



February 08, 2022

Mr. Douglas D. Johnson  
[REDACTED]

RE: Freedom of Information Act Request NGC22-216

Dear Mr. Johnson:

This is in response to your Freedom of Information Act (FOIA) request to the National Archives and Records Administration (NARA), dated January 10, 2022, which we received in our office on the same day via *FOIAonline*. We assigned your request the above internal tracking number in addition to your *FOIAonline* tracking number NARA-NGC-2022-000617. In your request you submitted the statement below:

“The chairwoman of the Committee on Oversight and Reform of the U.S. House of Representatives, Congresswoman Carolyn B. Maloney (D-NY), sent a letter on the letterhead of that committee, dated October 21, 2021, to the Honorable David S. Ferriero, Archivist of the United States, in which she wrote, inter alia, "I urge you to immediately perform your ministerial role under 1 U.S.C. § 10Gb to certify ... and publish the Equal Rights Amendment as the 28th Amendment to the Constitution ... If you feel you must request new guidance from OLC in order to proceed, I ask that you do so immediately." Chairwoman Maloney released the letter to the news media; a copy of the letter is uploaded with this FOIA request. This is a FOIA request for a copy of any response or responses to Congresswoman Maloney's letter that were sent to Congresswoman Maloney, or to any of her staff, or to any staff person of the Committee on Oversight and Reform of the U.S. House of Representatives (whether in the form of a letter, on an email, or any other matter of response of which a record has been retained); whether the responses were signed by Mr. Ferriero himself or were sent in the name of subordinates or by other officials or civil servants. This request covers any such responsive communications transmitted to Congresswoman Maloney, the committee that she chairs, or her agents, from the time that Chairwoman Maloney's letter of October 21, 2021 was received by any component or staff person of NARA, up to the date of the search.”

Following a search, we located one document totaling **one** page responsive to your request. We are releasing the document to you in full with no redactions.

If you are not satisfied with our action on this request, you have the right to file an administrative appeal within ninety (90) calendar days from the date of this letter via regular U.S. mail or email. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. If you submit your appeal in writing, please address it to the Deputy Archivist of the United

NATIONAL ARCHIVES *and*  
RECORDS ADMINISTRATION

8601 ADELPHI ROAD  
COLLEGE PARK, MD 20740-6001  
[www.archives.gov](http://www.archives.gov)

States (ND), National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." If you submit your appeal by e-mail please send it to [FOIA@nara.gov](mailto:FOIA@nara.gov), also addressed to the Deputy Archivist of the United States. Please be sure to explain why you believe this response does not meet the requirements of the FOIA. All correspondence should reference your case tracking number **NGC22-216** and your *FOIAonline* tracking number.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our FOIA Public Liaison Gary M. Stern for assistance at:

National Archives and Records Administration  
8601 Adelphi Road, Room 3110  
College Park, MD 20740-6001  
301-837-1750  
[garym.stern@nara.gov](mailto:garym.stern@nara.gov)

You may also contact the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman's office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is noted below:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, MD 20740-6001  
[ogis@nara.gov](mailto:ogis@nara.gov)  
[ogis.archives.gov](http://ogis.archives.gov)  
202-741-5770 or toll free 1-877-684-6448

Thank you for contacting NARA, please feel free to contact me directly if you have any questions or concerns.

Sincerely,  
*Wanda Williams*  
Wanda Williams  
Deputy FOIA Officer  
National Archives and Records Administration  
[wanda.williams@nara.gov](mailto:wanda.williams@nara.gov)  
301-837-0773 (direct voice mail)

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051  
MINORITY (202) 225-5074  
<https://oversight.house.gov>

October 21, 2021

The Honorable David S. Ferriero  
Archivist of the United States  
National Archives and Records Administration  
700 Pennsylvania Avenue, N.W.  
Washington, D.C. 20408

Dear Mr. Ferriero:

As you know, last January, Virginia became the 38th and final state needed to ratify the Equal Rights Amendment (ERA). Now that the ERA has been ratified by the necessary three-fourths of states and the requirements under Article V of the U.S. Constitution have been met, I urge you to immediately perform your ministerial role under 1 U.S.C. § 106b to certify the ratifications of Nevada, Illinois, and Virginia and publish the Equal Rights Amendment as the 28th Amendment to the Constitution.

The Trump Administration's Office of Legal Counsel (OLC) issued a legal opinion in January 2020—before Virginia ratified the ERA—attempting to block completion of the ratification process.<sup>1</sup> In a press release issued on January 8, 2020, the National Archives and Records Administration (NARA) stated that it would “abide by the OLC opinion, unless otherwise directed by a final court order.”<sup>2</sup> Legal scholars have recently informed the Committee that the Trump Administration's OLC memo is based on a faulty legal analysis and should be rescinded. These scholars have also opined that the memo goes “beyond the role of the Executive Branch.”<sup>3</sup>

I urge you to carry out your statutory duties to certify and publish the ERA without further delay. If you feel you must request new guidance from OLC in order to proceed, I ask that you do so immediately. Your role is purely ministerial and should not impede the amendment process laid out in Article V of the Constitution.

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<sup>1</sup> Office of Legal Counsel, Department of Justice, *Ratification of the Equal Rights Amendment* (Jan. 6, 2020) (online at [www.justice.gov/sites/default/files/opinions/attachments/2020/01/16/2020-01-06-ratif-era.pdf](http://www.justice.gov/sites/default/files/opinions/attachments/2020/01/16/2020-01-06-ratif-era.pdf)).

<sup>2</sup> National Archives and Records Administration, *Press Release: NARA Press Statement on the Equal Rights Amendment* (Jan. 8, 2020) (online at [www.archives.gov/press/press-releases-4](http://www.archives.gov/press/press-releases-4)).

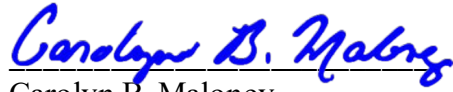
<sup>3</sup> Letter from Professor Katherine Franke, Faculty Director, ERA Project, Columbia Law School, et al. to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Oct. 15, 2021) (online at <https://gender-sexuality.law.columbia.edu/sites/default/files/content/Research%20and%20Papers/OLC%20Letter%20Final.pdf>).

The Honorable David S. Ferriero

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As Chairwoman of the Oversight Committee, and as a woman whose equality under the law is still not reflected in my own Constitution, I thank you for your attention to this important matter.

Sincerely,



Carolyn B. Maloney  
Chairwoman

cc: The Honorable James Comer, Ranking Member



Archivist of the  
United States

November 17, 2021

The Honorable Carolyn Maloney  
Chairwoman  
Committee on Oversight and Reform  
House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515-6143

Dear Chairwoman Maloney:

Thank you for your letter of October 21, 2021, concerning my role under 1 U.S.C. § 106b with respect to the constitutional amendment process as it relates to the Equal Rights Amendment.

As you know, in 2018, I requested advice from the Department of Justice on this issue, and on January 6, 2020, the Office of Legal Counsel (OLC) concluded "that Congress had the constitutional authority to impose a deadline on the ratification of the ERA and, because that deadline has expired, the ERA Resolution is no longer pending before the States." The OLC opinion went on to state that "the ERA's adoption could not be certified under 1 U.S.C. § 106b." In response, I authorized the release of a press statement that stated: "NARA defers to DOJ on this issue and will abide by the OLC opinion, unless otherwise directed by a final court order."

As you are also aware, there is ongoing litigation related to this issue in federal court against the National Archives, which is being defended by the Department of Justice. It is longstanding OLC policy not to opine on the legality of government action presently being challenged in litigation.

Accordingly, it is my understanding that OLC would not reconsider the question now if I were to ask it again.

Sincerely,

DAVID S. FERRIERO  
Archivist of the United States