

# Equal Rights Amendment

## Talking Points

*"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 1, Equal Rights Amendment

This year marks the 100th anniversary of the first introduction of the Equal Rights Amendment (ERA) in Congress. It is as important today as it was then. Today, the rights we as a society have relied on to protect women and the LGBTQIA+ community are being rolled back. The recent Dobbs decision shows that a majority of our Supreme Court interprets the Constitution solely through the lens of those who were alive when its provisions were adopted—at a time before women and people of color could vote, own land, or otherwise live as free individuals. To expand the meaning of the Constitution, we need to amend it. That is why we need the ERA, which provides an explicit prohibition against discrimination on the basis of sex.

### **THE ERA IS AS IMPORTANT TODAY AS IT EVER WAS.**

The ERA provides an explicit guarantee of protection against discrimination on the basis of sex. The ERA would provide additional protections that would:

- protect against sex-based violence and discrimination in legislation and the enforcement of laws;
- combat discrimination in government employment, including in education, law enforcement, and the military;
- give Congress increased power to protect against unequal pay, workplace harassment, pregnancy discrimination, and crimes against women, girls, and LGBTQ+ people; and
- provide a new basis for congressional action to protect reproductive health care, pre- and post-natal care, and contraceptives.

**The Constitution reflects our most cherished values as a nation. The ERA would affirm that sex equality is one of those values.** We need to create a better world for our children and show them that all people are equal under the law and represented in our Constitution. The U.S. is viewed as a beacon of democracy and equality in the world, with many looking to it as the example upon which they can base their own standards for human rights. Recognizing the ERA as valid sends a bold message that sex discrimination has no place in society.

**If we want to see ourselves in the Constitution, we must put ourselves in it.** A Pew Research poll finds that nearly 80% of Americans support the Equal Rights Amendment, and that 73% think we *already* have an ERA in the Constitution.

### **CONGRESS HAS THE POWER TO RECOGNIZE THE ERA AS THE 28TH AMENDMENT.**

The ERA was passed by Congress 51 years ago and ratified by three-fourths of the states in 2020,

satisfying all requirements to be added to the Constitution as the 28th Amendment. Nonetheless, the ERA has yet to be published by the U.S. Archivist. The Archivist has declined to recognize and publish the ERA, citing an opinion published by the Department of Justice's Office of Legal Counsel (OLC) under the Trump Administration. The opinion cites the time limit in the 1972 joint resolution as setting a permanent expiration date for the ERA, despite analysis by the nation's leading constitutional scholars to the contrary. The OLC has since clarified that its opinion is not a barrier to congressional action.

Bi-partisan resolutions are pending in Congress to affirm the ERA as valid. These resolutions would recognize the ERA as having been ratified by three-fourths of the states, notwithstanding any ratification deadline included in the original ERA resolution. The resolutions are being championed by lead sponsor Representative Ayanna Pressley (MA-07) in the House of Representatives (HJ Res 25) with 213 cosponsors as of 5.31.2024, and co-lead sponsors Senate Ben Cardin (MD) and Senator Lisa Murkowski (AK) in the Senate (SJ Res 4) with 53 bipartisan cosponsors as of 05.31.2024. Representative Pressley has filed a discharge petition to force a vote on HJ Res 25, with 212 signers, as of 5.31.2024. Congress retains the power to change the time limit on the ERA—as it did in the late 1970s—and it also retains the power to remove it. These bipartisan measures would remove any potential hurdles to the ERA's effectiveness.

In the 117th Congress, a new set of joint resolutions were introduced to advance the ERA. The ERA Now resolution would similarly dispel remaining constitutional questions regarding the ERA's ratification and would instruct the Archivist of the United States to proceed with publishing and ratifying it. The resolutions are being championed by lead sponsor Representative Cori Bush (MO-01) in the House of Representatives (HJ Res 82) with 85 cosponsors as of 5.31.2024 and lead sponsor Senator Kirsten Gillibrand (NY) in the Senate (S.J. Res 39) with 23 cosponsors as of 5.31.2024.

### **CONGRESS CAN AFFIRM THE ERA AS VALID AND EFFECTIVE, HAVING BEEN RATIFIED BY THREE-FOURTHS OF THE STATES.**

In proposing the ERA to the states in 1972, Congress included a time limit for ratification. This time limit appears only in the preamble to the ERA, not in its text. By placing it there, Congress reserved for itself the power to change or extend the time limit. Congress has the power today to recognize the ERA as valid and enforceable, notwithstanding the time limit imposed in 1972.

The efforts by some states to rescind their ratifications make no difference. Under Article V, the only question is whether a state has "ratified." Ratification is something that happens at a moment in time; it either happened, or it did not. History tells us that once a state ratifies, it can't take it back. The 14th Amendment became part of the Constitution even though two States had attempted to rescind prior ratifications—and those States were included on the list of States that ratified. The effectiveness of a purported rescission is ultimately a question for Congress.