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**Civics 101**

**The ERA**

**Nick Capodice:** [00:00:00] Civics 101 is supported in part by the Corporation for Public Broadcasting. I'm Nick Capodice.

**Hannah McCarthy:** [00:00:09] And I'm Hannah McCarthy.

**Nick Capodice:** [00:00:10] And this is Civics 101. The podcast refresher course on the basics of how our democracy works. The Equal Rights Amendment is a proposed constitutional amendment that would guarantee equality under U.S. law regardless of sex. Huh. Um, shouldn't that already be in there? Is that in there? No? Not really?

**Lillian Cunningham:** [00:00:32] The Equal Rights Amendment has been the most frequently proposed amendment in all of US history. There have been 11000 proposed amendments over the course of U.S. history and we only have 27 that have actually made it into the Constitution. But out of those 11000 the Equal Rights Amendment or some version of an Equal Rights Amendment is by far the most frequently proposed.

**Nick Capodice:** [00:01:03] That's today's guest Lillian Cunningham.

**Lillian Cunningham:** [00:01:05] I'm Lillian Cunningham. I am a journalist at The Washington Post and I'm the host and creator of two podcasts we have, Presidential and Constitutional.

**Nick Capodice:** [00:01:15] Lillian Cunningham who also goes by Lily is joining us to explain the ERA and why, almost a century after it was first proposed, we're hearing about it again in the news right now.

**Archival audio:** [00:01:27] You got to hear what I have to say because you know what's going to happen. Women are not given equal rights and protections under federal law.

**Nick Capodice:** [00:01:49] Alright, let's begin with the most basic question of all. Lily, what is the Equal Rights Amendment?

**Lillian Cunningham:** [00:01:54] So the Equal Rights Amendment is a proposed amendment or proposed change to the U.S. Constitution. And so the idea is that we would add a line or two to the constitution that would explicitly grant equality under U.S. law to every citizen regardless of their sex. So basically that would mean women would have the same rights and protections as men under the U.S. Constitution. The exact wording I have here in front of me the exact wording is "equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." So you know I think most of us today this sounds pretty straightforward kind of like a no brainer that men and women should have equal protections. But there has actually been a really intense and really long battle that's taking place over about 100 years now in this country over whether we should actually put that language in the Constitution. And that battle is kind of reaching a new climax in the country right now.

**Nick Capodice:** [00:03:13] So this is a proposed amendment it hasn't been ratified yet. And as Hannah and I know from several different episodes it takes two thirds of all houses three quarters of all states to ratify a constitutional amendment so this is still in the works?

**Lillian Cunningham:** [00:03:26] So this is where it actually gets very complicated. Right. So what is clear is that it was a proposed amendment and it did at one point pass both houses of Congress with two thirds of the vote. Now what it hasn't done is it hasn't cleared the second hurdle which is that three quarters of states.

**Hannah McCarthy:** [00:03:51] So Lily you said that this debate has been going on for about a hundred years now. When was this thing proposed and why was it proposed.

**Lillian Cunningham:** [00:03:59] The backdrop here is in 1920 the country adopts the 19th Amendment which is women's right to vote and kind of on the high from that victory, Alice Paul who's the head of the National Women's Party at the time and a bunch of other female activists, they decide you know OK this is great we have the right to vote now in this country but that's only one piece of what equality looks like. Gender equality looks like. And so really shortly after the adoption of the 19th Amendment Alice Paul and some of her colleagues put forward this idea that we should have an equal rights amendment. Alice Paul is not a congresswoman. She's just a political activist. But she sort of brings this idea to members of Congress and actually at the time in the early 1920s a nephew of Susan B Anthonys was a congressman and he and one of his other colleagues in Congress decide that they are going to actually officially propose this Equal Rights Amendment and they do that in 1923. It doesn't get enough votes though to pass and they try again the next year and the next year and every single year from 1923 onward an Equal Rights Amendment is proposed in Congress. But it just doesn't have enough momentum to get anywhere. Until about 1970 and that's then when the story changes and we suddenly see 50 years after its first proposed we finally see it pass both houses of Congress.

**Hannah McCarthy:** [00:05:51] So what is going on in the early 1970s why does the story suddenly change after 50 years?

**Lillian Cunningham:** [00:05:58] So it kind of interestingly it's another moment in the nation's history where we're obviously really debating and trying to reconcile our history of inequality. So Sort of out of racial inequality protesting comes some of these attempts to also fix gender inequality gaps. And so that's why we sort of see this turning point where there's just a lot of political pressure on Congress to pass this equal rights amendment that's been sitting there languishing and it becomes kind of a symbol of the country's commitment to solving these inequality issues.

**Nick Capodice:** [00:06:44] So it makes it out of committee, miraculously. It gets two thirds of the House two thirds of the Senate. But what happens in the States in 1970?

**Lillian Cunningham:** [00:06:54] So Congress does something with this amendment that they haven't done with a number of other amendments. And what they do is they pass it but they write that it has a seven year deadline to get those state ratifications. So that means that thirty eight states need to ratify or you know basically sign off and say they want this amendment to be in the Constitution. They need to do that by a deadline of March 22nd, 1979.

**Nick Capodice:** [00:07:29] So what are the arguments against the ERA. Because with our 2018 glasses on it seems a little strange to have this argument. But were there arguments against it in the 1970s and 80s?

**Lillian Cunningham:** [00:07:40] There were. There were arguments about it all the way back to the 1920s when it was first proposed you know some people say we don't actually want the same treatment for men and women and it doesn't mean we want worse treatment for women.

**Lillian Cunningham:** [00:08:00] But you know a lot of the people actually who opposed the Equal Rights Amendment were other women. In the 1920s there were women who had been fighting really hard to get new labor laws passed so that in this like new industrial age where women were joining the workforce in numbers that they hadn't before they were pushing really hard to pass laws where there were limited work hours for women or where you know you could say like if a woman goes on maternity leave she should maybe have different treatment than a man does in the workplace. And then there are of course also some people who are just in the camp of like ah, we already have a 14th Amendment that's sort of more broadly guarantees equal protection for every citizen under the law. And you know we don't really need this amendment.

**Nick Capodice:** [00:08:54] More on the ERA and the iconic activist who by some accounts is the single reason the ERA didn't pass in the 1970s. That's after the break.

**Nick Capodice:** [00:09:06] Welcome back to Civics 101. We are here with Lillian Cunningham, journalist for The Washington Post and host and creator of two of their podcasts, Presidential and Constitutional. I'm Nick Capodice here with Hannah McCarthy.

**Hannah McCarthy:** [00:09:18] So in the 70s and the 80s who was leading the charge against this equal rights amendment?

**Lillian Cunningham:** [00:09:25] So the main figure is this woman Phyllis Schlafly and she is she is a lawyer and she's also a conservative political activist and she is one of these women who very much felt that women should be treated differently under the law.

**Nick Capodice:** [00:09:48] Yeah and we've actually dug up some audio here of Phyllis Schlafly speaking about her views on the ERA.

**Phyllis Schlafly:** [00:09:54] My youngest daughter became 18. And I realized that what these people really wanted was to take my five 5 foot 2 little girl and treat her just like a man and draft her and put her in basic training and teach her to kill and send her out into our country's wars just like the men. Yes I do get emotional about that.

**Phyllis Schlafly:** [00:10:17] That brought about a very cutthroat censorship of elementary school textbooks, so that they eliminated ego pictures of women in the home and women with babies. Now I believe that strong nations depend upon strong families, and that child care should not be primarily a governmental function.

**Archival audio:** [00:10:34] Mrs. Schlafly in a well organized and financed campaign has been flying around the country inspiring opposition groups such as this one in Dade County, and the anti amendment mail started coming in.

**Lillian Cunningham:** [00:10:48] At least in the kind of simple telling of the story she's kind of the main reason why everyone who supported the ERA feels that they weren't able to get the 38 states they needed by the seven year deadline. You know for every pro ERA campaign that was mounted there was Phyllis Schlafly with the anti ERA campaign competing against state and cutting into its momentum.

**Nick Capodice:** [00:11:19] So I have two questions about where the amendment stands now, and the first is what would be the tangible effects if it were to be ratified?.

**Lillian Cunningham:** [00:11:28] So there are people who say at this point the ERA is more symbolic than anything else, that it's important for us to put it in the Constitution because it's important for us to acknowledge as a country that we have gender equality, but that in practice you know we've already kind of set up a legal system that can you know account for and protect women so that some people say not much will change.

**Lillian Cunningham:** [00:11:58] Other people of course the ones who are you know out there right now advocating for it they say it could have an effect on things like equal pay in the workplace for women. It could mean that women or actually men couldn't be charged different insurance premiums, health insurance, car insurance things like that. You know just based on their gender. It could have some kind of future effect on parental leave. So we don't really know all of the ways that it might play out. And that's you know, we won't know even if it does eventually make it into the constitution and we won't have an answer right away of course because all of that sort of thing gets set over time in Supreme Court cases kind of set the precedent for how they're going to how they're going to read that constitutional amendment.

**Hannah McCarthy:** [00:12:55] It strikes me that it's it's hard to overturn what the Constitution says but it's not quite so hard to overturn what a law says.

**Lillian Cunningham:** [00:13:06] Absolutely. You know with the exception of prohibition where we put that into the constitution and then repealed it eventually no other constitutional amendment in our history has been repealed. And it is the most permanent way we have of fixing something into you know the governing structure of our country. So it kind of buffers it from the winds of any particular political climate or you know President in office or Congress leaning this way or that way. Absolutely. Yeah that I think is one of the strongest arguments there is for why it would make a difference if we put it in the Constitution.

**Nick Capodice:** [00:13:55] And I guess the biggest question for me is what's going on right now with equal rights amendment. Why why is it coming into the news as we speak?

**Lillian Cunningham:** [00:14:03] That's the kind of curious and exciting and interesting thing right now is that the deadline the original deadline Congress set was 1979. And by 1979 35 of the 38 states that needed to ratify it had ratified it. So there were three states away from getting it officially into the Constitution. So Congress decides they're going to extend the deadline by three years until 1982 and give some of these straggler states a chance to ratify it so they can get the three more that's needed which was a controversial move at the time. So that second 82 deadline comes along. There are still 35 states. And it's you know kind of just pronounced dead. Like Congress doesn't extend another deadline. And the idea is that OK if we want an equal rights amendment we now need to go back to square one. It will need to be proposed in Congress again passed by Congress again sent to the states all the states again. So there are people today who say the ERA is actually dead. That's it. It's done. Well. Other people say you know I don't think so I think if we still get three more states we could go to Congress and say hey we have the 38 states we finally need. If Congress had the right to put a deadline on it in the first place and put an extension on the deadline then you have the ability kind of after the fact to go back and say OK we're going to sort of waive that original deadline and we're going to honor the rest of the state ratifications.

**Lillian Cunningham:** [00:16:00] So there are people who have since 1982 been kind of quietly pushing to get the other three states to ratify it so that we know as a country could then have to sort of force Congress's hand to decide you know what are they going to do. And what's happened is that last year Nevada kind of out of the blue passed it. Or they ratified it. Their state legislature decided to ratify the Equal Rights Amendment. And that meant there were 36 states and then just recently Illinois decided to do the same thing. So that's now 37 states that have said they want this amendment in the Constitution. So there is a huge question mark right now. Like can we get a 38th state? What state would it be. And you know the big question which is what in the world happens if we do get 38 states and Congress then needs to decide whether it's going to honor this. Even though the deadlines expired. So that's where we stand right now. It's a question again without an answer. We have no idea what Congress would do.

**Nick Capodice:** [00:17:36] Lillian Cunningham is a journalist with The Washington Post and the host and creator of Two sensational podcasts, Presidential and Constitutional. Do yourself a favor and listen to them. Presidential is a podcast about each of our presidents and onstitutional is an in-depth look at the stories of the people who framed and reframed the Constitution and our nation. Today's episode was produced by Justine Paradis with our executive producer Erika Janik. Our staff includes Ben Henry Taylor Quimby Jimmy Gutierrez and Jacqui Helbert and it's hosted by Hannah McCarthy and me Nick Capodice. If you have a question about this grand old American experiment. Send it to us.

**Nick Capodice:** [00:18:16] You can e-mail us at Civic's 101 at NHP dot org or tweet us at @civics101pod. Civics 101 is a production of new Hampshire Public Radio.