

The ERA roars suddenly back to life

A century after it was first introduced, there's still a need for the Equal Rights Amendment.

THE NEARLY century-long battle to pass the Equal Rights Amendment came back to life last month with a sudden jolt. Ninety-five years after it was first introduced and more than a generation after Congress passed it and sent it to the states for ratification, the Illinois Legislature became the 37th state to approve it.

It was more than just a symbolic gesture from the state where the ERA's staunchest opponent, Phyllis Schlafly, lived for much of her adult life. In theory at least, the amendment is now just one tantalizing state away from the supermajority required for passage. It now seems possible, to supporters anyway, that the U.S. Constitution may soon include this language: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

Of course, there are several significant legal hurdles to be overcome. But we'll come back to those in a minute.

Some might dismiss the renewed interest in this relic from the 1970s as a nice bit of symbolism in the #MeToo era, but ultimately unnecessary in the 21st century. Things have changed quite a bit in the years since the ERA was proposed. Women have made inroads in just about every career field from firefighter to soldier, professional athlete to Supreme Court justice. A woman can run a credible campaign for president (although a credible campaign is just the first step). Even the Boy Scouts of America is dropping the "boy" from the name and allowing girls to join. We have federal statutes such as the Equal Pay Act and state laws guaranteeing sex equality. The Supreme Court has affirmed these rights as well, ruling that the 14th Amendment guarantees protection from sex discrimination.

It is true that gender equality has come a long way. It is also true that laws can be undone quicker than you can say "The Handmaid's Tale" and, over time, even Supreme Court rulings can be reversed. If anything, the recent revelations about widespread sexual misconduct by powerful men underscores that women still contend with unacceptable amounts of sexual harassment and discrimination in the professional world.

Inclusion in the Constitution — the nation's most durable statement of values — may not fix that instantly, but it would make it a whole lot more difficult to roll back the progress that has been made so slowly over so many years.

That said — and here come the potential obstacles — it may not be as easy as convincing just one more state legislature to vote for ratification. There are at least two tricky legal sticking points that could slow or derail the effort. The first is the fact that when Congress passed the ERA in 1972 it set a seven-year deadline for ratification, which was then extended to 1982. At the end of that period, however, there were still only 35 states on board, and the ERA was essentially dormant until last year when Nevada lawmakers voted for ratification. Can Congress simply extend the deadline retroactively? The law is not clear on that. Some people believe that the deadline wasn't legally enforceable in the first place, and that the long gap in time doesn't pose a problem. After all, the 27th Amendment regarding congressional pay wasn't fully ratified for more than 200 years after Congress sent it to the states for approval.

There's also a question about rescissions. Five state legislatures — Idaho, Kentucky, Nebraska, Tennessee and South Dakota — initially voted to ratify and then changed their minds before the 1982 deadline. But did they have a legal right to rescind? The law doesn't specifically allow for rescissions, but one district court ruled they were legal because they occurred before the two-thirds requirement had been met. That issue will have to be worked out — but if, in the end, more state votes are needed, so be it.

For now, the focus should move to the 13 states that have not yet ratified: Alabama, Arkansas, Arizona, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Utah and Virginia.

At a moment when our nation is led, improbably, by a former beauty pageant operator who has bragged about grabbing women "by the p...," the time has finally come for the long-awaited passage of this important constitutional amendment.