



## BACKGROUND INFO ON THE EQUAL RIGHTS AMENDMENT

### Key Messages

1. The ERA has already satisfied all the requirements set forth in Article V of the Constitution. It was proposed by a vote of two-thirds of the Congress in 1972, and as of January 27, 2020, it has been ratified by the legislatures of three-quarters of the states. **It now only needs to be published and recognized as the 28th Amendment to the Constitution.**
2. Pew Research polling finds that nearly 80% of Americans support having the Equal Rights Amendment in the U.S. Constitution
3. According to this same Pew poll, 73% of Americans also think the ERA is already in the Constitution. It is not.
4. Near-universal support crosses party lines. The public understands that the ERA is an important protection for sex equality and every member of society.
5. All recent votes that have been taken on ratification of the ERA, both at the state and federal level, have had broad and bi-partisan support.
6. December 2023 marked the 100th anniversary of the first introduction of the ERA in Congress. It is as important today as it was then, which is why we launched our "It's been 100 years. Not One More Campaign." It is past time for constitutional sex equality.

### Why do we need the ERA now? What would the ERA do that we don't already have now?

- The rights we as a society have relied on to protect women and the LGBTQIA+ community are being rolled back.
- In addition to overturning Roe v. Wade, the 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.
- We are encouraged by the recent decision in the Pennsylvania Supreme Court that shows how an ERA can be used to protect abortion rights (*Allegheny Reproductive Health Center v. PA Department of Human Services*)
  - FOR BACKGROUND: The decision holds that the state's ban on Medicaid coverage for abortion is sex discrimination triggering enforcement of Pennsylvania's state Equal Rights Amendment (ERA) and sends it back to the lower court.

### Among other protections, the ERA 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.

### Positive arguments in favor of the ERA

- 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.

### What is the current status of the ERA?

The ERA has already satisfied all the requirements set forth in Article V of the Constitution. It was proposed by a vote of two-thirds of the Congress in 1972, and as of January 27, 2020, it has been ratified by the legislatures of three-quarters of the states.

### Current efforts on the ERA?

The ERA Coalition and partner organizations are taking an “all ways forward” approach;

- working to get to a vote on joint resolutions in Congress that would remove the arbitrary time limit on the ERA and affirm its validity,
- asking the White House to do everything in its power to get the U.S. Archivist to publish the ratified Amendment,
- asking the Department of Justice to act to remove the politically motivated legal memo from the Barr Office of Legal Counsel that the Archivist sees as impeding her path to publication,
- working in state legislatures to affirm the validity of the Amendment, pass state-level ERAs, and get the remaining unratified states to pass ratification legislation, and
- reactivating our Elect Equality campaign, which looks at all federal candidates for office and their stance on the ERA, and educates voters on the positions of their elected officials and candidates.

**CONGRESS HAS THE POWER TO RECOGNIZE THE ERA AS THE 28TH AMENDMENT.** The ERA was passed by Congress in 1972 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) and co-lead sponsors Senate Ben Cardin (MD) and Senator Lisa Murkowski (AK) in the Senate (SJ Res 4). 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.

**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.

### About the ERA Coalition

We are the ERA Coalition and Fund for Women’s Equality (ERA Coalition Forward); a movement of movements. We convene a diverse coalition of more than 300 partner organizations across the country, representing 80 million people.

From gender, racial, economic and reproductive justice to labor and LGBTQ+ rights, we unite interconnected, intergenerational, and intersectional organizations under one banner: to advance equality. We’re coming together to use the ERA to build a foundation for equal treatment under the law. This is what unites us all.

The Coalition works to mobilize people toward an inclusive forum with this one powerful goal. We share strategies and resources at the local, state, and federal levels, build support within Congress, provide legislative expertise, educate the American public about the urgent need for constitutional equality, and more.

The ERA Coalition and Fund for Women’s Equality were created in 2014 to energize and coordinate the renewed effort to have sex equality enshrined in the Constitution through the Equal Rights Amendment. We envision a world without health, legal, education, and economic disparities.