

1 SENATE JOINT MEMORIAL 10

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 A JOINT MEMORIAL

11 REQUESTING THE ADMINISTRATION OF PRESIDENT JOSEPH R. BIDEN, JR.  
12 TO PUBLISH WITHOUT DELAY THE EQUAL RIGHTS AMENDMENT AS THE  
13 TWENTY-EIGHTH AMENDMENT TO THE CONSTITUTION OF THE UNITED  
14 STATES.

15  
16 WHEREAS, in 1972, the ninety-second United States  
17 congress, at its second session, in both houses, by a  
18 constitutional majority of two-thirds, adopted the following  
19 proposition to amend the United States constitution:

20 "JOINT RESOLUTION RESOLVED BY THE HOUSE OF REPRESENTATIVES  
21 AND SENATE OF THE UNITED STATES OF AMERICA IN CONGRESS  
22 ASSEMBLED (TWO-THIRDS OF EACH HOUSE CONCURRING THEREIN), That  
23 the following article is proposed as an amendment to the  
24 Constitution of the United States, which shall be valid to all  
25 intents and purposes as a part of the Constitution when

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1 ratified by the legislatures of three-fourths of the several  
2 States within seven years from the date of its submission by  
3 the Congress:

4 "ARTICLE \_\_\_\_\_

5 Section 1. Equality of rights under the law shall not be  
6 denied or abridged by the United States or by any State on  
7 account of sex.

8 Section 2. The Congress shall have the power to enforce,  
9 by appropriate legislation, the provisions of this article.

10 Section 3. This amendment shall take effect two years  
11 after the date of ratification.""; and

12 WHEREAS, Article 5 of the United States constitution sets  
13 forth a two-step amending procedure; and

14 WHEREAS, the first step of the Article 5 amending  
15 procedure is the proposal of an amendment either by two-thirds'  
16 vote of both houses of congress or by a convention called by  
17 application of two-thirds of the states; and

18 WHEREAS, the second and final step of the Article 5  
19 amending procedure is ratification of an amendment by  
20 three-fourths of the states; and

21 WHEREAS, the United States constitution does not limit the  
22 time for states to ratify an amendment; and

23 WHEREAS, the United States constitution does not grant  
24 congress the unilateral authority to limit the time for states  
25 to ratify amendments; and

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1           WHEREAS, a time limit on state ratifications of amendments  
2 is a substantive change to the United States constitution; and

3           WHEREAS, to have full force and effect, any substantive  
4 change to the United States constitution, such as a time limit  
5 on ratification, must be within the text of an amendment, where  
6 it can also be approved by states as part of each of the two  
7 steps of the Article 5 amending procedure: a proposal step and  
8 a ratification step; and

9           WHEREAS, in the proposal step for the Equal Rights  
10 Amendment, the time limit on state ratifications was only in  
11 the preamble section of the resolution by congress and not  
12 within the text of the amendment presented to states for state  
13 approval; and

14           WHEREAS, in the ratification step, the states ratified  
15 only the text of the Equal Rights Amendment; and

16           WHEREAS, a time limit was only approved by congress in  
17 1972, but not subsequently approved by the states and is thus  
18 without force or effect; and

19           WHEREAS, in comparison, in 1978, a two-thirds' vote of  
20 both houses of congress passed the District of Columbia Voting  
21 Rights Amendment and included a time line within the text of  
22 the amendment offered to states for ratification; and

23           WHEREAS, the time limit for the District of Columbia  
24 Voting Rights Amendment ended before completion of the second  
25 and final step of ratification of the amendment by

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1 three-fourths of the states; and

2 WHEREAS, because the time limit was within the text of the  
3 District of Columbia Voting Rights Amendment, that time limit  
4 had full force and effect and that amendment expired in 1985;  
5 and

6 WHEREAS, in comparison, the text of the twenty-first and  
7 twenty-second amendments to the United States constitution both  
8 include a time line within the text of each amendment, and such  
9 time lines were ratified by three-fourths of the states within  
10 the agreed time line; and

11 WHEREAS, in 1789, by two-thirds' vote of each house of the  
12 first congress, the so-called Madison Amendment relating to  
13 compensation of members of congress completed the proposal step  
14 of Article 5; and

15 WHEREAS, approximately two hundred three years later, the  
16 Madison Amendment completed the ratification step of Article 5  
17 through ratification by three-fourths of the states; and

18 WHEREAS, in 1992, having met the strict two-step  
19 requirements of Article 5, the Madison Amendment was published  
20 by the United States archivist during the administration of  
21 President George H.W. Bush as the twenty-seventh amendment to  
22 the United States constitution; and

23 WHEREAS, following publication of the Madison Amendment,  
24 congress affirmed the Madison Amendment as the twenty-seventh  
25 amendment to the United States constitution; and

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1           WHEREAS, as of January 27, 2020, three-fourths of the  
2 states have ratified the Equal Rights Amendment; and

3           WHEREAS, unlike the District of Columbia Voting Rights  
4 Amendment, the Equal Rights Amendment does not have a time  
5 limit in its text where it would be of full force and effect;  
6 and

7           WHEREAS, in contrast to the Madison Amendment, which took  
8 two hundred three years to ratify, the Equal Rights Amendment  
9 took a mere forty-eight years to ratify; and

10          WHEREAS, the text of Article 5 of the United States  
11 constitution gives the states the power of ratification, not  
12 rescission; and

13          WHEREAS, Samuel Johnson's dictionary of 1755 defines  
14 "ratify" as "to confirm; to settle"; and

15          WHEREAS, *Bouvier's Law Dictionary* of 1856, considered to  
16 be the first American legal dictionary, states that a  
17 ratification, once done, "cannot be revoked or recalled"; and

18          WHEREAS, James Madison wrote in a July 20, 1788 letter to  
19 Alexander Hamilton that ratification is "in toto and for ever";  
20 and

21          WHEREAS, the various attempts throughout history to  
22 rescind the ratifications of the United States constitution or  
23 its amendments, including the fourteenth, fifteenth and  
24 nineteenth amendments, have never been honored; and

25          WHEREAS, the Equal Rights Amendment now meets the strict

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1 requirements of Article 5 of the United States constitution to  
2 be added as the twenty-eighth amendment;

3 NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE  
4 STATE OF NEW MEXICO that the legislature urge the  
5 administration of President Joseph R. Biden, Jr. to publish  
6 without delay the Equal Rights Amendment as the twenty-eighth  
7 amendment to the United States constitution; and

8 BE IT FURTHER RESOLVED that the legislature urge congress  
9 to pass a joint resolution affirming the Equal Rights Amendment  
10 as the twenty-eighth amendment to the United States  
11 constitution; and

12 BE IT FURTHER RESOLVED that the legislature call on other  
13 states to join in this action by passing the same or similar  
14 resolutions; and

15 BE IT FURTHER RESOLVED that copies of this memorial be  
16 transmitted to the president and vice president of the United  
17 States, the New Mexico congressional delegation and the United  
18 States archivist.