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Congressional Measures Purporting to Ratify The 1972 "Equal Rights Amendment" – Pro-abortion in Intent, Unconstitutional in Execution

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Recommended for ERA-related updates, from an ERA-skeptical perspective: @ERANoShortcuts on Twitter

- Congress submitted the ERA Resolution to the states on March 22, 1972, with a seven-year ratification deadline in the Proposing Clause – the same practice followed with every proposed constitutional amendment since 1960. 38 states are required for ratification. The deadline arrived on March 22, 1979 – 42 years ago – with 35 state legislatures having ratified, of which 5 took action to rescind before the deadline.

- In 1978, Congress by simple majority votes purported to extend the deadline to June 30, 1982. The only federal court to ever consider the matter ruled this extension unconstitutional; however, the case was later declared moot by the Supreme Court, because no additional states ratified prior to the purported extended deadline. Anyway, as of June 30, 1982, all agreed the ERA was dead.

- However, ERA advocates in 1993 developed theories under which deadlines can be disregarded, either because they are deemed to be unconstitutional, or because Congress can repeal them retroactively forever. Also, ERA proponents claim that state rescissions are never allowed. The legislatures of Nevada (2017), Illinois (2018), and Virginia (2020) adopted "ratifications" based on these theories, with Virginia's attorney general claiming in court that his state's ratification made ERA part of the Constitution.

- In a ruling issued March 5, 2021, U.S. District Judge Rudolph Contreras, an appointee of President Obama, ruled that the deadline was constitutional, and that the Nevada, Illinois, and Virginia ratifications "came too late to count." However, the judge did not decide some other issues, such as the constitutionality of Congress attempting to retroactively remove the deadline.

- Current resolutions H.J. Res. 17 (Speier-Reed) and S.J. Res. 1 (Cardin-Murkowski) purport to retroactively "remove" the deadline and thereby (sponsors claim) put ERA in the Constitution.

- Analysts on both sides of the abortion issue recognize that the 1972 ERA language could enshrine "abortion rights" into the text of the Constitution, with sweeping and permanent destructive effects on pro-life laws and policies. NARAL Pro-Choice America asserted that "the ERA would reinforce the constitutional right to abortion . . . [it] would require judges to strike down anti-abortion laws . . ." A National Organization for Women factsheet on the ERA states that "...an ERA – properly interpreted – could negate the hundreds of laws that have been passed restricting access to abortion care and contraception." The general counsel of the National Women's Law Center told AP that the ERA would allow courts to rule that limits on abortion "perpetuate gender inequality."