



Written by [Michael Tennant](#) on January 20, 2025

## Biden Declares ERA “the Law of the Land” Just Before Leaving Office

Then-President Joe Biden announced Friday — fewer than 72 hours before leaving office — that the long-dead Equal Rights Amendment (ERA) is now “the law of the land.”

“Today, I affirm the Equal Rights Amendment to have cleared all the necessary hurdles to be added to the U.S. Constitution *now*,” Biden [said](#) at a press conference. “The Equal Rights Amendment is the law of the land *now*. It’s the 28th Amendment to the Constitution *now*!”

Earlier in the day, Biden issued a statement to the same effect, as did then-Vice President Kamala Harris. Harris said:

Equality is a fundamental promise of our democracy. That is why the Equal Rights Amendment belongs in our Constitution. It makes our nation stronger, and it is the law of the land because the American people have spoken in states across our nation.



AP Images

## Ripped From the Deadlines

Yes, the American people *have* spoken — but not in favor of the ERA. George Washington University law professor Jonathan Turley observed in a [Fox News column](#):

Biden’s last-minute declaration ... requires not just the departure from the constitutional process, but also from reality. Despite running as the champion of democracy, Biden is simply brushing aside the fact that the ERA was not ratified, as made clear by the Justice Department, various judges, and his own archivist just weeks ago.

Congress passed the ERA in 1972 and sent it to the states for consideration with the proviso that it had to be ratified by three-fourths of them by 1979 to be added to the Constitution.

The amendment utterly failed to meet those conditions. The requisite 38 states did not ratify it by the deadline. One that did ratify it, South Dakota, conditioned its ratification on the other states’ meeting the deadline. Four states rescinded their prior ratifications.

Having failed to achieve their objective, Democrats in Congress and then-President Jimmy Carter simply moved the goalposts, giving states another three years to ratify the ERA. During that time, however, no states did so, and a federal court ruled that Congress had no authority to extend the deadline.



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## TransgendERA?

Nevertheless, in recent years, some Democrat-run states have ratified the amendment, with Virginia, in 2020, becoming the 38th state to do so. That prompted Democrats to call for its addition to the Constitution even though the three-fourths milestone was reached four decades too late and arguably was not reached at all given the rescinded ratifications.

Why are Democrats, especially of the far-Left variety, so keen to enact the ERA? The amendment, which seems merely to place women on an equal legal footing with men, is actually quite radical. As conservatives have been [warning](#) since the 1970s, the ERA could be used to legalize abortion nationwide; to deprive women of protection against sexual assault; and to force women to share bathrooms, locker rooms, and dormitories with men.

Heritage Foundation legal scholar Thomas Jipping told the [Daily Caller](#) in 2023:

The ERA has always been pushed by those who want to eliminate sexual distinctions. As legislatures and courts eliminated discriminatory laws between men and women, the ERA was attached to a different agenda that includes gay rights[,] and warnings about its impact on women's sports, etc., were raised more than 50 years ago. It is not a coincidence, therefore, that today's gender warriors strongly back the ERA.

## Archival Correction

National Archivist Colleen Shogan, a Biden appointee, has steadfastly refused to add the ERA to the Constitution. To bolster her case, she has [cited](#) court decisions along with 2020 and 2022 opinions from the Justice Department's Office of Legal Counsel "that the ratification deadline established by Congress for the ERA is valid and enforceable."

After Biden's Friday announcement, the National Archives reiterated its position that the ERA did not meet the requirements for adoption.

"This is a long standing position for the Archivist and the National Archives," a National Archives spokesperson told the [Daily Caller](#). "The underlying legal and procedural issues have not changed."

## Vanity Fare

That has not stopped some leftists from acting as if Biden's declaration had written the ERA into the Constitution. Harvard Law School professors Laurence Tribe and Kathleen Sullivan authored a [column](#) exulting, "The ERA Is Now Law!" Georgetown Law professor Victoria Nourse wrote a [letter](#) lauding Biden's "carefully considered decision" that "brings the White House in line with the legal academy and profession" — never mind the fact that Nourse [told](#) Congress in 2021 that "the President has no role" in the amendment process. And Senator Kirsten Gillibrand (D-N.Y.) [urged](#) women to sue to overturn state abortion restrictions on the basis that the ERA is now binding.

Others, however, are not so sure. [Politico](#) reported:

But what matters, legal experts say, is what Biden didn't do: He didn't order the archivist of the United States to formally publish the amendment. And he didn't direct the Justice Department's Office of Legal Counsel to withdraw its written opinion that the deadline for



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ratification expired long ago.

“The legal opinion from the executive branch says, ‘Don’t do it,’ but Biden is saying, ‘Do it.’ I don’t see how that can be enforced,” said John F. Kowal, a vice president at the Brennan Center for Justice who has written about legal issues surrounding the ERA.

Turley maintained that an order to the archivist “would quickly collapse under judicial review.”

Biden’s toothless declaration, he quipped, “was a participation trophy given to activists that lacked any substance or basis.”



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