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Federal District Judge Contreras, Obama Appointee, Rules That the Ratification Deadline for the 1972 Equal Rights Amendment Was Valid; Rejects the 2017-2020 "Ratifications" by Virginia, Nevada, and Illinois

WASHINGTON – U.S. District Judge Rudolph Contreras (an appointee of President Barack Obama) today ruled that the ratification period for the Equal Rights Amendment, set in the ERA Resolution approved by Congress 49 years ago, was valid, and that the actions of the legislatures of Nevada (2017), Illinois (2018), and Virginia (2020) had no legal effect.

In a case called *Virginia v. Ferriero*, those three states sued the Archivist of the United States in the federal district court in the District of Columbia, after the Archivist declined to certify the ERA as part of the Constitution, following a "ratification" by the Virginia legislature in January 2020. The Archivist deferred to a legal opinion issued by the Department of Justice's Office of Legal Counsel (OLC), January 6, 2020, which held that the ERA ratification deadline (March 22, 1979 – not in 1982 as often reported) was valid, and not subject to later manipulations by Congress.

With respect to the constitutionality of the deadline, Judge Contreras agreed with the arguments raised by the intervenor-defendant states (Alabama, Louisiana, Tennessee, Nebraska, and South Dakota). Contreras ruled that the fact that Congress included the deadline in the Proposing Clause (not "preamble") of the ERA resolution (as Congress has done with every constitutional amendment proposed since 1960) had no bearing on its legally binding nature.

Judge Contreras did not decide several issues that had been argued by some of the parties, holding that they were hypothetical or otherwise unnecessary to decide under current circumstances. Those issues included whether a state has a right to rescind its ratification before a deadline (as five states did with respect to the ERA, including intervenor-defendants Tennessee, Nebraska, and South Dakota), and the constitutionality of any hypothetical future action by Congress to retroactively revive the 1972 ERA.

House Majority Leader Steny Hoyer (D-MD) on March 2 announced that the U.S. House of Representatives will take up a measure that purports to "remove" the ERA ratification deadline, during the week of March 15.

Douglas D. Johnson, senior policy advisor for National Right to Life and director of its ERA Project, said, "Democratic congressional leaders and attorneys general are part of a political-pressure campaign to intimidate the federal courts into permitting them to air-drop the long-expired ERA into the Constitution. Today, a federal judge appointed by President Obama ignored the political pressures and unflinchingly enforced the Constitution."

Johnson said: “The upcoming votes in Congress are another chapter in the political-pressure campaign directed at the courts. The Constitution does not empower Congress to time travel to 1972 to resuscitate a long-dead constitutional amendment.”

The “deadline removal” measure (currently H.J. Res. 17, S.J. Res. 1) is expected to narrowly pass the House of Representatives, where only one Republican has co-sponsored it, “but it has a much steeper climb in the Senate,” Johnson said. “The Democrats’ position that the current Congress, by simple majority votes, can retroactively revise a measure that passed Congress in 1972 by the constitutionally required two-thirds margins, is absurd on its face.”

On February 10, 2020, in remarks at Georgetown University Law Center, the late Justice Ruth Bader Ginsburg indicated that she believes the proper approach for ERA supporters, such as herself, is “a new beginning. I’d like it to start over.” Virginia’s then-recent adoption of an ERA resolution was, she said, “long after the deadline passed.” If such “a latecomer” were to be recognized, she suggested, “how can you disregard states that said, ‘We’ve changed our minds’?”

National Right to Life opposes the 1972 ERA because it is likely to be employed as a textual constitutional foundation for judicial rulings that would invalidate virtually any state or federal law or policy that impedes access to abortion, or even that has a “disparate impact” on the availability of abortion. The 1972 ERA language is also likely to be construed to require state and federal health program to fund abortions without limitation. You can download a five-page factsheet, containing footnoted quotes from leaders and attorneys associated with numerous prominent abortion-rights organizations proclaiming the ERA-abortion connection, here:

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.

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