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## **National Right to Life and North Dakota Right to Life**

### **Applaud North Dakota Senate for message to courts, Congress:**

#### **“Count Us Out” on pro-abortion 1972 Equal Rights Amendment**

The North Dakota state Senate today made it clear that it wants no part of an ongoing effort to “air drop” the 1972 Equal Rights Amendment into the U.S. Constitution.

The North Dakota Senate adopted Senate Concurrent Resolution No. 4010, which reaffirms that the North Dakota legislature’s 1975 ratification of the ERA “lapsed” on March 22, 1979, which was the deadline included in the ERA resolution submitted by Congress to the states on March 22, 1972.

North Dakota “should not be counted by Congress, the Archivist of the United States...any court of law” as a state “still having on record a live ratification” of the ERA, the Senate-passed joint resolution says. The measure now goes to the state House for further consideration. The House already passed such a resolution in the previous legislative session (HCR 3037, approved March 5, 2019, 67-21).

When the March 1979 ERA ratification deadline arrived, only 35 of the required 38 states had ratified, and 5 of those had rescinded. Nevertheless, in recent years, various groups have claimed that ratification deadlines are unconstitutional, or that Congress can change them retroactively by simple majority votes. Based on such unprecedented claims, the states of Virginia, Illinois, and Nevada are pursuing a lawsuit (*Virginia v. Ferriero*) in federal court, claiming that the ERA has been ratified by 38 states and is part of the Constitution – and they are counting the 1975 North Dakota ratification. Many expect that the Biden Administration will soon urge Congress to endorse this scheme.

“Pro-abortion groups now openly proclaim that they will use the ERA as a legal weapon against all laws limiting abortion, and to require government funding of abortion,” said Douglas Johnson, senior policy advisor for National Right to Life. “The result could be the invalidation of hundreds of pro-life laws, state and federal. Fortunately, the ERA expired unratified in 1979—yet, liberal states now are urging a federal judge, and Congress, to say that the ERA achieved the required 38 states when Virginia endorsed the ERA in 2020. We applaud the North Dakota Senate for saying to the courts and to Congress, ‘Count us out!’ on this unconstitutional, pro-abortion scheme.”

Sierra Heitkamp, executive director of North Dakota Right to Life, said, “When the North Dakota legislature ratified the ERA in 1975, their intent was not to put into the U.S. Constitution a prohibition on any limits on abortion, or a mandate for government funding of abortion – yet that is what the 1972 ERA has become. We commend Senators David Clemens and Janne Myrdal for undertaking this important pro-life initiative. We urge the House to join the Senate in reaffirming that North Dakota’s ERA ratification expired in 1979, and that Congress and the federal courts should count us out in any ERA-revival scheme.”

Johnson noted: “North Dakota’s ‘Count Us Out’ resolution is not a ‘rescission.’ Rescissions, if possible, can occur only while a constitutional amendment proposal is still alive, and the ERA died in 1979. Rather, SCR No. 4010 is an affirmation that the North Dakota legislature’s 1975 consent was to a specific congressional proposal that included a deadline, and that consent lapsed when the 1979 deadline was reached without the required consensus by 37 other states. If there is to be an ERA, Congress should submit new language to the state -- language that is rendered harmless on abortion, and that can achieve the required consensus of two-thirds of Congress and three-quarters of the states.”

On February 10, 2020, U.S. Supreme Court Justice Ruth Bader Ginsburg, long known for her attachment to the Equal Rights Amendment, at a forum at Georgetown University Law Center, was asked directly about the status of the ERA. 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?’”**

A lawsuit underway for a year in the federal district court for the District of Columbia, *Virginia v. Ferriero*, pits three states that claim to have ratified the ERA in 2017-2020 (Virginia, Nevada, and Illinois) against two states that never ratified the ERA (Alabama and Louisiana) and three states that rescinded their ratifications before the March 1979 deadline (Nebraska, Tennessee, and South Dakota). The Department of Justice has argued in the case that the 1979 deadline was valid and not subject to retroactive alteration by Congress. While many expect the Biden Administration to modify that position, the involvement of states opposed to the 1972 ERA language means that any such shift in the Executive Branch’s stance will not end legal battles over the status of the ERA.

The Department of Justice Office of Legal Counsel’s 2020 legal opinion explaining that the ERA expired in March 1979, and cannot be resurrected by Congress, except by re-starting the entire constitutional amendment process, is posted here: [DOJ OLC opinion on Equal Rights Amendment](#)

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