



American Medical Women's Association
The Vision and Voice of Women in Medicine since 1915

President Joseph R. Biden Jr.
The White House
1600 Pennsylvania Avenue, N.W.
Washington DC 20500

September 7, 2022

Dear Mr. President:

Thank you for your leadership in the wake of the *Dobbs v. Jackson Women's Health Organization* ("Dobbs") decision.¹ As women physicians and future physicians, AMWA is over 10,000 strong and we bring a unique perspective to the challenges that patients, state officials and healthcare providers are currently facing.

We write today to urge you to direct the acting U.S. Archivist to publish the duly ratified Equal Rights Amendment ("ERA"), the 28th Amendment to the U.S. Constitution. The ERA is the most powerful tool available today to protect reproductive rights, guarantee equality for all Americans, and stop the erosion of the fundamental rights of women and LGBTQIA+ persons.

The mission of the American Medical Women's Association ("AMWA") is to advance women in medicine, advocate for equity, and ensure excellence in health care. To that end, AMWA's has created a Reproductive Health Coalition which meets regularly to discuss and address the myriad of issues arising from the active assault on comprehensive reproductive health care services, including abortion, contraception, management of miscarriages, life threatening pregnancy complications, rheumatologic disorders, and other general health care services in the wake of the "Dobbs" decision.

Abortion providers are in a precarious situation. Physicians and other healthcare providers may be subject to criminal penalties for performing abortion services. Conversely, the very same providers may face medical malpractice claims for failing to provide abortion services. These issues are further complicated by an increasingly complicated and ever-changing patchwork of laws that vary by state, and even by county. Medical professionals are being forced to make these decisions in a split second while patients are in crisis, and sometimes hemorrhaging. These working conditions will result in reproductive health care deserts. Residents in training are now stating they will not practice in states that curtail abortion care. Medical students will not choose OB-GYN as a specialty. Skilled OB-GYN's are retiring early. Patients will suffer for lack of access to care.

Fortunately, the Equal Rights Amendment can save reproductive rights for all Americans, regardless of where they live, ensure access to quality healthcare, and alleviate the pressure on the healthcare professionals and systems within which they operate.

Across the country, state ERAs and equal protection provisions have been used successfully to defeat abortion restrictions. However, without the fully ratified ERA published in the U.S. Constitution, the

¹ *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. ____ (2022)



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Court in *Dobbs* was free to ignore the ERA and equal protection provisions, which would protect reproductive freedom and bodily autonomy.

In New Mexico and Connecticut, state ERA provisions have been used to invalidate bans on Medicaid coverage for abortion services.²

Most recently, the Utah abortion ban triggered by the *Dobbs* decision was stayed twice based on the argument that the ban violates the ERA and equal protection provisions contained in the Utah Constitution.³ In addition, New York, recognizing the significance of constitutional equality for all Americans and its impact on the right to bodily autonomy and reproductive health services (including abortion), quickly took the first step towards strengthening their state constitution to include an ERA, a process that will not be completed until 2024.

Without a federal framework, these fundamental rights are subject to political whims. Unfortunately, this is only the beginning. More abortion restrictions are being proposed, and at least eight states have bans that are not being enforced pending the outcome of ongoing legal challenges. We need the ERA to ensure that all Americans have access to reproductive care, as well as to guarantee equality for all.

As you will recall, on March 22, 1972, the ERA was sent to the states for ratification following overwhelming passage in the House and Senate. By 1978, 35 states had ratified the ERA. When Nevada and Illinois became the 36th and 37th states to ratify the ERA in 2017 and 2018, respectively, the U.S. Archivist accepted and certified the ratifications.

When Virginia became the 38th and final state needed for ratification on January 27, 2020, the U.S. Archivist was required by statute (1 U.S.C. §106b) to certify and publish the ERA as the 28th Amendment to the U.S. Constitution. However, the ERA has yet to be published in the Constitution because the Trump Administration blocked publication,⁴ instead inserting its political views into the constitutional amendment process. The singular role of the Executive Branch is the ministerial act of receiving ratifications and publishing a revised Constitution.⁵ In fact, and in direct support of our request,

² In *New Mexico Right to Choose/NARAL v. Johnson*, 975 P.2d 841 (N.M. 1998), the New Mexico Supreme Court noted that “women’s biology and ability to bear children have been used as a basis for discrimination against them,” and ruled that a Medicaid coverage ban for abortion services violated the Equal Rights Amendment in the New Mexico Constitution. Similarly, in *Doe v. Maher*, 40 Conn. Supp. 394 (1986), the Connecticut Supreme Court held that the state’s Medicaid coverage ban for abortion services violated the Connecticut Constitution’s Equal Rights Amendment and Equal Protection provisions. Equal protection provisions in the Alaska and Arizona constitutions have been used to successfully defeat Medicaid coverage bans for abortion services and, in the case of Alaska, a requirement that parents be notified in advance of an abortion by a minor. See *In Planned Parenthood of the Great NW v. State*, 375 P.3d 1122 (Alaska 2016); *State v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904 (Alaska 2001); *Simat Corp. v. Arizona Health Care Cost Containment Sys.*, 56 P.3d 28 (Arizona 2002).

³ Complaint in *Planned Parenthood Association of Utah v. State of Utah*, et al, may be found online at https://www.plannedparenthood.org/uploads/filer_public/57/ca/57ca44fc-624b-4f2a-9eba-3d2824563df5/complaint_for_declaratory_and_injunctive_relief.pdf. Utah has sought leave from the Supreme Court of Utah to challenge the preliminary injunction.

⁴ U.S. Department of Justice, Office of Legal Counsel, “Ratification of the Equal Rights Amendment” (Jan. 6, 2020) (online at <https://www.justice.gov/olc/file/1235176/download>).

⁵ 1 U.S.C. §106b.



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a 2022 opinion from your Administration⁶ reinforces that the Executive Branch has no role in determining the validity of a constitutional amendment.

Consequently, the states of Virginia, Illinois and Nevada have brought suit against the U.S. Archivist, an Executive Branch employee, to compel publication of the ERA. The Trump Administration defended the U.S. Archivist, arguing the ERA is invalid due to an expired deadline and attempted rescissions by five states, rendering publication inappropriate.

Hundreds of constitutional scholars, including Professor Laurence Tribe⁷ and the Honorable Russ Feingold,⁸ agree that the ERA has met all constitutional requirements, is the 28th Amendment, and must be published. Similarly, the State of California has passed resolutions (1) calling upon Congress and your Administration to acknowledge that the ERA has been duly ratified and is currently the 28th Amendment to our constitution,⁹ and (2) ordering a review of California law for compliance with the ERA and requesting required legislative changes to ensure such compliance.¹⁰ Similar resolutions have been proposed by state legislatures in Ohio¹¹ and Illinois.¹²

Unfortunately, as seen in the recent *Dobbs* decision, without ERA publication, courts are free to make decisions in an America where all citizens have not been granted equal rights. This constitutional absence of equal rights impacts comprehensive reproductive health services (including abortion), contraception, same sex marriage, interracial marriage, violence against women, and so much more.

More specifically, the ERA would cement gender equality in the Constitution and provide the tools necessary to protect women from violence, provide equal opportunity for advancement, eliminate

⁶ U.S. Department of Justice, Office of Legal Counsel, "Effect of 2020 OLC Opinion on Possible Congressional Action Regarding Ratification of the Equal Rights Amendment" (Jan. 26, 2022) (online at <https://www.justice.gov/olc/file/1466036/download>).

⁷ Letter from Professor Laurence Tribe to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Mar. 22, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/ERA%2050th%20Anniversary%20%28Prof.%20Tribe%20Letter%29.pdf>).

⁸ Letter from the Honorable Russ Feingold to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Mar. 21, 2022) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/ERA%2050th%20Anniversary%20%28Russ%20Feingold%20Letter%29.pdf>).

⁹ Senate Joint Resolution No. 12 (2022) (online at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SJR12)

¹⁰ Senate Concurrent Resolution No. 94 (2022) (online at https://leginfo.legislature.ca.gov/faces/billPdf.xhtml?bill_id=202120220SCR92&version=20210SCR9297CHP).

¹¹ See <https://ohiohouse.gov/members/monique-smith/news/rep-monique-smith-introduces-resolution-to-certify-the-equal-rights-amendment-111101>.

¹² Illinois HJ0094 (online at <https://ilga.gov/legislation/fulltext.asp?DocName=&SessionId=110&GA=102&DocTypeld=HJR&DocNum=0094&GAID=16&LegID=141312&SpecSess=&Session=>)



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conscious and unconscious bias, and close the gender pay gap, which, for physicians, amounts to a staggering \$2 million on average less paid to women over a 40-year career.¹³

As a strong supporter of women and the LGBTQIA+ community, and a fierce advocate for equality and democracy, we urge you to end the Trump Administration's anti-equality crusade and direct the acting U.S. Archivist to fulfill her statutory duty to publish the ERA as the 28th Amendment without further delay. It would be one of the most meaningful successes in Presidential history and a huge win for our entire nation.

Sincerely,

A handwritten signature in blue ink that reads 'Theresa Rohr-Kirchgraber, MD'. The signature is fluid and cursive, with the 'MD' at the end being more distinct.

Theresa Rohr-Kirchgraber, MD, FACP, FAMWA

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¹³ See

https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2021.00461?utm_medium=press&utm_source=mediaadvisory&utm_campaign=december2021issue&utm_content=whaley.