

A series of unfortunate circumstances: the rescission of the Equal Rights Amendment in Kentucky

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Abstract

In 1923, suffragist Alice Paul introduced the Equal Rights Amendment (ERA) to the Woman's Rights Convention in Seneca Falls, New York. After repeated attempts to introduce and pass the ERA, Congress ratified the amendment in 1972 and the ERA was sent to the states, many of whom were quick to ratify. However, the prospect of state-based ratification provided a platform for local conservatives and state's rights activists, alike, to call for rescission of the amendment. Five states - Idaho, Kentucky, Nebraska, Tennessee, and South Dakota - voted to rescind their original approval of the Equal Rights Amendment before its 1982 ratification deadline. The focus of this paper lies in Kentucky, in which the rescission movement was extraordinarily successful despite the speed at which the state legislature initially ratified the ERA. By 1978, Kentucky STOP-ERA forces were able to successfully lobby the state legislature to rescind the amendment. Overall, this paper seeks to determine why STOP-ERA forces were successful in their efforts to rescind the amendment in the face of widespread national and local support. Through investigation into the factors that contributed to rescission, this paper concludes that success of the rescission

movement in Kentucky can be attributed to three key factors: 1) the rescission movement's successful framing of the ERA as morally corrosive to society, 2) the STOP-ERA movement's ability to form a diverse coalition comprised of conservatives, state's rights activists, and religious groups, and 3) the pro-ERA's belated and ineffectual response to the rescission movement.

Keywords: rescission, countermovement, Equal Rights Amendment, Kentucky

Introduction

One may be so bold to argue that the Equal Rights Amendment (ERA) is even more of a "living, breathing document" than the Constitution itself. In the 30 years since its legislative defeat, the ERA has come 'back to life' in some form or another every single year. Yet, with the exception of the 19th Amendment, which granted women the right to vote, the Constitution still makes no explicit affirmations for women. In more recent years, women's rights issues have been advanced through various legislation and court rulings, including the Violence Against Women Act, the Pregnancy Discrimination Act, Title VII and IX of the Civil Rights Act, *Roe v. Wade* (1973),

and the Equal Pay Act, to name a few. As Lerma (2015) notes, without the Equal Rights Amendment, these legal and legislative gains are virtually meaningless and could easily fall victim to "weak implementation, poor regulation, and even reversal."

Initially written by Alice Paul on behalf of the National Women's Party in 1923, the passage of the ERA was seen by many involved in the feminist movement as the next logical step following the successful adoption of the 19th Amendment (Cohen & Codrington III, 2020). Soon, women's rights advocates saw a singular, clear path to total elimination of legal gender-based discrimination in the United States: ratification of the Equal Rights Amendment. Lawmakers had introduced the ERA into every session of Congress since 1923, but the efforts of suffragists were left unnoticed by many within the mostly-male Congress for years. In the 1970s, when an increased number of female lawmakers pushed to make the ERA a legislative priority, Congress took the amendment seriously for the first time. Section 1 of the amendment presented on the floor of Congress read: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex" (Equal Rights Amendment, 1972). In March 1972, the ERA passed in both chambers of Congress with bipartisan support that greatly exceeded the two-thirds majority required by the Constitution. It was then sent to the states for ratification. Within a year, the amendment was ratified by 30 of the 38 states required for adoption. However, the movement soon slowed as groups, composed mostly of conservative activists and the religious right, launched campaigns across the nation to prevent further ratification. The opposition, led primarily by Phyllis Schlafly, a conservative lawyer and activist from Illinois, claimed the amendment would have corrupting effects on the traditional ways of American life. The opposition argued that the ERA would lead to the inclusion of women in the military draft, the creation of gender-neutral restrooms, and codification of same-sex marriage, among other societal changes. The STOP-ERA

movement, as it was called, quickly gained national attention, and support for ratification, especially among Republicans, began to erode. Five years after Congress passed the ERA, only 35 states had ratified it. Furthermore, growing popularity of the STOP-ERA movement had prompted five state legislatures - those in Idaho, Nebraska, South Dakota, Tennessee, and Kentucky - to rescind their original ratification of the amendment. Though some constitutional scholars prompted questions about the legality of rescission, the actions of these five states, then conservative strongholds, only bolstered the opposition.

The study of the Equal Rights Amendment is fascinating in any context, but it becomes truly nuanced when focusing on the ratification and subsequent rescission efforts of any one of the five states who voted to do so. The ERA debate in Kentucky is particularly interesting, as the state had a history of resistance to federal power. In fact, many STOP-ERA activists echoed the views expressed in the 1910s by women's suffrage opponents in the state. Moreover, Kentucky was quick to ratify the ERA, doing so only three months after it was ratified by Congress. Ratification was a seemingly done deal, and the opposition movement that manifested in the state was a ramification few expected. Nevertheless, Kentucky was the state with the most sustained and most successful rescission movement - legislators introduced rescission legislation in 1974, 1976, and 1978 (New York Times, 1978). No other state that had this many legislative rescission attempts was successful in their efforts. Unlike other states that considered rescission, the STOP-ERA movement in Kentucky gained strength the longer it continued (Baker, 2015). This begs the question: Why were ERA opponents in Kentucky so successful in their efforts to rescind an amendment that received widespread support from the state population and underwent quick ratification in the state legislature?

Aided by a slow and ineffective response by its supporters, opponents of the Equal Rights Amendment in Kentucky were able to frame rescission as a necessary corrective measure to

prevent federal overreach and perceived moral corrosion of society. The aggressive rescission campaign undertaken by the Kentucky chapter of STOP-ERA and other anti-ratification organizations within the state combined rhetorical strategies with a re-framing of issues to appeal to conservative voters and turned the tide against a second ratification of the amendment, inevitably affecting the passage of the ERA on the national level.

Review of Literature

Studies of the ERA and its eventual defeat are abundant and rich in content. Generally, scholarship surrounding the amendment tends to focus on the legislative processes in states that ratified it and those that didn't (Brady & Tedin, 1976). As Lerma (2015) elucidates, scholarly literature regarding the five states that initially ratified the amendment and later rescinded their votes is limited. This oversight, in part, is due to the general confusion regarding the legality of rescission. In August of 1978, President Jimmy Carter declared that he considered rescission of the ERA as illegal, and Congress followed suit two months later when they refused to recognize rescission. Nevertheless, the five states that claimed to have rescinded their ratification maintained their position and faced no official legal ramifications. In fact, the political move has been seen as a deciding factor in "un-ratified" states: rescission changed regional perceptions of the ERA and marked a shift towards more widespread state-level opposition to the amendment (Mansbridge, 1986).

Social movement theorists have spent the larger amount of the past two decades seeking to explain the legislative defeat of the ERA by documenting how the feminist and anti-feminist movements shaped legislative processes (Lerma, 2015; Gamson, 1990). More specifically, this research suggests that the strength and organization of a movement has a direct impact on the policy outcome, especially at the state level (Minkoff, 1999). Countermovements have long been recognized as powerful determinants in policy outcomes (Meyer & Staggenborg, 1996). If

one defines a social movement as sustained challenges by those with related interests in continued interactions with those in the political system in order to shape policy, a countermovement, according to Lerma (2015) can be defined as a movement that makes contrary claims to those of the original social movement in order to stagnate the movement's progress or advance a contrasting or opposite cause. Scholars, including Meyer and Staggenborg (1996), note that any movement capable of success will generate an oppositional movement, and the numerous ERA-related organizations that formed during the 1970s exemplify this idea. While they certainly play a role in the policy interactions of a social movement, countermovements also play an important role in a movement's defeat. The political framing of a movement, like the women's rights or ERA ratification movements, is necessary to mobilize supporters, interpret relevant events and outcomes, garner support, and demobilize "antagonists" (Benford & Snow, 2000). Additionally, the ability to properly frame major issues can make or break both a social movement and/or its countermovement. Nowhere is this more evident than in the pro-ERA and anti-ERA organizations. Many note that the STOP-ERA's utilization of rhetorical strategies and ability to cast themselves as defenders of "true womanhood" led to a more successful framing of the ERA, and in turn, more widespread support (Marshall, 1985).

Focusing on the ERA debate in Kentucky, a state which rescinded its original ratification of the amendment in 1978, provides a rare and unique window of opportunity to examine the influence of various organizations and non-governmental groups on policy making in a state legislature. Generally speaking, coverage of women's history in Kentucky is sparse, and the scholarship that does exist tends to focus on the period prior to and including the Progressive Era (Baker, 2015). Furthermore, this history typically celebrates the accomplishments of elite white women rather than the state female population as a whole. Despite limited scholarship in this area,

however, the ERA debate in Kentucky marked an extraordinary conflict that focused not only on feminism, but also on social movement strategy, federalism, moral standards, and more.

Analysis

The opposition's ability to frame the ERA as a threat to the family, womanhood, morality, and the conservative order and rescission as a moral and social corrective process enabled them to create a widespread coalition determined to achieve rescission in Kentucky. Initially, the Equal Rights Amendment experienced a quick and smooth ratification process when first introduced into the Kentucky state legislature in 1972. However, opposition mounted just as quickly and with remarkable success. Nevertheless, opponents of the ERA faced an uphill battle. Marshall (1985) highlights rhetoric as a key driver of any social movement and notes that the usage of such rhetoric is only complicated by the presence of a countermovement, which is forced to overcome the negativity that is intrinsically woven into their position (that of opponents, rather than proponents) related to the original movement. In theory, the very nature of the STOP-ERA movement and the virtue of their stance put them at risk to be cast as anti-women by its supporters. In light of this, opponents of the ERA recast themselves as defenders of womanhood and the family. The opposition relied on rhetorical strategies, framing the ERA as an amendment that would take away existing women's rights, instead of granting new ones (Lerma, 2015).

Perhaps the greatest success of the STOP-ERA movement in Kentucky, was the opposition's ability to frame ERA as a threat to the "traditional" way of life and rescission as the morally righteous solution. Opponents played into fears that the passage of the amendment would lead to the collapse of civil society. One Kentucky resident stated in a column in the Sentinel-News: "The ERA will cause chaos in our laws, schools, economy, military defense, and social customs" (as cited in Lerma, 2015). Opponents of the ERA were able to conflate the perceived erosion of

society brought on by the ERA with general economic fears, centering parts of their argument around the supposed elimination of economic protection for dependent housewives. In a letter to the Idaho State Journal, a male letter writer claimed that "the ERA will abolish all economic protections for women... A law like the ERA will only encourage men to walk away from their financial responsibilities to their families" (as cited in Lerma, 2015). Similarly, many in Kentucky feared that the ERA would lead to the destruction of the traditional family unit through the allowance of same-sex marriage, adoption by same-sex couples, conscription of women into the military, and/or forced employment outside the home. In an opposition piece written in a Kentucky newspaper, the Lexington Herald-Leader, one citizen went as far to say: "You can surely bet a bunch of homosexuals will be molesting your children in the ERA's unisex restrooms" (as cited in Lerma, 2015). It was this rhetoric that the ERA opposition used to their advantage, portraying their rescission crusade as a means to champion heteronormative notions concerning the family.

The ERA was seen as an assault on the social structures that legitimized gender equality, including the Church. Throughout the rescission battle, religion played a significant role in the opposition's arguments against the ERA and rhetoric often revolved around religious doctrine. Opponents used the Bible to demonstrate that God created men and women to be different, therefore claiming that they shouldn't be treated the same. It was in this context that opponents claimed the ERA to be fundamentally immoral. In short, opponents claimed the movement existed to attack and delegitimize the Church. The Church of Jesus Christ of Latter-Day Saints was perhaps the most vocal in its opposition. In a letter, the church claimed: "Women's libbers are using the ERA to carry out their attack on the Church and God's natural order" (Schneider, 2010, as cited in Lerma, 2015). Oppositional forces purposely created fear through the demonization of "women's libbers." This religious argument increased opposition by twofold, as the religious

right united with ERA opponents to protect what they believed to be God's will for humanity.

The Equal Rights Amendment quickly became a symbol for increased federal control over the states and social changes of which the people of Kentucky did not approve. The prevalence of ERA-related conversation in the public and private spheres prompted many to consider the social reforms of the past decade. In some circumstances, the ERA debate led many conservatives to acknowledge their rapidly changing world and society. Some even pointed to what they believed to be excessive overreach by the executive and judicial branches. While Phyllis Schlafly claimed that the amendment amounted to a "big grab for vast new federal power" (Schulman, 2001) at the expense of state legislatures and the will of the people, opponents pointed to the country's changing social climate, and the government's promotion of this change, to demonstrate what they believed American society would look like following the passage of the ERA. A former airline stewardess-turned-homemaker verbalized the sentiments of states-rights activists, and therefore ERA opponents, best: "The reason I'm in this is because I'm concerned about the trend our nation is in... I think we've gone a long way to the wrong extreme. We need less federal control and more state, more people control" (Early, 1975). The Supreme Court decisions in *Swann v. Charlotte-Mecklenburg Board of Education* (1971) and *Roe v. Wade* (1973) were front of mind for many Americans, and only added fuel to the fire. In *Swann*, the Court unanimously upheld school busing as the solution to persistent racial segregation. In *Roe*, the Court ruled with a 7-2 split that the Constitution protects a woman's right to privacy, therefore allowing her to choose whether or not to have an abortion. Those widely opposed to the social changes reflected in these decisions noted how the Court supposedly abused its power. Unsurprisingly, there was significant overlap in activists who opposed abortion, busing, and the ERA. Many pointed to the ways in which the amendment could be interpreted by the Court to mean support for, and

the institution of, radical social change (Lerma, 2015). Opponents represented the ERA as a de facto referendum on social change engineered by federal power, thus allowing them to garner rescission support from conservatives and states-rights activists alike.

Early, smooth ratification led to a false sense of security for ERA proponents, later resulting in passive and ineffective responses to the increased rescission efforts led by STOP-ERA and other anti-ratification organizations in Kentucky and a subsequent inability to maintain the amendment's original ratification. By the time ERA proponents realized the magnitude of the STOP-ERA movement, it was too late to adequately respond. Several factors contributed to the lack of response by supporters of the ERA in Kentucky. To start, proponents were under the impression that rescission was unconstitutional, and many believed that a move to rescind would not be officially recognized. To their credit, President Jimmy Carter declared that he considered rescission illegal in 1978 (Baker, 2015). The Supreme Court was also set to deliberate on the rescission question in *Idaho v. Freeman*, but the extended ratification period expired before the court could hear oral arguments. Ruth Bader Ginsburg, then a law professor at Columbia University, described the doctrine of rescission as "the most debatable issue" concerning the ERA (Ginsburg, 1979). This constitutional ambiguity left the amendment shrouded in a general climate of confusion. ERA activists in Kentucky were placed in a difficult position, and most chose to trust the amendment's ratification, instead directing their efforts towards states in which ratification was less popular.

Initially extraordinarily successful in their ratification attempts, pro-ERA activists in Kentucky had little need for the major organizational measures undertaken by similar coalitions in other states with seemingly harder ratification battles. Though the Kentucky Pro-ERA Alliance was formed in September 1975, this effort was a largely reactionary measure to the groundswell of support for rescission in the state.

When trying to rebuild momentum for the ERA, Martha Pickering, one of the two elected co-chairs of the Alliance said, "Kentucky women never had to organize to get the ERA ratified... in 1972 it looked as though it would sweep the country, and Kentucky politicians took advantage of a special session of the General Assembly to ratify the ERA. . . . What we didn't have to do in 1972, we have to do now" (Pickering, 1975). Yet, the Pro-ERA Alliance continued to employ a weak strategy. Legislators advised ERA activists to keep low profiles and avoid confrontational tactics or large demonstrations (Fortune, n.d.). Instead, supporters employed letter campaigns to secure ratification, a rather hands off approach and an inevitably ineffective measure. To challenge matters further, most pro-ERA women worked outside of the home and the activity of lobbying legislators would have required taking a day off work. In comparison, Kentucky STOP-ERA forces were composed largely of full-time homemakers; this role allowed for flexibility and resulted in frequent travel to the capitol in order to lobby elected officials to rescind the ERA (Luker, 1984; Matthews & De Hart, 1990). Nevertheless, when a rescission bill was introduced into the Kentucky legislature for a second time in 1976 and failed to pass, Alliance leaders dismantled the organization and declared victory over the STOP-ERA effort. A March 1976 Alliance newsletter read: "This will probably be the last newsletter you receive" (ERA Reporter: Bi-weekly Newsletter of the Pro-ERA Alliance, 1976). Unfortunately, the Alliance was mistaken. In 1978, Anti-ERA senators introduced a third rescission bill, House Joint Resolution 20 (HJR 20), into the Kentucky legislature. This time, the Equal Rights Amendment and its supporters were not as lucky: the resolution passed in the House and Senate with votes of 61-28 and 23-15, respectively (Raymond, 1978). STOP-ERA forces claimed victory, and Alliance members conceded, with Martha Pickering stating, "They've (anti-ERA) done a good job" (Louisville Courier-Journal, 1978).

Conclusion

On June 30, 1982, the Equal Rights Amendment ratification deadline expired, just three states shy of ratification, becoming the first constitutional amendment in U.S. history to be defeated. Those in support of ratification fought an almost unwinnable battle, and lost. The ratification failure in Kentucky speaks to just how controversial the ERA was, both in the state and nationwide. Public debate quickly shifted focus from abstract arguments about equality and instead centered around to recent Supreme Court decisions and societal change concerning issues such as abortion, busing, and gay rights. Many in Kentucky found themselves deeply committed to protecting heteronormative notions of the family and found a means to do so in the STOP-ERA movement. Arguments of morality and religion, those which already made up so much of Kentucky society, permeated the public debate about the ERA. Widespread support from the religious right, state's rights activists, and conservative men and women alike only bolstered the movement and allowed for the formation of a large and powerful coalition that made pro-ERA efforts pale in comparison. Not to mention, the Kentucky proponents' weak passive responses to early rescission efforts left the amendment without a strong support system in the state. Even by nature of their occupations, the women of the pro-ERA movement were left disadvantaged against the growing support for rescission that swept the Kentucky legislature.

In recent years, women's activism has resurfaced, from the #MeToo Movement to the Women's March on Washington to the record number of women elected to Congress and state legislatures in 2018 (Brennan Center, 2020). In 2017, Nevada became the first state to ratify the ERA since 1977. In 2018, the Illinois legislature did the same. Illinois State Representative Steven Andersson, a Republican who helped revive the measure, argued, "This is our generation's chance to correct a long standing wrong." In January 2020, Virginia's General Assembly also voted to ratify the ERA, becoming the pivotal 38th state to ratify the amendment. Despite this action,

however, the validity and standing of the amendment remains in question. The Justice Department's Office of Legal Counsel (OLC) issued an opinion arguing that the deadline previously set by Congress was and is binding, and that the ERA is "no longer pending before the States," rejecting an earlier 1977 OLC opinion which approved of Congress's extension of the ERA's ratification deadline (Office of Legal Counsel, 2020). However, Article V of the Constitution makes no explicit statement on how long the States have to ratify a proposed amendment, nor the validity of rescission. These circumstances beg the question: How would the Supreme Court weigh in on this controversy? With President Trump's appointment of Justice Amy Coney Barrett last year, the Court is now the most conservative it has been since 1950 (Bailey, 2020). With this in mind, the prospects of an ERA revival seem bleak. But in truth, only time will tell. Regardless, it is clear that the conversation around the Equal Rights Amendment, a Constitutional measure nearly a century in the making, is not going away anytime soon.

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