

# MEMORANDUM

## Government Relations Report

**To: NOW National Board Members**

**From: Jan Erickson, Director, Government Relations**

**Date: March 7, 2021**

**Late Breaking News:** Judge Rudolph Contreras of the federal district court for the District of Columbia, ruled against a case brought by the Attorneys General of Nevada, Illinois and Virginia which asked the Archivist of the United States to certify and publish the Equal Rights Amendment. The judge ruled Friday, March 5, that the three states that ratified in recent years were too late in making their approval to have those recognized towards full ratification by the required 38 states. Judge Contreras wrote, “[A] ratification deadline in a proposing resolutions introduction is just as effective as one in the text of a proposed amendment. Plaintiffs’ ratifications came after both the original and extended deadlines that Congress attached to the ERA, so the Archivist is not bound to record them as valid.”

For more discussion of the ERA, read on.

### TOPLINE LEGISLATION

(Note: Democrats are moving major legislation quickly through Congress so this information is current only as of March 6.)

#### **SAVING DEMOCRACY - A Major Civil Rights Initiative – For the People Act, H.R. 1**

The U.S. House of Representatives passed **H.R. 1 – For the People Act** on March 3 – it was hailed as the most important set of democracy reforms approved since the Watergate era. The vote was 220 to 212, mostly along party lines, but two Democrats, **Ron Kind** of Wisconsin and **Jared Golden** of Maine, voted against. One confused Republican says he voted for the bill by mistake. The narrow margin for Democrats on H.R. 1 shows that even though they hung on to their majority in the House, the margin shrank from 235 in 2018 to 220 currently. Republicans flipped 15 seats in the 2020 elections.

**President Joe Biden** issued a statement earlier in the week which said,

H.R. 1 contains a number of provisions to protect the fundamental right to vote and make it more equitable and accessible for all Americans to exercise that right. H.R. 1 would reform redistricting to curtail the gerrymandering that distorts our democracy and would modernize our elections and make them more secure. Consistent with the Administration’s commitment to racial equity, the bill would also expand the tools

available to the Justice Department to enforce the voting rights of all Americans.

H.R. 1 would also reform our campaign finance system to amplify the voices of the public, not the powerful, and establish stronger ethics rules for all three branches of government. These provisions would ensure that government works for the people and guard against corruption across the highest levels of government.

H.R. 1 was adopted in the previous Congress but was not taken up in the Republican-controlled Senate. The legislation addresses a range of political ills that have plagued the country for decades and it is essential to adopt into law if we are going to pull this nation from the brink. The infusion of dark money, the impact of Donald Trump's lies and attacks on Democratic norms, as well as the Republican tilt to the extreme Right Wing, White Supremacists and conspiracy believers has further endangered our democracy. Proof of the threat to our democratic system is the fact that large numbers of Republicans are still claiming that the election was stolen. A total of 147 Republicans, House and Senate, voted against accepting the Electoral College result, plus a substantial proportion of Republicans are reported to believe Trump's big lie. These facts forebode a dangerous weakening of representative government.

**ACTION NEEDED:** It is critically important that H.R. 1 is passed by the Senate and signed into law by Pres. Biden. Without these reforms, we face another ten years of Republican refusals to pass progressive measures and an expansion of voter suppression in the states. We need 60 votes in the Senate for H.R. 1 and all other bills sent over from the House. It may be possible that the more moderate senators, **Lisa Murkowski (AK), Susan Collins (ME), Mitt Romney (UT), Ben Sasse (NE), Richard Burr (NC), Bill Cassidy (LA)** and **Pat Toomey (PA)** who voted for convicting Trump will vote for H.R. 1 – but they must hear from their constituents SOON! Retiring **Sen. Rob Portman (OH)** is another possibility, but this gets the vote to only 58. Several of the Republican women might be considered: Sens. **Shelley Moore Capito** of West Virginia and **Deb Fischer** of Nebraska? But they need to hear from their constituents, ASAP!

### **Recovering from COVID – The American Rescue Plan Act of 2021, H.R. 1319**

A long awaited and desperately needed package of proposals that addresses needs created by the COVID 19 Pandemic was approved by the House on Feb. 27 by a vote of 219 to 212. It is being debated in the Senate this week. Millions of unemployed Americans and their families will be aided by the \$1.9 trillion infusion of financial aid. This is legislation that should have been adopted last fall when it was clear that those who had lost jobs and income were in dire need of assistance. The **\$900 billion package**, grudgingly agreed to by the Republican Senate leadership in December, provided a round of stimulus checks and jobless benefits – but it was not nearly enough help and expires in mid-March. All the more important for the Senate to pass this package now! A majority of the public, including Republicans, support this critically-important omnibus legislation.

According to a concise description on Congress.gov of the \$1.9 trillion **American Rescue Plan Act:**

This bill provides additional relief to address the continued impact of COVID-19 (i.e., coronavirus disease 2019) on the economy, public health, state and local governments, individuals, and businesses.

Specifically, the bill provides funding for

- agriculture and nutrition programs, including the Supplemental Nutrition Assistance Program (SNAP, formerly known as the food stamp program);
- schools and institutions of higher education;
- child care and programs for older Americans and their families;
- COVID-19 vaccinations, testing, treatment, and prevention;
- mental health and substance-use disorder services;
- emergency rental assistance, homeowner assistance, and other housing programs;
- payments to state, local, tribal, and territorial governments for economic relief;
- multiemployer pension plans;
- small business assistance, including specific programs for restaurants and live venues;
- programs for health care workers, transportation workers, federal employees, veterans, and other targeted populations;
- international and humanitarian responses;
- tribal government services; and
- scientific research and development.

The bill also includes provisions that

- raise the federal minimum wage to \$15 an hour by 2025;
- extend unemployment benefits and related services;
- provide a maximum recovery rebate of \$1,400 per eligible individual;
- expand and otherwise modify certain tax credits, including the child tax credit and the earned income tax credit;
- provide premium assistance for certain health insurance coverage; and
- require coverage, without cost-sharing, of COVID-19 vaccines and treatment under Medicaid and the Children's Health Insurance Program (CHIP).

As the bill moved over to the Senate, the Democrats agreed to several changes, including a more modest level of family income for eligibility to receive financial assistance. And, importantly, the proposed \$15 minimum wage increase (raised incrementally over five years from the current \$7.25/hour) was removed from the Rescue package. Because the American Rescue Plan Act was incorporated in a **Continuing Resolution** (CR) to keep the government funded, the question of whether the \$15 wage would violate a rule that the CR would not increase government spending. The nonpartisan **parliamentarian** ruled that the \$15 minimum wage increase cannot remain in the bill. **Senate Majority Leader Charles E. Schumer** (D-NY) accepted the ruling and vowed to not give up the fight. Several Republican senators, notably **Sen. Mitt Romney**, said that they might support a \$10 minimum wage. Whether he can get nine other senators to agree is questionable since the proposal would undoubtedly be filibustered. Several critics said that the Democrats should have fired the parliamentarian and gotten one who would agree – as the Republicans have done in the past. But the Democrats are just too darned nice to do that.

On Friday, eight Democratic senators, made a very public vote against the minimum wage \$15 increase. It may just be 'political theater', but the lawmakers who cast a no vote, surprisingly included: **Sens. Jean Shaheen, Maggie Hassan, Tom Carper, Angus King, Joe Manchin, Chris Coons, John Tester** and **Kyrsten Sinema**. [This is probably not the end of the \\$15 federal minimum wage hike](#) as President Biden has pledged to keep pushing for it.

Activists are encouraged to reach out to both their senators to urge they vote to increase the federal minimum wage.

### **The minimum wage's true value is closer to \$24 due to the effects of inflation and gains in productivity! Two-thirds of minimum wage workers are women.**

It is important to note that women have been seriously disadvantaged by the pandemic: more than 2.3 million have left the workforce since February 2020, dropping their labor participation rates to levels last seen in 1988. According to a report by the **National Women's Law Center**, all of the jobs lost in December were held by women, [December-Jobs-Day.pdf \(nwlc.org\)](#) Many of those women stayed home to help children with virtual education and care for children while day care and schools are closed or only partly open. Some observers speculate that some of those jobs women held may disappear; the long range impact on women's earnings is troubling. Right now, a majority of those households with at least one unemployed parent is likely anxiously awaiting help from the Biden-Harris Administration's American Rescue Plan.

### **The Equality Act Passes House – Awaits Senate Action**

The Equality Act ( H.R. 5 - **Rep. David Cicilline**), which passed the House on February 25, would incorporate in federal statutes provisions that would prohibit discrimination against LGBTQIA+ persons in employment, housing, credit, education, public accommodations, federally funded programs and jury service.

Even though last year the Supreme Court ruled in *Bostock v. Clayton County* that Title VII of the Civil Rights Act of 1964 protects employees against discrimination because of their sexual orientation or gender identity, we still need to make sure that those protections apply to other important aspects of life.

The bill expands the definition of public accommodations to include places or establishments that provide (1) exhibitions, recreation, exercise, amusement, gatherings, or displays; (2) goods, services, or programs; and (3) transportation services. The bill allows the Department of Justice to intervene in equal protection actions in federal court on account of sexual orientation or gender identity. The bill prohibits an individual from being denied access to a shared facility, including a restroom, a locker room, and a dressing room, that is in accordance with the individual's gender identity.

Polls show that 70 percent of Americans support the Equality Act. In fact, the House passed this legislation last Congress, but the Republican-controlled Senate refused to take it up. The bill has strong support from Democrats and we hope to see Republican members join in voting for it. More details appear in the [statement issued tby NOW President Christian F. Nunes](#).

There are efforts by conservative activists around the country to pressure Republican senators to oppose this legislation. But we remain optimistic: there is a good chance that we can see the Senate adopt the Equality Act, but we need to make our voices heard.

### **George Floyd Justice in Policing Act – An Important Step Towards Accountability**

The House adopted the **George Floyd Justice in Policing Act (H.R. 1280 – Rep. Karen Bass, D-CA)** on March 3 by a party line vote of 220 (D) and 212 (R). This was the second time

that the House has voted for this important legislation. The Senate in the 116<sup>th</sup> Congress refused to take it up, instead offering a weak bill, sponsored by South Carolina **Sen. Tim Scott** – which was blocked by Democrats. The JPA, as it is called, faces an uphill battle in the Senate. NOW and allies will have to work hard to convince Republican members that the reform is essential if the nation is to move away from police violence against persons of color, in particular. Other reforms call for the restriction of the use of military equipment by police, funding for independent investigations into the use of force, and requiring state and federal agencies which receive federal funds to conduct antidiscrimination policies and training.

A critically important provision is: Change the threshold for the permissible use of force by federal law enforcement officers from "reasonableness" to only when "necessary to prevent death or serious bodily injury."

Just to note the extent of this horrendous problem: The Washington Post maintains a database of persons killed by police each year; in 2020, 987 persons were shot and killed by police, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>

Developed by the Congressional Black Caucus, with input from an array of civil rights and justice reform organizations such as the Leadership Conference on Civil and Human Rights, the main provisions are listed here.

The legislation, described as expansive,<sup>[4]</sup> would:

- Grant power to the [Justice Department's Civil Rights Division](#) to issue [subpoenas](#) to police departments as part of "pattern or practice" investigations into whether there has been a "pattern and practice" of bias or misconduct by the department<sup>[7]</sup>
- Provide grants to [state attorneys general](#) to "create an independent process to investigate misconduct or excessive use of force" by police forces<sup>[8]</sup>
- Establish a federal registry of police misconduct complaints and disciplinary actions<sup>[8]</sup>
- Enhance accountability for police officers who commit misconduct, by restricting the application of the [qualified immunity](#) doctrine for local and state officers,<sup>[7][9]</sup> and by changing the [mens rea](#) (intent) element of 18 U.S.C. § 242 (the federal criminal offense of "deprivation of rights under color of law," which has been used to prosecute police for misconduct) from "[willfully](#)" to "[knowingly](#) or with reckless disregard"<sup>[10]</sup>
- Require federal uniformed police officers to have [body-worn cameras](#)<sup>[8][4]</sup>
- Require marked federal police vehicles to be equipped with [dashboard cameras](#).<sup>[8]</sup>
- Require state and local law enforcement agencies that receive federal funding to "ensure" the use of body-worn and dashboard cameras.<sup>[4]</sup>
- Restrict the transfer of military equipment to police<sup>[8]</sup> (see [1033 program](#), [militarization of police](#))
- Require state and local law enforcement agencies that receive federal funding to adopt anti-discrimination policies and training programs, including those targeted at fighting [racial profiling](#)<sup>[4]</sup>
- Prohibit federal police officers from using [chokeholds](#) or other [carotid holds](#) (which led to the death of [Eric Garner](#)), and require state and local law enforcement agencies that receive federal funding to adopt the same prohibition<sup>[4]</sup>
- Prohibit the issuance of [no-knock warrants](#) (warrants that allow police to conduct a raid without knocking or announcing themselves) in federal drug investigations, and provide incentives to the states to enact a similar prohibition.<sup>[4]</sup>

- Change the threshold for the permissible use of force by federal law enforcement officers from "reasonableness" to only when "necessary to prevent death or serious bodily injury."<sup>[4]</sup>
- Mandate that federal officers use [deadly force](#) only as a last resort and that de-escalation be attempted, and condition federal funding to state and local law enforcement agencies on the adoption of the same policy.<sup>[4]</sup>

(As summarized by Wikipedia.)

## Equal Rights Amendment Deadline Removal Legislation Scheduled

Reintroduced recently are **H.J. Res. 17** sponsored by **Rep. Jackie Speier** (D-CA) in the House, with 203 co-sponsors, and **Sen. Ben Cardin's** (D-MD), **S.J. Res. 1** (joined by **Sen. Lisa Murkowski** (R- AK), that would remove the deadline for ratification (seven years, extended by three more) that appears in the preface of the 1972 ERA resolution. The legislation passed the House in the 116th Congress but did not gain any traction in the Republican-led Senate.

Activists are working to help line up 60 votes in the Senate, definitely an uphill battle, but all NOW members are encouraged to write or call both of their senators to urge that they support this legislation. Sen. Cardin is requiring that of every Democrat we line-up to support, there must be a Republican supporter.

As she has done for many past Congresses, **Rep. Carolyn Maloney** (D-NY) introduced her "start over" Equal Rights Amendment. This time with co-sponsor, Rep. Thomas Reed (R-NY), This bill adds a sentence to the operative text which clearly states that it is women who are discriminated against. More information on the legislation and others in Congress working on the ERA can be read at, <https://maloney.house.gov/issues/womens-issues/equal-rights-amendment> **NOW President Christian F. Nunes and Feminist Majority President Ellie Smeal** are quoted in the press release. Rep. Maloney now chairs the powerful House Oversight Committee.

(NOTE: See Update at the beginning of this memorandum.) The lawsuit brought by the **Attorneys General of Nevada, Illinois and Virginia** (with the backing of close to two dozen other states) has been decided by a judge in federal District Court, in the District of Columbia. The lawsuit demands that the Archivist of the United States carry out his constitutional duty to certify and publish the addition of the Equal Rights Amendment to the U.S. Constitution.

In the meantime, we hear that legislators in North Dakota – which ratified the ERA in 1975 – are trying to rescind their ratification. The U.S. Constitution, Article V, makes no provision for rescinding –once a ratification of an amendment is approved, it's done - according to the U.S. Archivist David Ferriero.

For an insightful discussion of the Equal Rights Amendment, its relevance to women of color and the importance of the ERA in women gaining power -- all of this as it relates to the vision of our co-founder **Pauli Murray**, go to Virginia Law Review, January, 2021, "A Dangerous Imbalance: Pauli Murray's Equal Rights Amendment and the Path to Power," by Julie Suk, 107 Va. L. Rev. Online 3, <https://www.virginialawreview.org/online/> Prof. Suk spoke at workshop for the ERA at our 2020 National NOW Conference. She is the author of **We the Women – The Unstoppable Mothers of the Equal Rights Amendment** (Skyhorse Publishing, 2020).

## **Violence Against Women Reauthorization Act of 2021 Moves Forward**

The **Violence Against Women Reauthorization Act of 2021** will be introduced On Monday, March 8, with a vote to follow quickly after. Rep. Sheila Jackson Lee (D-TX) is the sponsor. Advocates have not seen the new text yet, but it could be very much the VAWA bill that was passed by the House in the 116<sup>th</sup> Congress (H.R. 1585) on April 4, 2019, by a vote of 263 to 158 – including 33 Republicans. The Republican Senate refused to take it up, instead directing **Sen. Joni Ernst (R- IA)** to introduce a weaker version. Reportedly, the Republicans did not want to include the provisions about firearms that was in the House bill – which, if adopted, would save many lives. **Sen. Dianne Feinstein** took the lead for passing a bill identical to the House version – but for 20 months neither bill was brought to a vote. As a result, reauthorization of VAWA is now three years overdue, though program funding has continued at levels approved seven years ago and by the various Continuing Resolutions that have kept the government funded.

VAWA is on a priority passage list for the House and leadership wants to quickly move to a floor vote. We expect easy passage with all Democrats on board and, hopefully, a number of Republicans. In the 116<sup>th</sup> Congress, 33 House Republican support VAWA reauthorization. The challenge, of course, is getting it through the Senate. Even though the Senate is split 50-50, Republicans are threatening filibuster for all bills (except the CR) coming from the House.

### **We need to have all NOW grassroots activists writing and calling both of their Senators.**

At the time of this writing, we do not have a bill number for VAWA 2021 but promise to alert folks once it is re-introduced. In the meantime, here are the highlights:

- Invests in prevention;
- Ends impunity for non-Native perpetrators of sexual assault, child abuse co-occurring with domestic violence, stalking, sex trafficking, and assaults on tribal law enforcement officers on tribal lands;
- Improves enforcement of court orders that require adjudicated domestic abusers to relinquish their firearms;
- Improves access to housing for victims and survivors;
- Protects victims of dating violence from firearm homicide;
- Helps survivors gain and maintain economic independence;
- Updates the federal definition of domestic violence for the purposes of VAWA grants only to acknowledge the full range of abuse victims suffer (does not impact the criminal definition of domestic violence);
- Maintains existing protections for all survivors; and
- Improves the healthcare system's response to domestic violence, sexual assault, dating violence, and stalking.

A statement from our allies, the National Coalition Against Domestic Violence, regarding a companion measure, the Victims of Crime Act:

### ***Introduction of the VOCA Fix to Sustain the Crime Victims Fund Act***

The National Coalition Against Domestic Violence (NCADV) celebrates the bicameral introduction of the bipartisan ***VOCA Fix to Sustain the Crime Victims Fund Act of 2021*** (*the VOCA Fix Act*). We applaud the leadership of **Senators Richard Durbin (D-IL), Lindsey Graham (R-SC), Tammy Baldwin (D-WI), Charles Grassley (R-IA), Dianne Feinstein (D-CA), John Cornyn (R-TX), Amy Klobuchar (D-MN), and Lisa Murkowski (R-AK)** and **Representatives Jerrold Nadler (D-NY-10), Brian Fitzpatrick (R-PA-1), Sheila Jackson Lee (D-TX-18), Ann Wagner (R-MO-2), Mary Gay Scanlon (D-PA-5), Cathy McMorris Rodgers (R-WA-5), Debbie Dingell (D-MI-12), and John Moolenaar (R-MI-4)** in championing this critical bill to prevent additional catastrophic cuts to the already significantly diminished Victims of Crime Act (VOCA) grants to domestic violence shelters and programs and other victims services.

VOCA grants are the main federal funding source for programs serving victims of all crimes and for victim compensation. Over the past several years, VOCA grants have decreased precipitously; victim assistance grants for Fiscal Year 2021 are two-thirds lower than they were just three years ago. VOCA grants are paid for out of the Crime Victims Fund (CVF), which comprises monetary penalties associated with federal convictions, primarily convictions for white collar crime. The CVF is shrinking rapidly, because the Department of Justice is increasingly entering into deferred prosecution and non-prosecution agreements instead of prosecuting these cases, and monetary penalties associated with these agreements are deposited into the Treasury instead of into the CVF.

***The VOCA Fix Act*** fixes this by ensuring that monetary penalties associated with deferred and non-prosecution agreements go into the CVF instead of into the Treasury. The crimes from which these penalties are derived are the same, whether they are prosecuted or settled, and the funding should likewise be going to serve victims. *The VOCA Fix Act* also makes the important structural improvements included in [this letter](#) to Congress, signed by more than 1,680 organizations and government agencies.

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