

I need the ERA because...

online abuse can lead to offline harm



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equalitynow.org/era

Online sexual exploitation and abuse (OSEA) encompasses a number of sexually exploitative and harmful behaviours that occur online, including online grooming, livestreaming of sexual abuse, child sexual abuse material, online sex trafficking, and image-based sexual abuse. **Sexual exploitation and abuse in the physical and digital realms operate together in a continuum, reinforcing each other as part of the same system of violence rooted in gender-based inequality and systemic misogyny.** While OSEA can be perpetrated against anyone, women and girls are significantly more likely to experience harm online.

OSEA is growing at an alarming rate. According to the Department of Justice (DoJ), approximately 40% of US sex trafficking victims are recruited online, making the internet the most common place for recruitment. Online advertising is also the main tactic used by traffickers to solicit buyers: in 2020, over 80% of sex trafficking prosecutions by the DoJ involved online advertising. Yet state and federal laws on sexual abuse and exploitation have not kept pace with digital technology, creating inconsistent protections and significant enforcement gaps across the country.

To fully and effectively address OSEA, all women and girls in the US must be able to realise the full array of human rights, including the right to education, to health, including sexual and reproductive rights and bodily autonomy, and to economic security, all of which are widely recognised under international law but not fully guaranteed in US legal frameworks, including the Constitution.



A just world for all women and girls

What could the ERA do?

The Supreme Court has previously restricted Congress's ability to address gender-based violence (GBV). In *U.S. v. Morrison*, for example, the Court held that Congress cannot rely on the Commerce Clause or the 14th Amendment of the Constitution to remedy discrimination for "non-economic," gender-based harms. This leaves a significant gap in federal authority to enact comprehensive protections against OSEA.

The Equal Rights Amendment (ERA) could address this by making sex and gender-based equality a constitutional mandate. **With the ERA, Congress could more easily pass laws requiring specific safeguards against gender-based discrimination and violence and the use of equality-by-design and safety-by-design approaches that integrate equality principles and prevention throughout the design process, rather than as an afterthought.** Congress would be able to regulate technology companies as entities whose products and policies have direct implications for constitutional equality and address the inherently gendered nature of OSEA. It could also open the door for Congress to pass federal civil remedies for survivors of OSEA to access justice.

In addition, the ERA would require courts to apply strict scrutiny (the highest level of judicial review) when evaluating laws or government actions. The government would have to demonstrate that any measure that directly or indirectly discriminates on the basis of sex is narrowly tailored to achieve a compelling interest or goal. **This would strengthen the legal foundation for a meaningful, coordinated, and rights-based response to OSEA at both the federal and state levels, countering discriminatory laws and practices.**