

**I need the  
ERA because...**

**GENDER EQUALITY SHOULD BE IN THE US CONSTITUTION**

**THE VOICE OF THE US LEGAL  
PROFESSION ENDORSES IT!**

**Lawyers for the ERA**



The American Bar Association (ABA), in [Resolution 601](#) adopted on August 6th, 2024, **urges “federal, state, local, territorial, and tribal governments to implement the Equal Rights Amendment** to the United States Constitution . . . in accordance with Article V of the Constitution.” The ABA is the [largest voluntary association of lawyers](#) in the world, and is the “national voice of the legal profession” in the United States. While the ABA has supported the ERA as far back as 1972, this is the first time it has unequivocally established a legal position.

The [ABA Resolution report](#) emphasizes how existing legal protections, such as Title VII and Title IX, are “a patchwork” of laws that can easily be repealed, narrowly interpreted, and not enforced. And it notes the rights currently protected by the 14th Amendment to the Constitution, “the greatest legal protection afforded to women today,” are in danger due to [originalist interpretation](#) that the 14th Amendment was never intended to guarantee equal protection of the law for women at all.

**The ABA Resolution report assesses the main legal issues opponents raise against recognition of the ERA as our 28<sup>th</sup> Amendment, using constitutional analyses to rebut each in turn.**

### ISSUE 1: TIMEFRAME

Three of the requisite 38 states—Nevada, Illinois, and Virginia—[ratified the ERA long after](#) the seven-year timeframe laid out in the “resolving clause” of Congress’s [1972 Joint Resolution proposing the ERA](#).

- The US Constitution, however, does not include a time limit for ratification of amendments, e.g., the 27th Amendment was [open for nearly 203 years](#) before it was fully ratified.
- Congress could only [impose a time limit by Constitutional amendment](#), which it did not do in the text of the ERA itself.

- The timeframe in the congressional Joint Resolution used to propose the ERA is unenforceable as a constitutional amendment, and thus the timing of a state’s ratification is of no consequence.

### ISSUE 2: RESCISSION

Six states have since purported to [rescind their ratification](#) status.

- The Constitution does not speak to rescission, and there is [no implied power to rescind](#).
- Historically, James Madison [dismissed the notion](#) of “conditional” ratification, emphasizing that ratification is “in toto, and for ever.”

- The purported rescissions are of no effect, and the requisite three-fourths of states (38) remain ratified.

### ISSUE 3: PUBLICATION

The National Archivist has not published and certified the amendment, in accordance with [1 U.S.C. § 106b](#).

- Publication and certification are [purely ministerial](#).

- Because 38 states have ratified the ERA, it is automatically part of the Constitution.

*Rights currently protected by the 14th Amendment to the Constitution, “the greatest legal protection afforded to women today,” are in danger.*

**Learn more: [equalitynow.org/ineedera](https://equalitynow.org/ineedera)**

 **Equality Now**  
A just world for women and girls.

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Although publication and certification by the National Archivist may have little significance with regard to the amendment's legal effectiveness, the Resolution report emphasizes how the “*practical* consequences of that are very real.” Publication provides [evidence of the law](#) and [symbolic weight](#), and notifies all branches of government “for purposes of compliance, enforcement, adjudication, and further legislation.”

**Without the ERA, the US is in violation of international law.**

Significantly, the ABA Resolution report also makes reference to the United States' obligations under the [International Covenant on Civil and Political Rights](#). Citing Equality Now's [I need the ERA because... Without the ERA, the US Violates International Law](#) factsheet, it describes how the UN Human Rights Committee “highlighted the United States' failure to include in its Constitution ‘an explicit guarantee...against sex- and gender-based discrimination’” in its [recommendations to the US Government](#) and expressly called for the inclusion of the ERA in the US Constitution. The Resolution report further emphasizes that the US is a “global outlier” as [85% of U.N. Member States](#) already have constitutional provisions that prohibit discrimination on the basis of sex and/or gender.

**Where do we go from here?**

The ABA Resolution is particularly significant because it provides a constitutional framework – delineated by some of the nation's top legal minds – for the legal community as a whole, and other advocates, to support recognition of the ERA as part of the US Constitution and its implementation as our 28<sup>th</sup> Amendment.

Lawyers can also continue to support enactment of state constitution ERAs and expand use of existing state ERAs to challenge laws and regulations that raise inequality and sex discrimination issues in a variety of contexts, such as in the recent [Pennsylvania case](#) on Medicaid abortion bans. Lawyers can also use these examples to strategize how the federal ERA could be used in the future.

Visit our [I need the ERA because...](#) series to learn more about how recognition and implementation of the ERA as our 28<sup>th</sup> Amendment to the US Constitution will help advance equality and gender justice, including on issues of economic rights, abortion access, gender-based violence, and more.

**Learn more: [equalitynow.org/ineedera](https://equalitynow.org/ineedera)**