

**STATEMENT FOR THE RECORD FROM  
ORGANIZATIONS OF THE #FAITH4ERA CAMPAIGN**

**THE COMMITTEE ON THE JUDICIARY  
U.S. SENATE**

**AT A HEARING ENTITLED  
“The Equal Rights Amendment: How Congress Can Recognize Ratification  
And Enshrine Equality in Our Constitution”  
FEBRUARY 28, 2023**

Chairman Durbin and Ranking Member Graham, and Members of the Committee, thank you for convening this hearing on Senate Joint Resolution 4, the bipartisan resolution that affirms the Equal Rights Amendment to be part of the U.S. Constitution, now that it has met the rigorous requirements of Article V. We are pleased to submit this statement for the record, emphasizing the urgency and importance of recognizing the ERA as the 28th Amendment.

The #Faith4ERA campaign is a national, nonpartisan, interfaith coalition of diverse religious organizations and leaders who support the Equal Rights Amendment. We are led by a dozen national organizations and joined by hundreds of individual faith leaders, including Buddhist, Catholic, Ecumenical, Evangelical, Jewish, Muslim, Protestant, and Sikh leaders from at least forty-four states. Collectively, our organizations represent over 400,000 constituents nationwide.

While our religious traditions are rich in diversity, we share a profound regard for the whole of humanity and a steadfast hope for greater justice and human flourishing, in this nation and beyond. We prayerfully anticipate the day when the equal human dignity and rights of all people, irrespective of sex or gender, will be respected. The Equal Rights Amendment is essential to this vision. We are thus eager to see this Congress recognize the ratification of the Equal Rights Amendment, and to affirm that gender equality is truly the law of this land.

The U.S. Constitution is the highest statement of our nation’s principles and values. To affirm gender equality within this revered document is to affirm and respect the deeper truth of equal human dignity and worth of all people. This reform is a necessary and vital step toward correcting for the wrongful subjugation, oppression, and degradation of women and other gender minorities. As people of faith, we believe that recognizing the ERA as the 28th Amendment is fundamentally the right thing to do—from the perspective of American democratic values, human rights ideals, and the conviction that all people are equal in dignity and worth before God.

Yet today, over half of all Americans still hold unrequited aspirations of meaningful equality, freedom, and safety from rights violations. Women and LGBTQ+ Americans continue to petition for equal citizenship stature and equal protection under the law. Without the ERA, our constitutional framework has proven inadequate to overcome the myriad forms of injustice that

women suffer disproportionately in this country, including widespread sexual and domestic violence, pregnancy and pay discrimination, needlessly high rates of maternal mortality, and more. These harms affect not only the immediate victims but also their families and communities. As religious leaders, we often bear witness to or hear first-hand testimonies of the pain and suffering caused by gendered violence and the feminization of poverty—problems the ERA would empower Congress and the courts to address.

We urge Congress to pass Senate Joint Resolution 4, to affirm that the ERA is indeed valid as part of the Constitution now that it has met the requirements set forth in Article V, including passage by two-thirds of Congress and ratification by three-fourths of states.

### Time Is No Barrier to Equality

We believe there should be no time limit on equality. The arbitrary seven-year time limit imposed by Congress on ERA ratification was manifestly unjust and unconscionable from the outset, given the centuries of gender-based injustice which the ERA is needed to rectify. The principle of full inclusion and equality for all Americans is ultimately a far weightier concern than the questionable procedural objections raised by ERA opponents. Our ethical commitment to the ERA as a matter of human rights and equal justice moves us to support the consummation of this reform through all legal means.

Leading constitutional law scholars such as Harvard professors Laurence H. Tribe and Martha Minow, American Constitution Society President Russ Feingold, and many others have detailed why the ERA remains viable and valid. The attorneys general of Illinois and Nevada argue in the federal case of *Illinois v. Ferriero* that the ERA is valid and should be published. There is clearly a compelling, good-faith legal argument that this reform should be consummated.

Against this backdrop, we understand that a vote for or against SJ Res 4 to recognize the ratification of the ERA is a vote for or against equal citizenship and human rights.

### Violence Against Women

The urgent national problem of violence against women impacts one in three U.S. women,<sup>i</sup> and this country needs constitutional reform to address it. In *U.S. v. Morrison*, the Supreme Court struck down the civil rights remedy of the Violence Against Women Act (VAWA), finding Congress lacked the constitutional authority to create a civil remedy.<sup>ii</sup> This decision meant that Christy Brzonkala, who was a freshman in college when she was raped, could not sue her assailants under VAWA, and it left all survivors without a crucial federal avenue to seek justice.

Consider the tragic case of Jessica Lenahan, whose three young daughters were abducted by Jessica's violent, unstable husband, in violation of a court restraining order against him.<sup>iii</sup> Despite a mandatory arrest law for this type of violation, police ignored Jessica's repeated pleas for help. As a result, the girls were murdered by gunshot wounds to the head. The Supreme Court held in *Castle Rock v. Gonzalez* that Jessica had no right to protection and the police bore no responsibility for the murders. It denied her justice entirely.

These tragic cases are currently the federal word on violence against women, leading a human rights expert to observe, "there is little protection afforded to domestic violence victims."<sup>iv</sup> In the words of legal scholar Catharine MacKinnon, "Women have been shut out of the legal system on this issue."<sup>v</sup> The ERA would grant Congress the further constitutional authority to pass much-needed laws to protect women against pervasive, sometimes lethal sexual and intimate partner violence.<sup>vi</sup> In a country where intimate partner homicide against women is on the rise, claiming four lives each day, this reform is urgent.<sup>vii</sup>

### Pregnancy Discrimination

Pregnant workers have no constitutional right against workplace discrimination, and they can lose wages, their job, or their child without a legal remedy.<sup>viii</sup> The Supreme Court ruled that pregnancy discrimination is not discrimination "on the basis of sex" under the Equal Protection Clause because women are not denied protection available to men.<sup>ix</sup> Justice Brennan dissented, saying "surely it offends common sense"<sup>x</sup> to fail to treat pregnancy discrimination as sex-based.

Congress responded by passing the Pregnancy Discrimination Act (PDA); however, the Court's interpretation of the PDA allows many employers to refuse basic accommodations to pregnant employees, like carrying water bottles, extra bathroom breaks, and lighter lifting duties.<sup>xi</sup> Pregnant workers also suffer because the U.S. is the only high-income country that does not guarantee any paid maternity leave,<sup>xii</sup> contributing to the country's egregious status as having the highest rate of maternal mortality in the developed world.<sup>xiii</sup> Many pregnant women in physically strenuous, low-paying jobs face a choice between physical health or financial stability.

The ERA would provide the basis for "fundamental and substantive" equality, giving women equal regard in view of their biological capacities for childbearing rather than neglecting mothers' needs based on an unfair comparison to a male norm.<sup>xiv</sup> The ERA should be a priority for any lawmaker concerned about mothers' well-being and ability to care for their children.

### Pay Discrimination

Women in the United States are consistently paid less than their male counterparts for the same work. A working woman today can expect over her career to earn \$500,000 to \$800,000 less than men in similar jobs.<sup>xv</sup> The pay gap contributes to women having higher rates of poverty: one

study found that women’s poverty rate would be cut in half if the gender pay gap was eliminated.<sup>xvi</sup> Mothers are especially hard hit by the disparity in pay, with around a quarter of single mothers living in poverty.<sup>xvii</sup> One study found that “if single working mothers received equal pay ... two-thirds would receive an increase in their pay, and their ‘very high poverty rate’ would also be cut in half.”<sup>xviii</sup>

The court-imposed standard for proving pay discrimination on the basis of sex is extraordinarily high, essentially requiring an explicit, stated policy that uses gender as a factor for pay. In the case of *Wal-Mart v. Dukes*, female Wal-Mart employees sued the company for sex discrimination under Title VII, providing statistical evidence of men being paid more and promoted more often than women. The Supreme Court held that even if the allegations of sex discrimination were true the employees would not have a claim because while Wal-Mart may have allowed a culture of sex discrimination, it did not have an identifiable policy of discrimination. This demonstrates the power corporations enjoy to promote a discriminatory culture.<sup>xix</sup> Likewise, the Equal Pay Act creates a high burden for plaintiffs challenging discrimination and allows employers to avoid accountability with the most pretextual of defenses. Employers can claim defenses such as merit, seniority, productivity, and a catchall, “any factor other than sex.” Employers can also use prior pay of employees as a defense, leading to a situation in which “[e]mployers can continue paying women less than men because other employers have paid women less than men.”<sup>xx</sup> The ERA would provide a new standard to guide the Court’s approach to pay discrimination, with potential to overcome the broad interpretation the Court has given to employers’ defenses.<sup>xxi</sup>

The ERA will empower Congress to enact legislation that safeguards against sexual and domestic violence, pregnancy discrimination, unequal pay, child marriage, female genital cutting, and other forms of gender-based injustice.<sup>xxii</sup> For example, the federal civil remedy in the Violence Against Women Act (VAWA)<sup>xxiii</sup> and the 1996 statute criminalizing female genital cutting,<sup>xxiv</sup> both of which were struck down for lack of constitutional foundation, would have been supported by the ERA.

### Respect for Human Rights Requires Full Equality

The United States has made numerous, legally binding commitments to respect the principles of equality and non-discrimination, which are foundational to human rights. Every major human rights instrument our nation has endorsed, including the landmark 1948 Universal Declaration of Human Rights (UDHR), obligates our government to forsake discrimination based on sex, as well as discrimination based on race, religion, and other factors.<sup>xxv</sup>

Eighty-five percent of countries worldwide explicitly protect women’s rights or prohibit gender discrimination in their constitutions, but the United States is not among them.<sup>xxvi</sup> The lack of an

Equal Rights Amendment undercuts U.S. leadership and credibility on women's human rights globally.

As people of faith, proponents of human rights, and believers in American democracy, we stand united in urging Congress to recognize the ratification of the Equal Rights Amendment. This is the honorable and ethical course of action, to respect the equal human dignity and worth of over half of our nation's citizens. It will serve to safeguard women and all Americans against innumerable injustices and harms, and in this way advance the common good of our nation.

Thank you for your serious attention to this vital and urgent concern.

### **Participating Organizations**

**Justice Revival®** is a diverse, inclusive Christian human rights organization. Our mission is to inspire, educate, and mobilize U.S. Christian communities to fulfill the call to justice by standing in solidarity with the oppressed and defending the human rights of all. We provide pioneering Christian education on human rights to churches and seminaries across the country. Justice Revival also serves as convener of the #Faith4ERA campaign for the Equal Rights Amendment.

We support constitutional equality for women and for all Americans based on our faith convictions. We understand through the sacred text of Genesis that humankind is made in the divine image irrespective of gender, and that women, like men, possess sacred and equal human dignity and worth. (Gen. 1:27), which is the foundation for human rights.

Jesus of Nazareth, whose life and teaching serve as our highest ethical example, welcomed and included women in his ministry, and offered them respect that far exceeded the culture of his time. Women played important leadership roles in the early Christian movement as apostles, priests, and martyrs; over the centuries they have been counted among the saints, reformers, and defenders of our faith.<sup>xxvii</sup> Today, women serve as ministers, pastors, deacons, and bishops through many of our traditions.<sup>xxviii</sup>

At the heart of Christian faith is an ethical injunction to love one's neighbor as oneself. Jesus named this as part of the "Great Command," inextricably intertwined with love and devotion to God. Theologian Soren Kierkegaard explained that love of neighbor should lead inevitably to full equality:

"The neighbor is the absolutely true expression for human equality. In case everyone were in truth to love his neighbor as himself, complete human equality would be attained. Everyone who loves his neighbor in truth, expresses unconditionally human equality."<sup>xxix</sup>

To continue to deny women full equality under the U.S. Constitution is to continue to perpetuate a fundamental injustice—one that offends the widely shared belief that all human people are equal in dignity and worth, and thus deserving of equal human rights. The ERA is indispensable to a just society where human rights are respected and upheld. We urge Congress to take swift action to affirm this vital reform.

**Sojourners** is an ecumenical Christian organization. For over 50 years our mission has been to articulate the biblical call to social justice, inspiring hope and building a movement to transform individuals, communities, the church, and the world. Sojourners is a source of inspiration and resources for millions of people, including clergy, seminarians, and journalists in secular and faith-based media. We help people put their faith in action through mobilizing campaigns, educational resources, events, coalitions, national faith networks, and our print and online publications. Our readers, activists, networks, and partners span the breadth of the diversity of the church, including Catholics; mainline Protestants; evangelicals; Black, Asian American, and Latina churches; and people who consider themselves spiritual but not religious. Sojourners regularly reaches more than 300,000 faith-inspired clergy and lay leaders in all 50 states, and we reach millions more through our website, social media, and earned media in both secular and faith-based outlets.

From our beginnings, Sojourners has been inspired by the Genesis 1:27 commitment to imago dei, the core Judeo-Christian belief that every person is made in the image and likeness of God, which means that each person possesses inherent dignity and worth. Sojourners is grounded in protecting human dignity and demonstrating a particular concern for the most vulnerable, principles exemplified in Catholic social teaching, in the historic Black Church experience, in immigrant churches, and the best of our progressive church revival history. We believe every person deserves equal protection under the law. We urge Congress to recognize the ratification of the Equal Rights Amendment.

**The Women's Alliance for Theology, Ethics, and Ritual (WATER)** in Silver Spring, Maryland, is a non-profit educational organization made up of justice-seeking people who use feminist religious insights and values to promote social change.

Our more than two thousand colleagues come from a range of religious traditions and no faith whatsoever. A unifying element in our Alliance is the firm belief, whether religious or otherwise, that women and non-binary people are full and equal human beings with all rights accorded to men. Therefore, our commitment to the Equal Rights Amendment is unfaltering, and has been part of our social change agenda since our founding in the 1980s.

At the spirited push for the ERA in June 1982, religious women were among those who

fasted, lobbied, and demonstrated for the ERA in Springfield, Illinois. A Catholic nun, Loretto Sister Maureen Fiedler, and Mormon leader Sonia Johnson were two of seven women who spent 37 days fasting to express the centrality of the ERA for women's well-being. Feminist religious colleagues walked the halls of Congress explaining to legislators that equality was an article of faith in most religious traditions. After the vote, the women and their supporters gathered for an interfaith prayer service committing themselves to work until the job was done. It is up to the Congress to officially finish the work that was 'completed' so long ago.

**Religions for Peace USA** is the largest and most broadly-based representative multi-religious forum in the United States, with participants from about 50 religious communities, representing each of the major faith traditions. The organization identifies shared commitments among religious communities in the United States, enhances mutual understanding among these communities, and facilitates collaboration to address issues of common concern. Our national member organizations are listed at <https://rfpusa.org/executive-council-council-of-presidents/>.

Our multi-religious organization works only on issues based on faith values deeply held and widely shared by our member religious communities. One of the issue we focus on is gender equity, including equal rights for women. For this reason, our organization has endorsed and advanced the Equal Rights Amendment.

**Freedom Road, LLC** is a national consulting and influencing group based in Philadelphia, Pennsylvania. We are dedicated to shrinking the narrative gap in our nation and in the church. We consult, coach, train and design experiences that help institutions in multiple sectors to do justice in just ways. The Narrative Gap, as coined by Lisa Sharon Harper, is the distance between the stories that we tell ourselves about ourselves and the truth of how we got here and what it will take to make things right. Narrative shapes worldview, as a result it shapes the world.

Our base of more than 100,000 social media followers represent a range of Christian faith, primarily evangelical or post-evangelical. Freedom Road's "Ally Tour" 2022 spent one week reflecting on the biblical mandate for women's equality and the need for recognition that the ERA has met all requirements to be adopted as an Amendment to the U.S. Constitution. Thousands of women faith leaders across the U.S. engaged in profound conversation on the ERA and vowed to support it.

In addition, December 2017 to January 2018, Freedom Road helped lead the "Silence Is Not Spiritual" hashtag campaign in the wake of the #MeToo movement. This campaign laid foundations for more than 6,000 evangelical churches and leaders to enter the #MeToo/#ChurchToo movement. Each one pledged to create protected space for women to share their stories of violence and space to heal. The Equal Rights Amendment would create constitutional boundaries to protect against women's pain and subjugation, by strengthening the legal response to violence. In so doing, The Constitution would finally align with the biblical

declaration that all people are created in the image of God and are therefore worthy of equal protection of the law.

**Muslims for Progressive Values (MPV)** was founded in 2007 to build a worldwide progressive Muslim movement. Through this movement we advocate for an Islam that protects the human rights of all, including the rights of women and LGBTQIA individuals. We also advocate for the separation of religion and state, freedom of expression, and freedom of religion or belief. In advancing these human rights values, MPV provides a progressive voice to these issues by participating in civil discourse, engaging with the media and government, public educational forums as well as cultural events, and by partnering with both Muslim and non-Muslim progressive organizations.

The basis of all of our advocacy efforts is rooted in Islamic values, which, are inherently inclusive and oriented around human rights for all. The primary source we turn to for our understanding of how Islam decrees gender equality is the Qur'an, which explicitly states "Any believer, male or female, who acts righteously, will enter Paradise and will not suffer the least bit of injustice" (4:124). As Muslims, we are commanded to follow the directive of God, who according to this verse from the Qur'an treats all genders as equals, meaning that Muslims too must do the same. Within Islam's holy text and the supporting sources of Islamic jurisprudence, the Hadith and the Sunnah, numerous values that support equal rights among genders emerge, including *insaf* (equality) and *karamah* (the equal dignity of both men and women). It is these values from which MPV advocates for equal rights, for we cannot achieve equal dignity for genders if we do not have equal rights.

As the oldest progressive Muslim organization in the United States, MPV has been at the forefront of pulling the American Muslim community back to the egalitarian values practiced by Prophet Muhammad (PBUH) and his companions. Among these values are the right for Muslim women to live a life free from violence both within and outside of the home. Far too often Muslim men misinterpret and manipulate a single verse in the Qur'an, verse, 4:34, to mean that hitting their wives as punishment for disobedience is acceptable in Islam. Domestic violence across the Muslim community is still prevalent and without the guarantees the Equal Rights Amendment offer women, this violence and injustice can be expected to continue.

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<sup>i</sup> See American College of Obstetricians & Gynecologists. *Intimate partner violence*. Committee Opinion No. 518. *Obstet Gynecol* 2012; 119:412–7. <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/02/intimate-partner%20violence#:~:text=Research%20confirms%20the%20long%2Dterm,in%20the%20United%20States%201>. U.S. women face similar odds of workplace sexual assault. See Center for Talent Innovation. *What #MeToo Means for Corporate America*. Key Findings. 2018. <https://coqual.org/wp-content/uploads/2020/09/CoqualWhatMeTooMeansKeyFindings090720.pdf>. U.S. women have a one in five chance



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of experiencing rape or attempted rape in their lifetimes. See Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, CENTER FOR DISEASE CONTROL AND PREVENTION, [https://www.cdc.gov/violenceprevention/pdf/nisvs\\_report2010-a.pdf](https://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf).

<sup>ii</sup> Sally F. Goldfarb, *The Supreme Court, The Violence Against Women Act, and the Use and Abuse of Federalism*, 71 *FORDHAM L. REV.* 57, 69 (2002).

<sup>iii</sup> *Town of Castle Rock, Colo. v. Gonzales*, 545 U.S. 748, 754 (2005).

<sup>iv</sup> *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, UNITED NATIONS HUMAN RIGHTS COUNCIL, [https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.26.Add.5\\_AEV.pdf](https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.26.Add.5_AEV.pdf) (last accessed Jun. 29, 2021).

<sup>v</sup> Catharine A MacKinnon, *Toward a Renewed Equal Rights Amendment: Now More Than Ever*, *EQUAL HARVARD JOURNAL OF LAW & GENDER* 37 (2013-2014) at 576.

<sup>vi</sup> See JESSICA NEUWIRTH, *EQUAL MEANS EQUAL* 69 (2015).

<sup>vii</sup> Since 2014, the number of women killed by an intimate partner increased from 3 women per day to nearly 4 women per day. Carol A Lambert, MSW, *The Number of Women Murdered by a Partner Is Rising*, *PSYCHOLOGY TODAY* (September 3, 2019). <https://www.psychologytoday.com/us/blog/mind-games/201909/the-number-women-murdered-partner-is-rising>.

<sup>viii</sup> See Jessica Silver-Greenberg & Natalie Kitroeff, *Miscarrying at Work: The Physical Toll of Pregnancy Discrimination*, *N.Y. TIMES*, <https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html> (last accessed July 22, 2021).

<sup>ix</sup> See JESSICA NEUWIRTH, *EQUAL MEANS EQUAL* 38-39 (2015).

<sup>x</sup> *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976).

<sup>xi</sup> See Dina Bakst, Elizabeth Gedmark, and Sarah Brafman, *Long Overdue: It is Time for the Federal Pregnant Workers Fairness Act*, *A Better Balance: THE WORK AND FAMILY LEGAL CENTER*, <https://www.abetterbalance.org/wp-content/uploads/2019/05/Long-Overdue.pdf> (last accessed July 23, 2021) (“In an extensive review of post-*Young* pregnancy accommodation cases conducted for this report, A Better Balance found that in over two-thirds of cases, despite the new *Young* standard, courts held employers were permitted to deny pregnant workers accommodations under the PDA”); Lara Grow, *Pregnancy Discrimination in the Wake of Young v. UPS*, 19 *U. PA. J. L. & SOC. CHANGE* 133, 135 (2016) (“[T]he Court’s new formulation nevertheless fails to clarify how a plaintiff identifies the appropriate comparator . . . Moreover, following *Young*, it remains unclear precisely how dramatic the differential between an employer’s treatment of pregnant and nonpregnant workers must be for a plaintiff to successfully prove that the employer’s policy significantly burdens pregnant employees”).

<sup>xii</sup> Joia Crear-Perry, *Paid Maternity Leave Saves Lives*, *BLOOMBERG OPINION*, <https://www.bloomberg.com/opinion/articles/2021-06-24/paid-maternity-leave-would-help-relieve-america-s-maternal-mortality-crisis> (last accessed July 2, 2021).

<sup>xiii</sup> Roosa Tikkanen, Munira Z. Gunja, Molly FitzGerald, Laurie Zephyrin, *Maternal Mortality and Maternity Care in the United States Compared to 10 Other Developed Countries*, *THE COMMONWEALTH FUND*, <https://www.commonwealthfund.org/publications/issue-briefs/2020/nov/maternal-mortality-maternity-care-us-compared-10-countries> (last accessed July 2, 2021).

<sup>xiv</sup> NEUWIRTH, *supra* note 9, at 49; see also Neil S. Siegel & Reva B. Siegel, *Struck by Stereotype: Ruth Bader Ginsburg on Pregnancy Discrimination as Sex Discrimination*, 59 *DUKE L. J.* 771 (2010) (argues the ERA would move the Supreme Court away from the framework they adopted in *Geduldig*, which holds pregnancy discrimination does not constitute sex discrimination).

<sup>xv</sup> Stephanie Bornstein, *Equal Work*, 77 *MD. L. REV.* 581, 599 (2018).

<sup>xvi</sup> *Id.*

<sup>xvii</sup> Robin Bleiweis, Diana Boesch, and Alexandra Cawthorne Gaines, *The Basic Facts About Women in Poverty*, *CENTER FOR AMERICAN PROGRESS*, <https://www.americanprogress.org/issues/women/reports/2020/08/03/488536/basic-facts-women-poverty/> (last accessed July 29, 2021).

<sup>xviii</sup> Bornstein, *supra* note xv, at 599.

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<sup>xix</sup> See Brief for Respondents at 21-22, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) (No. 10-277); JESSICA NEUWIRTH, *EQUAL MEANS EQUAL* 23 (2015).

<sup>xx</sup> NEUWIRTH, *supra* note ix, at 19. In *Kouba v. Allstate Insurance Company*, a woman was paid \$175 less a month than her male colleagues, but Allstate claimed that using prior salary as a factor for current pay was a “factor other than sex,” and therefore, “a legitimate reason under the law to pay women differently than men.” *Id.* at 18. The Ninth Circuit ruled in Allstate’s favor. *Id.* at 18-19. See also Bornstein, *supra* note xv, at 606-07.

<sup>xxi</sup> The Court has said that it is not their job to “roll aside all history” and “take over the job of leveling out centuries of discrimination.” NEUWIRTH, *supra* note ix, at 31. The ERA, however, could provide the basis for the Court to address discrimination. *Id.* The Court has interpreted employers’ defenses so broadly “that it has effectively become a loophole that allows some employers to successfully defend discriminatory pay practices that sound impartial or gender neutral on the surface.” Robin Blewis, *The Equal Rights Amendment: What You Need to Know*, CENTER FOR AMERICAN PROGRESS, <https://www.americanprogress.org/issues/women/reports/2020/01/29/479917/equal-rights-amendment-need-know/> (last accessed Aug. 19, 2021). The ERA “could strengthen arguments to close this loophole.” *Id.*

<sup>xxii</sup> Section 2 of the ERA provides, “The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.” *Proposed Amendment to the United States Constitution*, H.R.J. Res. 208, 92d Cong., 2d Sess., 86 Stat. 1523 (1972). As the House Judiciary Committee Report recognized in 2020, “[T]he ERA would empower Congress to enforce its provisions through legislation.” From the House Judiciary Committee Report “Removing the Deadline for the Ratification of The Equal Rights Amendment.” H.R. Rep No 116-378, 116th Congress, at 6 (2020), available at <https://www.congress.gov/116/crpt/hrpt378/CRPT-116hrpt378.pdf>.

<sup>xxiii</sup> See *United States v. Morrison*, 529 U.S. 598 (2000).

<sup>xxiv</sup> See *United States v. Nagarwala*, 350 F. Supp. 3d 613, 630-31 (2018).

<sup>xxv</sup> Universal Declaration of Human Rights, Dec. 8, 1948, G.A. Res. 217A (III), at art. 12 [hereinafter UDHR], at art. 1, 2, 7, 10, 16, 23.

<sup>xxvi</sup> World Policy Analysis Center, *Constitutional Equal Rights Across Gender and Sex*, World Policy Center (2020), <https://www.worldpolicycenter.org/sites/default/files/Fact%20Sheet%20%20-%20Constitutional%20Equal%20Rights%20Across%20Gender%20and%20Sex.pdf>.

<sup>xxvii</sup> See, e.g., Elizabeth Gillan Muir, *A Women’s History of the Christian Church: Two Thousand Years of Female Leadership* (2019); Karen J. Torjesen, *When Women Were Priests: Women’s Leadership in the Early Church & the Scandal of their Subordination in the Rise of Christianity* (1993); Eldon Jay Epp, *Junia: The First Woman Apostle* (2005).

<sup>xxviii</sup> See Muir, *supra* note xxvii, at 345-362.

<sup>xxix</sup> Duncan B. Forrester, *On Human Worth: A Christian Vindication of Equality* 97-98 (2001).