

**Questions for the Record
Senator John N. Kennedy**

Responses of Juliana Stratton, Illinois Lieutenant Governor

1. **The text of the ERA reads, in part, that: “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”**
 - a. **Title IX provides men and women with equal opportunity in academics and athletics. It makes a distinction between biological men and biological women when providing this opportunity. If ratified, do you believe the ERA would erode protections provided by Title IX?** If passed, both the ERA and Title IX would ensure equal opportunity in academics and athletics, regardless of sex. Like other federal and state protections, including the Illinois Civil Rights Act, Title IX prohibits discrimination on the basis of sex. The ERA would incorporate the principle of equality in the U.S. Constitution.
 - b. **If the ERA is ratified, would a biological male identifying as a transgender woman have a constitutional right to participate in women’s collegiate athletics?** Existing law, including Title IX and the Illinois Civil Rights Act, ensure equal opportunity on the basis of sex. Courts have the responsibility to decide questions of how to interpret these laws, and, likewise, will have the responsibility of interpreting the ERA.
 - c. **If the ERA is ratified, would a public school be permitted to separate students on the basis of biological sex via bathrooms, locker rooms, or otherwise?** Many states, like Illinois, already have an ERA in their constitution and do not mandate that students use unisex bathrooms.
 - d. **If the ERA is ratified, would women be required to register for Selective Service with the U.S. military?** The Supreme Court previously held that a draft of only men was constitutional because, at the time, women were not allowed to serve in combat positions. Future courts may decide, either on equal protection grounds, or the ERA, that a male-only draft is no longer justified. Courts have, and certainly will consider the expert views of military leaders in such a case.
 - e. **If the ERA is ratified, would a public health care facility owned or funded by the government be required to perform sex reassignment surgeries?** Courts will be responsible for assessing whether the ERA – or other existing statutes and constitutional provisions that require equality – may require coverage on a case-by-case basis.
2. **If the ERA is ratified, do you believe that the recent Supreme Court decision in *Dobbs v. Jackson Women’s Health Organization* remains good law?** The ERA addresses questions of equality, not privacy, which was the focus of the *Dobbs* decision. The ERA would not impact the legal reasoning of the *Dobbs* decision regarding privacy.

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- a. **Could the ERA, if ratified, be a constitutional source of the right to abortion?** Courts will be responsible for assessing whether the ERA creates a constitutional source of a right to abortion.
- b. **Would any law that places restrictions on abortion survive scrutiny under the ERA?** Courts will be responsible for assessing whether the ERA creates a constitutional source of a right to abortion.
- c. **If the ERA is ratified, would it constitutionally impact the viability of the Hyde Amendment?** The Supreme Court has previously rejected challenges to the Hyde Amendment. Courts will be responsible for assessing whether the ERA – or other existing statutes and constitutional provisions that require equality – may require coverage on a case-by-case basis.