

The ERA: Already Ratified. So Why Isn't It Fully Recognized?

The constitutional case for recognizing the ERA as the 28th Amendment

The Equal Rights Amendment — which states simply that "*Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex*" — has been ratified by the required 38 states and fulfilled every legal threshold of Article V.

Yet it remains unpublished, unrecognized, and unenforceable. This is not a legal ambiguity. It is a political choice — and it is the choice that Driving the Vote for Equality exists to reverse.

The Ratification Checklist: Every Box Is Checked

Article V Requirement	Status	Detail
⅔ Vote in House of Representatives	✓ DONE	Passed 1971
⅔ Vote in Senate	✓ DONE	Passed 1972
Ratification by ¾ of States (38)	✓ DONE	Virginia, Jan. 27, 2020

The Deadline Dispute

In 2025, President Biden declared the ERA the “law of the land;” however the Constitution does not give authority in the amending process to the president or executive branch.

Article V is clear that only Congress and the states have authority to amend the Constitution.

When Congress proposed the ERA in 1972, it included a seven-year ratification deadline in the preamble of the proposing resolution — not in the text of the amendment itself. That deadline was later extended to 1982. .

The Final Word: Congress & States

Due to dispute over the legitimacy of the time limit, the ERA is likely to end up before the Supreme Court.

In the past the Court has recognized Congress’ power to determine the mode of ratification for an amendment.

Should Congress formally recognize or affirm the validity of the ERA as the 28th Amendment, scholars assert no court, not even this Supreme Court could legitimately decide otherwise.

The path to jumpstarting the ERA runs through Congress — specifically, the Joint Resolution now before both chambers.

The Congressional Path: S.J. Res. 38 and H.J. Res. 80

The current legislative vehicle is straightforward. S.J. Res. 38 in the Senate and H.J. Res. 80 in the House are joint resolutions that would remove any question about the ERA's validity by affirming the ERA is valid notwithstanding any time limit having been ratified by the required 38 states.

The Driving the Vote for Equality Tour is laser-focused on raising awareness and activating supporters around the importance of Congressional action to resolve any questions about ratification by resolving issues around an arbitrary time limit.

At a Glance

ERA text: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex"

Year proposed by Congress: 1972, by $\frac{2}{3}$ supermajority in both chambers

38th state ratified: Virginia, January 27, 2020

Legislative vehicles: S.J. Res. 38 (Senate) | H.J. Res. 80 (House)