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# On 50th Anniversary of Congress Passing the ERA, Chairwoman Maloney Presses Archivist to Recognize ERA as 28th Amendment

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## New Legal Analyses from Professor Larry Tribe and Senator Feingold Confirm the Archivist Should Certify ERA “Without Delay”

Washington, D.C. (March 22, 2022)—On the 50th anniversary of congressional passage of the Equal Rights Amendment (ERA), Rep. Carolyn B. Maloney, Chairwoman of the Oversight and Reform Committee sent a [letter](#) to Archivist of the United States David Ferriero, urging him to carry out his statutory duty to certify and publish the ERA as the 28th Amendment to the Constitution.

**"On the anniversary of a historic step towards equality in our country, I am writing to share new legal analyses from leading constitutional experts Laurence Tribe and Senator Russ Feingold, which confirm the ERA is 'currently a valid part of the United States Constitution,' and state that you, as Archivist of the United States, 'can and should certify and publish the ERA as the 28th Amendment to the Constitution without delay,'" wrote Chairwoman Maloney.**

Chairwoman Maloney's letter includes new analyses from prominent legal scholar Laurence Tribe, the Carl M. Loeb University Professor Emeritus of Constitutional Law at Harvard Law School, as well as Senator Russ Feingold, President of the American Constitution Society and former Chairman of the Senate Judiciary Committee's Subcommittee on the Constitution. Both analyses found that the ERA has satisfied all constitutional requirements for ratification and no further action from Congress or the Executive Branch is needed for the National Archivist to certify the amendment.

Professor Tribe's analysis [stated](#):

**"My conclusion as a constitutional scholar is that the ERA is currently a valid part of the United States Constitution, that Congress should act concurrently to recognize it as such, and that even if Congress takes no such action the Archivist should publish it as the Twenty-Eighth Amendment."**

Senator Feingold [wrote](#):

**"It is my opinion that the ERA has met all constitutional requirements and the Archivist can and should certify and publish the ERA as the 28th Amendment to the Constitution without delay."**

The scholars analyzed a January 2020 opinion from the Trump Administration's Office of Legal Counsel (OLC) seeking to block completion of the ERA's ratification process. On January 8, 2020, the National Archives and Records Administration (NARA) stated that it would "abide by the OLC opinion."

On October 21, 2021, Chairwoman Maloney released a [legal analysis](#) of the Trump OLC memo by preeminent constitutional and legal scholars affiliated with Columbia Law School's ERA Project finding that the Trump Administration's OLC memo was based on a faulty legal analysis and should be withdrawn.

On January 26, 2022, Chairwoman Maloney joined Senators Richard Blumenthal, Amy Klobuchar, and Catherine Cortez Masto and Representative Jackie Speier in sending a [letter](#) calling on OLC to withdraw the Trump Administration's OLC opinion.

The following day, on January 27, 2022, OLC issued a new [opinion](#) acknowledging flaws in the Trump-era memo and clarifying that Congress—not the executive branch—is in control of amending the Constitution.

In his new analysis, Professor Tribe [wrote](#) to the Committee:

**"Based on the OLC's own updated opinion and the substantive misunderstandings central to the 2020 Opinion, the Archivist should not see the 2020 Opinion as a barrier to publishing the ERA as the Twenty-Eighth Amendment. If he is to decline to do so, he must provide a different justification altogether. In my view, none is available."**

Senator Feingold similarly [concluded](#):

**"Congress, having passed the ERA by a two-thirds vote in both chambers and sent the proposed amendment to the states for ratification, has fulfilled its constitutional role. The Archivist can publish without further action from the executive branch or Congress."**

The Chairwoman concluded her letter by pressing the Archivist to immediately certify and publish the ERA as the 28th Amendment.

**"Women and people of all marginalized genders across the United States continue to experience discrimination on the basis of sex. The only way to ensure true and equal protection under the law is to cement the ERA into the U.S. Constitution. As Chairwoman of the Committee with jurisdiction over the National Archives, and as a woman whose rights under the law are still not fully reflected in our nation's founding document, I urge you to carry out your ministerial duty under the law without delay," the Chairwoman concluded.**

On March 17, 2021, the House of Representatives voted to eliminate the non-binding timeframe for ratification of the ERA, in order to remove any doubt that the ERA has met the constitutional requirements for ratification. The House-passed resolution, H.J. Res 17., introduced by Rep. Speier and Rep. Tom Reed, has a companion bill, S.J. Res. 1, which has not yet been taken up by the Senate for a vote. On March 8, 2022, Chairwoman Maloney led a bipartisan group of members in [urging](#) Majority Leader Schumer and Minority Leader McConnell to take a floor vote on the ERA.

To read Professor Tribe's analysis, click [here](#).

To read Senator Feingold's analysis, click [here](#).

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