

**Testimony to the United States Senate Judiciary Committee by ERA Illinois
on How Congress Can Recognize Ratification and
Enshrine Equality in Our Constitution**

February 28, 2023

Originally formed as a campaign for Illinois ratification, **ERA Illinois** continues to advocate for constitutional equality. In 2020, ERA Illinois was instrumental in coordinating an amicus brief on behalf of advocates from the three recently ratified states.

We are grateful to the United States Senate Judiciary Committee for holding this important hearing on the status of How Congress Can Recognize Ratification and Enshrine Equality in Our Constitution with the Equal Rights Amendment as our 28th Amendment.

ERA Illinois echoes the position expressed by Illinois Attorney General Kwame Raoul in his brief, filed along with the Attorneys General of Nevada and Virginia in the United States Court of Appeals for the District of Columbia Circuit, that the Equal Rights Amendment is fully ratified and needs no further action, except to be published by the Archivist.¹

In support of the Attorneys General lawsuit, ERA Illinois joined other state groups in an amicus brief affirming our states' position that the Equal Rights Amendment is fully ratified, namely the following:

AAUW of Illinois	AAUW of Nevada
Chicago Bar Association	Nevada Coalition to End Domestic and Sexual Violence
Chicago Foundation for Women	Nevada NOW
Illinois Coalition Against Domestic Violence	Nevada Women's Lobby
Illinois Coalition Against Sexual Assault	Nevadans for the ERA Coalition
Illinois NOW	AAUW of Virginia
Illinois State Bar Association	Center for Common Ground
League of Women Voters of Illinois	League of Women Voters of Virginia
Women's Bar Association of Illinois	McIntosh Foundation
YWCA Elgin	Rachel's Network
YWCA McLean County	VARatifyERA
YWCA Metropolitan Chicago	Virginia NOW ²
YWCA of the University of Illinois	

¹ See Brief of Appellants, Illinois v. Ferriero, filed 01/03/2022, available at voteequality.us/wp-content/uploads/2022/01/Brief-of-Appellants-ERA.pdf (Illinois brief).

² See State Advocates Brief, available at eracoalition.org/wp-content/uploads/2022/01/ERA-Amicus-Brief-State-Organizations.pdf. Additional amicus briefs available at eracoalition.blog/2022/01/11/amicus-briefs-filed-in-support-of-the-era

According to Article V of the Constitution, an amendment becomes part of the Constitution upon ratification by the legislatures of three-fourths of the states. On January 27, 2020, Virginia became the 38th state to ratify the amendment, satisfying the constitutional requirement of three-fourths of the states or 38 of 50. On that date, the ERA became part of our Constitution.

As the Committee knows, the Archivist of the United States has yet to certify and publish the Equal Rights Amendment as part of our Constitution, in contravention of 1 U.S. Code 106b. While a Senate affirmation like S.J.Res.4 is gratifying to advocates, no congressional action is needed since, by the Constitution's own terms, the ERA is already the 28th Amendment.

Delayed certification of the Equal Rights Amendment harms the sovereign interests of Illinois, including its interest in performing the constitutional role assigned to it by Article V and its interest in ensuring that its legislature's ratification of the Amendment is given effect.³

The Attorneys General correctly argued in federal court that, "Congress lacks the authority to set deadlines outside the text of proposed amendments—as it sought to do here. Congress's decision to place its deadline in language *separate* from the proposed amendment, rather than including it *within* the text of a proposed amendment (consistent with its previous practice), is constitutionally significant."⁴ Opponents have argued that Congress proposing the mode of state ratification somehow gives Congress the ability to add a time constraint on states' rights of ratification in the amendment process. This reading contradicts the plain text and original meaning of the Constitution and suggests that the framers, as the late Justice Antonin Scalia would say, intended to hide an elephant in a mousehole.⁵

"All told, the Framers intentionally designed the amendment process to balance the authority of Congress and the States, and in doing so did not confer on Congress the power to limit the States' authority to ratify amendments—at least not by setting constraints outside the text of proposed amendments. Congress's purported deadline for the Equal Rights Amendment, therefore, does not invalidate [States'] ratifications."⁶ Given the clear language of Article V of the Constitution, three states were confident of their legislature's ability to ratify after the purported deadline. Additional states concurred with amicus brief support of the pending lawsuit, namely:

³ Illinois brief, 23.

⁴ Illinois brief, 53.

⁵ *Whitman v. American Trucking Assns., Inc.*, 531 US 457, 468 (2001).

⁶ Illinois brief, 62-63.

Colorado	Michigan	Oregon
Connecticut	Minnesota	Pennsylvania
Delaware	Governor of Montana	Rhode Island
Hawai‘i	New Jersey	Vermont
Governor of Kansas	New Mexico	Virginia
Maine	New York	Washington
Maryland	North Carolina	Wisconsin ⁷
Massachusetts		

Furthermore, “Congress’s past practice on this issue [of timelines] is of no probative value. Congress, moreover, may think that placing deadlines outside the text of proposed amendments will avoid ‘cluttering up the Constitution,’ ... but ‘Congress ... is powerless to expand or extend its constitutional authority,’ *United States v. Chambers*, 291 U.S. 217, 224 (1934), regardless of its reasons for doing so.”⁸

On May 30, 2018, Illinois became the 37th state to ratify the Equal Rights Amendment. In Illinois, a super-majority of 3/5s is required to ratify a proposed amendment, a hurdle met with broad Republican and Democrat support. In fact, on his retirement, Republican Illinois House Minority Leader Jim Durkin included his 2018 ERA vote as a proud accomplishment of his time in office.⁹ Former legislators from Nevada, Illinois and Virginia affirmed their timely votes in an amicus brief to the DC Appellate Court.¹⁰

We urge this Committee to conclude that no further action is required by Congress, to affirm that the Equal Rights Amendment is our 28th Amendment to the Constitution, and that the Archivist is clear to publish the good news.



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⁷ See collection of amicus briefs, available at www.eracoalition.blog/2022/01/11/amicus-briefs-filed-in-support-of-the-era

⁸ Illinois brief, 62.

⁹ Celeste Fisher, “My husband, Republican Jim Durkin, is an endangered species” *Chicago Tribune*, Nov 28, 2022.

¹⁰ See Legislator Amicus, available at eracoalition.org/wp-content/uploads/2022/01/Former-Legislators-ERA-Amicus-Brief.pdf