If you care for someone with Alzheimer's, you are

not alone. We're here whenever you need us.

24/7 helpline: 1.800.272.3900

VISIT ALZ.ORG >

alzheimer's \\ association

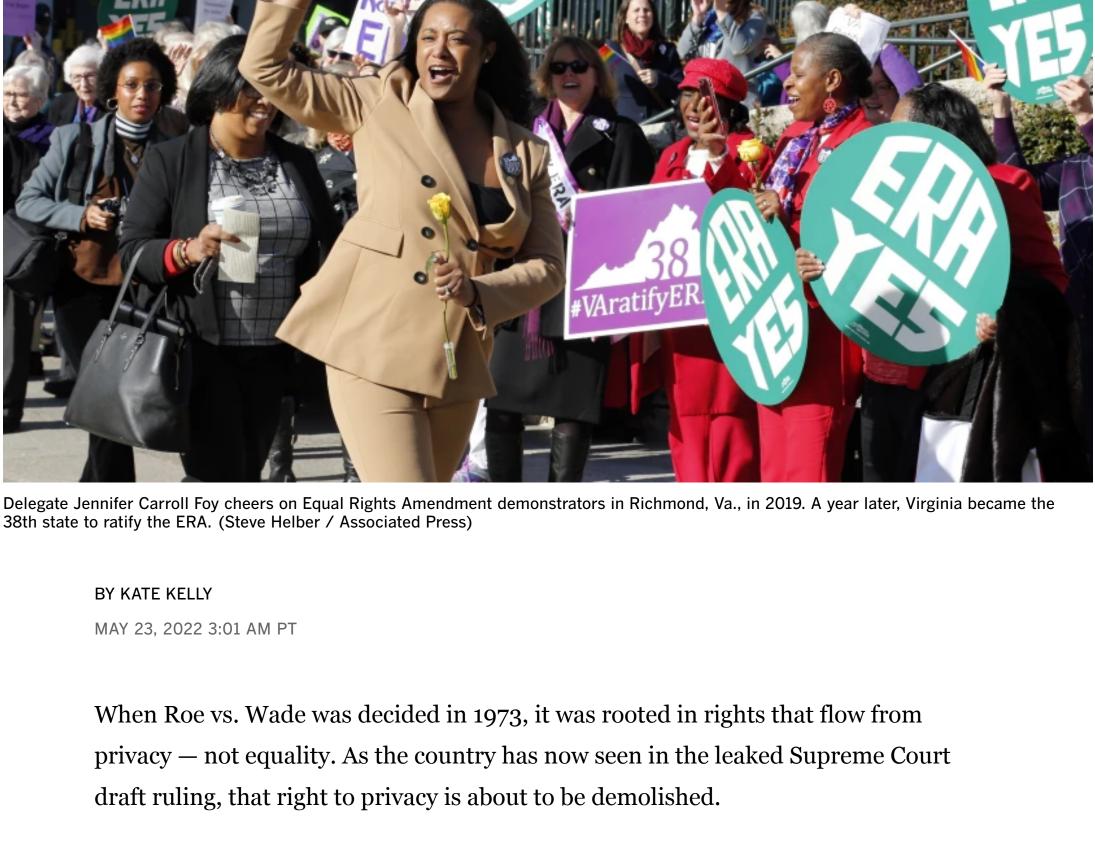
Q

ADVERTISEMENT

OPINION

rights? Finalize the Equal Rights Amendment

Op-Ed: The best way to protect abortion



Justice Samuel A. Alito Jr. bemoans in the draft opinion that Roe "was remarkably <u>loose</u> in its treatment of the constitutional text," basing the right to abortion on the right to privacy when neither is "mentioned" in the Constitution. While we can't

change the composition of the court poised to overturn Roe, we can change the text they are charged with interpreting. It's time to finalize the Equal Rights Amendment and enshrine gender equality.

The right to privacy was first articulated in a 1965 Supreme Court case, Griswold vs. Connecticut, concerning the state's decades-old law banning contraception. Lawyers defending married couples' use of contraceptives argued that the right to

reproductive healthcare existed under *equality* in the Constitution.

Abcarian: The right to abortion is deeply rooted in the Constitution, and flows from amends for slavery But, in part because there was no explicit equality guarantee in the Constitution, Justice William O. Douglas instead cobbled together guarantees within the Bill of

Rights (the 1st, 3rd, 4th and 9th Amendments). The court ruled to permit contraception, affirming that while privacy was not an explicit constitutional guarantee, it is found in the penumbras, or shadows, of other existing rights. Less than a decade later, in 1972, the ERA passed in Congress with little opposition from either party. The House approved the ERA 354 to 23, and just eight senators

voted against it. But it had still not been ratified by 1973 when Roe came down. With

the Constitution still lacking an explicit right to equality, the Roe decision is a

technical, medicalized one. It hyperfocuses on a pregnant person's body and

pregnancy timing rather than a right to equal citizenship and freedom from

criticized the decision to base the right to abortion on <u>privacy</u>, <u>not equality</u>.

discrimination on the basis of sex. Many, including Ruth Bader Ginsburg, have

The ERA barreled through 30 of the 38 necessary state ratifications in the first year after its passage, and ratification seemed inevitable. But after the Roe decision, many conservatives channeled their opposition to abortion toward the ERA, launching a wider fight against women's rights. Phyllis Schlafly's STOP ERA movement was born. As the religious right's political influence began to grow, this group of far-right activists chose abortion as a wedge issue to activate their base — but zeroed in on

opposition to the ERA as the <u>first concrete campaign</u> to flex their newfound political

amendment. In 1982, when the extended time limit on ratifying the ERA expired,

Many feminists gave up on the fight, falsely thinking at least access to abortion was

ERA has found new life. The amendment stands now as the most straightforward

secure. However, in recent years and with increasing threats to our basic liberties, the

power. Catholics, evangelicals and **Mormons** banded together against the

STOP ERA declared victory.

solution to current constitutional woes.

OPINION

and civil rights

May 10, 2022

ADVERTISEMENT

The ERA has already met all the constitutional requirements for ratification. In 2020, Virginia became the 38th and final state needed to satisfy the Constitution's Article V, which governs the amendment process. With the amendment having passed in Congress by more than the two-thirds vote required, and being ratified by enough states, respected constitutional legal scholars agree that the ERA is now the 28th

Amendment. The only step left required by statute says the national archivist has to

Though two years have passed since Virginia's ratification, the archivist has <u>refused</u>

to act, saying a green light is needed from the White House. Yet <u>Harvard professor</u>

Laurence Tribe wrote to Congress in March that his "conclusion as a constitutional

scholar is that the ERA is currently a valid part of the United States Constitution,"

that Congress should recognize it as such and that "even if Congress takes no such

The states that have ratified in the modern era, Nevada, Illinois and Virginia, <u>filed</u>

action the Archivist should publish it as the Twenty-Eighth Amendment."

certify the additional ratifications and publish the amendment in the Federal

Register. We are literally one signature away from changing the Constitution.

Op-Ed: The pendulum is swinging back, reversing hard-won sexual freedoms

suit against the archivist in 2020 to compel him to recognize their ratifications. Though the states lost in federal district court, they have appealed to the D.C. Circuit, where the case now stands. Depending on the outcome, the case could end up before the Supreme Court. But a strict reading of Article V makes amending the Constitution a political question not for the courts to resolve. Finalizing the ERA is the clearest path forward for abortion rights. The Senate, though generally an unproductive quagmire of late, should have at least <u>52 yes votes</u>

on a House-approved <u>resolution</u> eliminating the original ratification deadline placed

in the proposing clause of the ERA. That would help remove any lingering doubt

opponents try to drum up about its legitimacy. Biden should use a majority vote on

the ERA, which has bipartisan co-sponsorship, as evidence that Congress supports

Column: It's not easy to predict U.S. politics in a post-Roe world

ERA opponents frequently decry its enormous potential to protect reproductive

rights and freedom. They're not wrong. New Mexico's state Supreme Court struck

down a law (akin to the federal Hyde Amendment) that prohibited government-

the archivist publishing the ERA, once and for all.

OPINION

on equal citizenship.

Amendment."

OPINION

May 10, 2022

funded coverage of abortion, basing its ruling on the state's ERA. Other states have had <u>similar successes</u> under their state-level ERAs — a good sign for future abortion litigation on the federal level with the ERA in place. In addition to completely changing the landscape for the courts, a federal ERA would also provide a constitutional hook for Congress to pass laws that not only "codify Roe" but also move beyond the limited privacy framework to support the rights of women and other marginalized genders nationwide.

With five dedicated antiabortion "originalists" on the Supreme Court, the only thing

we can do to protect abortion rights permanently is to change the constitutional text.

Constitution. If we at long last finalize the ERA, we can achieve abortion access based

Kate Kelly is an attorney and author of "Ordinary Equality: The Fearless Women

and Queer People Who Shaped the U.S. Constitution and the Equal Rights

Even originalists have to concede that Article V exists, creating a way to edit the

A cure for the common opinion Get thought-provoking perspectives with our weekly newsletter. Enter email address SIGN ME UP

OPINION

May 26, 2022

seem scarce

May 26, 2022

OPINION

Editorial: Most Americans want

Republicans don't seem to care

Granderson: Black votes count,

even if results for Black voters

stricter gun laws. Senate

You may occasionally receive promotional content from the Los Angeles Times.

MORE FROM THE LOS ANGELES TIMES

OPINION

1 hour ago

OPINION

the causes

May 26, 2022

Commentary: Can any American

parent honestly say school

massacres are 'unimaginable'?

Editorial: The problem with

college debt is that we never fix

Subscribe for unlimited access

Follow Us

Los

Angeles

Times

By continuing to use our site, you agree to our Terms of Service and Privacy Policy. You can learn more about how we use cookies by reviewing our Privacy Policy. Close he West Coast Perspective \$1 for 6 months

SUBSCRIBE NOW

×

OPINION >

Your guide to California's 2022 primary election

SUBSCRIBERS ARE READING \rightarrow FOR SUBSCRIBERS

Disney power broker is part of a 'cabal' pulling the strings in Anaheim, FBI records show L.A. Times electoral endorsements for 2022

19 children, 2 adults killed in Texas in the deadliest school shooting since Sandy Hook 🕒 Timeline of Texas school shooting: 126 minutes of terror

Op-Ed: Why our response to school shootings is all wrong

Granderson: Black votes count, even if results for Black voters seem scarce

eNewspaper

Find/Post Jobs

Place an Ad

Times?

Bestcovery

Coupons

Sudoku **Obituaries** Recipes Media Kit: Why the L. A. Wine Club

L.A. Times Store

Crossword

L.A. Times Careers Manage Subscription **Reprints and Permissions** Site Map

About/Contact

For the Record