

Steve Marshall
Alabama Attorney General



For **press** inquiries only, contact:

Amanda Priest (334) 322-5694

William Califf (334) 604-3230

Page 1 of 2

Attorney General Marshall Urges White House to Not Add Long-Expired Equal Rights Amendment to Constitution

(Montgomery, Ala) – Alabama Attorney General Steve Marshall has sent a letter to President Joe Biden and Archivist of the United States Colleen Shogan, urging them to uphold the rule of law by adhering to constitutional procedures regarding the expired Equal Rights Amendment (ERA) and honoring the litigation agreement the Archivist reached with Alabama, Louisiana, and South Dakota related to the ERA.

The letter comes in response to reports of a pressure campaign seeking to have President Biden direct the Archivist to certify and publish the 1972 ERA as the 28th Amendment to the Constitution. The Attorneys General highlighted that multiple court decisions and every judge who has considered the issue have found that the ERA expired decades ago.

The letter underscores two key points:

1. **Legal Precedent and Expiration of the ERA:** The ERA, proposed by Congress in 1972, included a seven-year deadline for ratification by three-fourths of the states. After intense national debate, only 35 states ratified the amendment, falling short of the 38-state threshold. Moreover, five states – Idaho, Kentucky, Nebraska, Tennessee, and South Dakota – rescinded their ratifications before the deadline. As a result, the ERA expired in 1979. Notably, even Justice Ruth Bader Ginsburg, a staunch supporter of the ERA, acknowledged that "that proposed amendment is no more" and would need to be reintroduced to the states for ratification.
2. **Binding Agreement the Archivist reached with Alabama, Louisiana, and South Dakota:** Following a 2020 lawsuit filed by Alabama, Louisiana, and South Dakota, the Archivist of the United States agreed not to certify the ERA absent a court order or guidance from the Department of Justice (DOJ). Under the terms of a binding agreement, the Archivist may not certify the ERA until at least 45 days after a DOJ announcement that certification is authorized. As of now, no such announcement has been made, and the earliest possible certification date would be January 30, 2025, even if an announcement were issued today.

"The Constitution is our nation's fundamental law, and its amendment process is designed to reflect the will of the people. The ERA of 1972 failed to gain the necessary support from the states before its deadline, and no court has since held that the deadline can be retroactively disregarded. Efforts to pressure the President and Archivist to circumvent the rule of law and sneak the ERA into the Constitution ignore this reality and any attempt to falsely alter the Constitution would be tantamount to a betrayal of our constitutional order by the deep state," Attorney General Marshall said. "This kind of extremism was rejected by Americans in November. The Archivist should follow the law and leave the Constitution alone."



The letter also emphasized the potential policy implications of an unlawfully certified ERA. Drawing from interpretations of state-level ERAs, they warned that it could mandate changes to policies on women's sports, women's shelters, state prisons, and college housing.

The letter also highlights past legal rulings that have upheld the validity of ratification deadlines. The U.S. District Court for the District of Columbia dismissed a lawsuit by three states seeking to compel the Archivist to certify the expired ERA. The court ruled that "the deadline for ratifying the ERA ... expired long ago" and that the plaintiffs' claims would disrupt "Congress's long-accepted practice of declaring ratification conditions in a proposing resolution's preamble." The U.S. Court of Appeals for the D.C. Circuit subsequently upheld this decision in a unanimous 3-0 ruling.

Alabama was joined in this letter by its co-plaintiffs in the 2020 lawsuit, Louisiana and South Dakota.

You can read the full letter [here](#).