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**FOR ADDITIONAL DOCUMENTATION ON THE SUBJECT MATTER OF THIS RELEASE, SEE THE EQUAL RIGHTS AMENDMENT: AN IN-DEPTH SPECIAL REPORT (JAN. 27, 2022)**

**MEDIA ADVISORY— *Washington Post's* The Fact Checker Awards Four Pinocchios (“Whopper”) to Rep. Carolyn Maloney for claims that the Equal Rights Amendment has been ratified “and all that is needed is the approval of the archivist”**

WASHINGTON (Feb. 9, 2022)—The *Washington Post's* The Fact Checker today [awarded the leader of ERA-revival forces in Congress, Rep. Carolyn Maloney](#) (D-NY), “Four Pinocchios” (defined by the *Post* as “Whopper,” the maximum level of falsity) for her recent claims that the Equal Rights Amendment has been ratified and can be formally made part of the Constitution if published by the Archivist of the United States, David Ferriero.

“At this point, pending further court or congressional action, it is simply wrong to claim that the ERA already has met constitutional muster and all that is needed is the approval of the archivist,” the *Post* analysis concluded.

As noted in a recent series of Media Advisories issued by National Right to Life, essentially the same ERA-related misinformation is being disseminated by other members of Congress, at the behest of advocacy groups such as the Equal Means Equal and the ERA Coalition. In many instances the highly distorted claims about the ERA’s status are being uncritically adopted by journalists in stories, explainers, and profilers that are manifestly narrow in their sourcing.

[Today’s 2,100-word The Fact Checker critique](#) appeared on the *Washington Post* website under the headline “The ERA and the U.S. archivist: Anatomy of a false claim.” Chief *Post* fact checker Glenn Kessler examined several recent public statements by Rep. Maloney about the ERA, notably that the ERA is already part of the Constitution, and her insistence that Archivist of the U.S. is obligated to formally certify the ERA as part of the Constitution. Maloney, the longtime leader of ERA-revival forces in the U.S. House of Representatives, also chairs the House Oversight and Reform Committee, which holds oversight authority over the National Archives and Records Administration, which the Archivist heads.

Key points in the *Washington Post* The Fact Checker analysis included these:

\*“Every time the issue has been litigated in federal court, most recently in 2021, the pro-ERA side has lost, no matter whether the judge was appointed by a Democrat or a Republican.” (This is a point documented in detail in the [NRLC white paper](#) “Advocates seeking to resuscitate the 1972 ERA are on a 40-year losing streak before federal judges of every stripe,” by Douglas D. Johnson, director of the *ERA Project* for the National Right to Life Committee. Jan. 5, 2022)

\*A [March 2021 ruling by Judge Rudolph Contreras \(appointed by President Obama\)](#) “evaluated many of the arguments made by ERA supporters, such as Maloney, and found them wanting...He found the ratification deadline in the ERA to be valid and that it would be ‘absurd’ for the archivist to ignore it.”

\*The U.S. Supreme Court’s handling of a 1981 ruling by a different federal judge, holding that the ERA deadline was binding, “indicated support for the idea that the deadline had passed.”

\*A [January 2020 legal opinion by the Department of Justice Office of Legal Counsel](#) arguing that the ERA was long expired and had not been ratified “has not been rescinded by the Biden Administration Justice Department.” A White House official told The Fact Checker, “The role of the archivist is a matter subject to litigation, and we would defer to the Justice Department on such issues.”

**\*The *Washington Post* analysis concluded, “Maloney is offering false hope about the archivist’s role — and falsely putting words in Ferriero’s mouth.... Moreover, two major court rulings have concluded that the ERA’s ratification deadline, as set by Congress, has expired — a position embraced by both the Trump and Biden Justice Departments. The Supreme Court in 1982 also indicated support for the idea that the deadline had passed. At this point, pending further court or congressional action, it is simply wrong to claim that the ERA already has met constitutional muster and all that is needed is the approval of the archivist.”**

It would be only fair if Congresswoman Maloney would share her award with others equally deserving. For example, *The Atlantic* today (Feb. 9) published [an essay by Russell Berman](#), titled “The Biden Appointee Who Could Change the Constitution,” that promoted most of the same points of misinformation refuted in The Fact Checker analysis. In the very first paragraph, Berman embraced the proposition that the Archivist, the government’s librarian, has the power to “make an even more immediate and direct change to” the Constitution than the next Supreme Court nominee. Although Berman’s piece was 1800 words long, and mentioned President Trump five times, he did not find room to quote a single word from the ruling by Judge Contreras, the Obama-appointed judge who upheld the ERA ratification deadline and who said that it would have been “absurd” for the Archivist to disregard the deadline.

Archivist Ferriero has already announced that he will retire in April. In recent weeks, [Congresswoman Maloney](#), [Congresswoman Jackie Speier \(D-Ca.\)](#), ERA Coalition legal task force chair Linda Coberly, and other ERA advocates in and outside of Congress have openly called for Ferriero to certify the ERA before he leaves office. In addition, Berman reported that “some Democrats want to insist, as a requirement for confirmation, that the next Archivist publish the ERA.”

“That should be a litmus test for whoever is appointed,” Maloney told Berman, who also quoted Sen. Richard Blumenthal (D-Ct.) as saying he would “have trouble” voting for a nominee who did not commit to certify the ERA.

“The statute that created the office of Archivist specifically requires that it be filled without regard to partisan considerations, based purely on professional qualifications,” noted NRLC’s Douglas Johnson. “Yet we now hear sitting members of Congress and influential advocacy groups demanding that the Archivist or his successor ignore both a federal judge’s ruling and the Justice Department, and unilaterally declare that a long-expired amendment is part of the Constitution. This is an attack on the rule of law. Yet many of the recent journalistic treatments are rendered in tones of hopeful expectation or palpable cheerleading, rather than skepticism or outrage.” (The statute, 44 USC Ch. 21, Sec. §2103, says that the Archivist “shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist.”)

Johnson noted that Maloney, in her capacity as chairwoman of the House committee with direct oversight responsibility over the agency headed by Archivist Ferriero, sent Ferriero a letter on October 21, 2021, urging the Archivist to immediately certify the ERA, or if he felt it was necessary, to “immediately” request new guidance from the Office of Legal Counsel. In his November 17, 2021 reply (which Mr. Johnson obtained on February 8, 2022 through the Freedom of Information Act), Ferriero reminded Maloney of the Justice Department position that the ERA has expired, and of the ongoing litigation. “It is longstanding OLC policy not to opine on the legality of government action presently being challenged in litigation,” Ferriero wrote. “Accordingly, it is my understanding that OLC would not reconsider the question now if I were to ask again.”

Whoever President Biden nominates someone to succeed David Ferriero as Archivist, the nomination will go first to the Senate Homeland Security and Governmental Affairs Committee. On February 8, Senator Rob Portman (Ohio), the ranking Republican on that committee, and two other Republican members of the committee, Senator Ron Johnson (WI) and Senator Mitt Romney (Utah), sent Archivist Ferriero [a letter](#) noting statements by Rep. Maloney and others on the January 27 ERA Coalition virtual press conference. The letter concluded, “The office of the Archivist of the United States...has always been regarded as a nonpolitical office...Your handling of the matter of the Equal Rights Amendment from 2020 to date has conformed to this expectation by making clear that you would respect the formal DOJ opinions on the matter. In light of the calls for you to disregard your duty and certify the ERA, we write to ask for your commitment that you, and the acting Archivist who will take over in April, will not certify or publish the ERA, which failed to achieve ratification by the states and is no longer pending before them.”

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*Douglas Johnson, director of the National Right to Life ERA Project, is NRLC’s subject matter expert on the Equal Rights Amendment, an issue on which he has worked directly, and written, for 40 years. Mr. Johnson is available for telephone 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, the National Right to Life Committee (NRLC), the federation of affiliates in each of the 50 states and the District of Columbia 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.*