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Equal Rights Amendment:

North Dakota Legislature Approves “Count Us Out” Resolution, Formally Notifying Federal Authorities That the State’s 1975 Ratification of the Equal Rights Amendment Expired in 1979

The measure instructs that North Dakota “should not be counted by Congress...Archivist...any court...,” because its ratification “officially lapsed”

In a first-in-the-nation move, the North Dakota legislature today gave final approval to a measure to formally notify Congress, the Archivist of the United States, and the federal courts that North Dakota’s 1975 ratification of the Equal Rights Amendment expired on March 22, 1979.

The North Dakota House at 1:45 PM EDT approved the measure ([Senate Concurrent Resolution No. 4010](#)), which had passed the North Dakota Senate on February 22. Informally known as the “Count Us Out” resolution, the measure says 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.

Douglas D. Johnson, Senior Policy Advisor to National Right to Life and director of its ERA Project, who testified on March 18 before the North Dakota House Government and Veterans Affairs Committee in support of the “Count Us Out” resolution, explained: **“North Dakota has sent a loud and clear message to Congress, the courts, and the Archivist: *Count us out on the ERA. This is an emphatic repudiation of the attempts by Democrats in Congress, and Democratic attorneys general such as Virginia’s Mark Herring, to hijack long-expired actions by state legislatures and use them as props in a political mini-drama.*”**

Johnson said: “Contrary to some erroneous press reports, the North Dakota legislature has not ‘rescinded’ its 1975 ratification of the ERA. Rather, it has done something more meaningful -- it has notified Congress, the Archivist, and Democratic attorneys general that when the ERA expired on March 22, 1979, North Dakota’s ratification also lapsed, as it incorporated the same deadline. The North Dakota resolution implicitly recognizes the fact that once the ERA expired, it ceased to exist. States that pretend to ratify the 1972 ERA, such as Virginia did in 2020, engage in gestures without legal effect – as a federal judge [ruled this month in *Virginia v. Ferriero*](#).”

“The North Dakota measure is the first of its kind in the nation, but it may not be the last,” Johnson added.

Legislative backers of North Dakota’s “Count Us Out” measure said it was a response to claims made by congressional backers of measures currently under consideration (H.J. Res. 17, S.J. Res. 1) that purport to “remove the deadline” on the long-expired 1972 ERA. The congressional sponsors of those resolutions have often stated their premise that the ERA is alive and that 38 valid ratifications exist. H.J. Res. 17 passed the U.S. House of Representatives on March 17 by a vote of 222-204, which was the poorest showing on any ERA-related House vote in 50 years – barely a majority and 62 votes under the two-thirds margin required for real constitution-amending. The measure faces a much steeper climb in the U.S. Senate.

Backers of the North Dakota measure also took note of claims submitted in federal court by Virginia Attorney General Mark Herring, who sued the Archivist, claiming that action taken by the Virginia legislature in January 2020 made Virginia the 38th ratifying state (counting North Dakota), and thereby made the ERA part of the Constitution. The attorneys general of Nevada and Illinois were also parties to that lawsuit, which was backed in a friend-of-court brief by 18 other Democratic attorneys general. On March 5, 2021, Judge Rudolph Contreras (an appointee of President Obama) rejected the Virginia claims, ruling that the March 22, 1979 ERA deadline was constitutional and that no valid ratifications had occurred in Nevada, Illinois, or Virginia. Judge Contreras ruled that it would “absurd for the Archivist to ignore such a deadline,” and that the three states that acted in 2017-2020 “came too late to count.” Herring said he may appeal that ruling.

“The ERA-is-alive theories have a 40-year unbroken string of defeats in the federal courts, involving 20 federal judges and justices of every political stripe,” said NRLC’s Johnson. “Much of the news media are now participants in an elaborate theatrical production, with a political hologram playing the part of the real constitutional amendment that is now 42 years dead.”

On February 10, 2020, Justice Ruth Bader Ginsburg, long known for her attachment to the Equal Rights Amendment, was asked directly about the status of the ERA at a forum at Georgetown University Law Center. She responded:

“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?’”

For extensive documentation on the ERA-abortion connection, see the “quotesheet” available at this URL: <https://www.nrlc.org/uploads/era/ERA-AbortionQuotesheet3-5-20.pdf>

Douglas Johnson is NRL’s subject matter expert on the Equal Rights Amendment, an issue on which he has written and worked for 40 years. Mr. Johnson is available for interviews or email exchanges to discuss the congressional and ratification histories of the ERA, to comment on the legal and political aspects of the issue, and to discuss the ERA-abortion connection.

@ERANoShortcuts is a non-NRL but recommended Twitter account dedicated exclusively to tracking ERA-related legal and political developments in the courts,

Congress, Executive Branch, and state legislatures, from an “ERA-skeptical” perspective.

Founded in 1968, National Right to Life, the federation of 50 state right-to-life affiliates and more than 3,000 local chapters, is the nation's oldest and largest grassroots pro-life organization. Recognized as the flagship of the pro-life movement, NRLC works through legislation and education to protect innocent human life from abortion, infanticide, assisted suicide and euthanasia.