

**National Organization for Women**  
**Government Relations Report**

**To: National Board Members**

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

**Date: February 28, 2022**

**Violence Against Women Reauthorization is Ready for Senate Vote**

Currently, we are anticipating a vote soon in the Senate to reauthorize the Violence Against Women Act – it is an action that is five years overdue. The House of Representatives approved of their version of VAWA Reauthorization, H.R. 1620 – Sponsored by **Rep. Sheila Jackson Lee** way back in March 2021. Ever since then discussions in the Senate over certain provisions in the bill have been ongoing between Democratic and Republican Judiciary Committee members.

At a Feb. 9<sup>th</sup> press conference, **Sen. Dick Durbin** (D-IL) with **Sens. Dianne Feinstein** (D-CA) and **Joni Ernst** (D-IA) and featuring remarks by actor **Angelina Jolie**, introduced the new bill, S. 3623. Crucially, the Senate version has been negotiated to have bipartisan support: there are 11 democrats and 11 Republican co-sponsors – assuring that the legislation can pass the Senate. Not all of the provisions that House sponsors desired made it into the Senate bill, which is about 300 pages long. A vote may or may not happen the week of March 7<sup>th</sup>, depending upon when **Majority Leader Chuck Schumer** (D-NY) can schedule it. There is some concern about getting that vote set as other bills are piling up and hearings for **Judge Ketanji Brown Jackson**, President Biden’s nominee for the Supreme Court, should get underway.

**Summary**

This legislation reauthorizes and enhances the programs of the Violence Against Women Act through the fiscal year of 2027. This act is crucial to mitigate and more effectively respond to instances of domestic and dating violence, stalking, and sexual assault. Furthermore, the act establishes new programs to protect the economic security and safety of survivors of sexual violence. The Violence Against Women Reauthorization Act will ensure that support services are kept current with the needs and demands of survivors.

**Specific Impact Areas**

◆ **Safe housing provisions**

Bolster the implementation and enforcement of the existing housing protections established under VAWA

- Ensure homelessness definition encompasses and reflects the experiences of survivors of sexual and domestic violence
- Enhances the transitional housing services offered to survivors in need of relocation
- ◆ **Medical services**
  - Increase opportunities for Sexual Assault Nurse Examiner (SANE) training and expands survivors' access to SANE services and forensic examinations
- ◆ **Intersectionality and underserved populations**
  - Expansion of services to include those affected by both mental and physical disabilities
  - Enforcement of non-discrimination protections to encompass the needs of all survivors
  - Address the unique needs of and provide specific services for LGBTQ+ victims
  - Inclusion of culturally specific and sensitive services and support
- ◆ **Justice both in and out of the criminal justice system**
  - Establishment of a pilot program for restorative justice practices to provide survivors with greater autonomy
    - Provide survivors with option of pursuing a path towards justice that does not involve the carceral system
  - Include provisions that will address the needs of incarcerated women, including placement in correctional facilities and re-entry into society
  - Implementation of measures to reduce the unwarranted arrest of victims of violence
  - Prevent legal ramifications of victims failing to be present for court proceedings
  - Provide survivors with more comprehensive legal assistance and resources
  - Provide Tribal criminal jurisdiction for cases involving sexual violence against Tribal law enforcement, even if perpetrated by non-Indians
- ◆ **Research initiatives**
  - Mandated data collection on the economic outcomes of sexual violence survivors and existing barriers to economic security
- ◆ **Education**
  - Increase rape and sexual assault prevention programs on college campuses
    - Implementation of campus climate surveys to assess the prevalence of and attitudes towards sexual and gender-based violence
  - Expansion of authorizations for the Rape Prevention and Education Program
    - Additional involvement from sexual assault coalitions

### **What's Missing?**

- ◆ **"Boyfriend loophole"**
  - Only spouses or domestic partners who have been convicted of domestic violence will be prohibited from possessing firearms
  - This legislation does not expand the coverage of this firearm restriction to those who perpetrate dating violence (i.e., boyfriends)

## Women's Health Protection Act Fails Procedural Move

For the first time, a bill that would incorporate *Roe v. Wade* protections for abortion into federal law was voted on in the Senate. The Women's Health Protection Act (WHPA, H.R. 3755) failed the Motion to Proceed (46 Democrats voting for; 48 Republicans voting against) a procedural action that would have allowed a vote on the merits of the bill. The bill would protect a person's ability to determine whether to continue or end a pregnancy, and protect a provider's ability to provide abortion services, among other provisions. The House passed the measure on September 24 by a vote of 218-211, along party lines.

Nonetheless, abortion rights advocates hailed the Senate vote as progress – it is the first time such legislation has been considered by the upper body and it has taken ten years to get to this point. The next steps are to bring the bill to the Senate when we have eliminated the filibuster or elected a sufficient number of senators to override a filibuster challenge.

**Senate Majority Leader Chuck Schumer** (D-NY) had vowed last fall when the horrible, terrible, awful Texas SB 8 six-week abortion ban was not halted by the Supreme Court that he would hold a vote on this legislation.

The bill, sponsored by **Sen. Richard Blumenthal** (D-CT), would establish in federal statutes the right to receive abortion care, free from harmful bans and unnecessary restrictions that single out abortion and impede access to care. The law would override any Supreme Court ruling limiting access or banning abortion outright and would prohibit any state law that impinges on a person's exercise of this fundamental right to control one's reproductive life.

This legislation is critically important as we face both the Texas six-week abortion ban – which may be copied by at least a half dozen other states.

Additionally, a ruling by the arch-conservative U.S. Supreme Court in the Mississippi case of *Dobbs v. Jackson Women's Health Organization* will be announced this spring and could ban abortion after 15 weeks gestation, overturning the 24-week framework of *Roe v. Wade* which has stood for nearly a half century. Potentially ignoring the long-standing precedent of a Constitutional protection of the right to obtain an abortion, the Court could also overturn *Roe*, banning abortion completely, which the *Dobbs* case also requests.

If the *Roe* does fall, half of the states will ban abortion altogether, resulting a large swath of the south and mid-west without access to care – affecting 40 million persons of reproductive age.

The six-member conservative majority on the Court twice has failed over the past six months to stop the clearly unconstitutional Texas six-week abortion ban, with its bounty hunter type enforcement. The ban is causing great hardship for thousands of persons, especially women of color, low-income and marginalized persons in Texas, where one in every ten American women of child-bearing age lives. Clinics in other states are over-burdened with those Texas patients

who can afford to travel great distances to obtain abortion care. Already, nine states have introduced copycat laws of the Texas six-week abortion ban.

Just this past year legislatures enacted 108 abortion restrictions, including limitations on medication abortion. These red-state legislatures also adopted bills restricting voting access, politicizing the administration of elections and other bills that would require discriminatory policies against LGBTQIA+ individuals, especially targeting transgender youth.

The Republican party has made abortion rights an organizing cause for decades, supported by millions of dollars from conservative religiously affiliated organizations. Legislation and litigation are promoted by a network of right-wing legal advocacy groups that have pushed hundreds of anti-reproductive rights bills in state legislatures and in Congress. Nonetheless, polling consistently shows that between 60 and 70 percent of the public supports abortion in all or most instances. It is ironic that while right-wing ideologues are trying to reverse a half century of abortion rights in the U.S., other nations around the world like Ireland, Poland, Colombia, Mexico and Argentina are liberalizing their restrictive laws.

## **The Equal Rights Amendment is NOW in Effect!**

Are you surprised? It turns out that the 1972 resolution proposing that the Equal Rights Amendment be considered and passed by 38 ratifying also stipulated that the amendment would become effective two-years after the date of ratification by the final needed state. Virginia – that final state --- ratified the ERA on January 27<sup>th</sup>, 2020. However, there is a court case still pending that may determine whether the ERA can become part of the Constitution.

Advocates, organized by the ERA Coalition, held a zoom press conference on that date this year, with an impressive array of speakers from a half dozen women's organizations, plus key lawmakers sponsoring legislation to remove the deadline from the 1972 ERA bill. Among the latter group were **Sen. Benjamin Cardin** (D-MD), Sponsor of the deadline removal bill in the Senate (S.J. Res. 1), **Rep. Jackie Speier** (D-CA), House sponsor of the deadline removal bill (H.J. Res. 17 which passed the House in March 2021, 222- 204) and **Rep. Carolyn Maloney** (D-NY), longtime leader in the effort to pass the ERA. Also, former **Virginia Solicitor General Michelle Kallen** who wrote the lawsuit brought by the attorneys general of Virginia, Illinois and Nevada. **Linda Coberly**, chair of the ERA Coalition Task Force, gave a concise summary of where things stand with the three A.G.'s lawsuit, currently before the D.C. District appellate court. Former NOW president **Ellie Smeal**, currently president and CEO of the Feminist Majority Foundation, and NOW president **Christian F. Nunes** also spoke.

The press conference was followed by a breezy rally near the White House, with additional speakers, and concluded with a march to the Department of Justice to deliver more than 60,000 signatures on a petition urging the Department of Justice to take action to support the Equal Rights Amendment's inclusion in the U.S. Constitution.

## DOJ's Office of Legal Counsel Issues New Memorandum Regarding ERA

[Effect of 2020 OLC Opinion on Possible Congressional Action Regarding Ratification of the Equal Rights Amendment \(justice.gov\)](#)

Above is a link to the Department of Justice, Office of Legal Counsel Opinion regarding the Equal Rights Amendment that was issued on January 26, 2022. ERA advocates may recall that the Office of Legal Counsel during the Trump Administration issued an Opinion in 2020 concluding that the Equal Rights Amendment deadline had passed and the amendment was no longer pending. The Opinion directed the Archivist of the United States whose duty it is to certify and publish Constitutional amendments once they have been ratified by three-fourths of the states to not proceed with the ERA.

The new Opinion, written during the present presidential administration, comes to a different conclusion. Essentially, it defends most of the Trump Administration Opinion, but concludes that "Whether the ERA is part of the Constitution will be resolved not by an OLC Opinion but by the courts and Congress." This memorandum notes that "additional lawsuits are almost certain to be filed shortly." Those challenges may be in relation to the fact that whether Congress has the authority to set deadlines or to extend these has not been fully litigated; a lower court decades ago found that Congress does have that authority to set deadlines (NOW's comment: although this was only a lower court ruling and, to further note, Congress's role is not mentioned in Article V of the Constitution which governs the amending process. Additionally, whether rescissions by states of previous ratifications can or cannot be recognized has never been litigated.)

Getting back to the January OLC Opinion it does appear that the Department of Justice will be defending the Archivist's failure to certify and publish. (It should be noted that this archivist, **David O. Ferriero**, plans to retire in April.) The main objective of the three A.G.'s case is to get the Archivist to carry out what is described as his purely ministerial duty. The arguments are: thirty-eight states have ratified, the ERA deadline appears in the preface of the proposing legislation – not in the text of the amendment, and rescissions of prior approvals are not recognized by Article V of the U.S. Constitution.

**A reason for hope: in the final paragraphs of the Opinion, there is the statement that "the 2020 OLC Opinion does not preclude the House or the Senate from taking further action regarding ratification of the ERA."** (NOW comment: the 2020 Trump opinion declared the ERA dead, so certainly this is a very big door that has opened for us.)

All we have to do now is elect 60 Democratic senators in 2022 and/or get rid of the filibuster so that the deadline removal bills sponsored by Sen. Ben Cardin and Rep. Jackie Speier can be passed and signed into law.

## **Build Back Better Act Not Dead Yet!**

Activists and Congressional supporters of the Build Back Better Act (BBBA - summarized in the November 24, 2021 NOW Government Relations report) are reporting that there remains a strong possibility that parts of the BBBA will survive. Though Sens. Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ) have effectively killed the very ambitious \$1.7 trillion package, a much reduced version is being considered. Provisions concerning climate change, childcare and caregiving, and other provisions which may draw bipartisan support could be included. Negotiations could go on for quite some time, with a possible vote in July.