

SENATE JOINT RESOLUTION 1

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By: **Senators Kelly, Beidle, Elfreth, Klausmeier, Hettleman, Guzzone, Feldman, Hester, Lam, King, Smith, Gile, Waldstreicher, and Kagan**

Introduced and read first time: January 24, 2024

Assigned to: Judicial Proceedings

SENATE JOINT RESOLUTION

1 A Senate Joint Resolution concerning

2 **Affirming the Federal Equal Rights Amendment**

3 FOR the purpose of urging the Administration of President Joseph R. Biden to publish,
4 without delay, the federal Equal Rights Amendment as the Twenty–eighth
5 Amendment to the U.S. Constitution and urging the U.S. Congress to pass a joint
6 resolution affirming the Equal Rights Amendment as the Twenty–eighth
7 Amendment; and generally relating to the federal Equal Rights Amendment.

8 WHEREAS, In 1972, the 92nd Congress of the United States, at its second session,
9 in both houses, by a constitutional majority of two–thirds, adopted the following proposition
10 to amend the U.S. Constitution:

11 “JOINT RESOLUTION RESOLVED BY THE HOUSE OF REPRESENTATIVES
12 AND SENATE OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED
13 (TWO–THIRDS OF EACH HOUSE CONCURRING THEREIN), That the following article
14 is proposed as an amendment to the Constitution of the United States, which shall be valid
15 to all intents and purposes as a part of the Constitution when ratified by the legislatures
16 of three–fourths of the several States within seven years from the date of its submission by
17 the Congress:

18 ARTICLE _____

19 Section 1. Equality of rights under the law shall not be denied or abridged by the
20 United States or by any State on account of sex.

21 Section 2. The Congress shall have the power to enforce, by appropriate legislation,
22 the provisions of this article.

23 Section 3. This amendment shall take effect two years after the date of ratification.”;
24 and



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1 WHEREAS, Article V of the U.S. Constitution provides a two-step procedure for the
2 adoption of an amendment; and

3 WHEREAS, The first requirement for the adoption of an amendment under Article
4 V is the proposal of an amendment either by a two-thirds vote of both houses of Congress,
5 or by a convention called by application of two-thirds of the states; and

6 WHEREAS, The second requirement for the adoption of an amendment under
7 Article V is ratification of an amendment by three-fourths of the states; and

8 WHEREAS, The U.S. Constitution does not limit the time for states to ratify an
9 amendment and does not grant Congress the authority to unilaterally limit the time by
10 which an amendment may be ratified; and

11 WHEREAS, A time limitation for the ratification of amendments by the states would
12 be a substantive change to the U.S. Constitution; and

13 WHEREAS, To have full force and effect, a substantive change to the U.S.
14 Constitution must be within the text of an amendment so that it may be ratified by the
15 states as part of the requirements of Article V; and

16 WHEREAS, The time limitation on state ratifications was in the preamble section of
17 the resolution by Congress and not within the text of the amendment presented to states
18 for state approval; and

19 WHEREAS, Because of the placement of the time limitation, the states ratified the
20 text of the Equal Rights Amendment but did not ratify the time limit by Congress; and

21 WHEREAS, A time limit was approved in the Equal Rights Amendment by Congress
22 in 1972, but has not been subsequently approved by the states and thus is without force or
23 effect; and

24 WHEREAS, In comparison, in 1978, Congress passed the District of Columbia
25 Voting Rights Amendment, which included a time limitation within the text of the
26 Amendment offered to the states for ratification; and

27 WHEREAS, The time limitation for the District of Columbia Voting Rights
28 Amendment ended before ratification of the amendment by three-fourths of the states; and

29 WHEREAS, Because the time limit was within the text of the District of Columbia
30 Voting Rights Amendment, the time limit had full force and effect and the amendment
31 expired in 1985; and

32 WHEREAS, In comparison, the Twenty-first Amendment and the Twenty-second
33 Amendment include time limitations within the text of each amendment, and the timelines
34 were ratified by three-fourths of the states in accordance with the text of the amendments;
35 and

1 WHEREAS, In 1789, the First Congress proposed, in accordance with Article V, the
2 Madison Amendment relating to compensation of members of Congress; and

3 WHEREAS, Over 202 years later, the Madison Amendment was ratified by
4 three-fourths of the states; and

5 WHEREAS, In 1992, having finally met the requirements of Article V, the Madison
6 Amendment was published as the 27th Amendment to the U.S. Constitution by the
7 Archivist of the United States during the Administration of President George H.W. Bush;
8 and

9 WHEREAS, Following publication of the Madison Amendment by the Archivist of
10 the United States, Congress affirmed the Madison Amendment as the Twenty-seventh
11 Amendment to the U.S. Constitution; and

12 WHEREAS, As of January 27, 2020, three-fourths of the states have ratified the
13 Equal Rights Amendment; and

14 WHEREAS, Unlike the District of Columbia Voting Rights Amendment, the Equal
15 Rights Amendment does not contain a time limit in its text where it would be of full force
16 and effect; and

17 WHEREAS, In contrast to the Madison Amendment, which took 203 years to ratify,
18 the Equal Rights Amendment took only 48 years to ratify; and

19 WHEREAS, The text of Article V of the U.S. Constitution grants the states the power
20 of ratification, not rescission; and

21 WHEREAS, Samuel Johnson's dictionary of 1755 defines "ratify" as "to confirm; to
22 settle"; and

23 WHEREAS, Bouvier's Law Dictionary of 1856, considered to be the first American
24 legal dictionary, states that a ratification once done, "cannot be revoked or recalled"; and

25 WHEREAS, James Madison wrote in a July 20, 1788, letter to Alexander Hamilton
26 that ratification is "in toto and for ever"; and

27 WHEREAS, Various attempts to rescind ratifications of provisions of the U.S.
28 Constitution or its amendments, including the Fourteenth, Fifteenth, and Nineteenth
29 Amendments, have never been honored; and

30 WHEREAS, The General Assembly of Maryland set a precedent for this resolution
31 in 1961 by passing House Joint Resolution 14 urging Congress to pass the Equal Rights
32 Amendment; and

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1 WHEREAS, Maryland was one of the early states to ratify the Equal Rights
2 Amendment in May 1972, two months after Congress proposed it for ratification; and

3 WHEREAS, Maryland adopted the Maryland Equal Rights Amendment to the
4 Maryland Constitution in 1972; and

5 WHEREAS, The Maryland Equal Rights Amendment is only effective to the degree
6 that it does not conflict with federal law; and

7 WHEREAS, The Maryland Attorney General filed an amicus brief in 2022 in support
8 of a lawsuit brought by three ratifying states to require the Archivist of the United States
9 to certify and publish the Equal Rights Amendment as an amendment to the U.S.
10 Constitution; and

11 WHEREAS, Over several decades, the General Assembly of Maryland has passed
12 laws and created protections attempting to guarantee equal rights under the law for all
13 Marylanders, regardless of race, color, ethnicity, national origin, age, disability, creed,
14 religion, or sex – which includes legal equality and protection from discrimination on the
15 basis of sexual orientation, gender identity, gender expression, pregnancy, pregnancy
16 outcomes, and decisions regarding reproductive healthcare or other aspects of an
17 individual’s bodily autonomy; now, therefore, be it

18 RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That it is the
19 opinion of the General Assembly of Maryland that the Equal Rights Amendment meets the
20 requirements of Article V of the U.S. Constitution and should be recognized as the 28th
21 Amendment; and be it further

22 RESOLVED, That the General Assembly of Maryland urges the Administration of
23 President Joseph R. Biden to publish, without delay, the Equal Rights Amendment as the
24 28th Amendment to the U.S. Constitution; and be it further

25 RESOLVED, That the General Assembly of Maryland urges the Congress of the
26 United States to pass a joint resolution affirming the Equal Rights Amendment as the 28th
27 Amendment to the U.S. Constitution; and be it further

28 RESOLVED, That the General Assembly of Maryland calls on other states to join in
29 this action by passing similar resolutions; and be it further

30 RESOLVED, That a copy of this Resolution be forwarded by the Department of
31 Legislative Services to the Honorable Joseph R. Biden, President of the United States of
32 America, 1600 Pennsylvania Avenue NW, Washington, D.C. 20500; the Honorable Kamala
33 Harris, Vice President of the United States, President of the United States Senate, Senate
34 Office Building, Washington, D.C. 20510; the Honorable Colleen Joy Shogan, Archivist of
35 the United States, National Archives and Records Administration, 700 Pennsylvania
36 Avenue NW, Washington, D.C. 20408; the Maryland Congressional Delegation; and the
37 presiding officer of each House of the legislature of each state of the United States, with

1 the request that it be circulated among leadership of the legislative branch of the state
2 governments.