

## **COVID-19, Human Rights, Women's Rights and the ERA**

The following article is written by the Human Rights Team, a coast-to-coast network of League members regularly researching and publishing on the synergy between human rights and League positions and priorities. Please see the first edition of our *Briefing Book on Human Rights: Synergy Between Policies of the League of Women Voters and the United Nations Human Rights Conventions*. It may be found on the Fairfax Area LWV website at <https://www.lwv-fairfax.org/lwvun> (center column). Jill Follows (VA); Michele Thorne (IL); Anu Sahai (VA); Kathleen Montgomery (CA); Sheila Denn (NC); Susan Sherer (PA); Savanna Mapelli (PA); ErinLeigh Darnley(NY)

The COVID-19 pandemic affects everyone everywhere, but it affects each person differently and heightens existing inequalities. The ERA is a rule of fairness that strengthens everyone's rights.

### Human Rights are Women's Rights

"We simply cannot return to where we were just a few months ago," the United Nations High Commissioner for Human Rights Michelle Bachelet said in a recent informal briefing to the UN Human Rights Council, urging nations to take a more "cooperative, global and human rights-based approach" to the crisis.

"Gender equality and women's rights are essential," said UN Secretary General Antonio Guterres, "to getting through this pandemic together, to recovering faster, and to building a better future for everyone." He urged governments to "put women and girls at the centre of their efforts to recover from COVID-19."

The impact of this pandemic is disproportionately harsh on women throughout the world. On the frontlines, women make up the majority of workers in the health and social sector globally. The informal worldwide economy is composed of nearly 60% women, according to the UN, who earn less, save less, and are at greater risk of falling into poverty. As markets fall and businesses close, millions of women's jobs have disappeared. Women's caregiving responsibilities have increased, including care for children at home, the elderly, and the sick- work that in most countries is undervalued and often unpaid. The UN reports that nearly one in five women worldwide has experienced violence in the past year, and now many of these women are trapped at home with their abusers.

During this pandemic, women's access to pre- and post-natal obstetric care and family planning has been curtailed, especially in countries with authoritarian governments. The crisis has an even greater negative impact on women facing intersectional forms of discrimination, such as women with disabilities, elderly women, indigenous women, women in underrepresented groups, and women living

in rural communities. There are few shock absorbers to cushion women from this crisis, and progress on gender equality is tenuous.

This disproportionate impact of COVID-19 on women highlights a failure of governments to embrace human rights and respond to the needs of all people in a fair and equitable manner. Even a cursory look at visionary human rights documents, such as the 1948 Universal Declaration of Human Rights, reveals the precise words proclaiming, *“All human beings are born free and equal in dignity and rights.”* Those words, especially in time of crisis, can inspire governments formed of the people and by the people to meet the needs of all people equally and fairly, and to leave no one behind. Governments must take this opportunity to transform the systems that hold women back and amend the laws that deny women equality.

### The Equal Rights Amendment

The gendered impact of the pandemic in the United States can be addressed, in part, through adoption of the Equal Rights Amendment to the United States Constitution, which states, “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.” The ERA is a rule of fairness that strengthens everyone’s rights. Here are three examples of where the ERA could lessen the impact of COVID-19 on women.

First, women face the specter of domestic violence while sheltering. An analysis of data by The Economist from five big American cities indicates that although most types of crime have fallen in recent weeks, reports of domestic violence have increased.

The ERA can address domestic violence by serving as a catalyst for re-authorization of the Violence Against Women Act (VAWA), which lapsed a year ago. Even more, the ERA provides a constitutional basis to strengthen VAWA, which has been limited by the United States Supreme Court, in part because sex discrimination is not expressly prohibited by the Constitution.

Second, women face the brutal reality of their economic disparity in the pandemic. Federal Reserve Chairman Jerome Powell recently said, “The people who’re getting hurt the worst are the most recently hired, the lowest paid people. It’s women to an extraordinary extent.”

The ERA helps address the disparate economic impact by prohibiting pay and similar economic discrimination against women that is done by governmental bodies. The ERA should also be an impetus for the government to extend the ERA to the private sector by rule-making, executive orders, federal contracting, and leadership examples.

Third, women face serious threats to their healthcare. Women in the U.S. hold 76% of healthcare jobs, according to the U.S. Census Bureau; and in nursing, where workers are on the COVID-19 frontline, women make up more than 85% of the workforce. Women’s health is at risk in other ways as well. At state and national levels, government actors have taken advantage of the pandemic to restrict women’s access to reproductive healthcare. Unintended pregnancies will rise. According to the CDC, the rate of teen pregnancy in the United States is already higher than in other western industrialized nations.

During COVID-19, pregnant women have been unable to secure their usual support networks. According to the National Center for Health Statistics, the United States is the only developed country where maternal mortality is rising, with women of color most affected.

The ERA can address some issues with women's access to healthcare. As an example, about half of the states have "mini-ERAs" in their constitutions and in those states, courts have ruled that the promise of constitutional equality extends to government-funded healthcare which cannot be denied on the basis of sex. Additionally, the ERA should serve as a needed push for women to be well-represented wherever healthcare – especially women's healthcare – is discussed.

### What is happening with the ERA and what can you do?

On January 27, 2020, the Commonwealth of Virginia became the final state necessary to ratify the ERA; league members were key to that success. There are now arguments over a ratification time limit mentioned by Congress but not part of the amendment itself and not part of the official Article V amendment process set forth in the U.S. Constitution.

According to Virginia Attorney General Mark Herring, the ERA became an Amendment to the Constitution AUTOMATICALLY upon Virginia's ratification of the Amendment. In usual circumstances, after three-fourths of the states ratify an Amendment, the Amendment is sent to the U.S. Archivist, who is required by federal law to certify the Amendment as part of the Constitution.

In very short order, on January 29, 2020, the U.S. Archivist said he would NOT certify the ERA, opting instead to follow the ERA policy position of the current U.S. Department of Justice.

One day later, the State Attorneys General for Virginia, Illinois, and Nevada filed suit in the U.S. District Court in D.C. to compel the Archivist to perform his purely ministerial duty under the law and certify the ERA and, once and for all, declare that "equality of rights under the law shall not be denied or abridged on account of sex." The League of Women Voters of Virginia is one of many organizations that joined an amicus brief to the suit filed by the three Attorneys General.

On May 8, 2020 the current U.S. Department of Justice filed a Motion to Dismiss the State Attorneys General lawsuit. It is likely the District Court will rule on that motion this summer. But first the District Court must rule on whether to allow legal briefs in opposition to the ERA from the Attorneys General of Alabama, Louisiana, South Dakota, Tennessee, and Nebraska. Once a final decision is rendered by the District Court, appeals can be filed. Any eventual appeal will be heard in the United States Court of Appeals for the D.C. Circuit and thereafter, if indicated, in the United States Supreme Court.

Meanwhile, the League urges Congress to proactively remove its time limit for ratification. In February 2020, the United States House of Representatives passed a resolution removing the Congressional time limit for ratification. A companion bill - SJRes6 - is now in the United States Senate waiting to be heard. PLEASE contact your United States Senators TODAY to tell them you support the ERA. Here's an easy-to-use form: <https://tinyurl.com/lwvsenateERAbill> .

We MUST keep the ERA at the forefront of all legislative advocacy this election season, including in our candidate forums, voter guides and constituent interviews.

The COVID-19 pandemic provides clarity on what is important. There is no better time than the present to support the equal human rights of all persons under the law.