

# The Equal Rights Amendment – 28<sup>th</sup> Amendment

Status – August 16, 2023

## Background:

The ERA was written and introduced in Congress in 1923. Congress would not approve the ERA for 50 years. And when they did in 1972, they assigned an arbitrary seven-year deadline to ratify the ERA. Meanwhile, the first 18 Amendments to the Constitution had no deadline on ratification and the most recent 27<sup>th</sup> “Madison Amendment” was ratified after 203 years! From 1972 until 1977, the ERA met with tremendous success garnering the support of 35 states and 72% of Americans. Ohio ratified the amendment in 1974 making it the 33<sup>rd</sup> state to ratify. The states asked Congress for an additional seven years but were only granted three. Nevada ratified in March 2017, Illinois in 2018 and Virginia in 2020 bringing [the number of ratifications to 38](#). Two different types of ERA legislation have been introduced in the current session of Congress: One to remove the arbitrary time limit that constitutional lawyers have said is unconstitutional. The second legislation is to request that President Biden order the Archivist to publish the ERA.

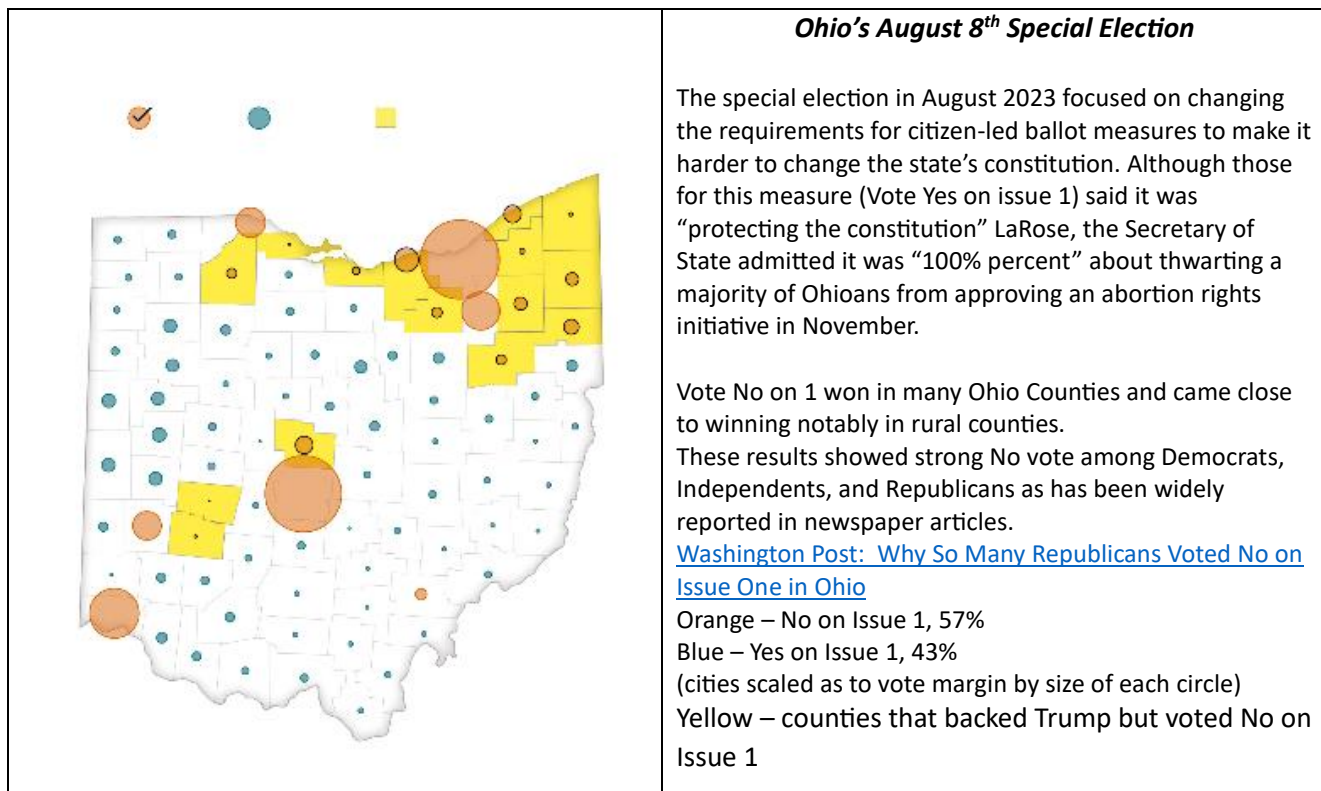
## Implementation of the Equal Rights Amendment:

There are 3 aspects of the effort to advance the implementation of the Equal Rights Amendment.

- Legislative Branches & Ballot Measures – Political Organizing, Ballot Measures and Congressional Activities
- Executive Branch – Publication of the 28<sup>th</sup> Amendment
- Judicial Branch – Enforcement of the 28th Amendment

## Political Organizing, Ballot Measures, and Congressional Activities

In Ohio (and many conservative states), Lake Research and other research has polling showing that voters view repro rights and equal rights as the same issue, and these voters are single issue voters. Polls have shown that *85% of Americans support abortion rights as well as the Equal Rights Amendment.*



## Congressional Activities

In Congress, there are 2 sets of Resolutions:

- 1) [SJ Res 4](#), [HJ Res 25](#) – removing the “deadline” in the Preamble
- 2) [HJ Res 82](#), [SJ Res 39](#) – ordering the Archivist to Publish the ERA

Options – we would like to discuss feedback on options for moving forward, including

- 1) Removing the “deadline” in the Preamble -- Co-sponsor HJ Res 25
- 2) Ordering the Archivist to Publish the ERA -- Co-sponsor HJ Res 82 – More momentum exists for HJ Res 82 than 25 and questions exist about using Resolutions as the courts will rule on whether Congress has a role at this point.
  - [Four Top Feminist Lawyers Discuss the Status Of the ERA On Its Centennial in 2023](#)
- New idea -- Letter to Biden from Congress advising President Biden to [Order the Archivist to Publish the Equal Rights Amendment – the 28<sup>th</sup> Amendment to the US Constitution](#)

## Publication of the 28<sup>th</sup> Amendment – the Equal Rights Amendment

[Perspective from the latest article by constitutional lawyers:](#)

Key excerpts from article:

*“President Biden is the only person or entity that has the authority to order the Archivist, Colleen J. Shogan, to publish it, because he has a Constitutional duty (Article II, §3) to “Take Care” that 1 USC §106b is faithfully executed. During her Senate confirmation hearing, she said she would need an order to publish the ERA, but both the Trump and Biden Departments of Justice issued misleading Office of Legal Counsel Opinions stating there were still prerequisites for the Archivist to act. To be clear, there are none!”*

...

*“The Biden Administration claims it supports women’s rights to control their own reproductive choices; however, President Biden knew in advance of the Dobbs decision, and after the Alito opinion was leaked on May 3, 2022, he could have prevented them from being decimated in Dobbs with an Executive Order or one phone call, telling the Archivist to publish the ERA. But he did not.”*

...

*“The failures of President Biden to publish the ERA before the Dobbs opinion and of the Center for Reproductive Rights to submit the ERA as legal authority in Dobbs resulted in the Supreme Court overturning Roe v. Wade. The Dobbs decision did much more than decimate reproductive rights. It obliterated the right to privacy, and arguably substantive due process, which is why Dobbs will likely be used to destroy many more rights, including LGBTQ rights.”*

In summary,

*President Biden should trust that [the 85% of Americans who support abortion rights](#), [the 85% of likely voters who support the Equal Rights Amendment](#), and the [71% of Americans who support gay marriage](#) will be grateful after he has the archivist publish the ERA, and that we will work assiduously to re-elect him, because [gratitude is stronger than fear](#).*

## Enforcement of the 28<sup>th</sup> Amendment – the Equal Rights Amendment

The [recent ruling from the US Federal District Court of Appeals for the DC Circuit](#) only ruled against the Mandamus Action, not against the [ERA 28<sup>th</sup> Amendment being Ratified, In Effect, and Enforceable when there is Standing and Harm](#).

Enforcement of the 28<sup>th</sup> Amendment, the Equal Rights Amendment, is currently occurring in a few family court cases working through the appeals process in state courts according to Equal Rights Amendments (with varying legal scrutiny standards) that are incorporated into state constitutions.

Legal scholars and constitutional lawyers agree that when such cases reach SCOTUS, the rulings will be subject to strict scrutiny according to the 28<sup>th</sup> Amendment – the Equal Rights Amendment. It is expected that the 28<sup>th</sup> Amendment will be enforced by SCOTUS as Ratified, In Effect, and Enforceable when there is Standing and Harm.

These family court cases are characterized by protective parents seeking relief in state forums when domestic violence has occurred against mothers and children. There is a family court crisis across all states and jurisdictions failing to protect abused mothers and abused children in family courts in child custody and protection order cases.

There are potentially many other types of cases where Enforcement of the 28<sup>th</sup> Amendment will occur including LGBTQ+ rights, marriage equality, equal pay for equal work, religious liberties, and more.

[Constitutional lawyers assert](#) that abortion rights are assured by the 28<sup>th</sup> Amendment, and if President Biden had ordered the Archivist to publish the ERA then the Dobbs Decision would not have occurred. Court cases relying on the ERA are advancing inevitably toward SCOTUS. Given the results shown above of the Ohio Issue 1 vote, [candidates and parties need to understand](#) that voters are angry that their rights are perverted into election year issues for politicians and fundraising. Will the Democrats gain votes by politicizing the ERA, or will the Republicans gain cover by blaming President Biden for not ordering the Archivist to publish the ERA?

*“Simply invoking support for Roe — or promising to pass a federal law, like the Women’s Health Protection Act, to codify protection for abortion, [may not be enough to motivate voters](#) to turn out for Democrats. It’s one thing to turn voters out for abortion when a single initiative will decide a great deal about access in a state. It’s another to be motivated to vote for a candidate when it’s unclear what kind of tangible difference they could make, and there are other issues at play.”*

The implementation of the 28<sup>th</sup> Amendment – the Equal Rights Amendment – will protect all people from sex discrimination across all states and jurisdictions with an equal level of protection (strict scrutiny) achieving equal justice.

Questions to Consider:

- What path do you think would be the most effective, efficient, and successful to finally implement the Equal Rights Amendment in the U.S. Constitution?
- Who needs to be involved and in what capacity?
- What role(s) would you consider helping implement the Equal Rights Amendment?