

EQUAL RIGHTS AMENDMENT

BACKGROUND ON THE CONGRESSIONAL JOINT RESOLUTION

As of August 2, 2026

The Equal Rights Amendment (ERA) is duly ratified, having been passed by Congress with the required two-thirds vote and approved by the required three-fourths of the states, and reads:

Section 1: Equality of Rights under the law shall not be denied or abridged by the United States or any state on account of sex.

Section 2: The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article. Section 3: This amendment shall take effect two years after the date of ratification

After Virginia's ratification in January 2020, the needed 38th state for ratification, a Congressional ERA Joint Resolution was introduced to recognize the ERA as valid as a way to eliminate any disputes related to the arbitrary time limit in the nonbinding resolving clause included when Congress passed the ERA in 1972, it read:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, that notwithstanding any time limit contained in House Joint Resolution 208, 92nd Congress, as agreed to in the Senate on March 22, 1972, the article of amendment proposed to the States in that joint resolution is valid to all intents and purposes as part of the United States Constitution having been ratified by the legislatures of three fourths of the several States

Under a Democratic House led by Speaker Nancy Pelosi, the ERA Joint Resolution was passed by the House in February 2020 in the 116th Congress, one month after Virginia's ratification; The House passed it again in March 2021 in the 117th Congress, however the Democratic controlled Senate never brought the ERA to a vote in either session. In the following 118th Congress, when the Republicans controlled the House, the Senate acted in April 2023, winning a majority 51-47 but could not secured the 60 votes needed to overcome a filibuster. A discharge petition was filed in the House and signed by 214 Members but fell short of the 218 needed to trigger a vote.

President Biden declared the ERA "the law of the land" but the Archivist did not certify ERA as in the Constitution, thus creating confusion about its status. A statement by the Archivist in 2024 read: *At this time, the Equal Rights Amendment (ERA) cannot be certified as part of the Constitution due to established legal, judicial, and procedural decisions. In 2020 and again in 2022, the Office of Legal Counsel of the U.S. Department of Justice affirmed that the ratification deadline established by Congress for the ERA is valid and enforceable. The OLC concluded that extending or removing the deadline requires new action by Congress or the courts.*

Under Article V of the Constitution, it is the role of Congress and the States to amend the Constitution; the President and Courts have no role in the amending process. A president cannot veto the ERA Joint Resolution.

The American Bar Association has rightfully concluded that the Constitution does not limit the time for state ratifications; deadlines on the amending process are inherently unconstitutional; and the seven-year time limit was not included in the version of the amendment that the states passed during the ERA ratification process.

There is an urgency to recognize the ERA because it is needed more than ever to stop further rollbacks. Without the ERA, Congress can amend or repeal existing laws, including Title VII barring sex discrimination in employment, educational safeguards of Title IX, VAWA, the Equal Credit Act, and more. The Executive Branch can stop enforcing laws and reverse Executive Orders, as is being done under the Trump Administration.

Under the ERA, sex would be a suspect classification and claims of discrimination would be subject to strict judicial scrutiny resulting in more desirable court decisions on pay equity, sexual violence, reproductive justice, gender biases, and more. Today, such claims are subject only to a lesser intermediate scrutiny.

Today, courts can interpret laws narrowly, strip away any effectiveness or reverse long standing precedents as was done when the Supreme Court reversed *Roe* in the *Dobbs* decision; and without an ERA Joint Resolution, the Supreme Court could rule in upcoming cases that the ratification process must begin again with a 2/3rds vote in Congress and ratification by 3/4ths of the States.