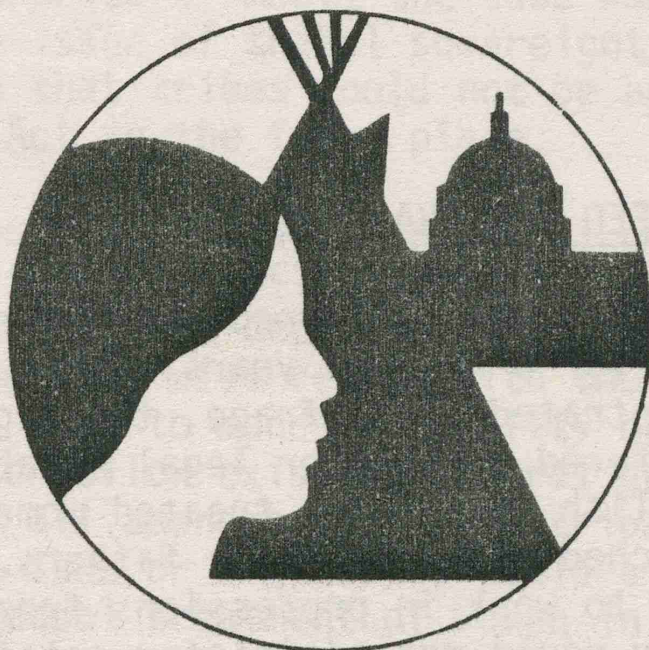


# THE ERA AND AMERICAN INDIAN WOMEN



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.

## WHAT IS THE EQUAL RIGHTS AMENDMENT?

The Equal Rights Amendment is a proposed amendment to the United States Constitution which, if ratified, will insure that equal rights and opportunities for women are fundamental law, as much a part of our system as the right to vote.

The purpose of the amendment would be to provide constitutional protection against laws and official practices that treat men and women differently. At the present time, the extent to which women may invoke the protection of the Constitution against laws which discriminate on the basis of sex is unclear.

## WHY IS THERE A NEED FOR ERA?

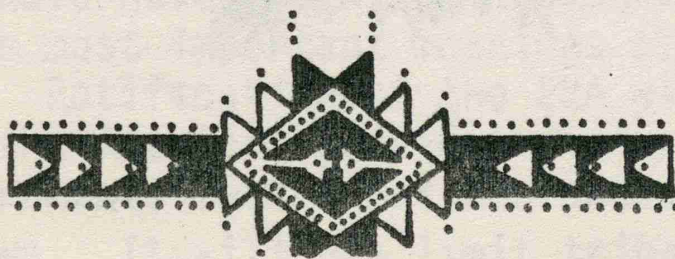
American women have been concerned about their civil rights for well over a hundred years. Most of the early work concentrated on suffrage, the right to vote. Women suffered many other legal disabilities based on old English laws which treated women as possessions attached to husbands or fathers. Women were not allowed to work in professions from law to bartending. They could not administer estates or serve on juries. The law still does not extend the same rights to women that it extends to men.

Over the years groups of women have tried many legal methods to end this discrimination. Women have attempted to use the 14th Amendment guarantee of equal protection under the law to challenge sex discriminatory practices. The Supreme Court has refused to consider sex discrimination in the same way it considers race discrimination. Under the 14th Amendment race discrimination, not sex discrimination, is automatically a violation of the U.S. Constitution in the Courts' eye.

Many misconceptions exist about this Act because for ten years lower U.S. Courts heard cases on violations of the Act. Finally in 1978 the U.S. Supreme Court held that most violations of the Act must be heard and decided in the tribal courts.

The U.S. Supreme Court decided this issue in Martinez v. Santa Clara Pueblo. This case is often misunderstood because it began as an attempt to use the equal protection clause contained in the Indian Civil Rights Act to invalidate a tribal law which discriminated against women. Most lawyers thought the case was about sex discrimination and tribal sovereignty. But, to the surprise of many, the case was finally decided on the issue of tribal sovereignty immunity. The court held that tribes could not be brought into court on this Act in the first place.

Second, ERA could be included in tribal constitutions. When ERA is ratified it will become part of the U.S. Constitution. But, the decision to include ERA in tribal constitutions will remain with the tribe. Should a tribe wish to mandate equality between the sexes, it would follow existing federal guidelines which apply to all amendments of IRA tribal constitutions. Tribal laws or ordinances could also be passed providing for equal treatment of women in education, credit or employment on the reservation. This, like the decision to include ERA in a tribal constitution, is a question for the tribe to decide. TRIBAL SOVEREIGNTY IMMUNITY WOULD REMAIN IN EFFECT UNDER ERA.



## HOW WILL THE ERA AFFECT INDIAN WOMEN?

In urban areas, Indian women would benefit greatly if the Equal Rights Amendment were ratified, just as all other women would.

In the reservation areas, tribal laws generally do not discriminate against women. While women have not been equal participants in all matters affecting tribal life, the problem is more because of attitudes and practices rather than laws.

There are, among a few tribes, laws which discriminate against women; for example, those laws which do not allow women to serve on tribal governing bodies. But in most instances where discrimination does exist, it exists in the determination of tribal membership. Although these laws would still be legal even after the passage of the ERA, there would probably be increasing pressure on the tribal government to change these provisions. In the end, the decision would be made by the tribes.



Discrimination against women has also been attacked through statutory changes affecting specific aspects of discrimination. Both the U.S. Congress and State Legislatures have passed laws to improve the status of women in employment, credit and education. These piece-meal changes, however, have produced no coherent uniform development in the field of women's rights. A Constitutional amendment is the best legal method by which equality for women can be comprehensively and permanently enforced as an important American value.



### CONSTITUTIONAL IMMUNITY OF INDIAN TRIBES

In Indian law, those parts of the U.S. Constitution which refer to the state or federal governments do not apply to Indian Tribes. Tribes for example can establish and support state religions while this is prohibited to the state and federal governments. The reason for this is that the power to govern Indian tribes does not come from the federal and state governments, but from the Indian people. Tribal government powers have never been extinguished; this concept is one of the most important meanings of Tribal Sovereignty. Ratification of the ERA will be an expression of the American people that their state and federal governments must treat men and women equally under the laws. It will not limit tribal governments.

## ERA IN INDIAN COUNTRY

ERA would have an effect in Indian Country -- it would mean simply that the federal government's role in reservations must be applied in an even handed manner for both men and women. Indian preference would be maintained in reservation employment at the Bureau of Indian Affairs and in the Indian Health Association. Equality of the sexes between Indian women and Indian men in federal employment would be more strictly enforced. The ERA would also come into play in regard to those federal laws which are enforced against Indians on reservations. For instance, prosecution for the crime of rape would be applied equally against men and women.

State laws, which come into line with the federal principle of equality when ERA is passed, also affect life on the reservation. Probate is one area of state law which often governs the inheritance of allotted lands, and, as women and men become equal under the law, they will also become equal in their right to inherit. Those state, county, and municipal programs which now serve reservation Indians would be available to men and women on a more equal basis. Federal and State criminal laws under which non-Indians are prosecuted on reservations would also be required to provide sex equal treatment under the law.

## THE ERA AND TRIBAL REALITY

There are two basic ways in which ERA could be applied to tribes. First, although Indian tribes are sovereign, their powers can be limited by Congress. But, as we experienced with the Indian Civil Rights Act of 1968, the U.S. Supreme Court has recognized the principle of tribal sovereign immunity over Congressional action. In 1968, Congress passed the Indian Civil Rights Act which mandated that certain sections of the U.S. Bill of Rights be inserted into tribal constitutions.

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BY THE COMPANY IT KEEPS



Ada Deer  
Native American Rights Fund

"We as Indian women must be especially supportive of all efforts to promote social equality and open-mindedness. The ERA is a 'one and only' in the improvement of our society."



LaDonna Harris  
President, Americans for  
Indians Opportunity

"Swift ratification of the Equal Rights Amendment is in the true interest of all Americans. This national affirmation of the equality of women is crucial to our continued struggle for economic and social justice."

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