

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

COMMITTEE ON OVERSIGHT AND REFORM

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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informed the Committee that the Trump Administration's OLC memo is based on a faulty legal analysis and should be rescinded.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)).

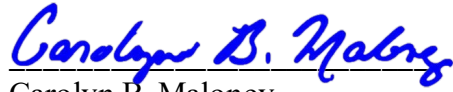
<sup>3</sup> Letter from Professor Katherine Franke, Faculty Director, ERA Project, Columbia Law School, et al. to Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform (Oct. 15, 2021) (online at <https://gender-sexuality.law.columbia.edu/sites/default/files/content/Research%20and%20Papers/OLC%20Letter%20Final.pdf>).

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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