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Written Testimony of Representative Cori Bush (MO-01)

“The Equal Rights Amendment: How Congress Can Recognize Ratification and Enshrine Equality in Our Constitution”

**Dirksen Senate Office Building Room 106
United States Senate Committee on the Judiciary
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10:00 AM**

Chair Durbin and esteemed Judiciary Committee Members, thank you for the opportunity to submit this written testimony and for your careful attention to the issue of constitutional equality.

The Equal Rights Amendment (ERA) was first unveiled in Seneca Falls, New York July 21st, 1923. July 21st also happens to be my birthday. On my birthday this year we will be marking a full century in this fight.

100 years is far too long to wait for equality.

It is appropriate that you are holding this hearing during Black History Month and at the cusp of March which is Women’s History Month. Black women and LGBTQ+ people have always been on the forefront of the fight for the ERA. Though we have never been on the front page of its coverage in the media.

Pioneering transgender attorney, ordained clergy, and civil rights activist Pauli Murray identified the twin evils of racism and sex discrimination we face as Black women by coining the phrase “Jane Crow” and later became a vocal advocate for an important tool to eradicate racialized gender discrimination—the Equal Rights Amendment. Murray argued, “Negro women as a group have the most to gain from the adoption of the Equal Rights Amendment . . . [It] strikes a blow at the powerlessness which all women share, but which Negro women experience in intensified form.” Murray’s influential perspective predicted that we would need the ERA as an anchor in the constitution to actualize the promise of equality.

Murray was not alone in their advocacy for the ERA. In 1970 Shirley Chisholm, the first Black woman elected to Congress, delivered a speech on the House Floor entitled, “I Am For the Equal Rights Amendment.” She urged her fellow members of Congress to vote for the ERA to complete the unfinished business of the so-called Founding Fathers.

Barbara Jordan, the first Black woman from the South elected to Congress, was also an ardent proponent of the ERA. She was a fierce defender of the U.S. Constitution and served on the House Judiciary Committee, an honor I share today. Jordan implored us to expand a rigid definition of “we of the people” to one that includes everybody. She forcefully testified in a congressional hearing to extend the deadline on the ERA, “The Equal Rights Amendment is a mandate for change.” Jordan recognized that the U.S. Constitution does not mandate a time limit on changes to a living, breathing document that governs the lives of millions. Like her, I believe that there can be no time limit on equality or our collective liberation. We’ve got to make progress, not put arbitrary limits on fundamental freedoms. I stand with the Black women and queer leaders who’ve come before me in unapologetically and unequivocally pushing for the ERA.

Black women have never given up on enshrining gender equality in our constitution. Even when the deadlines imposed by Congress in the proposing clause of the ERA timed out in 1982, three states short of ratification – we never gave up. In the modern era, three new states have ratified the ERA: Nevada, Illinois, and Virginia. In all of those states, Black legislators and organizers have led the way. In 2017, queer Black Senator Pat Spearman resurrected the ERA fight and got it ratified in Nevada. In Illinois, in 2018, Lieutenant Governor Juliana Stratton and others followed suit and ratified the ERA there. I’m glad to see she is a witness in today’s historic hearing. And, in Virginia in 2020, Senator Jennifer McClellan, who last week was elected as the first Black woman from the state to serve in Congress, got ERA ratification over the finish line. Across the states and across generations—Black women have led the way.

I am energized and inspired by the tenacity of Black women and LGBTQ+ leaders who have never given up on constitutional change. In the century since its introduction in 1923 we have met the requirements outlined in Article V of the Constitution—the ERA was passed by 2/3rds of Congress and it has now been ratified by 38 states. It is the 28th amendment. We did it. Our movement worked hard to affirm the full citizenship of women and people of all marginalized genders. I refuse to let the century of organizing, galvanizing, and strategizing on the ERA be in vain.

When a problem starts at the root, the solution has to be a foundational fix. And, the discrimination all women and gender expansive folks face in this country starts with our exclusion from our own constitution. Domestic violence is an epidemic. Abortion bans are sweeping the nation. Black trans women and our queer siblings are being targeted by violence. We need the ERA to protect us. To keep us safe, not 100 years ago, but now.

As a Member of Congress fighting for recognition of the ERA in the modern era, I want to be perfectly clear about two of the things I do envision it covering—abortion access and trans rights. I mention those two issues specifically because at today’s hearing you will hear those who oppose equality cite these two important protections as why they are fighting it.

Anti-ERA advocates like the Heritage Foundation fear “[The ERA Has Just One Purpose Left: Abortion](#).” The ERA’s potential is not limited to protections for health care, but this might be the only time I agree with the Heritage Foundation: the ERA will absolutely protect abortion. As

someone who has had abortions, I know how vital this is. Why would we fight so hard for an amendment that wouldn't even protect our most basic human rights?

Clearly abortion bans are sex-based discrimination. In states with state-level ERAs, the amendments have been crucial to protecting abortion access. For example, in New Mexico there are no gestational limits on abortion and state funds are required to cover abortion care—all because they have an ERA. In Utah right now the only reason you can get a legal abortion is their state-level ERA. It was put in the Utah Constitution in 1896 and is protecting abortion seekers today. With the federal level ERA in place as the 28th Amendment to the U.S. Constitution, we can revisit the *Dobbs v. Jackson Women's Health Organization* case without the need to rely on the right to privacy or anything in the 14th Amendment. We will have an entirely new right in the text of the Constitution in which to ground our basic human right to bodily autonomy and abortion access.

In addition to protecting our fundamental right to access abortion, the ERA will also provide a crucial bulwark against attacks on our trans siblings all across the country. The word “women” is nowhere to be found in the text of the ERA. Instead, it prohibits discrimination on the basis of the gender neutral term, “sex.” This simple, straightforward version of the language is what passed in Congress in 1972 and has now been ratified by 38 states. Since the ERA will explicitly prohibit discrimination on the basis of sex, if there's discrimination against LGBTQ+ people on the basis of sex, it will be covered by the ERA. Just reading the text, you can see that the amendment applies to both sexual orientation and gender identity. This is even more clear after the Supreme Court's recent decision in the [Bostock v. Clayton County](#) case, in which the Court decided that discrimination on the basis of sexual orientation or transgender status is discrimination on the basis of sex.

Those who oppose the ERA try to use protection of trans people as a wedge to keep it from being finalized. On the contrary, I think protection of trans people is one of its greatest strengths. The ERA is an amendment for our times, and desperately needed to protect those most on the margins. This is particularly important in light of the U.S. Supreme Court's trajectory of hacking away at our rights instead of expanding them.

Though we currently lack the political will to change the composition of the Supreme Court, when the ERA is finalized—no matter who sits on the Court—they will have to abide by these 24 words: *Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.* As Pauli Murray said, Black women have the most to gain from cementing those words into the constitution. As a Black woman, I know I—alongside millions of Black women, individuals, and children—have the most to gain from an equality amendment. That is why I am fighting for the ERA. I will not rest until our rights are fully recognized and affirmed within the text of the constitution itself.

It's imperative that Congress affirm its support for the Equal Rights Amendment and recognize it as the 28th amendment without further delay.