roe v. Wade decision as reason to not support the ERA. President Ford was an ERA supporter. Conservative Activist Phyllis Schlafly worked to help candidate Ronald Reagan compete with President Gerald Ford in the Republican Primaries of 1976. After Reagan lost to President Ford in 1976 Reagan and North Carolina Senator Jesse Helms worked over the next four years to build Reagan a social conservative base to win the Presidency in 1980. During the Presidential Campaign, Reagan spoke against the ERA, which was a reversal from his earlier support for the amendment.¹⁸ Reagan was convinced he needed to inherit a new “family values” message and the policies dependent on maintaining those values.¹⁹ Support for abortion rights and the ERA did not serve the conservative message needed to win. The Republican platform of 1976 was “ambivalent” on the issue of abortion. The pro-life contingency packed the 1980 platform committee with people from the Moral Majority and “ambivalence was gone.”²⁰

Democrats have a new strategy in passing the ERA as of 2011. The theory is that if three more states ratify the ERA, it will be ratified to the constitution. The most active states trying to ratify the federal ERA by passing the ERA in their State Legislatures include Nevada, Illinois and Virginia. While some of these states have passed the ERA in one chamber, none of them have passed the ERA in both. The “three-state” strategy might seem a better strategy as opposed to starting all over, which is another pathway in

¹⁸ Donald T. Critchlow, *Phyllis Schlafly and Grassroots Conservatism: A Woman's Crusade* (Princeton, NJ: Princeton University Press, 2005), 280.

¹⁹ Critchlow, *Phyllis Schlafly and Grassroots Conservatism*, 274.

²⁰ J. Brooks Flippen, *Jimmy Carter, the Politics of Family, and the Rise of the Religious Right* (Athens: University of Georgia Press, 2011), 278.

Congress today. There is Republican opposition across the board and that includes in many State Legislatures across the nation.

Because Congress established a deadline originally and extended the deadline in 1979, Congress has demonstrated that they have the power to alter the deadline again. However, others argue that the ERA would land in the Supreme Court over this issue and thus it is not the best pathway to pass the ERA. Because the public is unaware of the ERA, a strong argument for the three-state strategy rests on the fact that if the ERA landed in the Court, the public would become aware of the ERA and have a much greater chance for passage.

Consideration needs to be given to Democrats as to what is preventing them from holding a hearing on the ERA and it is fair to ask whether they have fought for passage of the ERA beyond introducing and sponsoring the ERA. Because Congressional passage of the ERA requires two-thirds in each chamber, the Democrats may have taken into account the total loss of Republican support on the ERA, and decidedly have chosen not to pursue a battle they deemed they could not win. The only party to hold two-thirds majority since the ERA was first introduced in 1923 are the Democrats and there was a hearing during that time.

Since the last hearing in 1984, it is possible Democrats priorities have changed. It is also possible that other movements have nudged the ERA from the limelight within the Democratic Party. Democrats continue to work to expand women's rights and move legislation that furthers women's rights. However, passage of the ERA would provide full protection against sex discrimination as opposed to the piece meal approach.

Republicans gained more congressional seats in the 1980s from the 1970s and

they have gained Republican representation in State Legislatures. In Republican Primary campaigns, it is the most conservative Republican who is most likely to win the office. The Democrats are the party with the brand of supporting women's rights. Republicans have the brand as the party who protects life. With respect to the ERA, while it is the queen of the women's rights and certainly symbolic of the expansion of women's rights, it is not being directly opposed or supported. The prevention that either party is engaging in blocking the ERA is indirect. The Republicans are not voting against it or denying hearings. The Democrats are not demanding hearings or pulling discharge petitions. The result of the ninety-three year life of the ERA is that it remains polarized.

The first attempt to pass the 2014 Oregon ERA was through the Oregon Legislature in 2013. With a bi-partisan majority of sponsors on the ERA bills, which would have been enough support to pass the ERA through the Legislature, the ERA was not given a hearing. Democrats were in the majority in both chambers. After failing in the Oregon Legislature, the ERA was filed as a direct ballot initiative that the people would vote on directly via the "direct initiative." The ERA passed with over 65% support statewide representing all parties, race, gender, age and geography. In Multnomah County, the largest county in Oregon, the ERA passed with over 78% support across a broad spectrum.²¹ While Oregon is only one of sixteen states that offer the "direct initiative" for state constitutional amendments, following a state-by-state plan helps create the awareness needed to return the power to the people from the hands of the elected. Women gained the right to vote in Oregon via the direct initiative in 1912, after it failed five times in the Oregon Legislature. The Nineteenth Amendment was passed eight

²¹ Secretary of State of Oregon, 2014 Oregon Ballot Measure 89, The Equal Rights Amendment, accessed on May 11, 2016, <http://sos.oregon.gov/elections/Pages/electionhistory.aspx>.

years later after additional states passed the right to vote as an example as to the power of the “direct initiative” and the will of the people.

V.

Research Methods

The hypothesis presented in this thesis assumes the Republicans do not support the ERA because they no longer sponsor the ERA bills. However, not all Democrats have and are sponsoring ERA bills today, which we will take into consideration in the research and studies.

I will conduct a comparative study of the arguments made by members of Congress from the testimony of the hearings in the 1970s and the 1980s. Evaluating the arguments after categorizing them by party, gender, state, and region will demonstrate the partisanship and changes in support from the members in Congress.

I will then compare these categorized and defined arguments by the legislation that has been put forth by both parties in the 1970s to the 1980s and from the last hearing in 1984.

The next stage of research will be to take one to five pieces of legislation that pertains to women and assess whether it is expanding women’s rights or restricting women’s rights. I will create the member profile as per above to study who is sponsoring what legislation. What party is sponsoring the “expansive” legislation and what party is sponsoring the “restrictive” legislation. “Women’s rights,” may mean different things to different people. For example, there are different interpretations on what is restrictive legislation versus protective legislation. I will establish criteria that will apply to all

legislation studied and it will be built on the number and the level of choices women can make based on the perimeters of the proposed legislation. For example, with respect to any military legislation and the participation of women I would categorize a piece of legislation as “expanding,” if the legislation was calling for full equality in allowing women to serve on the front lines – no sex discrimination with respect to the requirements to meet that job requirement.

Member profiles will include name of member, party, bill number, position of support (sponsor or co-sponsor), vote pro-ERA or anti-ERA (will have established criteria), # years in office, position of leadership, gender, race, state, region and affiliations with congressional caucuses. From this information I can examine patterns. For example, members from the South tend to introduce more legislation that is restrictive for women than members from other regions in the country.

Below is an example of a spreadsheet I would organize my data in and use to conduct comparisons of ERA support in particular years, take notice of Republican support starting to wane and finally stop altogether. This snap shot allows me to see where co-sponsors increase over a number of years so I can tie that to particular political strategies, cultural nuances, wars, and major events that affect women’s public participation. I may also use statistical analysis if needed. I may also want to use a questionnaire for members of Congress to provide more qualitative analysis.

This qualitative analysis will provide context to the data I collect on legislation and argument in order better to test my hypothesis.

Figure 1: Sample spreadsheet for data collected

Date Congress Committee ERA Sponsor D R Text

3/22/12	112th	Judiciary	SJR 39	Cardin-D	13	2	ERA rat. Deadline removal
3/8/11	112th	Judiciary Sub Constitution	HJR 47	Baldwin- D	46	0	ERA rat. Deadline Removal
1/25/89	101st	Judiciary Sub Constitution	SJR 1	Kennedy- D	41	11	ERA
1/3/89	101	Judiciary Sub Civil & Constitution	HJR 1	Edwards- D	154	32	ERA

IV.

Research Limitations

Due to a lack of hearings on the ERA since 1984, there is an absence of testimony from either party to use to draw any conclusions from. Because the Republicans are not sponsoring the ERA and some Democrats are not I will base my analysis on one party lacking support and the other party “supporting” the ERA only in so far as sponsorship which itself I will analyze.

With respect to demonstrating what Republicans have to gain from working against the expansion of women’s rights will require that some assumptions be made. The most basic measure of a political party’s success is if they are winning more seats and building their majority. We know that since the 1980s Republicans have picked up more seats in Congress and at the state level as well since the 1970s. Because we are focusing on the ERA, our focus will be within the parameters of women’s rights. Undoubtedly arguments can be made as to why the Republicans were able to gain seats and increase their majority in Congress and at the state level. For the sake of this study we will look at the Congressional majority increase and state legislative seats over the last few decades for context.

VII.

Tentative Schedule

Submission of first draft of proposal	February 1, 2016
First draft returned for revisions.....	March 1, 2016
Submission of second draft of proposal.....	April 1, 2016
Second draft returned for revisions.....	April 15, 2016
Submission of third draft of proposal	April 30, 2016
Proposal accepted by research advisor.....	May 1, 2016
Thesis director agrees to serve.....	June 1, 2016
Registration for thesis completed.....	June 15, 2016
First draft of key chapters completed and sent to thesis director.....	September 15, 2016
Thesis director returns corrected first draft.....	October 15, 2016
Second draft completed and sent to thesis director.....	November 15, 2016
Thesis director returns corrected second draft.....	December 15, 2016
Third draft completed and sent to thesis director	January 15, 2017
Thesis director returns corrected third draft	February 15, 2017
Final text submitted to thesis director and research advisor.....	March 1, 2017
Format review process completed	April 14, 2017
Thesis uploaded to Electronic Thesis Database	April 15, 2017
Graduation	May 2017

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