

We write to urge a follow up on recent episodes to allow an opportunity to make critically important corrections to the historical record which was mis-reported by you in this month's programming.

In your recent series entitled "On Democracy," the PBS News Hour aired two segments discussing the U.S. Constitution, the first on September 18th with John Malcolm of the Heritage Foundation discussing an originalist interpretation, and the second with historian Jill Lepore, who questioned the idea of originalism. Both Malcolm and Lepore claimed that the Constitution has been amended "27 times". Lepore stated that the Supreme Court has had "so much exclusive authority over the Constitution because we've stopped amending the Constitution" since the concept of originalism was introduced by Robert Bork in 1971 and adopted in the 1980's.

When interviewing Malcolm, Amna Nawaz stated, "There have been no significant amendments to the Constitution for over fifty years", and Geoff Bennett described the Constitution as having "rigidity" and being "really difficult" to amend. Lepore also argued that "we have abandoned that very idea of amendment, the idea that it is our Constitution and that we are the authors of it and by not changing it, we submit to possible abuses of Constitutionalism. . . . If a fundamental mechanism that was built into the constitution . . . that people have the capacity to amend it doesn't work, is the Constitution still working?" On September 17th, Nawaz also interviewed Colleen Shogun, the National Archivist appointed by Biden and subsequently fired by Trump, who said we have "a crisis of civics education in this country," and who is reportedly launching "a national effort to strengthen democracy."

These so-called Constitutional experts and your journalists appear to not realize or are ignoring the fact that the Constitution has indeed been amended, by the ratification of the 27th amendment in 1992, and very recently, by the ratification of the Equal Rights Amendment on January 27, 2020, both well within 50 years. Are these interview subjects trying to rewrite history? We have not stopped amending the Constitution. Rather, the Trump and Biden administrations have each thwarted the will of the states, failing to recognize that our nation has ratified the Equal Rights Amendment.

The ERA legally became the 28th Amendment to the U.S. Constitution as of January 27, 2022 and has met both constitutional requirements: 1) passed by $\frac{2}{3}$ vote of each chamber in the U.S. Congress and 2) ratified by $\frac{3}{4}$ of the states. Despite this, its publication as a part of the Constitution was interfered with by first the Trump Administration which, relying on a memo by AG Barr, improperly directed then Archivist David Ferriero to ignore his statutory duty to publish the ERA when it was ratified in 2020, stating the deadline had passed. Then later by the Biden Administration who refused to reverse this failure to honor the Constitution.

Colleen Shogun, despite her claims of wanting to educate people on civics, also defied the statute and failed in her oath to the Constitution by refusing to publish the ERA as the 28th Amendment. According to reporting by the AP, that you reference on January 17th of this year: "Last month, the archivist and deputy archivist of the United States said in a rare joint statement that the ERA could not be certified without further action by Congress or the courts, saying that

either entity must change the deadline to consider the amendment as certified.” This is a patently false statement by Shogun and her deputy. As Archivist, Shogun had a statutory and ministerial duty to publish Constitutional amendments when they met the two requirements laid out by the founders in Article V. The Constitution does not grant the Archivist any authority to decide which amendments get published and which do not, or to weigh in with her opinion about their validity. Biden also failed to honor his oath of office by not ordering Shogun to do her job, ignoring sustained calls from citizens, the American Bar Association, over a hundred organizations, and members of Congress urging him to do so.

The Constitution says nothing about deadlines when amending the Constitution, and there is no need for Congress to take any more action as it performed its Constitutional duty in 1972. The deadline is immaterial, given the fact that: 1) it was in the preamble, not the text of the amendment that the states ratified; 2) multiple legal scholars have challenged deadlines on the amendment process as an unconstitutional power grab, denying powers reserved to the states by shifting undue control of the process to the federal government; and 3) the 27th amendment was ratified and published in 1992, over 202 years after its introduction in Congress in 1789.

There were 35 states that ratified the ERA by the artificially-imposed deadline, 3 states shy of the required 38. The News Hour owes it to its audience to let it hear from an organization that did the lion's share of the work, getting the last 3 states to ratify—Nevada in 2017, Illinois in 2018, and Virginia in 2020. Please book for a follow-up show, Kamala Lopez, CEO of [Equal Means Equal](#), and the pre-eminent legal expert on all things ERA, impact litigator [Wendy Murphy](#), who can correct the recent misinformation and offer your viewers some accurate, current news about the ERA. We encourage you to also invite [Arlaine Rockey](#), Legal Consultant, who works with Equal Means Equal as well, for a follow-up show regarding the cases she has filed in North Carolina representing protective mothers, pursuing justice for them and their children and seeking validation of the ERA in the courts. See below for their bios.

Women are NOT giving up on getting equality in the U.S. Constitution, and Equal Means Equal has filed a case to get the courts to validate the ERA. The case is [Equal Means Equal v. Donald J. Trump](#). Kamala Lopez, Wendy Murphy, and Arlaine Rockey will be happy to update you on this case and the ongoing fight to get the ERA recognized in the courts. Our Constitution may be difficult to amend (which is by design), so we should celebrate the work of those who have taken the time and effort to attain an amendment, particularly one of this gravity. Rather than relying on the inaccurate and inadequate information of your recent guests and former reporters like Laura Barron Lopez, who made a number of erroneous statements when she gave her superficial summary of the ERA several months ago, you owe your listeners some timely, fair reporting on the Constitutional rights of women by experts in the field.

For a more complete history of what has happened with the ERA, see [The Equal Rights Amendment: The Journey to become the 28th Amendment to the United States Constitution](#), and Murphy, Wendy J. J.D. (2024) "[Unequal Protection of the Laws for Women is Constitutional Terrorism, So How Come Nobody Knows About It?](#)," Ohio Northern University Law Review: Vol. 50: Iss. 2, Article 1.

For an up-to-date version of the Constitution see: [Unabridged U.S. Constitution](#)

Thank you,

Green Alliance for Sex-Based Rights

GASBR speakers bureau / spokespeople

https://greenalliance.sexbasedrights.org/speakers_bureau/request

Wendy J. Murphy, JD

Wendy is adjunct professor of Sexual Violence and Law Reform at New England Law | Boston where she also co-directs the Women's and Children's Advocacy Project (WCAP) under the Center for Law and Social Responsibility. WCAP runs the Judicial Language Project, and the Hate Crimes Against Women project, WCAP also files amicus briefs and engages in public interest litigation to advance the rights of women and children. On January 7, 2020, WCAP filed a first-in-the-nation federal lawsuit to validate the Equal Rights Amendment (ERA) in Massachusetts federal court.

Wendy was a Visiting Scholar at Harvard Law School from 2002-03 and served as the Mary Joe Frug Assistant Professor of Law at New England Law | Boston from 2001-2002. She is a former child abuse and sex crimes prosecutor and founded the first organization in the nation to provide pro bono legal services to victims of violence involved in the criminal justice system. Wendy is an impact litigator who practices in state and federal courts and specializes in advancing the constitutional and civil rights of women and children.

Wendy has authored numerous scholarly articles including a landmark piece explaining the legal relationship between sexual assault on campus and Title IX. Wendy filed many impact litigation cases involving Title IX and campus sexual assault resulting in groundbreaking victories and leading to widespread awareness and reforms, including the well-known April 2011, Dear Colleague Letter. Her most recent law review article is a feminist critical re-examination of the history of women's struggle for equality and is entitled, "Unequal Protection of the Laws for Women is Constitutional Terrorism, So How Come Nobody Knows about It?" She has also appeared on television as a legal analyst for many years and has worked for NBC, CBS, CNN, and Fox News and has provided legal analysis for print and television media. She is the author of two books, "And Justice For Some," published by Penguin/Sentinel in 2007 and "Oh No He Didn't, Brilliant Women and the Men Who Took Credit for Their Work," published by Cynren Press in 2024.

Arlaine Rockey, Legal Consultant

Attorney Arlaine Rockey represents clients throughout North Carolina and Florida, as well as in all other states with local co-counsel, and she is a national Legal Consultant to attorneys representing Protective Mothers. Ms. Rockey handles complicated child custody cases for Protective Mothers, trying to protect their children from sexual and physical abuse from their children's fathers who more often than not win custody due to inherent sex discrimination against women and Protective Mothers. Ms. Rockey has been practicing nationally since 2002.

Ms. Rockey has been an Equal Rights Amendment (#ERA) attorney and advocate for over five years nationally. She is honored to be a [Legal Advisor to Equal Means Equal, the most effective national ERA advocacy organization](#). Currently, she is handling APPEALS for three #ProtectiveMothers using the fully-ratified #ERA in the North Carolina Court of Appeals, to win back custody of their children, and to get that Court, the NC Supreme Court, and ultimately the U.S. Supreme Court, to declare the ERA to be the valid 28th Amendment to the U.S. Constitution.