

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM
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October 6, 2021

Ms. Ting Ting Cheng
Director, ERA Project
Columbia Law School
435 West 116th Street
New York, NY 10027

Dear Ms. Cheng:

I am writing to seek the opinions of constitutional scholars on the current status of the Equal Rights Amendment (ERA). The mission of the ERA Project at Columbia Law School's Center for Gender and Sexuality is "to develop academically rigorous research, policy papers, expert guidance, and strategic leadership on the Equal Rights Amendment (ERA) to the U.S. Constitution, and on the role of the ERA in advancing the larger cause of gender-based justice."¹ The ERA Project has an academic advisory council of constitutional legal scholars with expertise in the constitutional amendment process and gender justice.

As you are aware, Virginia ratified the ERA in January 2020, becoming the 38th and final state necessary for adoption of the Amendment.² Under 1 U.S.C. § 106b, the Archivist of the United States is required to certify and publish amendments once they are ratified by the requisite number of states. Just days before Virginia's ratification, the Trump Administration's Office of Legal Counsel (OLC) issued an opinion instructing the Archivist not to proceed with publishing the ERA.³ This opinion is preventing the Archivist from certifying and publishing the ERA as the 28th Amendment to the Constitution.⁴

Given the unique mission of the ERA Project, I would like to offer this opportunity for the ERA Project to provide input to the Committee as we consider what, if any, further action by Congress is appropriate. In particular, I would be interested in your views on the current legal status of the ERA, including a legal analysis of:

¹ ERA Project, Center for Gender and Sexuality Law, Columbia Law School, *Our Mission* (online at <https://gender-sexuality.law.columbia.edu/content/team-mission>) (accessed Sept. 27, 2021).

² *Virginia Approves the ERA, Becoming the 38th State to Back It*, New York Times (Jan. 16, 2020) (online at www.nytimes.com/2020/01/15/us/era-virginia-vote.html); U.S. Const. art. V.

³ Office of Legal Counsel, Department of Justice, *Opinion: Ratification of the Equal Rights Amendment* (Jan. 6, 2020) (online at www.justice.gov/olc/opinion/ratification-equal-rights-amendment).

⁴ 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).

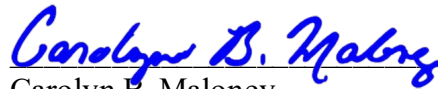
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1. The validity of the Trump OLC opinion on the ERA, and whether this opinion should be updated or rescinded; and
2. The authority of the Archivist of the United States to certify and publish the ERA with or without further action by the executive branch or Congress.

As Chairwoman of the Committee with jurisdiction over the National Archives and Records Administration, and as the lead sponsor of ERA ratification legislation in Congress since 1997, I would find it helpful to know what the legal community has to say on this matter.

Sincerely,



Carolyn B. Maloney
Chairwoman

cc: The Honorable James Comer, Ranking Member