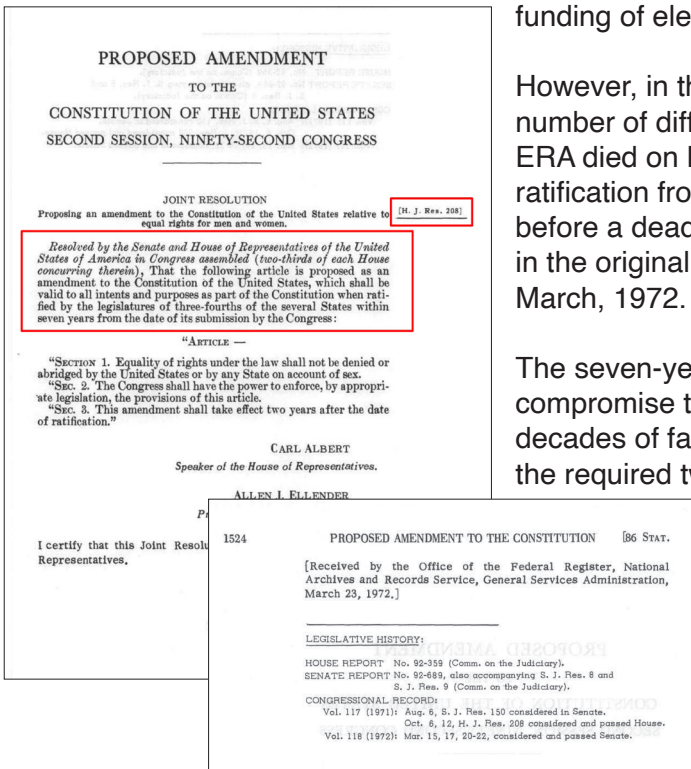


THE EQUAL RIGHTS AMENDMENT

An In-Depth Special Report

Pro-abortion groups, seeking a replacement for *Roe v. Wade*, are now openly joining in the campaign to jam the long-expired 1972 ERA into the U.S. Constitution

Organizations that advocate for the Equal Rights Amendment (ERA), as well as major pro-abortion advocacy groups, now loudly proclaim what for decades they denied or deflected: If the ERA becomes part of the federal Constitution, they will employ it as a constitutional replacement for *Roe v. Wade* — i.e., as a legal weapon to invalidate virtually all state and federal limits on abortion, and to require funding of elective abortion at all levels of government.



However, in this endeavor they are faced with a number of difficulties. Chief among them this: The ERA died on March 22, 1979, having failed to win ratification from the required 38 state legislatures before a deadline that had been included by Congress in the original ERA resolution submitted to the states in March, 1972.

The seven-year ratification deadline was a legislative compromise that allowed ERA advocates, after decades of failure, to get the measure approved by the required two-thirds votes in the U.S. House of Representatives and the U.S. Senate during the 92nd Congress (1971-1972). ERA advocates now have far less support in Congress than was the case in 1972. Rather than seeking compromise on amendment language or otherwise seeking consensus, they have mounted a concerted attack on the integrity of the constitutional

amendment process. After winning adoption of “ratification” resolutions from the legislatures of Nevada (2017), Illinois (2018), and Virginia (2020), they now insist that the deadline was unconstitutional, and/or that it can be removed *retroactively* by the current Congress (or, it seems, by any future Congress).

Early in 2021, the biggest pro-ERA advocacy group, the ERA Coalition, proclaimed “2021: The Year of the ERA.” However, objectively, 2021 was not a good year for the ERA-resuscitation movement. They failed to pick up any new supporters among Republican members of the U.S. Senate, and therefore remain far short of the 60 supporters they’d need to pass a measure that they assert (erroneously) would ensure that the ERA will be recognized as part of the Constitution. They have continued to lose lawsuits in federal courts before federal judges of every stripe; during 2021, the judges voting against the ERA-revival litigants were appointed by Democratic presidents 7 to 1. Moreover, the ERA-advocacy groups have so far been

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unsuccessful in their demands that key Executive Branch officials disregard those adverse court rulings and engage in irregular actions to declare that the ERA is already part of the Constitution.

Nevertheless, ERA-advocacy groups are having considerable success peddling a strikingly different picture to the mainstream news media. In their public relations construct, ERA backers are on the cusp of total victory after a 50-year struggle (or a 99-year struggle). According to this concocted political narrative, the ERA has already met all the conditions required to be part of the Constitution, and at most a small number of recalcitrant officeholders in Congress and/or the Executive Branch must be persuaded to recognize it.

Examples: Linda Coberly, chair of the Legal Task Force of the ERA Coalition, in letter published in *The New York Times* on August 14, 2021, wrote, “In light of the continuing efforts in Congress and the courts, the E.R.A...is alive and well.” House Speaker Nancy Pelosi (D-CA) said on November 16, 2021, that the ERA was on “the cusp of being enshrined into the Constitution.” ERA Coalition President Carol Jenkins asserted in a November 12, 2021 fundraising solicitation, “We are just 2.5 months away from being able to add the Equal Rights Amendment to the Constitution on January 27, 2022. There are only two things standing in our way — the Senate and the Department of Justice.”

Kamela Lopez, president of another major ERA-advocacy group, Equal Means Equal, even suggested that government officials are engaged in “criminality” and “crime” in failing to somehow make the ERA happen. (October 28, 2021) “The will of the people is being stolen from us in slow motion before our very eyes,” resulting in a “constitutional crisis,” the group said in an alert issued on January 23, 2022.

If the rule of law prevails, this unprecedented campaign to air-drop a failed amendment into the text of the Constitution will not succeed. Still, given the number of centers of political power that are parties to the campaign, and the warm reception it is receiving in many quarters of the news-entertainment industry, the political construct that the ERA as “almost there” is likely to achieve unprecedented visibility during 2022.

“The ERA-cannot-die movement has run up an unbroken 40-year losing streak in the courts, before federal judges of every political stripe,” said Douglas Johnson, who oversaw NRLC’s opposition to the ERA during his long tenure as NRLC Federal Legislative Director (1981-2016), and who continues to do today as director of NRLC’s *ERA Project*. Johnson recently updated [an article](#)¹ distilling all federal lawsuits dealing with the status of the ERA, from 1981 to date.

**EQUAL RIGHTS AMENDMENT - PROPOSED MARCH 22, 1972
LIST OF STATE RATIFICATION ACTIONS**

The following dates reflect the date of the state legislature’s passage, the date of filing with the Governor or Secretary of State, or the date of certification by the Governor or Secretary of State, whichever is the earliest date included in the official documents sent to the NARA, Office of the Federal Register. (Updated as of: 03/24/2020)

STATE	RATIFICATION	STATE	RATIFICATION
Alabama	not ratified	Montana	Jan. 25, 1974
Alaska	April 5, 1972	Nebraska*	March 29, 1972
Arizona	not ratified	Nevada**	March 22, 2017
Arkansas	not ratified	New Hampshire	March 23, 1972
California	Nov. 13, 1972	New Jersey	April 17, 1972
Colorado	April 21, 1972	New Mexico	Feb. 28, 1973
Connecticut	March 15, 1973	New York	May 18, 1972
Delaware	March 23, 1972	North Carolina	not ratified
Florida	not ratified	North Dakota	Feb. 3, 1975
Georgia	not ratified	Ohio	Feb. 7, 1974
Hawaii	March 22, 1972	Oklahoma	not ratified
Idaho*	March 24, 1972	Oregon	Feb. 8, 1973
Illinois**	May 30, 2018	Pennsylvania	Sept. 26, 1972
Indiana	Jan. 24, 1977	Rhode Island	April 14, 1972
Iowa	March 24, 1972	South Carolina	not ratified
Kansas	March 28, 1972	South Dakota*	Feb. 5, 1973
Kentucky*	June 27, 1972	Tennessee*	April 4, 1972
Louisiana	not ratified	Texas	March 30, 1972
Maine	Jan 18, 1974	Utah	not ratified
Maryland	May 26, 1972	Vermont	March 1, 1973
Massachusetts	June 21, 1972	Virginia**	January 27, 2020
Michigan	May 22, 1972	Washington	March 22, 1973
Minnesota	Feb. 8, 1973	West Virginia	April 22, 1972
Mississippi	not ratified	Wisconsin	April 26, 1972
Missouri	not ratified	Wyoming	Jan. 26, 1973

* Purported Rescission

Nebraska	March 15, 1973
Tennessee	April 23, 1974
Idaho	Feb. 8, 1977
Kentucky	March 20, 1978
South Dakota	March 5, 1979

** Ratification actions occurred after Congress’s deadline expired. See U.S. Dept of Justice, Office of Legal Counsel, *Ratification of the Equal Rights Amendment*, 44 Op. O.L.C. ___, Slip Op. (Jan. 6, 2020).

[1] <https://www.nrlc.org/uploads/era/FederalJudgesScornERAResuscitation.pdf>

THE EQUAL RIGHTS AMENDMENT

CNN politics

Federal judge says deadline to ratify ERA 'expired long ago' in setback to advocates' efforts



By Veronica Stracqualursi, CNN
Updated 2:55 PM ET, Sat March 6, 2021



A marcher holds a sign that says "ERA USA" during the Women's March in the borough of Manhattan in New York on January 18, 2020.

(CNN) — A federal district judge on Friday dealt a blow to advocates of the Equal Rights Amendment in ruling that the deadline to ratify the ERA "expired long ago" and three states' recent ratifications of the amendment arrived "too late to count."

Johnson said: "So far, 26 federal judges and justices have had opportunities to act on some substantive or jurisdictional issue advanced by ERA-revival litigators — and those litigators have yet to get a single judge's vote on any component of their theories, although the judges were nearly evenly divided in party affiliation. Twice pro-ERA litigators sought Supreme Court review of key issues pertaining to ERA's post-deadline status, yet not even one of 17 justices recorded a vote in favor of granting cert. With such a record, on a less-fashionable issue, the media would be branding the ERA-lives legal claims as 'unfounded' or 'false.' On this issue, however, mainstream media treatments often display lazy gullibility in accepting the dubious premises of ERA-lives advocates, and ignore key events in ERA's history in the courts and the Congress."

The ERA-Abortion Connection

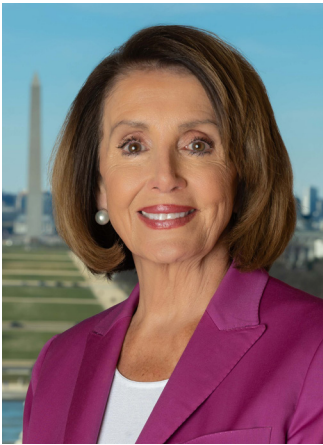
National Right to Life has opposed the ERA for decades, recognizing that the ERA language proposed by Congress in 1972 could be and likely would be construed to invalidate virtually all limitations on abortion, and to require government funding of abortion. In a May 13, 2021 letter to U.S. senators, NRLC said, "Any vote to advance either of these measures [resolutions purporting to retroactively "remove" the ERA ratification deadline] will be accurately characterized as intended to insert language into the U.S. Constitution that could invalidate any limits whatsoever on abortion..."

In decades past, such pro-life objections were publicly rejected by most ERA advocates, who often derided assertions of an ERA-abortion link with such terms as "misleading," "scare tactic" and even "a big lie." Even as recently as February 13, 2020, Speaker Nancy Pelosi said on the floor of the U.S. House of Representatives, "This [the ERA] has nothing to do with the abortion issue." In 2019, a pro-ERA leader in the House, Rep. Carolyn Maloney (D-NY), lectured Republicans at a hearing on the ERA, [stating](#),² "The Equal Rights Amendment has absolutely nothing to do with abortion...saying so is divisive and a tool to try to defeat it. So please don't ever say that again."

But now, most pro-ERA and pro-abortion activists, attorneys, and allied officeholders have dropped the pretext, and openly proclaim that the ERA is needed precisely to reinforce and expand "abortion rights." At a hearing on October 21, 2021 before the U.S. House of Representatives Committee on Oversight and Reform, chaired by that same Rep. Maloney, [pro-ERA committee members \(such as Rep. Ayanne Pressley, D-MA\) and witnesses agreed](#)³ that the ERA would protect federal "abortion rights." For example, Georgetown Law Prof. Victoria Nourse said, "Without actual text, without a text of the ERA [in the Constitution], it may well be that the [Supreme] Court reverses *Roe versus Wade*."

[2] <https://www.nrlc.org/uploads/era/ERAnothingtodowithabortion-Maloney-HJCERAhearing4-30-19.mp4>

[3] <https://www.nrlc.org/uploads/era/Pressley-McClellan-NourseERA-abortion10-21-21hearing.mp4>



"This [the Equal Rights Amendment] has nothing to do with the abortion issue."

-Speaker Nancy Pelosi, on the floor of the U.S. House of Representatives February 13, 2020

In a letter to the U.S. House of Representatives (March 16, 2021), the ACLU said: "The Equal Rights Amendment could provide an additional layer of protection against restrictions on abortion... [it] could be an additional tool against further erosion of reproductive freedom..."

If the mask came off fully in 2021, it had been slipping for years. For example, as early as 2015 the National Organization for Women had circulated a monograph making numerous sweeping claims about the hoped-for pro-abortion legal effects of the ERA — stating, for example, that "an ERA — properly interpreted — could negate the hundreds of laws that have been passed restricting access to abortion care . . ."

In a national alert sent out on March 13, 2019, NARAL Pro-Choice America asserted that "the ERA would reinforce the constitutional right to abortion . . . [it] would require judges to strike down anti-abortion laws . . ."

The Associated Press on January 1, 2020 reported that Emily Martin, general counsel for the National Women's Law Center, "affirmed that abortion access is a key issue for many ERA supporters; she said adding the amendment to the Constitution would enable courts to rule that restrictions on abortion 'perpetuate gender inequality.'" Later that month, national AP reporter David Crary wrote, "Abortion-rights supporters are eager to nullify the [ERA ratification] deadline and get the amendment ratified so it could be used to overturn state laws restricting abortion." (January 21, 2020).

Pete Williams of NBC News reported (Jan. 30, 2020), "The ERA has been embraced by advocates of abortion rights. NARAL Pro-Choice America has said it would 'reinforce the constitutional right to abortion' and 'require judges to strike down anti-abortion laws.' Abortion opponents agree... 'It would nullify any federal or state restrictions, even on partial-birth or 3rd-trimester abortions,' [said] National Right to Life."

Increasingly, abortion advocates have stressed that having actual text in the Constitution could provide a legal foundation for "abortion rights" more secure and *even more expansive* than those achieved under past Supreme Court rulings. *The Daily Beast* (July 30, 2018) reported remarks by Jennifer Weiss-Wolf, vice president of the Brennan Center for Justice: "Both the basis of the privacy argument and even the technical, technological underpinnings of [*Roe*] always seemed likely to expire. . . . Technology was always going to move us to a place where the trimester framework didn't make sense. . . . If you were rooted in an equality argument, those things would not matter."

In 1983 and since, National Right to Life has expressed strong opposition to any federal ERA, *unless* an "abortion-neutralization" amendment is added, which would state: "Nothing in this Article [the ERA] shall be construed to grant, secure, or deny any right relating to abortion or the funding thereof." ERA proponents have vehemently rejected such a modification to any "start over" ERA.

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Kate Kelly, a prominent pro-ERA activist attorney, who in 2021 was hired by Congresswoman Maloney as a counsel to the U.S. House of Representatives Committee on Oversight and Reform, when asked on January 24, 2021 whether the ERA would “codify *Roe v. Wade*,” answered, “My hope is that what we could get with the ERA is FAR BETTER than *Roe*.”

In addition to such predictive statements, ERAs that have been added to various state constitutions, containing language nearly identical to the proposed federal ERA, *have actually been used* as powerful pro-abortion legal weapons. For example, the New Mexico Supreme Court in 1998 unanimously struck down a state law restricting public funding of elective abortions, solely on the basis of the state ERA, in a lawsuit brought by affiliates of Planned Parenthood and NARAL. (*New Mexico Right to Choose v. Johnson*).

At this writing, the Women’s Law Project, in alliance with Planned Parenthood, has a lawsuit appeal pending before the Pennsylvania Supreme Court, arguing that a limitation on state funding of elective abortion violates the Pennsylvania ERA. (*Allegheny Reproductive Health Center vs. Pennsylvania Dept. of Human Services*) The groups have asserted that a 1986 state supreme court decision that held otherwise should be overturned as “contrary to a modern understanding” of an ERA. Briefs in support of this ERA-equals-abortion doctrine have been filed by many groups, including the Columbia Law School ERA Project, which argued that the abortion-funding limitation is “disparate treatment on the basis of sex,” to the detriment of “pregnant people,” and perpetrates “odious sex-stereotyping.”

[Additional evidence of the ERA-abortion connection is available in a footnoted [factsheet](#)⁴ on the National Right to Life website.]

How We Got to this Place on the Equal Rights Amendment

Article V of the Constitution spells out two possible methods of amending the Constitution, only one of which has ever been employed: Congress, by a two-thirds vote of each house, submits a proposed constitutional amendment text to the states, with that text always preceded by a “Proposing Clause” specifying the “mode of ratification” (e.g., instructing the states to consider the proposal either in their state legislatures, or in specially called state conventions). If three-quarters of the states (currently, 38) ratify the amendment, it becomes part of the Constitution.

POST-DISPATCH

FINAL
★★★

2:50 P.M. New York Stocks
Pages 4B and 5B

MONDAY, OCTOBER 4, 1982

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act students St. Louis school board has supported city-county desegregation efforts. Rava called the action “the crowning result and conclusion of a long series of precedents. The Supreme Court has denied (review) . . . of the case at least three times. It is very important to the orderly dispatch of the “ing aspects of the case.” “t said he was “very at the decision but added in no way undermines ination of the state on in the court . . . Page 8

Supreme Court Declares ERA Issues Legally Dead

WASHINGTON (UPI) — The Supreme Court today closed the coffin lid on the 10-year-old Equal Rights Amendment. The court declared the amendment legally dead and refused to rule on questions raised about the ratification process. The justices dismissed a case over a federal court ruling that upheld Idaho’s revocation of its earlier approval of the ERA. They declared the issues “moot” — no

longer presenting a live controversy. The court had temporarily blocked the ruling in January. Today, it wiped the decision off the books so that it could not serve as a precedent. The amendment was adopted by Congress in March 1972. It officially died on June 30, when the amendment gained approval of only 35 states. This was 3 states See COURT, Page 8

[4] <https://www.nrlc.org/uploads/era/ERA-AbortionQuotesheet3-5-20.pdf>



The Baltimore Sun
November 16, 1983

[Associated Press
dispatch]

A dour-looking Representative Patricia Schroeder (D, Colo.) and Representative Peter W. Rodino, Jr. (D, N.J.), supporters of the equal rights amendment, talk to reporters after the defeat.

House falls six votes short of bringing back the ERA

Washington (AP) — The House of Representatives spurned impassioned pleas from the Democratic leadership yesterday and rejected a revival of the proposed equal rights amendment on a vote that fell six short of the required two-thirds majority.

The 278-147 tally followed last-minute threats by women's rights advocates and their opponents in the anti-abortion movement to judge lawmakers at the ballot box next year solely by their votes on the issue.

Voting for the ERA were 225 Democrats and 53 Republicans, while 109 Republicans and 38 Democrats opposed it.

The proposed constitutional amendment, which reads simply that "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex," has twice cleared Congress but fell three states short of ratification — with 38 needed by last year's deadline.

The ERA went down this time after Republicans assailed the Democratic leadership for trying to railroad the legislation without giving members a chance to amend it and with only 40 minutes of debate.

The lawmakers rejected a final appeal by House Speaker Thomas P. O'Neill, Jr. (D, Mass.), who urged support for the ERA without an anti-abortion rider "in fairness to the women of America."

Representative Hamilton Fish, Jr. (R, N.Y.) said after the vote that he would reintroduce the ERA and seek to have it considered later this week under a rule permitting full debate and amendments.

The spectator galleries were nearly filled with supporters of women's groups favoring the ERA, and backers of anti-abortion organizations opposing it without the rider. Lobbyists for both sides worked furiously in the final hours in their attempts to sway votes.

"We are outraged once again that it failed," said Sally Rosloff, president of the Los Angeles chapter of the National Organization for Women. "But we are pleased that we do have a vote with House members on record for or against women's equality. With

this on record, we can plan our strategy for 1984 accordingly."

Until Mr. O'Neill approved the shortcut, Representative F. James Sensenbrenner, Jr. (R, Wis.) stood ready to introduce an amendment that would have ensured continuation of laws restricting government financing of abortions to cases where a woman's life is endangered. Such anti-abortion measures are known as "Hyde amendments," after Representative Henry J. Hyde (R, Ill.).

Mr. Sensenbrenner also planned to offer an amendment that would have prevented use of the ERA to draft women and send them into combat.

Mr. O'Neill said without the no-amendment rule, the anti-abortion forces likely would have won.

He told the House, "In fairness to women of America, the thing to do is send a lean, clean package" to the Senate. He told those saying they would vote against ERA because of the rule, "In your hearts you were never with us. You were looking for an escape."

But Representative Marilyn Lloyd Bouquard (D, Tenn.) accused her own party leadership of ignoring concerns that will be raised in state legislatures. "If we fail to deal with the issues now, we will sow the seeds of confusion. Let's not settle for a meaningless victory on a hollow symbol."

And Representative Michael DeWine (R, Ohio) added that, without amendments on abortion and women in combat, "This ERA is dead. If you want to put it in the Constitution, vote no."

Maryland's House delegation of five men and three women voted solidly in favor of the equal rights amendment. But for Beverly B. Byron it was a last-minute decision.

The Western Maryland Democrat never had to vote on the issue before and had never taken a position. Even her staff could not predict which way she would go.

She explained it was "upsetting" that the equal rights vote had become symbolically entwined with the questions of abortion and combat roles for women in the military — though the amendment addresses neither issue. She said she also has "problems" with constitutional amendments generally. As one of the last House members to cast her vote, Mrs. Byron joined the ERA supporters, she said, because, "Sooner or later you've finally got to make your mind up."

Maryland was one of the first states to ratify the first federal ERA, in 1972, and also added an Equal Rights Amendment to the state Constitution that year.

Mrs. Byron said, however, that she suspects a majority of her constituents in the mountainous and rural west oppose the notion.

Mr. O'Neill told reporters he scheduled the vote "at the insistence of women's organizations who want to find out who their friends are."

"That's the vote people are going to look at," Mary Jean Collins, a vice president of the National Organization for Women, said before the roll call. "NOW's political activity will be based at least partially on how people vote" on the ERA.

Doug Johnson, legislative director of the National Right to Life Committee, said, "I'm not prepared to say how exactly it's going to be defined with respect to individual candidates, but it's a weightier vote than a vote on the Hyde amendment, because it could invalidate all Hyde amendments, past, present and future."

Various versions of the Equal Rights Amendment were introduced in Congress beginning in 1923, but for decades failed to win the necessary two-thirds approval by both houses during any single Congress. ERA proponents finally succeeded during the 92nd Congress (1971-1972) — but only after they reluctantly accepted a seven-year ratification deadline. ("Proponents eventually relented and inserted a seven-year time limit," noted federal Judge Rudolph Contreras in a March 2021 ruling upholding the ratification deadline.) The deadline — as for every successful constitutional amendment proposed since 1960 — was placed in the Proposing Clause (which is not a "preamble," but a constitutionally required element of every constitutional amendment submission).

Many state legislatures ratified the ERA quickly and with little debate. Twenty-two state legislatures ratified by the end of 1972 (that is, before the U.S. Supreme Court handed down its *Roe v. Wade* ruling invalidating the abortion laws of all 50 states, in January 1973). Twelve more states ratified the ERA before government funding of abortion became a volatile national issue in 1976. According to federal Judge Contreras, "25 of the 35 states that ratified the ERA by 1977 voted on an instrument of ratification that quoted Congress's joint resolution in its entirety [including the deadline]. 5 other states...referenced its 7-year deadline."

As the March 22, 1979 deadline approached, the ERA was three states short of the required 38 state ratifications — and four of the states that had ratified during an initial rush had rescinded their ratifications. Under pressure from pro-ERA groups, in 1978 Congress passed a resolution — by simple majority

votes — that purported to extend the deadline for 39 months. Many members of Congress, and many constitutional experts, criticized the ostensible deadline extension as clearly unconstitutional. The only federal court to consider the matter ruled that the deadline extension was unconstitutional (and that rescissions were valid), but no additional states ratified during the 39-month pseudo-extension, so in 1982 the Supreme Court declared that the entire controversy was moot. The 1972 ERA was dead.

THE EQUAL RIGHTS AMENDMENT

In 1983, a top priority of the Democratic majority leadership of the U.S. House of Representatives was restarting the constitutional amendment process for the ERA. A House Judiciary subcommittee held five hearings on a new ERA resolution (containing exactly the same language as the 1972 proposal), after which the full Judiciary Committee rejected all proposed amendments and sent the start-over ERA to the House floor. Democratic leaders and pro-ERA groups were stunned when the ERA went down to defeat on the House floor on November 15, 1983, in large part because of opposition from National Right to Life and other pro-life groups. The measure received the support of 65% of the voting House members — short of the two-thirds margin required under Article V.

The Congressional Pay Amendment (“27th Amendment”) and the Emergence of the “Three-State Strategy”

The ERA resuscitation movement began in 1992, when both the Justice Department and Congress opined that a proposal termed the “Congressional Pay Amendment” (CPA) had achieved ratification, 203 years after Congress had submitted the proposal to the states. Perhaps they were correct, although it appears that no federal court to this day has been forced to decide whether this so-called “27th Amendment” is actually part of the Constitution. The question actually has little bearing on the status of the ERA, because the CPA had no deadline attached, and no state had ever rescinded its ratification. Still, ERA advocates seized on the claimed ratification of the CPA to concoct what they called the “three-state strategy,” which rested on the assertion that the 1972 ERA was not actually dead, but only sleeping — and could still become part of the Constitution, if only three more states adopted “ratification” resolutions.

Operating on this new construct, beginning in 1994, “ratification” resolutions were proposed repeatedly in legislatures in the 15 states that had never ratified the ERA. For more than two decades — from 1994 through 2016 — none of those attempts was successful, with pro-life opposition in many instances decisive in defeating such resolutions.

Finally, in 2017, the Nevada legislature adopted such a “ratification,” followed by Illinois in 2018 and Virginia in January 2020.

The Sacramento Bee • Sunday, December 12, 1993

CA 4

NATION

New strategy adopted to revive ERA

By Kim I. Mills
Associated Press

WASHINGTON — Hoping to take advantage of the more supportive Clinton administration, a coalition of women's groups is trying again to pass the 70-year-old Equal Rights Amendment.

This time, feminists are adopting a tactic that at least one constitutional scholar says might work. They plan to ask Congress to nullify the 1982 deadline for ratification that had been imposed on the measure back in the 1970s.

“We are aware that it is within the prerogative of Congress to lift that expired deadline so that ratification of three additional states may be secured,” said Allie Corbin Hixson, spokeswoman for the coalition, ERA Summit. “With an administration that favors constitutional equality for women, we also believe the time is now favorable to push our suit for justice for all.”

Since the measure passed 35 of the 38 state legislatures required by the deadline, only three more states must pass it to make the amendment law, she said at a news conference in the Capitol.

“We think a concurrent resolution could be passed that says putting a deadline on the amendment was in error,” she said.

The coalition does not yet have sponsors for the proposed resolution, Hixson said.

Mary Cheh, a professor of constitutional law at George Washington University, called the strategy plausible.

Congress “put a limitation on it, they can take a limitation off it,” she said in an interview.

Equal rights proposal

Here is the text of the proposed Equal Rights Amendment:

“Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”

“It would work in their favor if they could get a simple majority of Congress to do this,” she added. “They would be aided by the courts’ reluctance to get involved. . . . If they seize the initiative, they may prevail.”

Patricia Ireland, president of the National Organization for Women, said the 12-year Reagan-Bush era was, for women, “like being a hamster in an exercise

wheel, running as hard as we could just to stay even.”

“We are going to mobilize the movement once again around what has been the Holy Grail of the feminist movement once we won the right to vote,” she said at the news conference, in front of a statue of suffragists Susan B. Anthony, Elizabeth Cady Stanton and Lucretia Mott.

The Equal Rights Amendment was first introduced in Congress in 1923. It states simply: “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 measure failed, but it was reintroduced in 1972, and passed

both houses with a seven-year limit for ratification by at least 38 states. The deadline was extended for three years, but elapsed before enough states could pass it.

The ERA has been reintroduced in Congress every two years since but has never again won the two-thirds support needed to submit it to the states.

Hixson said the coalition will focus its efforts on the 15 states that failed to ratify the ERA by 1982. She said Virginia, which defeated the ERA by one vote, would be the next state in which there would be an attempt to pass it.

The other prime target states are Illinois, Florida, North Carolina, Oklahoma and Missouri.

Under a federal statute, when a state legislature ratifies a proposed constitutional amendment, it sends notification to the Archivist of the United States, an official nominated by the president and confirmed by the U.S. Senate. When the Archivist receives 38 valid ratifications, he publishes the amendment, which is a formal notification that new text has been added to the Constitution.

However, in the case of the ERA, the documents that had been submitted by Nevada and Illinois purported to ratify a proposal that, by its own explicit terms, had expired in 1979. Moreover, four of the states that had ratified had formally rescinded their ratifications prior to the March 1979 deadline (Nebraska, Tennessee, Idaho, and Kentucky). (A fifth state, South Dakota, on March 5, 1979, adopted a resolution stating, arguably redundantly, that its ratification was valid only until March 22, 1979.)



BRIEFING ROOM

Statement from President Biden on the Equal Rights Amendment

JANUARY 27, 2022 • STATEMENTS AND RELEASES

Today, as the House announces a resolution on the Equal Rights Amendment, I once again want to express my support for the ERA loudly and clearly. I have been a strong supporter of the ERA ever since I first ran for the Senate as a 29-year-old. We must recognize the clear will of the American people and definitively enshrine the principle of gender equality in the Constitution. It is long past time that we put all doubt to rest. I am calling on Congress to act immediately to pass a resolution recognizing ratification of the ERA. As the recently published Office of Legal Counsel memorandum makes clear, there is nothing standing in Congress's way from doing so. No one should be discriminated against based on their sex—and we, as a nation, must stand up for full women's equality.

###

Faced with those impending legal issues, the Archivist in 2019 sought guidance from the Department of Justice's Office of Legal Counsel (OLC), which advises the entire Executive Branch on major legal issues. On January 6, 2020, the OLC issued a 38-page legal memo that concluded that Congress had power to include a binding ratification deadline in a constitutional amendment resolution before submitting it to the states, and that the ERA had expired unratified in 1979. The opinion said that once Congress submits a constitutional amendment proposal to the states, the role of Congress has ended – it may not retroactively modify that proposal, including any deadline. Taking note of proposals in Congress that purported to retroactively “remove” the deadline, the OLC opinion said that a later Congress lacks the power to act retroactively in this manner, much as the current Congress lacks the power to override a veto by President Carter.

The Archivist announced that he would “abide by the OLC opinion, unless otherwise directed by a final court order.” As of this writing (January 17, 2022), the OLC opinion remains in place, and so does the public commitment from the National Archives and Records Administration that the Archivist will not certify the ERA unless so directed by “a final court order.”

On January 29, 2020, the Virginia legislature gave final approval to a resolution purporting to ratify the ERA. When the Archivist, in accord with the OLC opinion, declined to publish the ERA as part of the Constitution, the attorneys general of Virginia, Nevada, and Illinois sued in federal court in Washington, D.C., seeking to compel him to do so. Meanwhile, the Biden-Harris campaign said that if elected, “Biden will proudly advocate for Congress to recognize that 3/4 of states have ratified the amendment and take action so our Constitution [includes ERA].”

The U.S. House of Representatives also got into the act, with the leadership of the Democratic majority announcing plans to advance a resolution that purported to retroactively remove the deadline. However,

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three days before the measure was scheduled for a vote on the House floor, ERA advocates suffering a serious blow when longtime ERA champion Justice Ruth Bader Ginsburg was asked about the ERA at a public appearance at Georgetown University Law Center. In her response, Justice Ginsburg implicitly recognized both the validity of both the deadline and the potential power of states to rescind.

I would like to see a new beginning. I'd like it to start over. There's too much controversy about latecomers — Virginia, long after the deadline passed. Plus, a number of states have withdrawn their ratification. So, if you count a latecomer on the plus side, how can you disregard states that said, "We've changed our minds"?

Despite Justice Ginsburg's cautionary words, on February 13, 2020, the House of Representatives passed the measure purporting to remove the ratification deadline by a vote of 232-183 – with all voting

Democrats in support, but only five out of 187 voting Republicans. The Senate, which was then under Republican control, took no action on the measure, so it died at the end of the 116th Congress (2019-2020).



Judge M. Margaret McKeown: "Leaving aside whether any deadlines could be extended, what's your prognosis on when we will get an Equal Rights Amendment on the federal level?"

Justice Ruth Bader Ginsburg: "I would like to see a new beginning. I'd like it to start over. There's too much controversy about latecomers — Virginia, long after the deadline passed. Plus, a number of states have withdrawn their ratification. So, if you count a latecomer on the plus side, how can you disregard states that said, 'We've changed our minds'?"

-February 10, 2020 remarks at Georgetown University Law Center

Meanwhile, in the lawsuit brought by the pro-ERA attorneys general (*Virginia v. Ferriero*), the presiding judge, Judge Rudolph Contreras (an appointee of President Obama), allowed the attorneys general of five "anti-ERA" states (Alabama, Louisiana, Nebraska, Tennessee, and South Dakota) to become "intervenor-defendants" in the

case. These states argued in support of the constitutional validity of both deadlines and rescissions.

On March 5, 2021, Judge Contreras handed a major legal defeat to ERA-cannot-die advocates. Judge Contreras declined to order the Archivist to publish the ERA, observing that it would have been "absurd" to the Archivist to ignore the fact that the congressional deadline was long past; he ruled that even if the Archivist did certify the ERA, that action would have no effect on the legal status of the ERA; and he ruled (as an "alternative holding," i.e., a separate basis for rejecting the Virginia-Nevada-Illinois claims) that the deadline was valid and that the "ratifications" by the three states came too late to count. Most of the news media ignored Judge Contreras' ruling, but gave big coverage two weeks later to another vote in the House of Representatives, passing another a "deadline removal" resolution (H.J. Res. 17), on March 17, 2021. The vote this time was by an even closer margin than in 2020 — 222-204.

"This was ERA's poorest showing in the House in 50 years," said NRLC's Douglas Johnson. "The tally was 62 votes below the two-thirds margin that the Constitution requires when Congress actually exercises its powers under Article V, as opposed to engaging in cheap theatrical performances." (See page 15 for graphics demonstrating the precipitous drop in support for the ERA in the House of Representatives over a 50-year period, as measured in five roll call votes from 1971 through 2021.)

In the Senate, now with a razor-thin Democratic majority, Majority Leader Charles Schumer (D-NY) prevented H.J. Res. 17 from being referred to committee, holding it “at the desk,” cued up for consideration by the full Senate. However, as of this writing (January 17, 2022), Schumer has made no attempt to force the issue. ERA-revival proponents would have to muster 60 votes to overcome the procedural barrier of the filibuster.



“Congress set deadlines for ratifying the ERA that expired long ago. Plaintiffs’ ratifications [those of Virginia, Nevada, and Illinois] came too late to count...Congress’s power to set a ratification deadline comes directly from Article V [of the Constitution]...A contrary result would be absurd.”

U.S. District Judge Rudolph Contreras (appointee of President Obama), ruling in *Virginia v. Ferriero*, March 5, 2021

2021 ERA-Related Developments in the Executive Branch

On January 7, 2021, President Biden announced that he would nominate Merrick Garland, a longtime judge of the U.S. Court of Appeals for the District of Columbia, as attorney general. Garland said publicly that he had sought and received from the President a commitment that the White House would not dictate legal positions to the Justice Department, and that he would not have accepted the job without such an assurance.

President Biden publicly affirmed that he had given Garland such an assurance. “I want to be clear to those who lead this department [about] who you serve,” President Biden said on January 7, 2021. “You won’t work for me. You are not the president or the vice president’s lawyer. Your loyalty is not to me. It’s to the law, the Constitution, the people of this nation, to guarantee justice.”

During his subsequent confirmation process in the Senate, Garland told senators that because he was still a judge at the time, he was ethically barred from answering any of the twenty ERA-related questions members of the Senate Judiciary Committee submitted to him in writing. But, Garland assured the senators, “any opinions or legal advice I might give on this subject would be based solely on the law, and not on any other consideration.” The Senate confirmed Garland on March 10, 2021, on a roll call vote of 70-30.

On June 23, 2021, the Senate Judiciary Committee conducted a hearing for President Biden’s nominee to serve as the assistant attorney general in charge of the Office of Legal Counsel, Christopher Schroeder. Sen. Charles Grassley (R-Iowa) asked Schroeder how he would approach the 2020 OLC opinion on the ERA. Schroeder noted that the Archivist had stated he would follow a final court order, and that the matter was being litigated in the federal courts. “I think we will be all best suited if we allow the litigation process to answer that question,” Schroeder said.

In a June 30, 2021 written response to another senator, Schroeder wrote, “Whenever an OLC opinion has been the subject of a judicial decision...its reasoning should inform and will be acknowledged in the Office’s subsequent analysis of the topic.”

Schroeder was confirmed as head of the Office of Legal Policy on October 28, 2021, by a roll call vote of 56-41.

What to Expect on the Equal Rights Amendment During 2022

During 2022, the ERA battle will involve all three branches of the federal government, and there will be relevant activity in some state legislatures as well.

A New Wave of Lawsuits

On or about January 27, 2022, a new wave of federal lawsuits will begin, challenging a range of local, state, and federal policies in various federal judicial circuits. These lawsuits will be based on the premise that because two years have passed since the Virginia legislature approved a “ratification” resolution, the ERA is now enforceable. (Section 3 of the ERA specifies a two-year preparation period between ratification and activation.) Linda Coberly, the attorney who heads the legal task force of the ERA Coalition, has spoken about this litigation strategy in various webinars and interviews for many months. For example, on a May 1, 2021 virtual “ERA Summit,” Coberly said, “Those lawsuits will most certainly start to be filed in January of 2022, the two-year anniversary of Virginia’s ratification, and at that point ...courts will have to decide whether they agree with the district court in D.C. [Judge Contreras’ ruling], or whether they take some other view.”

Given the four-decade string of defeats that ERA-revival advocates have suffered in the federal courts, Coberly’s fleet of new lawsuits obviously faces strong headwinds. But part of the purpose is political theater. As Coberly put it, “One thing that litigation will explore and demonstrate is the kind of protections that the ERA will provide.” (Bloomberg Law, Dec. 28, 2021)

Meanwhile, Virginia, Nevada, and Illinois have appealed Judge Contreras’ ruling (validating the deadline and the Archivist’s refusal to certify the ERA) to the U.S. Court of Appeals for the District of Columbia, where briefs began to be filed in early January 2022, and where a three-judge panel (not yet named) will hear oral arguments sometime in the fall of 2022. A ruling by the panel is likely in early 2023, if not sooner.

It is noteworthy, however, that an increasing number of ERA advocates are openly asserting that the federal courts lack authority to resolve the legal issues surrounding ERA’s status. For example, in an opinion piece published in the *Washington Post* on November 22, 2021, David Pozen and Thomas P. Schmidt of Columbia Law School asserted, “On many matters of constitutional law, the legal community has accepted that the Supreme Court enjoys the final word. Questions about whether an amendment has become part of the Constitution are an important exception. Congress, not the courts, is the primary arbiter of an amendment’s validity.”

On January 10, 2022, Pozen joined three other law professors (Erwin Chemerinsky, Noah Feldman, and Julie C. Suk) on a friend-of-the-court brief in *Virginia v. Ferriero*, arguing that the courts should take a hands-off approach, stepping back and allowing Congress to decide if the ERA is part of the Constitution.

Longtime pro-ERA activist Kate Kelly, now counsel to Congresswoman Carolyn Maloney (who chairs the House Oversight and Reform Committee), said on Twitter on January 16, 2022: “Running tally of roles given by Article V of the U.S. Constitution to the judiciary in the amending process: 0.”

However, the ERA Coalition’s Linda Coberly told Bloomberg Law, “There is no question that the validity of the Equal Rights Amendment will ultimately be resolved by a court. That could happen soon in the



"The court's reasoning clearly affirms Congress's role as the director of the Article V amendment process."

CUNY Professor Julie Suk commenting March 6, 2021 on the ruling of U.S. District Court Judge Rudolph Contreras in *Virginia v. Ferriero*



"In addition, the effect of a ratification deadline is not the kind of question that ought to vary from political moment to political moment...Yet leaving the efficacy of ratification deadlines up to the political branches would do just that."

U.S. District Judge Rudolph Contreras (appointee of President Obama), ruling in *Virginia v. Ferriero*, March 5, 2021

D.C. Circuit, or it could happen years from now in litigation that advocates bring to enforce the provisions that advocates believe are a part of our Constitution." ("Equal Rights Amendment litigation likely to ramp up in new year," by Chris Marr; Dec. 28, 2021.)

Continuing Political Pressure on the Biden Administration to Twist Legal Standards, and/or on the Archivist of the U.S. to "Go Rogue"

ERA-advocacy groups have, with varying degrees of vehemence, engaged in repeated demands that various Executive Branch officials take actions to declare that the ERA has become part of the Constitution. Such urgings have variously directed at President Biden, Attorney General

Merrick Garland, Assistant Attorney General for the Office of Legal Counsel (OLC) Christopher Schroeder, and the Archivist of the United States, David Ferriero. The actions demanded have been the withdrawal of the January 2020 OLC opinion holding that the ERA had expired, and the publication ("certification") of the ERA as part of Constitution by the Archivist.

"These are, in effect, demands for Executive Branch officials to simply ignore judicial rulings and to act on the basis of a set of politically dictated ideological positions," said NRLC's Johnson.

On January 26, 2022, the Justice Department finally took action, but it was a far cry from the action that the ERA-revival activists had been demanding. OLC head Christopher Schroeder issued a new, three-page opinion about the ERA – but did not withdraw the January 2020 OLC opinion, which therefore continues to be the official interpretation of the governing constitutional law for the Archivist and other members of the Executive Branch.

In the new memo, Schroeder wrote that some of the issues addressed in the 2020 memo "were closer and more difficult than the opinion suggested," but he did not directly repudiate any of them. He wrote, "As a co-equal branch of government, Congress is entitled to take a different view on these complex and unsettled questions," which was no more than a truism – the Office of Legal Counsel provides legal guidance for the Executive Branch, and no one has suggested that its opinions could impede Congress from acting on a different interpretation.

Schroeder also noted that the Justice Department is currently in federal court defending the Archivist's failure to publish the ERA, and that "the federal courts may soon determine or shed light upon several unsettled matters."

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The next day, January 27, 2022, President Biden issued a statement stating, “I am calling on Congress to act immediately to pass a resolution recognizing ratification of the ERA. As the recently published Office of Legal Counsel memorandum makes clear, there is nothing standing in Congress’s way from doing so.”

“Thus, the President is urging the Senate to adopt a resolution ‘recognizing ratification of the ERA,’ even though the official position of the Justice Department, being defended in court, is that the ERA has not been ratified,” commented NRLC’s Johnson. “This appears to be an awkward attempt to appease political activists, while not displaying open contempt for the judgments and proceedings of federal courts. The President’s gesture will not affect any votes in the Senate.”

ERA-revival activists responded to Schroeder’s failure to scrap the 2020 legal opinion by ratcheting up their fire at the Archivist -- insisting that he should simply publish the ERA as part of the Constitution without regard for any other authority.

“He’s the one holding it back. It’s a technicality,” said Rep. Carolyn Maloney (D-NY) at a January 27, 2022 press conference sponsored by the ERA Coalition. “It’s ridiculous that’s he’s holding this up.” Maloney chairs the House Oversight and Reform Committee, which has statutory oversight authority over the National Archives and Records Administration, which the Archivist heads.

Congresswoman Jackie Speier (D-Calif.) agreed: “If the Archivist wants to go down in history for a good reason, he should certify it...Then it will be law.” Speier also said, “In our minds, it is law.”

Linda Coberly, head of the legal task force for the ERA Coalition, agreed that “the Archivist could go ahead and certify it today, and we need to continue the pressure to go ahead and do that.”

NRLC’s Johnson commented, “It is remarkable that sitting members of Congress, and advocate-attorneys, are urging an official of the Executive Branch to act with complete disregard for a federal district court ruling, ongoing litigation, and the official position of the Justice Department as to the governing law, for the sake of being a hero to the activists. The ERA-revival movement seems to be becoming increasingly divorced from legal reality, if such a thing were possible.”

The U.S. Senate Will Conduct a Cloture Vote on the “Deadline Removal” Measure

At some point during 2022, U.S. Senate Majority Leader Charles Schumer will attempt to take up the measure (H.J. Res. 17) that purports to retroactively remove the ratification deadline.

Only two of the 50 Republican senators are on record in support of the Senate version of the measure (S.J. Res. 1), and they are the same two who supported such measures in the previous Congress: Lisa Murkowski of Alaska, and Susan Collins of Maine. The ERA Coalition began the Congress in 2021 with a target list of about 10 other Republican senators, speaking with confidence of a “Roadmap to 60.” They planned to add co-sponsors in bipartisan pairs as new Republicans agreed to cosponsor—they called it the “Noah’s Ark” strategy. But nearly a year later (as of January 27, 2022), not a single additional Republican senator has expressed support for the “deadline removal” measure.

“The time-travel resolution will fall well short of the 60 votes that would be required for it to clear the Senate,” said NRLC’s Johnson. “Retroactive deadline nullification is a constitutional and temporal absurdity. Its advocates would require us believe that the Constitution can be amended without two-thirds of the House and Senate, and three-quarters of the states, ever agreeing on a single fixed proposition, which is clearly what Article V requires.”

Continued ERA-Related Activity in Some State Legislatures

During 2022 there will also be activity in some state legislatures pertaining to the 1972 federal ERA. Twelve states have never ratified nor claimed to have ratified the ERA. Pro-ERA legislators and groups made unsuccessful attempts to pass “ratifications” in most of these states within the past three years, including failed efforts during 2021 in Alabama, Arizona, Florida, Georgia, North Carolina, and Utah. During 2022, ERA advocates will again try to achieve “ratification” in some of the non-ratifying states, but their prospects for success seem slim.

ADDITIONAL RESOURCES

Additional historic documentation on the Equal Rights Amendment can be found on at nrlc.org/federal/era.

Douglas Johnson, director of National Right to Life’s *ERA Project*, is the pro-life movement’s subject matter expert on the Equal Rights Amendment. He has been extensively involved in the legislative and legal disputes surrounding the Equal Rights Amendment since 1982, and has written widely on the subject. He can be reached through the National Right to Life Communications Department at (202) 626-8825 or via email at mediarelations@nrlc.org

@ERA_No_Shortcuts is a recommended Twitter account dedicated exclusively to tracking legal and political developments pertaining to the federal Equal Rights Amendment, from an ERA-skeptical perspective.

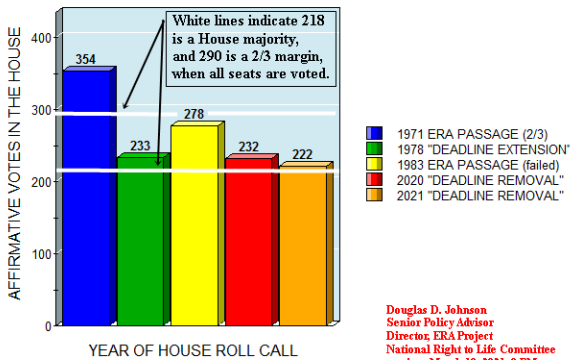
In addition, on March 19, 2021, the North Dakota legislature gave final approval to a measure (Senate Concurrent Resolution No. 4010), informally known as the “Count Us Out” resolution, stating that North Dakota’s 1975 ratification “officially lapsed” on March 22, 1979, and that North Dakota “should not be counted by Congress, the Archivist of the United States...[or] any court of law...as still having on record a live ratification” of the ERA. (This was not a “rescission,” since for those who recognize the original ratification as deadline as valid and immutable, neither true ratifications nor true rescissions are possible after March 22, 1979. Rather, a “Count Us Out” resolution merely explains or underscores the original duration of the legislative action taken decades ago.) It is possible that one or more additional ratifying states might adopt such “Count Us Out” clarifications during the coming year.

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ERA's Sinking Support in Congress: How support for the Equal Rights Amendment has plunged over a 50-year period

When Congress approved the Equal Rights Amendment resolution for submission to the states in 1971-1972, it did so by overwhelming margins — but that occurred only after ERA sponsors reluctantly concluded that they must accept a ratification deadline in order to overcome opposition from ERA skeptics. (“Proponents eventually relented and inserted a seven-year time limit,” noted federal Judge Rudolph Contreras in his March 2021 ruling upholding the ratification deadline.)

Affirmative Votes for ERA Measures, U.S. House, 1971-2021



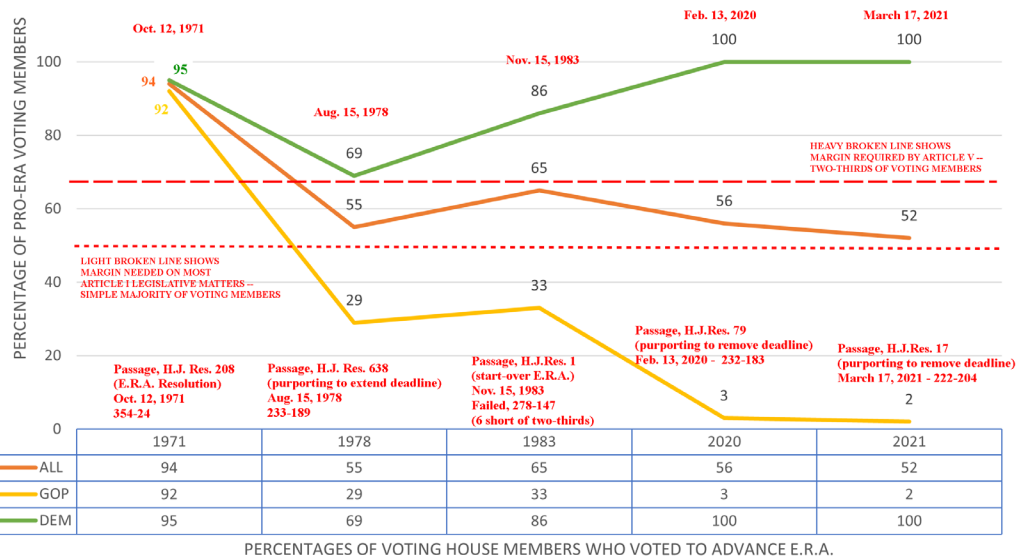
Since then, the U.S. Senate has voted only once on an ERA-related matter — in 1978, when a Congress controlled by strong Democratic majorities passed, by simple majority votes (not two-thirds) a resolution that purported to extend the ERA’s ratification deadline by 39 months, to mid-1982. The only federal court ever to consider the matter ruled that this was unconstitutional, but the issue was never definitively resolved because no additional states ratified during the pseudo-extension period.

50-YEAR ERA SUPPORT IN U.S. HOUSE 1971-2021 BY % OF VOTING MEMBERS

All numbers shown are percentages of voting members (not percentages of total House membership).

Douglas D. Johnson
Senior Policy Advisor
Director, ERA Project
National Right to Life Committee
version: March 18, 2021, 8 PM

However, over a 50-year period, the U.S. House of Representatives has voted five times on ERA and directly related measures: The original ERA resolution in 1971; the “deadline extension” in 1978; a start-over ERA in 1983 (defeated on the House floor); and measures purporting to retroactively “remove” the ratification deadline in 2000 and 2001.



Analysis of these roll calls shows a precipitous drop in overall support for the ERA in the House, from 94% of voting members in 1971 to only 52% in 2021. Support among Republican House members has fallen from 92% in 1971 to 2% in 2021. The single biggest factor (although not the only factor) in this erosion in Republican support has been recognition that the 1972 ERA language would lend itself to use as a powerful pro-abortion legal weapon — an intended effect belatedly acknowledged and indeed proclaimed by pro-ERA activists.