

Winston & Strawn Represents More Than 50 Equality Advocates in Amicus Brief Calling for Publication of Equal Rights Amendment

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Pressure Increases for U.S. Archivist to Publish Amendment

Following Ratification by the Required 38 States

CHICAGO, January 10, 2022 – Winston & Strawn filed an amicus brief today in the U.S. Court of Appeals for the District of Columbia on behalf of the ERA Coalition and more than 50 other organizations that fight for sex equality and women’s rights. The brief argues for formal recognition of the Equal Rights Amendment, which has now been fully ratified under Article V of the Constitution.

The brief asserts that a district court erred in dismissing a suit brought by the attorneys general of the last three ratifying states—Nevada, Illinois, and Virginia—and in concluding that a seven-year time limit stands in the way of the ERA. The suit asks the court to compel Archivist David S. Ferriero to comply with his statutory duty to publish and certify the ERA as the 28th Amendment to the U.S. Constitution.

At stake is constitutional equality (particularly for women and sexual minorities in underrepresented and marginalized groups) and the integrity of the ratification process.

Winston’s team was led by Linda T. Coberly, chair of the firm’s Appellate & Critical Motions Practice and chair of the ERA Coalition’s Legal Task Force. She was joined on the brief by partner Christopher Man and associates Johanna Rae Hudgens, Linda A. Greene, and Courtney S. Block.

The ERA satisfied all constitutional requirements in January 2020, when Virginia became the 38th state to ratify it. The amicus brief argues that the seven-year time frame for adoption that Congress unilaterally imposed in 1972 cannot stand in the way of the ERA, as that timetable does not—and cannot—alter or override Article V’s crystal-clear provisions, all of which the ERA has already met.

Article V leaves no room for time limits. Unless the language of an amendment specifically contains such a limit, none exists. In this case, Congress’s arbitrary seven-year time limit appears, not in the text of the amendment itself, but in the resolving clause of the 1972 session’s joint resolution. By electing to place the time limit there, Congress made it merely advisory. A time limit created unilaterally by Congress cannot stand in the way of an amendment that has satisfied all requirements of Article V.

In addition, the brief asserts that the district court erred in finding that the Archivist's refusal to publish the ERA makes no difference. While it may have no *legal* effect, publication by the Archivist *is* important. Among other things, the Archivist's refusal to comply with his statutory duty to publish the amendment will stand in the way of efforts to press for revision of state statutes that continue to discriminate on the basis of sex.

"The ERA Coalition is proud to sign on to the amicus brief in support of the lawsuit the Attorneys General of Illinois, Nevada, and Virginia have filed. We need to remedy the systemic causes of sex inequality in this country, and you don't get more systemic than the Constitution. This is where it all begins, and the Equal Rights Amendment can help end it," stated Carol Jenkins, President and CEO of the ERA Coalition/Fund for Women's Equality. She added, "There is no time limit on equality."

"The ERA Coalition is glad to be able to present the views of the women's movement in this case. All the constitutional requirements for an amendment have been met, and the failure of the Archivist to publish the ERA is a dereliction of duty that we hope the court will address. Women have waited far too long for constitutional equality, a fundamental human right recognized in other constitutions around the world," said Jessica Neuwirth, co-founder and President Emerita of the ERA Coalition.

Represented on the brief are advocates who have been fighting for the ERA for decades, as well as others who are new to the fight. They include national feminist groups, advocates for immigrant women and women of color, religious organizations, and LGBTQ+ advocates.

Among these groups is the Feminist Majority Foundation, founded and led by Eleanor Smeal. "This amazing amicus brief reviews the nearly 100 years of feminist struggle for the ERA as well as its need, relevance, and popularity today. The diverse array of women's rights, civil rights, social justice, professional, and equality groups representing millions of people throughout the nation signing on to the brief also speaks volumes for the ERA's long-overdue need," she said.

"The need for the Equal Rights Amendment has never been greater," said Winston partner Linda Coberly. "Women are consistently underrepresented, underpaid, and subjected to a national epidemic of domestic and sexual violence. The ERA has already met all constitutional requirements for an amendment, and the Archivist's refusal to publish it runs counter to the will of people and is an inappropriate intrusion by the Executive Branch into the ratification process."

Winston & Strawn is a proud and active supporter of the ERA and the present-day efforts to make it part of the Constitution. The firm's involvement began in 2017 when Winston joined the revived campaign for ratification in Illinois. The firm has since hosted events, coordinated activists, published legal research, led webinars, submitted witness slips, and testified at a legislative hearing. After Illinois' historic ratification in 2018, Winston joined the national ERA Coalition as a Lead Organization—the first law firm to do so. Linda Coberly continues to serve as chair of the Coalition's Legal Task Force, a group of constitutional scholars working toward ratification.

Support for the ERA from Big Law has never been stronger, as women in leadership positions continue to increase momentum for adoption through a series of supporting briefs. Prominent partners at a series of major law firms are expected to file briefs today.

Winston & Strawn LLP is an international law firm with 15 offices located throughout North America, Asia, and Europe. More information about the firm is available at www.winston.com.

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