

# ERA NOW RESOLUTION

**CONGRESSWOMAN CORI BUSH AND SENATOR KIRSTEN GILLIBRAND**

Congresswoman Cori Bush (MO-01), co-chair of the Congressional Caucus for the Equal Rights Amendment (ERA), and Senator Kirsten Gillibrand (NY) are introducing the “ERA Now” resolution alongside fellow ERA Caucus co-chair Congresswoman Ayanna Pressley (MA-07), and Vice Chairs Representatives Becca Balint (VT), Barbara Lee (CA-13), Summer Lee (PA-12), Jennifer McClellan (VA-04), Lois Frankel (FL-22), and caucus Members Jonathan L. Jackson (IL-01) and James McGovern (MA-02).

Article V of the U.S. Constitution has two requirements for amendments in the path every single amendment so far has taken:

1. Passage by 2/3rds of both houses of Congress
2. Ratification by 3/4ths of the states (38)

The Equal Rights Amendment (ERA) has met both of those requirements, and as such is the validly ratified 28th Amendment. In 1972, the ERA was passed by both houses of Congress with far more than the 2/3rds necessary. In January of 2020, Virginia became the 38th, and final state necessary, to ratify the ERA.

Under 1 U.S.C. § 106b Congress has charged the Archivist of the United States with the responsibility to publish new constitutional amendments upon receiving official notice of ratification from the requisite number of states. Whenever the National Archives and Records Administration receives notice that an amendment to the Constitution has been adopted, the Archivist “shall forthwith cause the amendment to be published” along with a certificate identifying the states that ratified the amendment and declaring it “...has become valid, to all intents and purposes, as a part of the Constitution of the United States.”

In 2020 Archivist David Ferriero, an Obama appointee, failed to certify and publish the ERA in the Federal Register (as required by 1 U.S.C. § 106b) when Virginia ratified it. Instead, he asked the Trump Administration’s Department of Justice for a legal opinion to green-light publication. Unsurprisingly, they did not give it and instructed him not to proceed. The Archivist’s failure to publish was a mistake that is an impediment to millions of Americans enjoying full constitutional equality.

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Our most recent amendment, the 27th Amendment regarding congressional pay, was ratified by the final state, Michigan, on May 7, 1992. This was 202 years, 7 months, and 10 days after it was first proposed by James Madison. The 27th Amendment was then certified on May 18, 1992 by then-Archivist Don Wilson, a Reagan appointee. He published his certification of it in the Federal Register and the 27th Amendment became the law of the land. Congress later voted on a resolution to validate the ratification of the 27th Amendment, though it was unnecessary and purely ceremonial.

Our ERA Now resolution urges today's Archivist, Colleen Shogan, to act upon this precedent and her statutory duty under 1 U.S.C. § 106b to certify and publish her certification of the ERA. There is no role for the Executive Branch in the amending process under Article V. Since the ERA has met the requirements of Article V of the U.S. Constitution, by not certifying and publishing the ERA the current Archivist is unconstitutionally inserting herself in the amending process, and going outside the bounds of the ministerial function given to her by Congress.

We cannot continue to let an unelected appointee play any part in impeding more than half of this country from enjoying full constitutional equality.

## Our ERA Now resolution:

- Makes a clear constitutional case for the ERA as properly ratified
- Directs the Archivist of the U.S. to perform her ministerial duty under 1 U.S.C. § 106b and certify and publish the ERA as the 28th Amendment to the U.S. Constitution
- Declares the ERA enforceable as the 28th Amendment, effectively ratified on January 27th, 2020, when Virginia became the final state to ratify it