

Carol Jenkins Transcript

Mila Atmos: [00:00:04] Welcome to Future Hindsight, a podcast that takes big ideas about civic life and democracy and turns them into action items for you and me. I'm Mila Atmos.

Mila Atmos: [00:00:25] Belgium, France, Denmark, Latvia, Luxembourg, Sweden, Canada, Iceland, Portugal and Ireland. What do these countries have in common? They all have something we don't have here in the U.S. -- that is full legal protections for women. In fact, according to the World Bank, the U.S. ranks below countries like Peru and Albania in terms of legal protections for women. Despite an almost 100 year long campaign, women in the U.S. still do not have equal rights guaranteed under the Constitution. And if that's a surprise to you, you're not alone. 70% of Americans think an Equal Rights Amendment is a good idea and that we already have one. I was one of those people only discovering a few years ago that women are not equal to men in the Constitution. I kind of couldn't believe it. Even more unbelievable is that it's been 99 years since the start of the movement to pass the Equal Rights Amendment, or ERA, and we're still not there. Just to be clear what we're talking about, here is what's actually in the ERA, and I'm going to read the exact language to you.

Mila Atmos: [00:01:41] Section One: 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 Two: The Congress shall have the power to enforce by appropriate legislation the provisions of this article. Section Three: This amendment shall take effect two years after the date of ratification.

Mila Atmos: [00:02:06] This episode is coming to you aptly on the last day of Women's History Month. And we're going to dig deep into this amendment in waiting. We're going to find out what's transpired so far and what the future may yet hold for the ERA. We're joined by Carol Jenkins, President and CEO of the ERA Coalition and the Fund for Women's Equality, sister organizations dedicated to the adoption of the Equal Rights Amendment. Carol, thank you for joining us.

Carol Jenkins: [00:02:35] Mila, thank you so much for having us and for presenting the issue so precisely.

Mila Atmos: [00:02:42] We are so thrilled to have you. So can you take us with a history of the ERA? Or maybe let's start with Alice Paul in 1923.

Carol Jenkins: [00:02:49] People always ask, "Can you just give us the short version of the ERA?" And I say, "there is none." But to take it back those 99 years. Alice Paul, who as we all know, was so instrumental in getting women the vote in the United States of America, and we've been voting for 100 years now. What Alice Paul knew then, as soon as that resolution passed, was that we needed something else. And she was so right because women have been voting for 100 years, we still don't have full access to all rights in this country. And the question is why? And what she understood was that the source of the disconnect was in the Constitution. It was written by white men, the patriarchy, slaveholding men. They didn't think that either women or the Indigenous or the enslaved required full rights because in fact they were not full people. So Alice Paul, 1923, said, "Let's have an amendment that says you cannot be discriminated based on sex." And that is such a fundamental underpinning understanding of what we're talking about and what the the ERA would do. We are operating from this constitutional underpinning of our country that eliminates huge segments of individuals. Now, that Constitution has been amended 27 times, and what we're working on is the 28th -- what we call fix -- to this founding document. Okay, they may not have known that women or Indigenous or the enslaved would one day be demanding their rights and, you know, to be understood as full human beings.

Carol Jenkins: [00:04:31] But they did at least give a way to amend it. It's a very complicated way of fixing that founding document. It has taken us 99 years and counting to actually get as close as we are. The things that Article Five and the Constitution require for amending the Constitution are passage by Congress. We did that in the 1970s. It was a bipartisan vote. And then the tricky part is that it then has to be ratified by 38 states, and that means sending that amendment out to the states to vote yes or no on equality for all people in the country. The deal that was struck when this amendment was sent out of Congress was that it had what we call a time limit. What then was referred to as a deadline. It was a seven year time limit. If you can imagine just thinking about the holistic nature of that, sending that out to 50 states and saying you have to do it within seven years. And that's every legislature in every state voting to say yes to the ERA. When the seven years were up, we were stuck at 35

states. We needed three more. It went back to Congress, got an extension. At the end of the ten years, we were stuck. We were at 35 states.

Mila Atmos: [00:05:53] Let's backtrack a little bit to the very beginning. What happened in the early years to even get it as far as getting to Congress and how did people build a movement around it?

Carol Jenkins: [00:06:04] From the very beginning, Alice Paul was very good at building movements and so, you know, in 1923 was the first year she introduced it and indeed she was still alive in '72 when it was finally passed. And when she heard about the time limit, she cried because she understood that this was going to throw an obstacle in our path and would delay the ratification, the actual acceptance, and enforcement of the Equal Rights Amendment. And she was absolutely right. Such a smart woman. This has been a century long movement where there has never been a time when people have not been pushing for it and where there hasn't been acceptance in the general population, but defiance in the Congress of the United States, a reluctance to actually make this happen. We ended with those 35 states in the early eighties and the ERA Coalition was founded eight years ago, 2014. And how close are we? We have gotten a full 38 states to ratify the Equal Rights Amendment. It is the law of the land as of January 27th of 2022.

Mila Atmos: [00:07:17] I have a question about the January 27th date. What do you mean it's going to be the law of the land? Can you explain that?

Carol Jenkins: [00:07:24] Well, Article Five, again, which stipulates what it takes to add an amendment to the Constitution, only says two things. Passage by Congress and ratification by 38 states. So in 2017, suddenly out of the blue, the state of Nevada, headed by this wonderful State Senator, Pat Spearman, a Black woman. Nevada ratified the era. And we're sitting in our office and we're saying, "what? You know, does that count?" And our legal scholars said, "yes, it counts." The next state that we actually started working in was Illinois. And in 2018, Illinois ratified Alice Paul's ERA. It took Virginia a little bit longer, but in 2020 it turned blue and voted to ratify the ERA. So Virginia became the last state that we needed. So we had the full 38 states. So as far as we are concerned, the clock started ticking then because what the amendment says is that there's a two year preparation period to get us to the point of actually enacting this,

to let all of the states know that the ERA is coming. You need to fix your statutes so that you're not in conflict with the ERA on January 27th of 2022. We reached that threshold and went to the White House, had a rally. Announced to the world the Equal Rights Amendment has met all constitutional requirements. It's in force. We still fight to have the archivist whose job it is to publish the Constitution to add those three states. Because Mila, you and I would like to hold the Constitution in our hands that actually has 28 amendments as opposed to the 27.

Mila Atmos: [00:09:13] Are states or have states in the last two years been getting ready for this adoption of the ERA?

Carol Jenkins: [00:09:19] Some have! And it's part of the work that the Coalition does. We started immediately, you know, in 2020, asking states to look at their statutes. We have 250 organizations across the country. Those working ins in states began to look at the statutes. Our coalition partner in Arizona was the first to come back with a full report through the work of some pro bono lawyers who went through every statute in the state of Arizona. Their final report was 650 pages long of things that needed to be changed. You know, some things are simply pronouns. Some things are deliberately discriminatory statutes that would need to be removed. It's not all bad news. For instance, Illinois has done a very good job through the years of updating their statutes so that they do not have 650 pages of things that Arizona would have to fix. So the reason that it's important for this work to be done is that people will soon begin to use the Equal Rights Amendment to sue for discrimination. And so we're advising all states to get ready for that. What this amendment gives us is the right to create laws so that people cannot be discriminated against. And so there will be a whole slew of those as we go through trying to give this country the equality that it thinks it has.

Mila Atmos: [00:10:49] Let's go back and talk about the archivist, because you said, you know, the archivist hasn't done this yet, right? He hasn't yet published the 28th Amendment. So tell us about the archivist. Who is this person and what's their deal?

Carol Jenkins: [00:11:00] I know this poor librarian, you know, as we have painted him to be the ogre who was holding up equality for all Americans. We have also had sympathy for him because he's the head librarian at the National Archives and has a ministerial duty to simply publish ratifications as they become valid. So what should

have happened when Virginia became the 38th state to ratify, David Ferriero, who holds that position, should have simply posted it in the Constitution and created the 28th Amendment. He was, however, stopped by a Department of Justice memo issued by the previous administration, the Trump administration. We were all standing in Virginia getting ready to celebrate this big moment when all of our cell phones went off that said, "the Department of Justice has just stopped the ERA." And what that memo said was, do not publish the Equal Rights Amendment. It is dead and over because of the time limit, a cease and desist. The three states that ratified in the last phase of this sued the archivist to publish. There were states who sued the archivist saying, "Yes, it's right, it's dead and gone. Do not publish it." And so he was immediately thrown into, you know, a legal mess. So we are now still working on that Department of Justice memo. The case of the three states suing the archivist is moving along. The Department of Justice has already issued a clarification. The Biden administration has clarified that memo and said essentially, we do not agree that the ERA is dead and over. Congress and the courts can still work to resolve the issue of the ERA. So that's good news. But as we know, Congress and the courts are not exactly aligned with us in their current makeup.

Mila Atmos: [00:13:01] We're going to take a brief break here because I want to tell you about a podcast you should check out. But when we come back after that, Carol is going to take us through the concrete ways the ERA could change our lives.

Mila Atmos: [00:13:12] But first, things can seem pretty bleak right now, which is maybe why I'm totally into this new podcast that shares a hopeful view of the world -- kind of like us. What if, instead of being on the brink of disaster, we're on the cusp of a better world? On every episode of *What Could Go Right*, Progress Network founder Zachary Karabell and executive director Emma Varvaloucas convene experts to discuss the central issues of our era and make the case for a brighter future. They emerge from their conversations with a counterintuitive but informed take: Progress is on its way! Some of the guests have included Jason Crawford, founder of The Roots of Progress; Tyler Cowan, Mercatus Center director and economics chair at George Mason University; Gregg Easterbrook, longtime Atlantic contributor and author of *The Progress Paradox*; Roy Bahat, Head of Bloomberg Beta; and Arthur Brooks, Harvard professor and bestselling author. *What Could Go Right* is available wherever you listen to podcasts.

Mila Atmos: [00:14:12] Now let's get back to our conversation about the Equal Rights Amendment with Carol Jenkins. In what way can this be derailed at this point? Because you're saying it's the law of the land, but people have doubts about it because of the lawsuits. And some people continue to argue about this idea that the time has passed. And then also -- not to complicate things further -- some states have rescinded their ratification. Can you talk about that?

Carol Jenkins: [00:14:38] Sure. We'll start with the rescissions. Those states have expressed a wish to rescind, but they have not rescinded. And our legal scholars say they cannot rescind based on subsequent bodies not being able to undo the work of previous bodies. We would be at a chaotic legal mess if it were possible, you know, for the new administrations in any state to undo everything that was done. I mean, it's already complicated in Congress, but if states were allowed to do that, there would be total chaos in this country. When the 14th Amendment was ratified, there were two states who said they wanted to rescind. They were counted as having approved because they had approved. So, you know, the rescissions as far as we're concerned do not count. We'll see what happens in future courts and whatever. But as far as the legal history goes that we stand on is that they cannot rescind. They had expressed their desire to back out of it as the attorney general of the state of Virginia has done recently. It was a Democratic administration that supported this lawsuit in the last election. A new administration came in and the new attorney general has said, we no longer want to support the lawsuit. And fortunately, the states of Illinois and Nevada expected that to happen and are continuing with the lawsuit. So there are two things at stake there. One is the question of whether or not a court judge will decide on this lawsuit that the ERA is in full standing or not because of the deadline or whether these states have standing to file that lawsuit or not. You know, in a previous decision, the judge said the states do not have standing and the states have, are appealing that judgment now. So that's where we are, you know, in the lawsuits, again, against the archivist. And all of that will be resolved probably in the summer.

Mila Atmos: [00:16:44] However, the lawsuits are resolved, it sounds as if, when you read the statutes, that really it is the law of the land as of January. And so, does it really matter?

Carol Jenkins: [00:16:58] Does it matter?

Mila Atmos: [00:17:00] Yes.

Carol Jenkins: [00:17:00] As some phrase it to us, "You've been working on this for 100 years. Okay, you have it. What are you doing with it? You know, what? What difference does it make?" Well, most people don't understand the effect of the Constitution on our lives. You know, it's sort of the invisible rules that guide who has rights and who doesn't. As a matter of fact, my grandchildren were visiting Mount Vernon recently, and I said to them, say hello to Thomas Jefferson for me and tell him that your Black grandmother is fixing the Constitution that he helped write. You know, he left out a few things. So it's a legal thing, but it's also a huge symbolic cultural thing that has persisted in making people believe that women are not equal, you know, and that you can discriminate against people based on their sex. And the Supreme Court has now said that sex is defined as any way you describe yourself, LGBTQ, trans, whatever, so that all of those rights are now protected by the Equal Rights Amendment. Other classes of people probably unthought of by our founding fathers and and left out of this great document. So this is what we're doing with it.

Carol Jenkins: [00:18:16] We've been looking for the source of sexism and racism that has bedeviled us the entire life of our country. The source of that is the Constitution. And until it is fixed and until it is recognized that we are all equal and all citizens of this country and not just citizens, people living in this country, are affected by the Equal Rights Amendment and that we're all equal under that law. So it means that pay equity. You know, every year we go through this thing of "when does a black woman, when does a Latino woman make what a white man made the year before?" People have been working on that forever. For Black women, that figure is not changed for 30 years. And the reason it hasn't changed is that the source of that sexism and racism lies in the Constitution. The cultural understanding, you know, that Black women do not deserve, Latino women do not deserve, women do not deserve, LGBTQ do not deserve. And until we are all perceived and act as equal and made to act as equal under the law, and we will be in this malaise of year after year wondering why is it that women are the impoverished of the country? We'll tell you why. It's because the playbook that we live under is faulty and it needs to be fixed.

Mila Atmos: [00:19:40] Oh, that's very well-put. I was just going to ask you whether the amendment will make the lives of American girls and women better. And you've just explained that it would get rid of things like unfair pay.

Carol Jenkins: [00:19:52] The Violence Against Women Act had to be reauthorized, a big fight over it. It's still not totally resolved. What the Equal Rights Amendment would do is give a fundamental legal, constitutional underpinning for that, because in so many instances there is not constitutional rationale for getting your rights. It was Justice Scalia, conservative justice, who who said, if you're asking me if the Constitution prohibits discrimination based on sex. No, it doesn't. We need this constitutional underpinning that flat out says -- and now we have it -- that there will be consequences and real consequences if you break these laws. I mean, now we have cases if you have a lot of money and a lot of time, you can sue for your rights that you may or may not get. And in pay inequity, if you're a woman, you'd better make sure that you get enough in that settlement, because the likelihood of you working anywhere else again is very diminished. The MeToo movement created this whole class of women who said, "Yes, we have cases that we need to press." And so then the word went out. We need lawyers to file those cases. They raised millions of dollars to pay for those lawyers to file those cases. You know, as the Equal Rights Amendment becomes more and more in play and as we pass, those laws will become unnecessary. It should not take millions of dollars and 20 years of someone's life in order to get recourse for discrimination.

Mila Atmos: [00:21:28] Right. Right. So well, talk to me about the equal protection clause of the 14th Amendment, because some people argue that that does the trick. What do you think?

Carol Jenkins: [00:21:36] Well, I don't know. I always say, is the problem fixed? I don't think so.

Mila Atmos: [00:21:42] Well, it feels as though equality is under assault. Roe v Wade is at risk of being overturned, and dozens of states are ready to go with abortion bans the moment Roe falls. And then in Texas, SB eight has unleashed a kind of legal vigilantism against anyone supporting pregnant people, accessing abortions, effectively banning abortion at six weeks. Also in Texas, families and caregivers of trans kids are subject to child abuse investigations. And by the way, this is already happening in lots of places.

It's just that Texas is the first state to actually issue a directive to that effect. It's, it's totally overwhelming. It's a lot. So does the ERA solve for any of this?

Carol Jenkins: [00:22:26] It does. And I think, in fact, it is the last stand. I mean, everyone seems to be shocked that it is so easy to unwind a 50-year right to an abortion in these United States. You know, but there you go. It is because there is no constitutional underpinning for it. The problem for so many ways of correcting it is that the United States Senate, because of the filibuster, is just logjam. You cannot get anything done. You have this small group of people and I won't even say men anymore because of the women in the Senate who are blocking the Equal Rights Amendment, the Equality Act, the Women's Protective Act that is in movement now. You know, all of these things are blocked. And therefore, I say everybody needs to go out and vote. We need pro equality, pro women representatives and senators running our country and making decisions for the people who live here.

Mila Atmos: [00:23:32] So why isn't this a key pledge in every campaign, certainly by progressive candidates? Because I don't I don't really hear candidates talk about this at all.

Carol Jenkins: [00:23:42] Well, I think you will hear it more now this this cycle. We're a nonpartisan organization and we are using a tool where we survey every single person running for Congress and running in the unratified states. We survey them on their stance on the Equal Rights Amendment and on equality. And what we say is that voters will need to use our elected quality certification in order to vote for candidates. And when we use it, the last time around, candidates went wild. If they found themselves missing, you know, from the pro equality certification. It was like, let's just have equality. Let's just make sure that our country can come to some level agreement that we all deserve to be protected and can't be discriminated against based on how we define ourselves and our sex. So I just say that we need to ask the question as voters, people running to represent us, do they really represent us? And that has to include equality based on sex.

Mila Atmos: [00:24:44] I was talking to a friend of mine before getting ready for this interview and she told me that she remembers going with her mother to knock on doors in support of the era in the 1970s. So, you know, generations of women have carried

this campaign. And I'm wondering what you have learned personally from those generations of women and in your many years of activism on the era, perhaps, you know, something that surprised you.

Carol Jenkins: [00:25:09] Well, what surprises me and what we count on is the fact that people do not give up. We have members in our coalition who are 90 years old and have been working on this their entire... I mean, they may have gone to protests and knocked on doors with their mothers. I mean, that's just how long people have wanted this. And when we started, we had maybe five or ten organizations who were with us, and they were the women who knocked on doors with their mothers and grandmothers. And now we have 250 organizations and we have union members. We have miners. We have the teachers' union. We expect that the flight attendants, but the miners' union, LGBTQ groups, voting rights groups, they understand that, that this source that started at the inception of our country is the thing still holding us back and that we need to fix it and it can be fixed. I'm surprised that our numbers grow. I'm surprised at the enthusiasm and the determination. I'm surprised that my granddaughter in the third grade, you know, has ERA buttons and she gives them out to her classmates and they wear them on their backpacks. No matter what generational sphere you're looking at, people get it. They know that they are still discriminated against, that there's still discrepancies. And as we point them in the direction of the Constitution and say "this is it. Systemic racism, systemic sexism, misogyny, you know, the patriarchal founding of our country that still culturally has us in this unequal space."

Carol Jenkins: [00:26:57] So, you know, it's just been tremendously rewarding. Every single day we have people calling us up saying, what can we do? How can we help? Of course we send them to the Senate. We need support there for removal of the time limit in the Senate. Send it to the Department of Justice. Tell them to fully remove a memo that limits full publishing of the Equal Rights Amendment. And we're reviewing those statutes. We are starting to work in corporate America, trying to create a universal code of equality. And we've talked with about 20-25 companies, big ones. They all have great things going on. But it's not universal from company to company. And nobody has come to an agreement of how you do that. The Coalition wants to help in putting that together and we've started our equal voice, equal future communications hub. So those out of the mainstream of media who can't get their words out need a place. And we're trying to create that as well in our equal voice, equal future hub. So lots and lots of things

underway. For those out there who say, "oh, the ERA won't do anything, it's just a symbol." I say, "please give it to me. If it doesn't mean anything, why are you working so hard to keep it away from us?"

Mila Atmos: [00:28:15] Yeah.

Carol Jenkins: [00:28:17] Give it to us as a symbol, like the Statue of Liberty. We could use it in this country so that we can all feel good about ourselves.

Mila Atmos: [00:28:25] Right. So what are two things an everyday citizen can do to advance the ERA and make sure it actually gets published as the 28th Amendment?

Carol Jenkins: [00:28:34] I would say one of the things that we have learned is that while a lot of attention is paid to Congress and in meeting the House of Representatives in the Senate and the President, we really need to pay attention to our school boards, our state legislatures, our city councils, making sure that the people who are getting elected there are ERA supporters, because that is the pipeline. For instance, in Virginia, if pro ERA people had not been elected in Virginia in 2020, we would only have 37 states as opposed to 38. So it was a change in the legislature in the state of Virginia that gave us the ERA. It is the imbalance on pro and anti ERA supporters in 12 states that keeps us from getting more. So it is changing the legislatures in the states that is so important and to really focus locally who's running for a Secretary of State, Attorney General, all of those positions in local life that lead up to our overall concept of who has rights and who doesn't. And these elections that are coming up are essentially crucial for the protection of our democracy. I hate to be overly pessimistic, but I just want to be overly enthusiastic that voting in every single elected office locally is extremely important this year round 2022 and 2024. That's where you can have the most impact to support the candidates who support women, who support LGBTQ rights, who understand that we all belong in this country. You can always demand that your Senator support the ERA. We at our website eracoalition.org give ways of writing to the president, writing to your senators, writing to the archivist. You know, those are sort of distant things that are still impactful but focus locally.

Mila Atmos: [00:30:45] Perfect. Looking into the future. What makes you hopeful?

Carol Jenkins: [00:30:49] I'm hopeful because I believe that the Equal Rights Amendment is in effect. I believe that we can use it. I believe that it will be used well and powerfully. I am looking forward to the lawsuits that will come to enforce it. And I'm I'm really hopeful about everyone understanding that it's not a normal thing for people to be discriminated against based on their sex. We've come to believe it, assume it. We're used to it. Get unused to it because it is about to end. I'm so hopeful, you know, that we can do this and we can do it in the near term and not a century from now. I want to put a lid on this actually, before it reaches the full 100 year mark. Let's close it out right now.

Mila Atmos: [00:31:41] Hear. Hear. Thank you very much for being on Future Hindsight.

Carol Jenkins: [00:31:45] Thank you so much, Mila. Enjoyed the conversation with you so much.

Mila Atmos: [00:31:49] Carol Jenkins is the President and CEO of the ERA Coalition and the Fund for Women's Equality. Next time on Future Hindsight, we'll be talking about servant leadership and who should be running for office with Emily Cherniack, founder of New Politics. Her organization works with military veterans and alumni of civilian service programs like AmeriCorps with the goal of encouraging more people with civil and military service experience to run for office, all the way from school boards to Congress. That's next time on Future Hindsight. This episode was produced by Zack Travis and Sara Burningham. Until next time, stay engaged.

The Democracy Group: [00:32:41] This podcast is part of the Democracy Group.