



# New momentum for Equal Rights Amendment

BY LYDIA WHEELER - 01/22/19 06:00 AM EST

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Equal rights for women could soon be enshrined in the Constitution.

Congress passed the Equal Rights Amendment (ERA) almost 47 years ago to establish gender equality under the law, and state support is closing in on clearing a crucial obstacle.

The Virginia Senate passed a resolution last week to ratify the ERA, which would make gender equality the law of the land. If the House follows suit, the commonwealth would become the 38th state needed for ratification.

The proposal was rejected 4-2 by Republicans on a Virginia House subcommittee on Tuesday morning. But [The Washington Post reported](#) that the two Democrats on the committee who supported the measure expressed hope the full committee will revive the legislation.

Article V of the Constitution allows for amendments approved by two-thirds of both the U.S. House and Senate and ratified by three-fourths of the 50 states.

But some say it's not a done deal even if one more state ratifies the ERA.

That's because the amendment Congress passed in 1972 has expired, and some states have rescinded their ratifications.

Legal experts say Congress has to remove that expired ratification deadline to get it over the finish line. Lawmakers have tried to do so in the past, but those efforts have never made it out of committee.

In the coming days, Sen. Ben Cardin (D-Md.) is planning to take another shot at it.

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Cardin told The Hill on Friday that he will soon reintroduce a joint resolution to remove the deadline, and this time he has Republican support right out of the gate: Sen. Lisa Murkowski (Alaska) has signed on as a co-sponsor, giving the measure new momentum.

"We believe there is no limitation in the Constitution to ratify a constitutional amendment," Cardin said, arguing that the deadline language was in a congressional preamble to the amendment, not the amendment itself.

Cardin predicted that the resolution, which would need a simple majority to pass if it reaches the Senate floor, will make it through Congress this time around given the number of female lawmakers and action on women's issues across the country.

The 116th Congress includes a record number of female lawmakers, with 106 in the House and 25 in the Senate.

"This is not a radical idea," Cardin said. "This is something most people think has already been done, and from the point of view of policy this is something that needs to be accomplished."

Murkowski said the U.S. cannot and must not put a time limit on the fight for women's equality.

"The bipartisan legislation I'm leading, alongside Senator Cardin, will resolve any ambiguity over whether states, like Virginia, can make the ERA effective by ratifying it this year," she said in a statement Friday. "I was heartened to learn that the Virginia Senate moved to ratify."

Rep. Jackie Speier (D-Calif.) said she is planning to introduce the resolution in the House, where Democrats now have the majority.

"I'm confident that the support of our enthusiastic new membership will help create the momentum needed to finally get the ERA over the finish line this year," she said in a statement to The Hill. "Thanks to the Me Too movement two states, Nevada and Illinois, ratified in the last two years. We're just one state shy of our goal and Virginia and several other states are racing to become the third."

Experts say Arizona, North Carolina and Georgia are seeing momentum toward ratification.

Virginia state Sen. Jennifer McClellan (D) told the [Richmond Times-Dispatch](#) it would be "poetic justice" if her state, which was home to the Confederate capital during the Civil War, became the crucial one to ratify the amendment.

"We should be the 38th state to ratify the ERA and finally bring truth to the promise that we are all created equal," she said.

Jessica Neuwirth, founder and co-president of the ERA Coalition, said House Judiciary Chairman Jerrold Nadler (D-N.Y.) has committed to holding a hearing and getting the resolution to the floor for a vote.

Nadler's office did not respond to a request for comment.

Movement on the bill, Neuwirth said, is what's been missing.

"Who's going to vote against the ERA? Why would they? It's a fundamental principle of equality," she said.

Congress has extended the seven-year deadline for constitutional amendments once before. In 1978, lawmakers agreed to revise the March 22, 1979, deadline to June 30, 1982. But the ERA expired when it was three states short of ratification, according to the National Organization for Women (NOW).

There is some debate in the legal community about whether the deadline was ever valid in the first place. Many point to the 27th Amendment, which was not ratified by the states until 200 years after it passed in 1789. That amendment prevents lawmakers from raising their own salaries mid-term.

“This ratification suggests that amendments, such as the ERA, which do not contain a textual time limit, remain valid for state ratification indefinitely,” three graduates of the T.C. Williams School of Law in Richmond, Va., argued in a 1997 article published in the William & Mary Journal of Race, Gender, and Social Justice.

NOW’s president, Toni Van Pelt, said the ERA deadline was artificially set.

“Clearly, once it’s ratified it’s in the Constitution,” she said, adding that her organization won’t stop fighting for the ERA.

But it’s a battle that will have to be fought on Capitol Hill, not in the courts.

In a 1992 Fordham Law Review [article](#), Richard Bernstein, an adjunct associate professor at New York Law School, said a 1939 Supreme Court case established the principle that issues having to do with the ratification of amendments are political questions best left to the determination of Congress.

Either way, Van Pelt said she is not deterred.

“We’re going to get women in the Constitution whether men like it or not,” she said.

Some view the ERA at this point as moot, given that women have gained many rights through Supreme Court cases and laws like the 2009 Lilly Ledbetter Fair Pay Act, which makes discriminatory pay practices unlawful and gives women the right to seek a court ruling for back wages.

But women’s rights advocates say they still have to prove their cases in court.

“We have a little patchwork of laws that help some people in some circumstances, but more people fall through the cracks than get justice,” Neuwirth said.

As for the states that have withdrawn support for the ERA — Idaho, Kentucky, Nebraska, South Dakota and Tennessee — their actions may not matter.

The T.C. Williams Law School graduates noted that Ohio and New Jersey tried to pull back their consent for the 14th Amendment in 1868, but the U.S. secretary of State ignored the rescissions and declared the amendment ratified.

*-Updated 2:02 p.m.*

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