

**STATEMENT FOR THE RECORD BY
SENATOR BENJAMIN L. CARDIN
APRIL 30, 2019**

**House Judiciary Committee
Subcommittee on the Constitution, Civil Rights & Civil Liberties
Hearing: “Equal Rights Amendment”**

Let me begin by thanking the committee and subcommittee for holding a hearing on this important matter, and allowing me to submit this statement for the record.

Nearly 100 years after women fought for and earned the right to vote, most Americans are shocked to realize that the U.S. Constitution does not already guarantee women the same rights and protections as men. It’s long past time for us to correct this injustice and recognize the equality of women under the law. What better way to set a positive tone for a new Congress than to take clear steps to fix a long-standing slight to America’s women.

It may come as a surprise to many that in a country to which the world looks as being an example of liberty and justice, our Constitution does not guarantee women the same rights and protections as men. That is why the ERA is imperative as we urge Congress and the remaining States to finish what we started nearly 50 years ago to ensure equality under the law for all women.

In the early 20th century, women were disenfranchised and had little or no legal, financial, or social opportunities to pursue. Property ownership, jobs, and economic equality were privileges women did not have. Today, a century later, more women have entered the workforce than ever before. Women are filling leadership roles at unprecedented levels, and we are finally on the verge of ratifying the ERA. This change has boosted our economy, strengthened our families, and brought our society to new heights of innovation, enlightenment, and opportunity. We see that change is not only possible, it is essential to realizing our greatest potential as a nation.

I want to begin by addressing why we still need the ERA to be ratified as part of the Constitution. As the late Justice Antonin Scalia said, “Certainly the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn’t.”

The Fourteenth Amendment of the Constitution guarantees “equal protection of the laws,” and the Supreme Court, so far, has held that most sex or gender classifications are subject to only “intermediate scrutiny” when analyzing laws that may have a discriminatory impact. Ratification of the Equal Rights Amendment (ERA) by state legislatures would provide the courts with clearer guidance in holding gender or sex classifications to the “strict scrutiny” standard, as is used in cases involving racial or religious discrimination. Under that standard, laws must be “narrowly tailored” to achieve a “compelling government interest,” using the “least restrictive means” of doing so.

ERA ratification would allow Congress to enforce the amendment by appropriate legislation, and prohibit sex discrimination under the law, which would include statutes and regulations. Such a higher standard would give Congress a firmer constitutional basis to pass legislation that provides relief for women who are victims of gender-based violence, including cases arising under the Violence Against Women Act. The ERA would help Congress and the states combat employment discrimination. The text of the ERA is quite simple: “Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.” I would note that the text guarantees “equality of rights” on account of sex, and would therefore provide additional legal protections to both men and women.

Congress should now take action to complete ratification of the ERA by removing the final barrier in front of the states. That is why this January I introduced, with Senator Murkowski from Alaska, a resolution (S.J. Res. 6), which would immediately remove the ratification deadline and reopen consideration of the ERA for ratification by the states. With the ratification by one more state, we can finally guarantee full and equal protections to women in the Constitution. I am proud to work with Senator Murkowski on a bipartisan basis to move this essential legislation over the finish line, along with Representative Jackie Speier, who has introduced the House companion legislation (H.J. Res. 38).

Thirty-seven states, of the 38 needed, have already ratified the amendment, which was first proposed in 1972. Illinois was the last state to ratify the ERA in May 2018. Nevada ratified the ERA in March 2017. Only one more state is needed among the following states: Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Utah, or Virginia.

Note that nearly half of the states already have a version of the ERA written into their state constitutions. Gender-based equality represents the present-day views of the vast majority of people across the United States, and is the spirit that underpins the ERA.

Article V of the Constitution contains no time limits for ratification of amendments, and the states finally ratified the Twenty-Seventh Amendment in 1992 regarding Congressional pay raises more than 200 years after Congress proposed it in 1789 as part of the original Bill of Rights. The ERA time limit was contained in a joint resolution, not the actual text of the amendment, and Congress has already once voted to extend the ERA ratification deadline. Congressional action to remove the ERA deadline would help remove remaining legal ambiguities regarding the states' ratification process.

Supreme Court Justice Ruth Bader Ginsburg laid out the rationale for the ERA in simple terms: “Every constitution written since the end of World War II includes a provision that men and women are citizens of equal stature. Ours does not.” Let’s take action and step up to our responsibilities here in Congress by removing the artificial deadline for ERA ratification, allowing the states to finally complete the constitutional amendment ratification process. The ERA would give Congress another tool to combat sex discrimination as we celebrate the 100th anniversary of womens’ suffrage, as we pursue the continuing fight for women’s equality recently exemplified by the #MeToo movement.

Women should not be held back or provided less opportunity, respect or protections under the law because of their gender. This is not a partisan issue but one of universal human rights. Gender equality should be an explicit, basic principle of our society.