

Attorney General Raoul Presents Oral Argument In Lawsuit To Ensure Equal Rights Amendment Is Recognized As 28th Amendment

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CHICAGO – Attorney General Kwame Raoul and Nevada Attorney General Aaron Ford presented an oral argument today in their lawsuit asking the federal government to acknowledge the Equal Rights Amendment (ERA) as the 28th Amendment to the U.S. Constitution. The ERA guarantees equal rights for all Americans regardless of their sex.

In the argument before the U.S. Court of Appeals for the District of Columbia, Solicitor General Jane Notz of the Illinois Attorney General's office represented Illinois and Nevada and contended that the federal archivist should be ordered to certify and publish the ERA in the official U.S. Constitution. According to Raoul and Ford, a lower court overlooked the special role that Article V of the Constitution gives states in the amendment process, improperly discounted the actions of their state legislatures in ratifying the Equal Rights Amendment, and gave too much weight to a seven-year ratification deadline that Congress included in its language proposing the amendment. Raoul and Ford initiated the lawsuit in 2020, but a lower-court judge dismissed it in March 2021 – a decision the attorneys general are now asking the appellate court to reverse.

“As we continue our fight to recognize the Equal Rights Amendment as the 28th Amendment to the Constitution amid a national assault on women's rights, I am struck that Congress first considered an equal rights amendment nearly 100 years ago,” Raoul said. “One hundred years is far too long to wait for equality under the law. I have a daughter who intends to practice law, and the Constitution she will pledge to protect should fully protect her as well. Until the United States Constitution reflects our society's commitment to not go backward, none of us should stop fighting for equality.”

“It is far beyond time to stop the stalling and codify the rights that we all share - regardless of sex - but that have not always been honored in our country,” Ford said. “I am disappointed that we have to fight to recognize the equal rights of women, but as long as I am Attorney General, we will not stop until these rights are codified in our Constitution. By inscribing these rights in our nation's most important document, we will protect our country and our citizens against any future actions that would take us backward.”

“We are grateful to the Attorneys General for pursuing this important litigation. The ERA has met all the constitutional requirements for an amendment, and the Archivist has a statutory duty to publish it. Publication will give official notice to all 50 states that the ERA is now the Twenty-Eighth Amendment,” said Zakiya Thomas, President and CEO of the ERA Coalition. “The Coalition is pursuing all possible avenues to recognize and implement the ERA—including not only this lawsuit but also action by Congress.”

The ERA states that “quality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.” It provides an explicit guarantee of

protection, enshrined in the U.S. Constitution, against discrimination based on sex. Although an equal rights amendment was considered as early as 1923, Congress did not propose the ERA to the states until 1972, when it passed with broad, bipartisan support. By 1977, 35 states had ratified the ERA. Illinois ratified the ERA in 2018. When combined with Nevada's ratification in 2017 and Virginia's ratification in 2020, a total of 38 states have now ratified the ERA, passing the constitutional threshold required for it to become a part of the Constitution. Nonetheless, the United States archivist, who is responsible for publishing and certifying constitutional amendments, has declined to publish and certify the ERA.

Raoul and Ford's lawsuit is supported by amicus briefs filed by approximately 86 business groups, 85 advocacy groups, 19 states and the District of Columbia, former state legislators, and constitutional law scholars.

Solicitor General Jane Elinor Notz, Public Interest Division Deputy Chief Kathryn Hunt Muse, Public Interest Counsel Elizabeth Roberson-Young and Assistant Attorney General Priyanka Gupta are handling the case for Raoul's office.