

United States Senate

WASHINGTON, DC 20510

November 22, 2024

The Honorable Joseph R. Biden, Jr.
1600 Pennsylvania Ave. NW
Washington, DC 20500

Dear President Biden,

We write because we share your commitment to ensuring equal justice under the law for American women and girls, and to highlight action available to you to enshrine reproductive rights in the Constitution. We respectfully request that you direct the archivist of the United States to certify and publish the Equal Rights Amendment (ERA) as the 28th Amendment, which is the most effective means at our disposal to prohibit restrictions on women's reproductive care nationwide.

As you are keenly aware, after nearly fifty years under the protections of *Roe*, more than half of all Americans have seen their rights come under attack, with access to abortion care and life-saving health care varying from state to state. A federal solution is needed, and the ERA is the strongest tool to ensure equality and protect these rights for everyone. It would establish the premise that sex-based distinctions in access to reproductive care are unconstitutional, and therefore that abortion bans — which single out women for unfair denial of medical treatment based on sex — violate a constitutional right to sex equality.

There is already strong evidence of the ERA's potential to guard against restrictions on reproductive care. State-level ERAs, including in Connecticut, New Mexico, Pennsylvania, Nevada, and Utah, have already been successful in providing the constitutional basis for reproductive equality and have been historically successful in defending against legislative infringements on women's reproductive freedom.

The ERA is the only proposed constitutional amendment that has met the clear requirements of Article V but has not been certified and published. Approved by Congress in 1972 and initially ratified by 35 states, it finally met the three-fourths state ratification requirement when Virginia ratified it in 2020.

However, despite these requirements being fulfilled, the archivist has not published the ERA as the 28th Amendment. Despite Virginia's ratification, the Trump administration's Office of Legal Counsel (OLC) issued a deeply flawed opinion claiming that the time limit in the amendment's proposing clause invalidates subsequent ratifications.

The archivist at the time, David Ferriero, publicly stated that this OLC opinion prevented him from performing the ministerial duty of certifying and publishing the ERA. In a press release issued on January 8, 2020, the National Archives and Records Administration (NARA) stated, "NARA defers to DOJ on this issue and will abide by the OLC opinion," effectively permitting

the executive branch to interfere in the constitutionally mandated independent amendment process outlined in Article V.

Some opponents have made an issue of the timeline. But Article V of the Constitution does not impose a time limit for ratification of a proposed amendment, nor does it give Congress the power to do so. This fact was made clear by the 27th Amendment, which was ratified in 1992 — 203 years after it was initially proposed to the states. The archivist at the time, Don Wilson, published the amendment upon its ultimate ratification by three-fourths of the states, despite outstanding congressional objections.

Of his decision to certify and publish the 27th Amendment without any further congressional action, Archivist Wilson said:

*“I feel pretty strongly this is a ministerial function, a function given to the archivist to certify and publish once three-quarters of the states ratified. It is a bureaucratic issue, not a political one. And if I don’t certify and there are thirty-eight states that have ratified, then I’m interpreting the Constitution beyond the ministerial function given to me by Congress, and I didn’t feel it was appropriate for me to do that. If I didn’t publish the 27th [Amendment], then I would be playing a role **not delegated to me**. The biggest factor for me was the fact that I shouldn’t interfere, and needed to follow the statutory process.” [emphasis added]*

Furthermore, Article V does not allow for rescissions of ratifications. For example, when New Jersey and Ohio tried to withdraw their ratifications of the 14th Amendment, they were still counted as ratifying states. Similarly, Tennessee’s attempt to rescind its ratification of the 19th Amendment was disregarded, and the amendment was published.

Having been proposed by two-thirds of each House of Congress and ratified by three-fourths of the states, the ERA has met the requirements of the Constitution under Article V. It is enforceable as the 28th Amendment to the Constitution, and it must be published. At present, we strongly believe there is no further role for Congress.

Once the ERA is published, it will be presumed valid, and the burden of proof will be on the opponents of equality to prove otherwise. That is exactly as it should be and has been for the previous 27 constitutional amendments. That is what the American people demand and deserve.

In summation, the ERA is the most powerful tool available to put an end to the rollback of women’s rights, as well as civil rights more broadly. It would serve as our best chance to guarantee equality for all, free from the whims of anti-equality judges and politicians; guarantee equal pay and opportunities; restore reproductive rights; protect women from domestic violence and sexual harassment; put an end to gender and pregnancy discrimination; and more.

Inaction is action. Women have advocated for over 100 years to make constitutional gender equality a reality. We cannot let disingenuous and deceptive arguments about procedure stand in the way of basic human rights and dignity. We must answer the call to uphold equality and strengthen women’s rights by certifying the ERA.

We urge you to direct the archivist to publish the ERA as the 28th Amendment without further delay.

Sincerely,



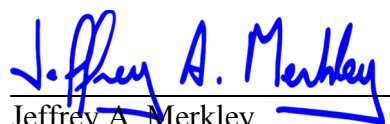
Kirsten Gillibrand
United States Senator



Charles E. Schumer
United States Senator



Martin Heinrich
United States Senator



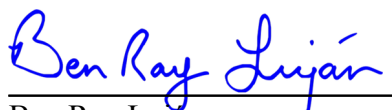
Jeffrey A. Merkley
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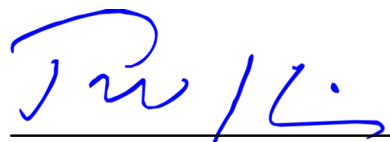
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Chris Van Hollen
United States Senator



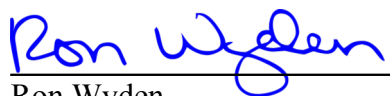
Ben Ray Lujan
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Tim Kaine
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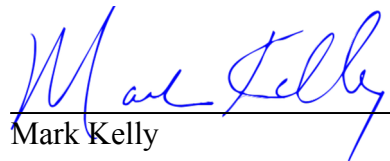
Peter Welch
United States Senator




Ron Wyden
United States Senator

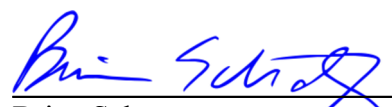



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United States Senator

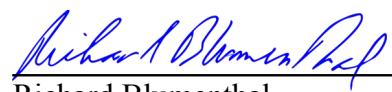



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Benjamin L. Cardin
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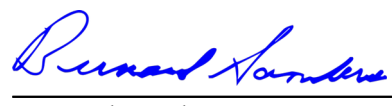

Richard Blumenthal
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Catherine Cortez Masto
United States Senator

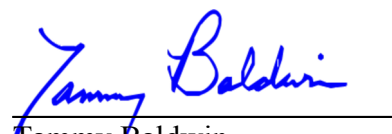
/s/

George S. Helmy
United States Senator



Alex Padilla
United States Senator



Bernard Sanders
United States Senator

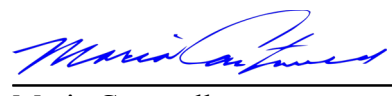

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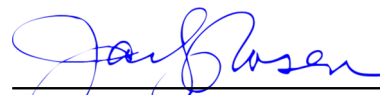
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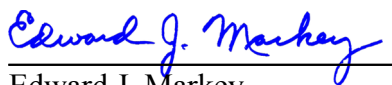
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Mark R. Warner
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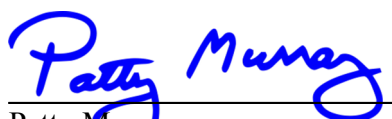
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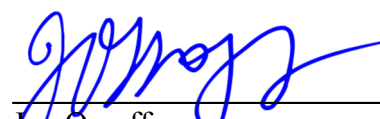
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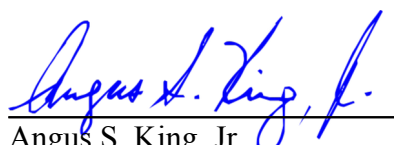
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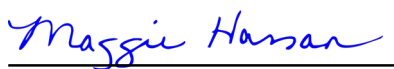
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