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The ERA Coalition works with more than 300 state, federal, and grassroots partners to advance the cause of women's equality in the United States, primarily through adding the Equal Rights Amendment to the Constitution and supporting states' ongoing efforts to ratify the ERA.

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The ERA's Ratification Journey

 News

By Isabella Guzman

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Blog

Equal Rights

Equal Rights Amendment Coalition

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The power to amend the Constitution is bestowed upon the states and Congress by Article V of the Constitution. A proposed amendment requires a two-thirds majority in both houses of Congress and ratification by three-fourths of the states. For the states to ratify, both chambers of state legislatures must pass the proposed amendment. The Equal Rights Amendment (ERA) was first introduced to Congress in 1923. The Equal Rights Amendment guarantees codified protection from sex discrimination. This amendment is necessary for furthering women's rights toward equity and equality. The ERA provides the essential legal basis for progressive women's legislation. Congress will have a concrete foundation for enacting laws regarding fair and equal employment opportunities, fair wages, reproductive rights, voting rights, and addressing a wide range of women's issues. Although it did not pass in that session, the amendment was introduced to Congress in every session until 1972.

In 1972, the Equal Rights Amendment finally gained enough momentum to pass both chambers of Congress with overwhelming support. The next step required was ratification by 38 states to become law. Within the preamble of the Equal Rights Amendment was a seven-year time limit set to expire in 1979, which was extended until 1982. When the time limit arrived, only 35 states had ratified the Equal Rights Amendment. However, in 2017, Nevada became the first state in 45 years to ratify the ERA and was quickly followed by Illinois in 2018, following a renewed push to finalize the amendment. In 2020, the amendment reached the 38-state threshold, with Virginia being the last state to ratify it.

Today, the Equal Rights Amendment is the law of the land. Yet, its validity continues to be challenged. Opponents often cite two main arguments: the ratification time limit set by Congress and state rescissions. To make matters more complicated, the National Archivist has refused to certify and publish the ERA as the 28th Amendment. The National Archivist cited guidance from the Trump Administration's DOJ that was issued following Virginia's ratification. However, these arguments don't hold up under constitutional scrutiny.

The Constitution's Article V contains no mention of deadlines. An amendment becomes valid once it is ratified by three-fourths of the states. The time limit associated with the ERA was included in the preamble by Congress, not in the amendment's text, meaning the states never voted on a time limit. Congress also has the authority to extend or remove such deadlines, as it has done in the past.

The role of the National Archivist is administrative and not required for an amendment to be valid. Publication was originally intended to inform the public that an amendment had been adopted, but that function is now served by modern communication and public declarations, including the one by President Biden.

Some opponents point to five states that voted to rescind their ratifications. But the Constitution grants states the power to ratify, not to rescind. When states attempted to rescind ratification of the 14th Amendment, their initial approvals still counted, and the amendment was adopted. The same precedent applies to the ERA.

When Virginia ratified the ERA in 2020, becoming the 38th and final state needed, the amendment met all constitutional requirements to become the 28th Amendment to the U.S. Constitution.

Historical precedent reinforces this conclusion. The 27th Amendment, which governs congressional pay, was ratified 203 years after it was first proposed, demonstrating that time does not invalidate a properly ratified amendment. Virginia's ratification in 2020 was only 48 years after the ERA's passage in Congress in 1972. This showcases the arbitrariness of time limits for constitutional amendments.

The Equal Rights Amendment has satisfied every requirement laid out in Article V of the Constitution. It is the law, and it's time our institutions recognize and implement it as such. We must continue to spread awareness of the validity of the ERA as the 28th Amendment and encourage our representatives and legal system to recognize the law.

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