



Biden and Harris Ignore Warnings From the American Bar Association and Shattering Glass That Women Will Lose 14th Amendment Equal Protection

Shattering Glass Demonstrates Why Publication of the ERA as the 28th Amendment to the US Constitution By Monday, August 26th is Critical to Stopping SCOTUS From Stripping Women, Girls and LGBTQIA+ People of 14th Amendment Equal Protection.

FOR IMMEDIATE RELEASE
August 25, 2024

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Washington, DC – Last week, Shattering Glass again memorialized its ongoing requests, dating back to January 2022, of [President Biden](#) and [Vice President Harris](#) to publish the Equal Rights Amendment (“ERA”) as the 28th Amendment to the Constitution.

As we have communicated previously in meetings and written communications with the White House and the Vice President’s Office, if they continue to block the ERA, the United States Supreme Court (“SCOTUS”) will strip women, girls and LGBTQIA+ people of 14th Amendment Equal Protection, the very protection ERA opponents point to when they incorrectly argue the ERA is “unnecessary.”

On August 6th, the American Bar Association (“ABA”) [issued a similar warning](#) and called for immediate publication of the ERA as the 28th Amendment, noting:

*Originalists on the Supreme Court and elsewhere argue that because the framers did not intend for the 14th Amendment to cover sex, it should not be so interpreted now. The late Supreme Court Justice Antonin Scalia famously stated: ‘Certainly the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn’t. Nobody ever thought that that’s what [the 14th Amendment] meant.’ **To the extent that the Supreme Court’s recent decisions in Dobbs and elsewhere evince a Supreme Court majority’s embrace of originalism, longstanding interpretations of the 14th Amendment are in grave peril.***

On December 5, 2023, Shattering Glass gathered 84 diverse organizations and medical associations (representing millions of Americans and our democracy) in a [letter urging President Biden](#) to publish the ERA as the 28th Amendment to guarantee equality for all, stop the ever-increasing attacks on the rights of women, girls and LGBTQIA+ people, protect access to reproductive and gender-affirming healthcare, and preserve our democracy and credibility on the world stage.

The White House refused to engage regarding this letter, and the Biden/Harris Administration has never provided a reason for refusing to publish the ERA.

As set forth in detail in the Memoranda sent separately to [President Biden](#) and to [Vice President Harris](#), SCOTUS has made clear it intends to strip women, girls and LGBTQIA+ people of 14th Amendment Equal

Protection in the *US v. Skrametti* case currently pending before the court. In order to stop that, the ERA must be published by August 26th because the US's brief, where they will defend 14th Amendment sex-based Equal Protection, is due the very next day, and they need to rely on the ERA to successfully stop SCOTUS from issuing its intended decision.

In addition, Shattering Glass reminded the President and Vice President of their official position that Congress has no authority to act with respect to the ERA. More specifically, on September 28, 2022, when asked by Judge Wilkens of the US DC Circuit Court of Appeals, "why shouldn't the Archivist just certify and publish and let Congress decide whether the timeline should be enforced?" Sarah Harrington, the attorney representing the Biden/Harris Administration, [stated](#):

Although Congress has with the 14th and 15th Amendments issued some proclamations about when Amendments were ratified, the Constitution doesn't contemplate any role for Congress at the back end. Congress proposes the Amendment, it goes out into the world, and the states do what they are going to do.

This official Biden/Harris position – that Congress cannot act to affirm the ERA has been ratified – has been repeatedly emphasized by the Heritage Foundation and [JD Vance and other GOP Senators who have sponsored a resolution](#), to support their argument that the ERA is dead – an argument critical to their goal of ensuring women will never have bodily autonomy or equality.

Despite the official Biden/Harris position, yesterday, the White House released its [2024 Proclamation on Women's Equality Day](#), which provides:

We are making tremendous progress, but more must be done to ensure equal rights and opportunity for women and girls. I urge the Congress to recognize the ratification of the Equal Rights Amendment and affirm the fundamental truth that all Americans should have equal rights and protections under the law.

This Proclamation not only contradicts the official Biden/Harris position, but it ignores the warnings of [Shattering Glass, the ABA](#), and [84 organizations and medical associations](#), representing millions of Americans and our democracy, of the imminent threat to the rights and lives of women, girls and LGBTQIA+ people if the ERA is not published as the 28th Amendment.

"More and more women are saying they will not vote for Kamala Harris unless Joe Biden stops blocking the Equal Rights Amendment and directs the Archivist to publish the ERA before Election Day," said Wendy Murphy, a law professor at New England Law in Boston, who specializes in women's rights. "The ERA is the most important Women's issue in history. If Kamala Harris loses in November because Joe Biden refused to support Women's equality, that's on him. Women are done supporting candidates based on partisan politics. We want equality now."

Marla Barthen, a Registered Nurse, Women's Rights Activist, and North Carolina voter, added "We cannot move forward electing the first woman president when we've left the rest of women in America out of the Constitution."

"We just spent the last week listening to the Democratic Party and Vice President Harris at their Convention repeatedly chant 'We Won't Go Back.' By doubling down on their unjustified refusal to publish the Equal Rights Amendment, they are ensuring we WILL go back," said Nicole Vorrasi Bates, Executive Director of Shattering Glass. "When faced with the clear roadmap SCOTUS has provided of its plan to strip women, girls, and LGBTQ+ people of Equal Protection this coming June, both President Biden and Vice President Harris have ignored it, seemingly opting to mislead the American public with the 2024 Proclamation for Women's Equality Day."

“The fact is they are knowingly sitting by – first watching SCOTUS overturn Roe, and now watching as SCOTUS prepares to kill 14th Amendment sex-based Equal Protection – while they alone control the solution,” Vorrasi Bates added. “Many people ask why is the Biden/Harris Administration doing this? The why is irrelevant. And in light of their contradictory 2024 Proclamation for Women’s Equality Day, their reasoning for not publishing the ERA can’t be good. The Executive Branch, their political appointees, and the librarian tasked with collecting and counting ratifications do not get to decide whether to publish the ERA. They have a duty to publish and need to get it done now. The rights and lives of 187 million Americans are at stake.”

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[Shattering Glass](#) is a national, nonpartisan, 501(c) (3) organization, headquartered in Washington DC, which addresses the systemic economic, societal, and political barriers impeding equality for women and girls. Through advocacy, education, and outreach, Shattering Glass fights for gender equity and gender equality to ensure our daughters, granddaughters, and their children can achieve their dreams, know their worth, and live in a world free of discrimination and bias. Its mission is to create a world where gender equality is the norm, and "Shattering Glass" refers to breakthrough innovations, not women and girls successfully fighting to break down barriers.