



April 29, 2019

Representative Steve Cohen  
Chair  
Subcommittee on the Constitution, Civil Rights  
and Civil Liberties  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Representative Mike Johnson  
Ranking Member  
Subcommittee on the Constitution, Civil Rights  
and Civil Liberties  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee:

On behalf of the more than 170,000 members and supporters of the American Association of University Women (AAUW), I thank you for the opportunity to submit this letter for the record for the Subcommittee's hearing on the Equal Rights Amendment. While women have made significant gains towards equality throughout history, the Constitution has yet to specifically guarantee that men and women have equal rights under the law. The Equal Rights Amendment (ERA) would, once and for all, guarantee constitutional equality between men and women. It is time Congress took action to ensure a path towards ratification of the ERA and to establish equal rights under the law that cannot be denied or abridged on the basis of sex.

The ERA was first introduced in Congress in 1923 and was re-introduced every year until its passage in 1972. The proposed constitutional amendment required, and achieved, approval by two-thirds of the U.S. House of Representatives and U.S. Senate. After passing out of Congress, the ERA needed to be ratified by three-fourths of all states in order to be included as an amendment to the Constitution. Congress placed a seven-year deadline on the ratification process. By 1977, 35 of the necessary 38 states approved the ERA. As the deadline neared, advocates successfully pushed Congress to extend it until 1982. But, even with the extended deadline, the ERA still fell three states short for ratification.

However, in the years after the 1982 deadline, several states have revisited the ERA and taken action to include women in the Constitution, reigniting strategic discussions about the legal path towards ratification. In 2017, Nevada became the 36th state to ratify the ERA. One year later, Illinois followed suit and became the 37th state, leaving us just one short of the three-fourths requirement. Last month, Virginia came close to being the 38th and final state needed to ratify the amendment. Legal scholars have suggested that if, and when, the requisite 38 states approve the ERA, there is precedent for accepting it and including it in the Constitution.<sup>1</sup> For example, the Madison Amendment was introduced 203 years before its addition to the Constitution—it was proposed in 1789, but not ratified until May 7, 1992.<sup>2</sup> This example has led scholars to argue that the ERA remains legally viable.<sup>3</sup> Thus, if a 38th state ratifies the ERA, there are persuasive grounds for that action creating a pathway towards including it in the Constitution.

If necessary, Congress also has the power to take action to ensure the ratification of the ERA. Currently, there are two solutions before the U.S. Senate and U.S. House of Representatives that would support the process toward ratification of the ERA. S.J. Res. 6<sup>4</sup>/H.J. Res. 38,<sup>5</sup> often referred to as the “three-state strategy,” is a bipartisan resolution eliminating the ratification deadline from the 1972 ERA bill. If passed, the existing 35 state ratifications would still be in effect, and only three additional states would be needed to successfully ratify the ERA.

Another resolution, S.J. Res. 15<sup>6</sup>/H.J. Res. 35<sup>7</sup>, typically referred to as the “start-over amendment,” mirrors the language of the 1972 ERA. If passed by a two-thirds vote of both chambers of Congress, this amendment would follow the process set forth by the amendment passed in 1972 and restart the ratification process, requiring the approval of three-fourths of all states.

Women continue to make progress toward equality through the courts and through passage of state and federal legislation, all of which has significantly improved women’s lives. The ERA, however, would clarify, once and for all, that sex discrimination—in, for example, employment, health care, insurance, Social Security, education, and many other aspects of daily life—is a violation of our constitutional rights. By guaranteeing constitutional equality, ratification of the Equal Rights Amendment will give women new avenues of legal recourse when they face sex discrimination.

Women in the United States have waited long enough for the ratification of the ERA, and Congress has the power to help realize this goal. We must take action to ensure constitutional equality for all.

I want to thank the Subcommittee for holding this important hearing on the Equal Rights Amendment and for entering this statement into the record. Cosponsorship and votes associated with these bills and amendments may be scored in the AAUW Action Fund *Congressional Voting Record for the 116th Congress*. Please do not hesitate to contact me at 202/785-7720 or Pam Yuen, Senior Government Relations Coordinator, at 202/785-7712, if you have any questions.

Sincerely,



Deborah J. Vagins  
Senior Vice President, Public Policy and Research

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<sup>1</sup> Allison L. Held, Sheryl L. Herndon, and Danielle M. Stager. “The Equal Rights Amendment: Why the Era Remains Legally Viable and Properly Before the States” 3, no. 1 (1997). <https://scholarship.law.wm.edu/wmjowl/vol3/iss1/5/>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> A joint resolution removing the deadline for the ratification of the equal rights amendment, S.J.Res.6, 116th Cong. (2019).

<sup>5</sup> Removing the deadline for the ratification of the equal rights amendment, H.J.Res.38, 116th Cong. (2019).

<sup>6</sup> A joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for men and women, S.J.Res.15, 116th Cong. (2019).

<sup>7</sup> Proposing an amendment to the Constitution of the United States relative to equal rights for men and women, H.J.Res.35, 116th Cong. (2019).