

THE HISTORY OF THE EQUAL RIGHTS AMENDMENT

ARTICLE –

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

Sec. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Sec. 3. This amendment shall take effect two years after the date of ratification.

Introduction and Passage by Congress

In 1923, three years after women won the constitutional right to vote, Alice Paul and Crystal Eastman wrote and presented the first version of the Equal Rights Amendment (ERA) at the 75th Anniversary of the Seneca Falls Convention. In December 1923, the resolution was first introduced in Congress by Senator Charles Curtis (R-KS) and Representative Daniel R Anthony, Jr (R-KS), Susan B Anthony's nephew.

Between 1923 and 1972, the ERA was introduced in every Congressional session, during which time the text was changed to the language passed by Congress. Support for the Amendment slowly grew, and the ERA was added to the Republican Party platform in 1940 and Democratic Party platform in 1944. In 1972, nearly fifty years after it was first introduced, Senator Birch Bayh (D-IN) authored a new version of the ERA which passed the House and Senate with the required two-thirds majority. The amendment was then sent for ratification by three-fourths of the states with a seven-year time limit.

During the 1960s, inspired by the civil rights movement, the women's movement gained power in the United States, and fueled by a barnburner of a speech given by Shirley Chisholm during her first term elected to Congress in 1969 the ERA garnered increasing traction.

Despite strong support both outside and inside the halls of Congress, the resolution was being held in the House Judiciary Committee by then Chair and labor leader Emmanuel Celler (D-NY-10). In a bold move to overcome this opposition, Representative Martha Griffiths (D-MI-17) moved forward with a discharge petition to bring the ERA directly to the floor, where it successfully passed on August 10, 1970 with a vote of 352-15. The Senate did not pass the resolution before the end of the session.

In 1971, Representative Martha Griffiths reintroduced the ERA in the next Congressional session. The resolution was approved by the U.S. House of Representatives on October 12, 1971, and by the U.S. Senate on March 22, 1972, with a seven-year ratification time limit in its introductory clause set to expire on March 22, 1979. The amendment was then sent for ratification by three-fourths of the states, as required by Article V of the U.S. Constitution.

States initially rushed to ratify the ERA and twenty-two states ratified the Amendment within the first year. Progress slowed over the years and by 1977, two years before the ratification deadline expired, only 35 of the 38 states needed had ratified. Five states attempted to rescind their ratification, but the legal status of these rescissions is uncertain.

States with rescission attempts of their previous ratification of the Equal Rights Amendment:

- Nebraska March 15, 1973
- Tennessee April 23, 1974
- Idaho February 8, 1977
- Kentucky March 17, 1978
- South Dakota March 5, 1979 (through a "Sunset Clause")

When it became clear that the thirty-eight states needed for ratification would not occur by the 1979 deadline, legislation was introduced by Congress to extend the time limit for ratification. In 1978, Congress passed (by simple majorities in each house), and President Carter signed a joint resolution with the intent of extending the ratification deadline to June 30, 1982. No additional state legislatures ratified the ERA between March 22, 1979, and June 30, 1982, so the validity of that disputed extension was rendered moot.

Ratification efforts after the 1982 time limit

Since 1982 the ERA has been reintroduced in every session of Congress in the House of Representatives. Representative Carolyn Maloney (D-NY-12) has introduced the Amendment in every session of Congress since the 105th Congress. Concurrently, state advocates in the 15 unratified states continued to press to ratify the 1972 Equal Rights Amendment in their state legislatures.

In the 2010s, due in part to fourth-wave feminism and the Me Too movement, interest in adopting the ERA was revived. This strengthened the "3 State Strategy," where feminist movement organizations worked in unratified states to reach their goal of the required 38 states ratifying, despite the time limit being passed.

In 2017, led by State Senator Pat Spearman, Nevada became the first state to ratify the ERA after the expiration of both deadlines. Illinois followed in 2018, and in 2020, Virginia's General Assembly passed a ratification resolution for the ERA, bringing the number of state ratifications to 38.

On March 8, 2011, the 100th anniversary of International Women's Day, Representative Tammy Baldwin (D-WI-2) introduced new legislation (H.J. Res. 47) to remove the congressionally imposed time limit for ratification of the Equal Rights Amendment.

The resolution was introduced in the Senate by Senator Ben Cardin (SJ Res 39) on March 22, 2012. The joint resolutions have been introduced in every Congressional session since then, recently under the leadership of Representative Jackie Speier (D-CA-14) as the lead sponsor in the House, and bipartisan co-lead sponsors Senator Ben Cardin (D-MD) and Senator Lisa Murkowski (R-AK) in the Senate. The House of Representatives has successfully voted two years in a row, 2020 and 2021, to pass the joint resolution to remove the time limit imposed upon the ERA in its introductory clause. The Senate failed to take up the resolution in 2020, and is currently looking to build upon its bipartisan support for passage in 2021 (SJ Res 1).

Legal Challenges and Litigation

The Office of Legal Counsel (OLC) in the Trump Department of Justice under Attorney General Bill Barr issued a memo in anticipation of Virginia's ratification as the 38th state. This memo stated that it was the opinion of the OLC that the National Archivist did not have the responsibility of certifying the Amendment since the time limit added in the introduction to the bill and then extended had already passed.

On January 30, 2020, the Attorneys General of Virginia, Illinois, and Nevada filed a lawsuit to require the Archivist of the United States to "carry out his statutory duty of recognizing the complete and final adoption" of the ERA as the Twenty-eighth Amendment to the Constitution.

On February 19, 2020, the States of Alabama, Louisiana, Nebraska, South Dakota and Tennessee moved to intervene in the case. On March 10, 2020, the Plaintiff States (Virginia, Illinois and Nevada) filed a memorandum in opposition to the 5 states seeking to intervene. On May 7, 2020, the Trump DOJ filed a motion to dismiss, claiming the states do not have standing to bring the case to trial as they have to show any "concrete injury", nor that the case was ripe for review.

On June 12, 2020, the District Court granted the intervening states (Alabama, Louisiana, Nebraska, South Dakota and Tennessee) motion to intervene in the case. On March 5, 2021, federal Judge Rudolph Contreras of the United States District Court for the District of Columbia ruled that the ratification period for the ERA "expired long ago" and that three states' recent ratifications had come too late to be counted in the amendment's favor. The three Attorneys General filed their motion to appeal on May 3, 2021.

Other lawsuits are also in various phases of litigation on behalf of, and against, the certification of the ERA, allowing for different potential avenues for finally adopting the 28th Amendment to the Constitution.

ERA Coalition partner organizations are petitioning the Biden Administration's Office of Legal Counsel under the DOJ and Attorney General Merrick Garland to review the OLC memo issued by the previous Administration in a push to rescind the memo stopping the Archivist from publishing the Amendment with his certificate.