

Statement of S. Mona Sinha on behalf of Equality Now
Testimony for the U.S. Senate Committee on the Judiciary Hearing on 28 February 2023
The Equal Rights Amendment: How Congress Can Recognize Ratification and Enshrine Equality in Our Constitution

Greetings Chair Durbin and Distinguished Members of the U.S. Senate Committee on the Judiciary. Thank you for holding this hearing at a critical moment in United States history. My name is S. Mona Sinha and I am the Global Executive Director of Equality Now, an international human rights organization, incorporated in New York and elsewhere, working globally with grassroots organizations and coalitions such as the ERA Coalition to protect and promote the rights of all women and girls.

Equality Now's mission is to achieve legal and systemic change that addresses violence and discrimination against women and girls around the world. I am honored, the week before International Women's Day, to provide this written testimony in support of the Equal Rights Amendment (ERA) and **S.J. Res. 4 - Removing the deadline for the ratification of the Equal Rights Amendment**, which recognizes that the ERA is "valid to all intents and purposes as part of the Constitution".

Equality Now has seen the pervasive damage done to women and girls wrought by legal inequality, including the promotion of gender-based violence (GBV) in discriminatory laws. Conversely, we have seen the tremendous benefits gained by countries that have embraced equality in the law, including in their constitutions, the supreme law of the land.

In other countries, constitutional equality provisions have advanced progress on important issues such as the reform of parental leave to incentivize equal caregiving between parents, and on GBV issues such as the elimination of marital rape exceptions and discriminatory child marriage provisions,¹ and the upholding of an anti-female genital mutilation (FGM) statute².

The vast majority of countries around the world recognize the pervasive harm arising from sex inequality and the need for express constitutional guarantees of equality on the basis of sex. The United States is a **global outlier** in not having a constitutional equality provision - 85% of other UN member states do have one.³

¹ Concrete examples of these advances from around the world are elaborated on in Equality Now's joint *amicus curiae* brief with women's rights organizations from every region of the world in *Commonwealth of Virginia, et al v. Ferriero* filed on January 10, 2022 in the United States Court of Appeals for the District of Columbia Circuit, No. 21-5096, available at

<https://equalitynow.storage.googleapis.com/wp-content/uploads/2022/01/13220010/2022.01.10-Equality-Now-et-al-ERA-Amici-Brief.pdf>

² See Dr. Tatu Kamau v. AG & Others, Judgment Nairobi H.C. Constit. Pet. No. 244 of 2019, available at <http://kenyalaw.org/caselaw/cases/view/209223/>

³ Heymann J. et al. 2020. Advancing Equality: How Constitutional Rights Can Make a Difference Worldwide. California: Univ. of California Press. 49. DOI: <https://doi.org/10.1525/luminos.81>

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According to the 2020 comparative constitutional analysis, *Advancing Equality: How Constitutional Rights Can Make a Difference Worldwide*, no constitution adopted since 2000 omits protections against sex-based discrimination. Furthermore, countries such as France, Germany, and Luxembourg have amended their older constitutions in acknowledgment of the concrete harms caused by sex inequality.⁴

The United States is **required to adopt, and implement, the ERA to be in compliance with international law**, its treaty obligations and international human rights standards.⁵ The International Covenant on Civil and Political Rights (ICCPR), which the United States ratified in 1992, requires States parties to ensure equal enjoyment of civil and political rights for all, including by taking the necessary steps to prevent sex discrimination and gender-based violence.

Sex equality has attained the status of customary international law and is reflected in numerous other treaties and commitments which the United States has also endorsed, including the Beijing Platform for Action, and most recently the UN Sustainable Development Goals. The United States is also prohibited from taking actions that would defeat the object and purpose of the Convention on the Elimination of All Forms of Discrimination against Women, a treaty the United States has signed which requires sex equality. At a bare minimum, this means a constitutional guarantee against discrimination on the basis of sex must be in place. Recognizing the ERA's validity will be an important step towards compliance, and will also give the United States more credibility on the world stage.

Until all women and girls, no matter their gender identity or expression, sexuality, race, class, religion or any other socio-economic status, have a constitutional guarantee of equality on the basis of sex, they will have to rely on an incomplete patchwork of state and federal laws to protect their most basic human rights. Nations across the globe have recognized that this is not sufficient, and it is 100 years, a century, past time that America does as well by finally incorporating the ERA as the 28th amendment to the United States Constitution.

We strongly believe that the Equal Rights Amendment will bring about further positive legal and social change, as it has in other countries, and make an enormous difference in the lives of all American women and girls, their families, and their communities. It could provide further protection from [gender-based violence](#), including sexual and domestic violence, [child marriage](#), [FGM](#), and other forms of violence and discrimination.

Thank you for your attention and your commitment to this vital issue. Having been ratified by the requisite number of states, all constitutional requirements have been met for the ERA to be codified and become the supreme law of the land. Please support S.J. Res. 4 and call for the urgent incorporation of the Equal Rights Amendment into the United States Constitution.

⁴ *Id* at 58; Julie C. Suk, An Equal Rights Amendment for the Twenty-First Century: Bringing Global Constitutionalism Home, 28 Yale J.L. & Feminism 381, 385 (2017).

⁵ See joint amicus brief, note 1.