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Thanks to Jean Sweeney of Rethinking Eve for sharing.

PROPOSED EXECUTIVE ORDER FOR PRESIDENT BIDEN TO DIRECT THE ARCHIVIST TO PUBLISH THE EQUAL RIGHTS AMENDMENT

Executive Order _____ of May ____, 2022

Publishing the Ratified Equal Rights Amendment as the 28th Amendment to the United States Constitution

By the authority vested in me as President by the U.S. Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy.

Advancing gender equity and equality is a matter of human rights, justice, and fairness. It is also a strategic imperative that reduces poverty and promotes economic growth, increases access to education, improves health outcomes, advances political stability, and fosters democracy. The full participation of all people—including women and girls—across all aspects of our society is essential to the economic well-being, health, and security of our Nation and of the world. It is therefore the policy of my Administration that every person should be treated with equality under the laws of the United States and of every state therein and should face no discrimination on the basis of sex.

Since the founding of our country, some 245 years ago with the Declaration of Independence, women have been subjected to invidious discrimination inflicted by the laws of this country and its several states. Because equal rights for women have not been explicitly written in the U.S. Constitution, women have continued to suffer legal, societal, and personal indignities and discrimination, physical and sexual assaults that often go unreported or un-redressed in criminal courts, unequal pay for equal work as men, lack of parity in the economic, professional, educational and political spheres, and unequal treatment and bias in the legal system. Women have been deprived of the full benefits of the Equal Protection Clause of the Fourteenth Amendment. Without the Equal Rights Amendment published in the U.S. Constitution, women are subjected to a lesser standard of judicial scrutiny, than the strict scrutiny standard the new 28th Amendment will provide, meaning that women have heretofore suffered more discrimination without the benefits of the Equal Rights Amendment.

It is also the policy of my Administration that the January 6, 2020 Opinion, of the Office of Legal Counsel, on the Ratification of the Equal Rights Amendment, Opinions of the Office of Legal Counsel of the Department of Justice, 44 Op. O.L.C. (released January 8, 2020), was improvidently and wrongly decided, because the deadline in the Equal Rights Amendment was placed, not in its text, but solely in the Preamble, which unconstitutionally interfered with the States' rights under Art. V and the 10th Amendment of the U.S. Constitution. Being unconstitutional, the deadline is void ab initio.

Three-fourths of the states have ratified the Equal Rights Amendment, in accordance with Art. V of the U.S. Constitution, with the last three states being Nevada and Illinois, in 2017 and 2018, respectively, and the thirty-eighth, the Commonwealth of Virginia, which ratified the Equal Rights Amendment on January 27, 2020, which date is and shall be known as the date the Equal Rights Amendment was fully ratified.

It is the policy of my Administration to prevent and to combat discrimination on the basis of sex, and to do so by publishing the Equal Rights Amendment forthwith as the 28th Amendment to the U.S. Constitution.

On March 24, 2020, the Archivist of the United States recorded Virginia's ratification with a notation that said ratification occurred after the void deadline expired. On the same date, the Archivist added the same notation to the previously recorded ratifications of Nevada and Illinois. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION: EQUAL RIGHTS AMENDMENT, LIST OF STATE RATIFICATION ACTIONS (<https://www.archives.gov/files/foia/pdf/era-list-of-state-ratification-actions-03-24-2020.pdf>).

It is the policy of my Administration that the Archivist of the United States, shall remove the aforementioned notations, and per 1 U.S.C. § 106b, that the Archivist of the United States shall forthwith record that the Equal Rights Amendment was duly ratified on January 27, 2020.

Section 2. Specific Provisions.

(a) Consistent with the policies set forth in Section 1 of this Order, the Archivist of the United States shall remove the aforementioned notations, with regard to the void deadline, to the ratifications of Nevada, Illinois, and Virginia.

(b) Consistent with the policies set forth in section 1 of this Order, the Archivist of the United States shall publish the Equal Rights Amendment forthwith as the 28th Amendment to the U.S. Constitution.

Section 3. General Provisions.

(a) Except as stated herein-above and as are the natural and legal consequences of the publication of the Equal Rights Amendment as the 28th Amendment to the U.S. Constitution, nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Archivist of the United States or the Office of Legal Counsel.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.