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January 3, 2019

Pocahontas Building
900 East Main Street
Richmond, VA 23219

Dear Legislator,

In 2018 Virginians across the Commonwealth vocalized strong bipartisan support for ratification of the Equal Rights Amendment. Support was demonstrated both in public polling as well as in actions taken by municipalities and organizations across the Commonwealth.

Recent polling by the Wason Center for Public Policy at Christopher Newport University showed that more Virginians (81 percent) favor Virginia’s ratification of the Equal Rights Amendment than favor a tax cut (75 percent) or the relocation of Amazon’s HQ2 (68 percent). Significant support was found regardless of political party, age, gender, and among in both Republican-led and Democrat-led districts and among citizens identifying as Republican and Democrat. The citizens of the Commonwealth have spoken loudly in favor of constitutional gender equality. Learn more at https://varatifyera.org/polling-results/.

A growing number of local localities and organizations around the state have echoed this support, adding Virginia’s ratification of the Equal Rights Amendment to their legislative priorities and passing resolutions in support of ratification. This list below represents the diverse support for ratification, representing all areas of the state and cities as well as rural counties. Learn more at https://varatifyera.org/path-to-ratification/resolutions/.

**Statewide Organizations**
American Association of University Women (AAUW) of Virginia
American Civil Liberties Union (ACLU) of Virginia
Delta Sigma Theta Sorority, Inc. (Virginia Social Task Force)
Democratic Party of Virginia
League of Women Voters of Virginia
Virginia Municipal League
Virginia NAACP State Conference
Virginia National Organization for Women (VA NOW)
Virginia Poor People’s Campaign
Cities and Counties
Alexandria City Council
Albemarle County
Arlington County
Blacksburg City Council
Charlottesville City Council
Chesapeake City Council
Dumfries Town Council
Fairfax County
Farmville Town Council
Fredericksburg City Council
Hampton City Council
Manassas Park
Montgomery County
Newport News City Council
Norfolk City Council
Page County
Powhatan County
Portsmouth City
Prince Edward County
Prince George County
Radford City Council
Scottsville Town Council
Shenandoah County
Staunton City Council
Suffolk City Council
Virginia Beach City Council

In addition to this growing list of organizations and localities, the American Bar Association sent a letter of support for Virginia’s ratification of the Equal Rights Amendment on January 2nd. We have forwarded a copy to your legislative inbox and an online copy of that letter is available off our main webpage: VAratifyERA.org.

Soon, equality advocates will begin asking corporate donors of Virginia legislators to ensure they gift money consistent with their corporate values regarding gender equality. If you have any questions, comments, or concerns please do not hesitate to reach out to our campaign manager, Kati Hornung at 804.347.4396 or KatiHornung@gmail.com.

Sincerely,

The VAratifyERA Team
Why Support the Equal Rights Amendment?

**Equality for all is the right thing to do**
Equality of rights, regardless of sex, is a fundamental human right that belongs in the Constitution. Indeed, 84% of international constitutions already include such a statement.

The Equal Rights Amendment was first supported by the Republican Party and is consistent with the **Virginia Republican Creed**, which states: “We believe . . . all individuals are entitled to equal rights . . .”

**Virginia Republican Creed**

We Believe
That all individuals are entitled to equal rights, justice, and opportunities and should assume their responsibilities as citizens in a free society

**Overwhelming public support for ratification**
Today, most Americans believe that equality of the sexes belongs in the Constitution. The American Bar Association supports ratification of the Equal Rights Amendment.

According to a 2018 poll by the Wason Center for Public Policy at Christopher Newport University, over 80% of Virginia voters believe the General Assembly should ratify the Equal Rights Amendment. This issue achieved greater support than any other issue polled for the 2019 General Assembly session, including tax cuts (75% support).

**Consistency of judicial standards**
Courts impose one standard to test the constitutionality of government classification on the basis of race or national origin and a different one to sex. They do so because the Constitution does not prohibit sex discrimination. If the Equal Rights Amendment is added to the Constitution, then the Constitution will prohibit sex discrimination. With that addition, sex becomes a proscribed classification like race and national origin. Courts will test the constitutionality of government classifications on the basis of sex with the same high standard they apply to these other classifications.
December 5, 2018

**Voters back Amazon deal, sports betting, ERA and independent redistricting commission**

Summary of Key Findings

1. Virginia voters strongly approve of the deal that will bring part of Amazon’s east coast headquarters to Virginia.

2. Voters support legalizing sports betting and casinos and want any related tax revenue to support education and the general fund. But they worry legalization will promote gambling addiction.

3. Across party lines and demographic groups, voters very strongly support ratifying the Equal Rights Amendment in the 2019 General Assembly.

4. Voters very strongly support amending Virginia’s constitution to transfer redistricting from the General Assembly to an independent commission.

5. Voters are divided about what to do with an expected state windfall from federal tax reform, slightly favoring a general tax cut over a tax credit for low-income to moderate-income Virginians.

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**For further information contact:**

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January 2, 2019

Delegate M. Kirkland Cox  
Speaker of the House  
P.O. Box 1205  
Colonial Heights, VA 238

RE: ABA Support for Ratification of the Equal Rights Amendment

Dear Speaker Cox:

I am writing on behalf of the American Bar Association and its over 400,000 members to urge you to use the power of your office to secure ratification of the Equal Rights Amendment (ERA) during this upcoming 2019 legislative session. We understand that H.J.Res.579 already has been pre-filed in the House of Delegates for the upcoming 2019 legislative session and has bipartisan support.

The ABA has long advocated for gender equality and stands in full support of ratification of the ERA. Our policy-making body has adopted positions of support in 1972, 1974, and in 2016, when it reaffirmed the need for, and its support of, ratification of the ERA.

The ERA is needed to assure that gender equality is recognized as a fundamental, irrevocable right protected by the highest law of the land. Ratification would have three immediate effects:

- First, it would establish that gender equality under the law is a fundamental and irrevocable tenet of our society.
- Second, it would require all judges to apply the highest standard of scrutiny when deciding cases involving sex discrimination. This means judges would use the same standard of review in sex discrimination cases that they now use in deciding cases involving discrimination based on race, religion, and national origin.
- Third, it would protect and reinvigorate enforcement of existing gender equity laws.

We are encouraged that Nevada and Illinois have recently ratified the ERA because it signals a renewed nationwide recognition of the need for the ERA and the public’s determination to transform legislators’ verbal support for equal rights into votes for ratification. Indeed, a recent poll released by the Watson Center for Public Policy at Christopher Newport University revealed that there was overwhelming public support for favorable action by the General Assembly this
session. We hope that Virginia will have the honorable distinction of becoming the 38th state to ratify the ERA.

While ratification by Virginia will mark a watershed moment, issues involving the expiration of the deadline for ratification will still need to be resolved by Congress before the ERA will become the 28th Amendment to the U.S. Constitution. Legislation to address this issue was introduced in the past Congress and will be reintroduced again during the 116th Congress. Even though the ABA has not taken a position on proposed legislative solutions, we remain committed to constitutional equality for women and to ratification and implementation of the ERA.

We urge you to schedule a vote on the ERA in the House of Delegates and to do all that you can to secure ratification by the Commonwealth of Virginia this session.

Thank you for your consideration of the views of the ABA on this critical matter. Please contact Denise Cardman, deputy director of the Governmental Affairs Office, at denise.cardman@americanbar.org if we can be of additional assistance.

Sincerely,

Robert M. Carlson

Cc: Delegate C. Todd Gilbert
    House Majority Leader

    Delegate Eileen Filler-Corn
    House Minority Leader
Virginia Ratification of Equal Rights Amendment

The Equal Rights Amendment states that the rights guaranteed by the Constitution apply equally to all persons regardless of their sex. I am happy to know Virginians are working diligently to ensure Virginia will be the 38th state to ratify it. Since 1923, when it was first introduced by Alice Paul, our country has stalled for decades in making it part of the law for women to be considered full citizens. This ratification comes two years before the 100th anniversary of the 19th amendment where all women “in theory” gained the right to vote.

In 1913, my great-grandmother, Ida B. Wells, founded the Alpha Suffrage Club -- the first organization of all African American women to form around voting rights. Despite her work, she and the other African American women were asked to march in the back of the 1913 suffrage parade in Washington, DC. My ancestor refused, and inserted herself into the front of the Illinois delegation where she belonged. It was a victory for women to gain the right to vote 98 years ago. However, most Black women – especially in the South – have only enjoyed that right for 45 years. It took decades of struggle to overcome state and local legal barriers that prevented them from casting ballots until the Voting Rights Act of 1965 was signed into law.

Now after five decades of progress it is ironic that in 2018, when the Equal Rights Amendment is on the verge of complete ratification, that there is such an effort by some to revoke and challenge many of the gains and freedoms that women have experienced. As a descendant of a leader who spent her life fighting for justice and equality for both women and African Americans, it is disappointing to see that we are still fighting for some of the dignity and equal protection under the law she fought for.

The ratification of the Equal Rights Amendment will be a huge step for all Americans. I am encouraged by Virginia’s efforts and the fight will continue for absolute equality until victory is won for all on every front. Thank you to everyone who is working tirelessly to have this ratification come to fruition. I feel confident that Virginia will make it possible for the rights of all persons regardless of their sex to be guaranteed under the Constitution.

Michelle Duster
Author, Speaker, Professor
Great-granddaughter of Ida B. Wells
Case for ERA

The Law

- The courts currently treat gender discrimination more leniently ("intermediate scrutiny") than discrimination on the basis of race, national origin, or alienage ("strict scrutiny").
- Adoption of the Equal Rights Amendment will give Congress greater Constitutional authority to enact legislation to protect women. Without this, legislation protecting women could be invalidated as happened in 2000, when the Supreme Court struck down the civil remedy provision of the Violence Against Women Act.

Economics

- Virginia competes for college students, corporate headquarters relocations, top industry talent, etc. and an unmistakable indicator of Virginia’s support for gender equality will be attractive to citizens, business, and industry.
- Virginia has already demonstrably benefited economically from North Carolina’s divisive politics. Ratifying the Equal Rights Amendment could further this advantage, particularly if nationwide press covers the story.

Politics

- Ratification of the Equal Rights Amendment is good politics for Vir-
ginia, especially now when national attention is focused on women’s issues and technology companies are looking to locate in welcoming sites in the Southeast.

- The November 2017 House races reflect Virginia women’s surging interest in politics and reflects an increased focus on gender equality and parity of representation.

- The resolutions to ratify the Equal Rights Amendment already have bipartisan support. Expanding this cooperation to encompass a majority of legislators from both parties will give the General Assembly national accolades not only for its leadership on a longstanding civil rights issue but also for its bipartisanship during these contentious times.

- The number of patrons and resolutions in 2018 showed an uptick in interest by constituents and politicians compared to prior years. In total there were 73 patrons for the Equal Rights Amendment resolutions (21 Senators and 52 Delegates). Based on patronage alone the Equal Rights Amendment had enough votes to pass the full House and Senate.

- The Senate and House committees, where these bills are pending, are comprised mainly of men. With a room full of women constituents requesting gender equality in the Constitution, these majorities of men declining (again) to hear testimony and/or to send the Equal Rights Amendment to the floor for a vote will glaringly place the Commonwealth in a bad light before the nation.

- Given the historical nature of the “38th state to ratify” status Virginia could achieve, there is a lot of energy and focus in the state and around the country on Virginia’s activities related to the Equal Rights Amendment.

SHARE THIS:
May 11, 2018

The Honorable Richard H. Black  
Member, Senate of Virginia  
Post Office Box 3026  
Leesburg, Virginia 20177

Dear Senator Black:

Issue Presented

You have requested that I “render a formal opinion on the following question: Would ratification of the ERA [Equal Rights Amendment] by the Virginia General Assembly have any legal effect?”

Background

Article V of the U.S. Constitution governs the process by which the Constitution can be amended. It provides, in relevant part:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress . . . .[1]

The Equal Rights Amendment (“ERA”) was first introduced in Congress in 1923, but it was not until March 22, 1972 that two-thirds of Congress agreed to the proposal and submitted it to the States for

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[1] U.S. CONST. art. V.  
[2] See S.J. Res. 21, 68th Cong., 65 CONG. REC. 150 (1923) (known at that time as the “Lucretia Mott Amendment”).
their consideration. Although the text had changed over the years, the version submitted to the States read as follows:

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.\textsuperscript{[5]}

The proposing resolution to the amendment prescribed a seven-year period for ratification: “[T]he following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress.”\textsuperscript{[6]} By placing the seven-year limit in the proposing resolution rather than in the text of the amendment itself, Congress followed its practice for the Twenty-third through Twenty-sixth Amendments, all of which had been ratified within seven years.\textsuperscript{[7]}

Between 1972 and March 22, 1979, thirty-five States ratified the ERA—three States short of the requisite three-fourths needed for adoption.\textsuperscript{[8]} In 1978, following extensive debate and committee testimony, Congress extended the ratification deadline by approximately three years and three months.\textsuperscript{[9]} Its legal justification for doing so relied in part on the location of the time limitation in the text of the proposing resolution, rather than the text of the amendment itself.\textsuperscript{[10]} On June 30, 1982, the extended ratification period elapsed, without any additional State having ratified the amendment. On March 22, 2017, Nevada became the 36th State to ratify the ERA, the only other State to do so since 1982.\textsuperscript{[11]}

The fourteen States that have never ratified the ERA are Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Utah, and Virginia. Five other States have purported to rescind their votes ratifying the ERA: Nebraska (1973),


\textsuperscript{4} NEALE, supra note 3, at 2.

\textsuperscript{5} H.R.J. Res. 208, 92d Cong., 86 Stat. 1523 (1972).

\textsuperscript{6} Id.

\textsuperscript{7} NEALE, supra note 3, at 8-9. Previously, for the Eighteenth, Twentieth, Twenty-first, and Twenty-second Amendments, Congress had included time limitations in the text of the amendments themselves, but then changed its practice because including the limits in the text “cluttered up” the Constitution. Id. at 8.

\textsuperscript{8} Id. at 9.

\textsuperscript{9} See H.R.J. Res. 638, 95th Cong., 92 Stat. 3799 (1978) (“[N]otwithstanding any provision of House Joint Resolution 208 of the Ninety-second Congress, second session, to the contrary, the article of amendment proposed to the States in such joint resolution shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States not later than June 30, 1982.”).


Tennessee (1974), Idaho (1977), Kentucky (1978), and South Dakota (1979). Although the Virginia General Assembly has never ratified the Equal Rights Amendment, the Senate of Virginia has passed a ratifying resolution at least five times, most recently in 2016. Similar measures have been introduced in the House of Delegates, but have not been considered.

Applicable Law and Discussion

You ask whether ratification of the ERA by the General Assembly would have “any legal effect.” In responding to your inquiry, I will assume that you do not question the General Assembly’s power to vote on or pass joint resolutions expressing its sentiment on a variety of issues, including about whether a proposed amendment to the U.S. Constitution should be ratified. Historically, the General Assembly has passed ratifying resolutions even after an amendment had become part of the Constitution—having already been ratified by the requisite number of States—and after the ratification period prescribed for a proposed amendment had lapsed. To the extent you question whether those resolutions have legal effect as official expressions of the will of the General Assembly, I cannot agree.

Rather, I take your question to be whether the General Assembly’s passage of a resolution

12 NEALE, supra note 3, at 9 n.47.
17 See H.D.J. Res. 44, 1952 Va. Acts ch. 173, at 183-84 (making Virginia the forty-first State to ratify the Nineteenth Amendment, thirty-two years after having rejected it and the Amendment having become part of the Constitution); S.J. Res. 32, 1971 Va. Acts, at 559-60 (making Virginia the fortieth State to ratify the Twenty-sixth Amendment).
18 See S.J. Res. 140, 1977 Va. Acts, at 1609-10 (ratifying the Twenty-fourth Amendment despite the expiration of the seven-year limitation on consideration stipulated in the proposing resolution to the Amendment, which was also restated in the General Assembly’s ratifying resolution). The Amendment had been submitted to the States in 1962 and ratified in 1964, and the ratification period had lapsed in 1969—eight years before the General Assembly passed a ratifying resolution. See id.
ratifying the ERA at this point could ever be treated as legally effective for purposes of determining whether the ERA has been ratified by the requisite number of States, given that the ERA’s original ratification deadline lapsed in 1979 and an extended deadline lapsed in 1982. In light of Congress’s significant control over the amendment process, I cannot conclude that it lacks the power to extend the period in which an amendment can be ratified and recognize a State’s intervening ratifying resolution as legally effective for purposes of determining whether the ERA has been ratified.

Although the precise issue you raise has not been conclusively resolved, the historical evidence and case law demonstrate Congress’s significant, even plenary, power over the amending process. In 1978, when Congress was debating and ultimately approved extending the original ERA deadline, the House Judiciary Committee found that the power-to-extend question was a matter of “first impression.”19 But after reviewing the limited historical and legal precedent and taking extensive testimony from numerous constitutional experts, the House Judiciary Committee concluded that “the period for an amendment’s ratification lies exclusively within congressional control.”20 Both the full House and Senate debated Congress’s power to extend the ERA’s ratification deadline, but effectively resolved that issue when they agreed to a joint resolution setting a new deadline of June 30, 1982.21

As recognized by the constitutional scholars who testified before Congress and in the report of the House Judiciary Committee recommending extension, the limited Supreme Court precedent in this area suggests that Congress has authority to extend a ratification deadline. Two cases chiefly support that conclusion. In Dillon v. Gloss,22 the Court turned away a challenge to the Eighteenth Amendment based on the fact that the text of the proposed amendment prescribed a time period of seven years for ratification by the States, the first amendment to contain such a limitation.23 In ruling that Congress could set a definite period for ratification, the Court in Dillon emphasized two points: that the time period for ratification must be “within reasonable limits” so that ratification expresses the “sufficiently contemporaneous . . . will of the people,” and that it was within Congress’s authority to determine what period is reasonable.24 It underscored that the “general terms” of Article V “leave[e] Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require.”25 Thus, in the Court’s opinion, whether to fix a term of years for ratification was a matter for Congress, “as an incident of its power to designate the mode of ratification.”26

Two decades after Dillon, in Coleman v. Miller,27 the Court extended Dillon’s analysis and concluded that the reasonableness of the ratification period at issue there was a matter for Congress alone to decide. In 1924, Congress had submitted an amendment to the States, without a prescribed time limit, that prohibited the use of child labor. The Kansas legislature rejected the amendment in 1925 but when it reconsidered and passed the amendment in 1937, opponents sued, arguing that the time period had lapsed.

22 256 U.S. 368 (1921).
23 Id. at 371-72.
24 Id. at 375-76.
25 Id. at 376.
26 Id.
The Court rejected the contention that “in the absence of a limitation by the Congress, the Court can and should decide what is a reasonable period within which ratification may be had.” Rather, “Congress in controlling the promulgation of the adoption of a constitutional amendment has the final determination of the question whether by lapse of time its proposal of the amendment had lost its vitality prior to the required ratifications.” The Court reasoned that the task of determining reasonableness would require an “appraisal of a great variety of relevant conditions, political, social, and economic”—conditions that “can hardly be said to be within the appropriate range of evidence receivable in a court of justice” but that are “appropriate for the consideration of the political departments of the Government.” Four justices signed a concurring opinion to express, in strong language, the even broader view that Congress has “sole and complete control over the amending process, subject to no judicial review.”

These cases figured prominently in the 1977 and 1978 congressional hearings on the proposed extension to the ERA deadline. A number of scholars testified before the House Judiciary Committee’s Subcommittee on Civil and Constitutional Rights on the various issues raised by the proposed extension, including the extent of congressional control over the amendment process in general. With a few exceptions, there was general consensus among the scholars that extending the ratification period was within Congress’s power. A representative of the Office of Legal Counsel agreed, reasoning that “the power of extension is reserved to the Congress, and reconsideration of the extension period is within the power of the Congress.” The scholars gave several reasons for that conclusion, including the location of the time limit in the proposing resolution rather than in the text of the amendment. Later testimony by these and other scholars before the Senate Judiciary Committee’s Subcommittee on the Constitution

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28 Id. at 452.
29 Id. at 456.
30 Id. at 453-54.
31 Id. at 459 (Black, J., concurring, joined by Roberts, Frankfurter, and Douglas, JJ.).
33 Compare id. at 115 (statement of William Van Alstyne, Professor, College of William & Mary, Marshall-Wythe School of Law) (“In brief, extension of the period by Congress is solely for Congress to determine . . . .”), and id. at 125-26 (testimony of Ruth Bader Ginsburg, then-Professor, Columbia Law School) (“Congress, as director under our constitutional scheme of the amendment process, is not locked into a 7-year period; 14, 16, 18 years would constitute a rational constitutional time period for ratification of the proposed equal rights amendment. The issue, then, is simply whether Congress may accomplish in two steps what it might have accomplished in one.”), with id. at 112 (testimony of Erwin N. Griswold, former Solicitor General of the United States) (“I do not think that anyone can say with confidence that Congress has the power to make the change. It does seem to me that there are strong reasons why Congress should not undertake to exercise such a power.”).
34 Id. at 28 (testimony of John M. Harmon, Assistant Attorney General, Office of Legal Counsel, Department of Justice).
35 See, e.g., id. at 6 (testimony of John M. Harmon); id. at 63 (statement of Thomas L. Emerson, Professor, Yale Law School); id. at 119 (statement of William Van Alstyne); see also 124 CONG. REC. 29,135 (1978) (incorporating House Report No. 95-1405, which acknowledged that, in the case of a proposed amendment on Congressional representation for the District of Columbia, a deadline was included in the body of the amendment because of “a recognition on the part of the committee that unless the language appeared in the body of the proposed amendment it may not be controlling on subsequent Congresses or on the State legislatures”).
similarly supported Congress’s power to extend the deadline.\textsuperscript{36} Since then, no Supreme Court case has questioned Congress’s authority over the amending process, including whether it can extend a ratification period and whether the lapse of the ratification period would make a difference.\textsuperscript{37}

In light of the foregoing, I cannot conclude that Congress lacked the authority to extend the ratification deadline from 1979 to 1982, or—critical to your opinion request—that it would lack the authority to extend the deadline further if it chose to do so. Indeed, resolutions currently pending in both houses of Congress seek to accomplish just that; the proposed resolutions would remove the deadline for ratification of the ERA and treat States’ ratifications as valid “whenever” they occur.\textsuperscript{38}

Assuming that the ERA ratification deadline were again extended, the ratification of the Amendment may still be subject to a congressional judgment regarding whether it met the requirement of “contemporaneous consensus.”\textsuperscript{39} While some constitutional scholars who testified before the House of Representatives prior to the first extension of the ERA’s ratification deadline doubted whether even fourteen years would satisfy that requirement,\textsuperscript{40} the intervening ratification of the Twenty-seventh Amendment, governing congressional pay raises, serves as a notable countexample. First proposed in 1789, that amendment was not ratified until 1992.\textsuperscript{41}

\textsuperscript{36} See, e.g., Equal Rights Amendment Extension: Hearings on S.J. Res. 134 Before the Subcomm. on the Constitution of the Comm. on the Judiciary, 95th Cong. (1978), at 114 (testimony of Thomas I. Emerson, Professor, Yale Law School) (“The first issue is [the] power of Congress to extend the time for ratification of the equal rights amendment. I think there is very little doubt in the minds of most constitutional lawyers that Congress has such powers.”).

\textsuperscript{37} In 1981, the federal district court in Idaho ruled that whether Congress acted beyond its authority in extending the deadline was a justiciable question, and it proceeded to find that it had acted beyond its authority, but the Supreme Court vacated that decision as moot when the ERA’s extended deadline lapsed. See Idaho v. Freeman, 529 F. Supp. 1107 (D. Idaho 1981), vacated, 459 U.S. 809 (1982).

\textsuperscript{38} See S.J. Res. 5, 115th Cong. (2017) (“That notwithstanding any time limit contained in House Joint Resolution 208, 92d Congress, as agreed to in the Senate on March 22, 1972, the article of amendment proposed to the States in that joint resolution shall be valid to all intents and purposes as part of the Constitution whenever ratified by the legislatures of three-fourths of the several States.”); H.R.J. Res. 53, 115th Cong. (2017) (same). I decline to speculate on the likelihood that these resolutions will pass or that Congress would otherwise act to recognize a State’s ratification of the ERA as effective.

\textsuperscript{39} See Gloss v. Dillon, 256 U.S. 368, 375 (1921) (“[R]atification scattered through a long series of years would not do.”); see also John Alexander Jameson, A TREATISE ON CONSTITUTIONAL CONVENTIONS; THEIR HISTORY, POWERS, AND MODES OF PROCEEDING 634 (4th ed. 1887) (“It is, therefore, possible, though hardly probable, that an amendment, once proposed, is always open to adoption by the non-acting or non-ratifying States. The better opinion would seem to be that an alteration of the Constitution proposed to-day has relation to the sentiment and the felt needs of to-day, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress.”).

\textsuperscript{40} See, e.g., House ERA Extension Hearings, supra note 32, at 153 (testimony of Erwin N. Griswold, former Solicitor General of the United States); see also Dillon, 256 U.S. at 375 (pronouncing as “quite untenable” the idea that amendments first proposed in 1789, 1810, and 1861 were still eligible for ratification).

\textsuperscript{41} See Archivist of the U.S., U.S. Constitution, Amendment 27, 57 Fed. Reg. 21187, 21187-88 (May 19, 1992). “Although the Archivist was specifically authorized by the U.S. Code to publish the act of adoption and issue a certificate declaring the amendment to be adopted, many in Congress believed that, in light of the unusual circumstances surrounding the ratification, positive action by both houses was necessary to confirm the [amendment’s] legitimacy.” Neale, supra note 3, at 18. Accordingly, both the Senate and House passed resolutions “declar[ing] the amendment to be duly ratified and part of the Constitution.” Id. at 18-19 & 19 nn. 90-91
Conclusion

It is my opinion that the lapse of the ERA’s original and extended ratification periods has not disempowered the General Assembly from passing a ratifying resolution. Given Congress’s substantial power over the amending process, I cannot conclude that Congress would be powerless to extend or remove the ERA’s ratification deadline and recognize as valid a State’s intervening act of ratification. Indeed, legislation currently pending in Congress seeks to exercise that very power.

With kindest regards, I am,

Very truly yours,

Mark R. Herring
Attorney General

25 October 2012

The Honorable Carolyn Maloney
U.S. House of Representatives
Washington, DC 20515

Dear Ms. Maloney:

Thank you for your letter requesting information about the ratification status of the Equal Rights Amendment (ERA), and the role played by the National Archives and Records Administration (NARA) in certifying amendments to the Constitution.

You asked for a list of the states that ratified the ERA, and a list of states that either rejected the amendment, or rescinded an earlier ratification vote. I have attached a chart showing this information.

You also asked for legal verification of statements on NARA’s website page “The Constitutional Amendment Process” (www.archives.gov/federal-register/constitution). This webpage states that a proposed Amendment becomes part of the Constitution as soon as it is ratified by three-fourths of the states, indicating that Congressional action is not needed to certify that the Amendment has been added to the Constitution. It also states that my certification of the legal sufficiency of ratification documents is final and conclusive, and that a later rescission of a state’s ratification is not accepted as valid.

These statements are derived from 1 U.S.C. 106b, which says that: “Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become
valid, to all intents and purposes, as a part of the Constitution of the United States."
Under the authority granted by this statute, once NARA receives at least 38 state
ratifications of a proposed Constitutional Amendment, NARA publishes the amendment
along with a certification of the ratifications and it becomes part of the Constitution
without further action by the Congress. Once the process in 1 U.S.C. 106b is completed
the Amendment becomes part of the Constitution and cannot be rescinded. Another
Constitutional Amendment would be needed to abolish the new Amendment.

I hope this information answers your question and is of use to you. If you would like
more information or would like to discuss this issue further, please do not hesitate to
contact me again.

Sincerely,

[Signature]

DAVID S. FERRIERO
Archivist of the United States
Good afternoon,

Thank you for your query of February 16, requesting clarification of statements recently made by Virginia State Senator, Ryan McDougle.

Press reports of the events leading to the defeat of the measure in the Virginia Senate, quote Senator McDougle with saying that “an official at the National Archives and Records Administration, advised him that the ERA is a ‘failed amendment’ and therefore improper for the General Assembly to vote on it.”

The Archivist of the United States has not taken such a stance and has never issued an opinion on this matter either officially or unofficially. The role the National Archives plays, after ratification is complete, while very important, does not extend to the Constitutional question of whether deadlines can, or should be, extended, reinstated or otherwise altered. These questions are, rightfully, left to the legislative and judicial branches of our government, as are questions about whether the ratifying states may rescind previous ratification. Additionally, whether the amendment is “properly before the states,” is not a question for the National Archives to determine or render an opinion.

For more information, see this article about the role of the National Archives in the amendment process. It provides a detailed description by which the Constitution is amended and the role of the Archivist.

JAMES B. PRITCHETT
Director, Public and Media Communications
U.S. National Archives and Records Administration
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National Archives News
Equal Rights Amendment
Frequently Asked Questions

This factsheet provides responses to frequently asked questions (FAQ) or misconceptions about the Equal Rights Amendment (ERA). The top three questions are listed first: unnecessary, unintended consequences, and deadline. Additional FAQs are provided in alphabetical order afterwards.

Unnecessary

“We don’t need it anymore.”

* Legislation advancing equal rights may be repealed or amended. Court decisions may be retreated from or abandoned. By contrast, a constitutional amendment is far more enduring.

* Legislation and court decisions without a constitutional backstop do not protect equality. Government agencies and courts must apply and interpret these statutes. Currently they do so without the guiderails of the Equal Rights Amendment.

* The Fourteenth and Fifth Amendments require equal protection of the laws, but courts do not hold state and federal governments discriminating on the basis of sex to the same high standard courts apply to government discrimination on the basis of race, national origin, or religion. Sex discrimination currently receives “intermediate scrutiny” in the courts, whereas other forms of discrimination receive “strict scrutiny.” Under intermediate scrutiny it is much easier for the government to discriminate.

* The late Justice Scalia once remarked that gender discrimination is not prohibited in the Constitution.

* Justice Bader Ginsburg has said that the Equal Rights Amendment is the one Amendment she would like to see added to our Constitution.

* The American Bar Association formally reaffirmed support for the Equal Rights Amendment in 2016. In a June, 2018 letter submitted for inclusion in the Congressional Record the ABA identified three immediate effects of the addition of the Equal Rights Amendment to the Constitution:
  ○ gender equality would be established under the law as a fundamental and irrevocable tenet of society;
  ○ judges would be required to apply the highest standard of scrutiny when deciding cases involving sex discrimination; and
  ○ existing gender equity laws would be protected, and enforcement of these laws would be reinvigorated.
**Unintended Consequences**

“I don’t think we should add this amendment because we don’t know what will happen and there could be unintended consequences.”

- When the Founding Fathers approved the Bill of Rights, they did not know the potential consequences of constitutionally guaranteeing individual rights. Our nation was a grand Enlightenment experiment, and no one could see how it would turn out. Moreover, Federalists opposed ratifying the Bill of Rights because they feared procedural uncertainties. Nonetheless, Virginia ratified the Bill of Rights and it became part of our Constitution.
- As we see from hundreds of years of judicial decisions, Constitutional rights—even ones as sacred as freedom of speech—are not absolute. No one has the right to yell “FIRE” in a crowded theater. Likewise, rights protected by the Equal Rights Amendment will not be absolute.
- Even with the Equal Rights Amendment, the government may make distinctions on the basis of sex if it has a compelling interest for doing so and the discriminatory action is narrowly tailored to serve that interest.
- The Equal Rights Amendment does not confer special rights. It simply prohibits the United States or any state from denying or abridging equality of rights under the law on account of sex.
- Failure to ratify continues the country’s current path of unintended consequences for not ratifying the Equal Rights Amendment. Without this amendment, women continue to be treated as second-class citizens in a nation that purports to value equality, opportunity for all, and advancement based on merit.

**Deadline**

“Didn’t the ratification deadline pass?”

- On May 11, 2018 Attorney General Mark Herring weighed in on this issue with a formal opinion addressed to Virginia Senator Black (R – Loudon):

  “…the lapse of the ERA’s original and extended ratification periods has not disempowered the General Assembly from passing a ratifying resolution.”

  - Attorney General Mark Herring, May 11, 2018

- If Congress has the power to impose a ratification deadline, it should have the power to extend or eliminate the deadline. In Coleman v. Miller, the Supreme Court left it to Congress to decide ratification periods. Beginning with the prohibition amendment, Congress included ratification deadlines in amendments it submitted to the states. With the Equal Rights Amendment, Congress imposed a ratification deadline but, significantly, it did so in the preamble of the resolution proposing the amendment, not in the amendment itself. By not submitting the deadline with the amendment to the states for approval, Congress reserved for itself the ability to extend or eliminate the deadline. In fact, in 1978 it did extend the ratification deadline to 1982.
- Both Nevada (March 22, 2017) and Illinois (May 30, 2018) have ratified the Equal Rights Amendment, exercising their state’s right to ratify under Article V of the Constitution.
- After Nevada ratified a white paper was produced for Congress exploring whether or not the deadline precluded the Equal Rights Amendment from being added to the Constitution (spoiler alert: it can be added).
- Some legal scholars argue that Congress lacks the authority to impose a deadline on the ratification process.
Frequently Asked Questions about the Equal Rights Amendment

Additional FAQs listed in alphabetical order:

**Abortion**

“Doesn’t this open the door for abortion rights.”

- Women already have a right to choose to have an abortion. The right, as the Supreme Court explained in *Roe v. Wade*, is grounded in privacy rights, not equality, and certainly not on the basis of a non-existent federal Equal Rights Amendment.
- Twenty-four states, including Virginia, have adopted Equal Rights Amendments in state constitutions without voiding, limiting, or expanding statutes that govern the right to have abortion procedures.
- Some state courts have ruled that a state’s refusal to fund medically necessary abortions if it funds all other medically necessary procedures violates the Equal Rights Amendment of that state’s constitution. These court decisions, however, specifically state that they do not address the legality or morality of abortion rights.

**Bathrooms**

“We will all be using the same bathrooms!”

- Existing privacy rights will continue to protect appropriate separation of facilities for performing intimate bodily functions.
- Anyone considering this argument should be mindful of the severe economic harm North Carolina suffered over its bathroom legislation, which caused at least one relocating company to choose Richmond instead of Charlotte.

**Constitutional Convention**

“Don’t worry about the Equal Rights Amendment since we are working on a constitutional convention!”

- A constitutional convention is called when two-thirds of the states (34 states) agree to gather and discuss a specific topic or topics. Any amendement(s) approved by constitutional convention must nonetheless be approved by the legislatures of three-fourths of the states. In other words, it doesn’t matter whether Congress or a constitutional convention proposes an amendment. The proposed amendment, regardless of its source, must be submitted to the legislatures of the states for approval. A constitutional convention would have no impact on the ratification process except to slow it down and waste resources.
- The Equal Rights Amendment has already been submitted to the states for ratification, and 37 of the required 38 states needed for ratification have approved it. Why start over again, especially when none of the states appear to have called for a constitutional convention to address equal rights?
- Some have argued that ratification of the Equal Rights Amendment will cause a constitutional crisis because states would have to call a constitutional convention to remove the amendment from the Constitution. This argument overlooks the fact that an overwhelming percentage of Americans (94%) favor the Equal Rights Amendment.
Frequently Asked Questions about the Equal Rights Amendment

Contracts

“Women contractors will lose enhanced status for contract bids.”

• The enhanced status program for female contractors will continue unabated with a ratified federal Equal Rights Amendment, just like those same programs are allowed to give enhanced status to minority-owned businesses even though racial equality is protected under the Fourteenth Amendment.
• Virginia’s equal rights amendment has had no effect on this issue.

Draft

“Would the wording ‘equality of rights under the law’ force women to be drafted?”

• Women are already eligible to be drafted and were nearly drafted in the last couple of days of WWII, as nurses. Source: [http://www.historynet.com/drafting-women.htm](http://www.historynet.com/drafting-women.htm)
• Requiring both men and women to register for the draft is not dependent on passage of the Equal Rights Amendment. Already, in October 2017, the Pentagon recommended that women should register with the selective service. Source: [http://thehill.com/policy/defense/357055-pentagon-recommends-requiring-women-to-register-for-the-draft](http://thehill.com/policy/defense/357055-pentagon-recommends-requiring-women-to-register-for-the-draft)
• Regardless of ratification of the Equal Rights Amendment, a reinstated draft likely will include everyone, not just men. Conscripting only men into our military force, currently comprised of both male and female volunteers, would be unreasonable and antithetical to defense needs and morale. Women have proven their worth in our modern military and in a time of war, if a draft were necessary, our military would want the very best our country has to offer, which would include women.

Insurance

“If the Equal Rights Amendment is ratified women’s insurance rates will go up!”

• Insurance rates are regulated by the states. Since Virginia has regulated insurance with a gender equality statement in our Virginia state constitution, it can be assumed no change would occur.
Ratification Rescission

“We’re not really at 37 states because some states revoked their ratifications.”

- Article V of the Constitution authorizes states to ratify amendments but does not give states the power to rescind their ratification.
- Allowing ratification while prohibiting a change of heart makes practical sense too. If states were allowed to rescind as well as ratify, there would be no point in time when we could safely say that three-fourths of the states ratified the amendment, making it part of the Constitution. The uncertainty would make it impossible to know what is or is not in the Constitution.
- Three amendments to the Constitution were added while ignoring rescissions. All states that ratified, including those who had attempted to rescind a ratification, were included in the count that determined the amendment was, indeed, valid as part of the Constitution:
  - Fourteenth Amendment: Ohio and New Jersey attempted to rescind their ratification, their rescission was ignored, the Fourteenth Amendment was added to the Constitution
  - Fifteenth Amendment: New York attempted to rescind; Georgia ratified; both were considered among the ratifying states (NY’s rescission was ignored)
  - Nineteenth Amendment: Tennessee attempted to rescind but its rescission was ignored and the Nineteenth Amendment was added to the Constitution

Social Security

“Widows will lose social security benefits.”

- Social security has been gender inclusive for surviving spouses since a legal challenge in 1975. This is an anachronistic concern from the early 1970s.

Tax Exempt Status

“Would churches and religious organizations with gender-specific practices lose their tax exemptions?”

- The First Amendment’s Free Exercise Clause protects the rights of religious groups to freely practice their religion. This fundamental right, which dates back to the founding of the United States, would be weighed against the protections afforded by any new constitutional amendment.
- The ERA would not require anyone to change their religious beliefs. The ERA would not limit the freedom of religions to organize their clergy and other religious practices according to their beliefs.
- When same-sex marriage was legalized, religions were not required to change their definitions of marriage for their institutions. When divorce and birth control were legalized, religious organizations were not required to change their beliefs regarding these practices. Churches that refuse to marry same-sex couples or to permit their members to divorce still receive tax exemptions. Passing the ERA is the same - it will not require churches to change their beliefs and gender-specific practices.
Topless

“Will passing the Equal Rights Amendment permit women to walk around topless?”

• Constitutional amendments have limits, and rights do not exist in a vacuum. Public decency laws have been upheld by the Supreme Court even when challenged as violating the Constitution’s First Amendment guarantee of freedom of speech. As an example, it’s not legal to yell “FIRE” in a crowded theater (if there is no fire) despite free speech rights.
• Additionally, when the Equal Rights Amendment is added to the Constitution, the government can still pass sex specific legislation if it has a compelling government purpose and the government action is narrowly tailored to achieve that purpose.
• Public nudity prohibitions do not even have to meet this exacting standard. The Supreme Court has recognized nude dancing as expression protected under the First Amendment, YET nonetheless, upheld enforcement of public decency statutes as necessary to serve a substantial government interest.
• In other words, the Court allows state governments to infringe fundamental First Amendment rights in certain circumstances. These cases provide a basis for applying a more lenient standard to test and uphold public nudity statutes challenged on equal rights grounds.

Transgender Discrimination

“Does the Equal Rights Amendment prohibit discrimination on the basis of transitioning or transgender status?”

• The Equal Rights Amendment states: “Equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex.” Whether the amendment protects transgender rights turns on the meaning of “sex.”
• In the context of civil rights cases, a majority of the circuit courts that have interpreted “sex” concluded that the proscription against sex discrimination prohibits discrimination on the basis of transitioning or transgender status. To date, only the Tenth Circuit has held that discrimination against transgender employees does not necessarily violate Title VII, but even that court recognizes that discrimination on the basis of transitioning or transgender status may violate Title VII under some circumstances. Of recent decisions, only those from a district court in the Northern District of Texas and one in the Western District of Pennsylvania have held that Title IX does not apply to discrimination on the basis of gender identity or transgender status.
• Although Titles VII and IX cases may illuminate the meaning of “sex,” they are not binding on any court’s interpretation of the word in the context of the Equal Rights Amendment, which, of course, has yet to be examined by courts.
• With a new amendment in the Constitution, judges will be free to apply any of numerous theories for interpreting constitutional provisions, from originalism to structuralism and more. In doing so they may look to what the word “sex” meant to Congress when it proposed the amendment in the early 1970s, to Congress’s intent with the amendment, or to contemporary usage in addition to how courts have interpreted the word in other contexts.
Virginia should ratify ERA

Richmond Free Press
August 30, 2018
Editor’s note: Women’s Equality Day was observed Aug. 26 across the country.

Sen. Jennifer L. McClellan

In 2010, when I became the first member of the Virginia House of Delegates to be pregnant while in office, I faced an unanticipated question: Are you retiring?

Although Delegate Chris Peace and his wife were expecting a child at the same time, no one asked him about his retirement plans. Chris and I laughed about the difference in reactions we faced. But it was a stark reminder that inequities persist in this country based on gender.

For women of color, inequity persists on two fronts — gender and race. Women of color face inequity in every part of society — employment and earning, family support such as child care or elder care, political participation, health and well-being, access to the C-suite and the criminal justice system.

One hundred and fifty years ago, the 14th Amendment’s Equal Protection Clause in the U.S. Constitution prohibited states from denying to any person within its jurisdiction “the equal protection of the laws.” And shortly thereafter, the 15th Amendment declared the right to vote shall not be denied “on account of race, color, or previous condition of servitude.”

Fifty two years later, the 19th Amendment guaranteed the right to vote would not be denied based on gender. And yet, black women — and men — were systematically denied the vote and equality under the law until a series of landmark civil rights cases and the Civil Rights Act of 1964 (enabled by the 14th Amendment) and the Voting Rights Act of 1965 (enabled by the 15th Amendment) struck down legal discrimination on the basis of race.

Despite these gains, women still have not attained full equality under the Constitution. Since it first applied the Equal Protection Clause to prohibit differential treatment on the basis of sex in the 1971 Reed v. Reed decision, the U.S. Supreme Court has applied a less rigorous standard of review for sex discrimination cases than for racial discrimination cases.

As a result, true equality of rights under the law remains elusive for women.

We need the Equal Rights Amendment to ensure “[e]quality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”

During the Suffrage Movement and the Civil Rights Movement, the efforts of women of color were ignored as we were relegated to the background.

In the 1913 Suffrage Parade organized by Alice Paul in Washington, black women were asked to march in the back for fear of offending Southern white allies.

Despite that, dozens of black women — including the 22 founding members of my sorority, Delta Sigma Theta — marched.
During the 1963 March on Washington, women had to fight to be included in the program at all.

Today is no different, and I am proud to be among a number of women of color taking up the mantle to ratify the Equal Rights Amendment.

Virginia has the chance to be the 38th and final state needed to ratify the Equal Rights Amendment during the 2019 General Assembly session. The bill has bipartisan support, with Sens. Scott Surrovell, D-Fairfax; Glen Sturtevant, R-Richmond; and Rosalyn Dance, D-Petersburg; leading the charge in the Senate and Delegates Jennifer Carroll-Foy, D-Prince William; Hala Ayala, D-Prince William; and Luke Torian, D-Prince William; leading the charge in the House. The diversity of support reflects the 84 percent of Americans who support the ERA.

Too often, Virginia has been on the wrong side of history — the capital of the Confederacy, late to ratify the 14th and 19th Amendments, the epicenter of Massive Resistance.

But in 2019 as we celebrate the 400th anniversary of Africans and European women arriving to the Virginia colony, we can be the state that puts the ERA in the Constitution.

Instead of being dragged forward into progress, we can lead the change for future generations.

The writer represents the 9th District in the Virginia Senate that includes parts of Richmond, parts of Henrico and Hanover counties and all of Charles City County.
Edwards: Virginia should ratify the ERA

The Roanoke Times
December 21, 2018

By John Edwards

The upcoming session of the General Assembly is an opportunity for Virginia to make history by ratifying the Equal Rights Amendment and become the 38th State necessary to place it in the United States Constitution.

Virginia has not always been on the right side of history. But this coming year can mark the time when Virginia is on the right side of history by extending equal rights under the law to women without reservation.

The Amendment simply states: “Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.”

The ERA is necessary because, in the words of Justice Sandra Day O’Connor, “the Equal Rights Amendment recognizes the fundamental dignity and individuality of each human being and rests on the basic principle that sex should not be a factor in determining the legal rights of men or women.”

Virginia’s own distinguished U.S. Supreme Court Justice, the late Lewis Powell, Jr., said “Equal justice under law is not merely a caption on the façade of the Supreme Court building, it is perhaps the most inspiring ideal of our society.”

While more than 20 states have ERA-type provisions in their state constitutions and many federal and state laws are already gender neutral, there are many states and laws that do not afford women equal rights under the law.

The late Justice Antonin Scalia, my professor, for whom I worked at University of Virginia Law School, stated, “Certainly the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn’t.” The Amendment is necessary to ensure gender equality under the law throughout the United States.

“Equality” does not mean “identically” and the Amendment does not prevent reasonable classifications based on sex. It does not override customary privacy rights, does not require same sex bathrooms, does not change existing abortion statues, and does not prevent separation of men and women in the jails.

First proposed by Congress in 1972, the amendment by its terms does not require ratification in any stated time period, as was the case with the 18th Amendment on Prohibition and the 21st Amendment ending Prohibition, both requiring in their terms seven years to be ratified by the states. Absent a ratification deadline in the text, the time for ratification may be indefinite. The 27th Amendment, regarding compensation of senators and representatives, for example, was proposed in 1789 by Virginia’s James Madison and not declared ratified until 1992.
While Congress by legislation initially set a seven-year deadline for ratification of the ERA, Congress later extended it to 1982, and Congress can extend it again as necessary. As citizens in 37 states have already voted to ratify it, Congress would not likely fail to extend the time as necessary when the 38th state ratifies the amendment to be placed in the Constitution.

The year 2019 already promises to be historic in Virginia, as it is the 400th anniversary of the House of Burgesses, predecessor to the Virginia General Assembly, the longest continuous legislative body in the world.

Let the Virginia General Assembly make history again in 2019 by ratifying the Equal Rights Amendment and enshrine it in the U.S. Constitution, celebrating that we in Virginia and throughout the United States believe in full equality under the law for all citizens, men and women alike.

*Edwards represents the 21st District in the Virginia Senate, which covers Roanoke, Giles County, and parts of Montgomery and Roanoke counties. He is a Democrat.*
Military Petition
Comments for Virginia Legislators

VAratifyERA has offered a petition specific to military veterans, both currently serving and retired, to express their support of our efforts to ratify the Equal Rights Amendment in Virginia. Below is a sampling of comments they wanted to share with Virginia legislators.

Virginia has a chance here to secure its place not in the nation’s history but in its future.
- Nick Chanin, Marines - Virginia

I encourage you to ratify this legislation. There are still many inequalities in our benefits.
- HHQ, Navy, Virginia

Women serve on the battlefield, side-by-side and equally with men. Same throughout government and the private sector. Proud to support codifying that into our Constitution.
- Dan Helmer, Army - Virginia

Republicans continue to be skewered like the catcher for the javelin team when they oppose this issue—WHY? I have one daughter and eight granddaughters who deserve the same consideration as my three sons and two grandsons—not to mention a wife who is about to become a Damnocrat in order to get this issue past. Get out in front; steal with pride and make this issue yours!
- Frank Gunkelman, Navy - Virginia

Ratify the ERA and show that you would like the same rights currently afforded to Virginians to be afforded to all, including our service members as they move from state to state.
- Shyamali Hauth, Air Force - Virginia

I’m a retired USAF Lt Col who served 23 years, I’m a lifelong Republican, and I support this legislation!
- Robert D. Skelton, Air Force - Virginia

Please support Sen. Sturtevant’s resolution and help make history in 2019.
- Karen Skelton, Air Force - Virginia

This will bring nothing but good. Please ratify.
- Heidi BruMar, Navy - Virginia

Please do the right thing. Ratify the ERA.
- Chris Hauth, Air Force - Virginia

As a lifelong resident of Virginia and the father of two daughters and two sons, it’s appalling that Virginia hasn’t codified these protections. Let’s get this done!
- Jeff Stewart, Reserves / Guard - Virginia

About time
- James Wilkerson, Army - Virginia

Please vote to ratify ERA--long overdue. Women are thoughtful, smart, and equal.
- Martin Davis, Army - Virginia
Military Petition - Comments for Virginia Legislators

Women veterans live and work in Virginia and deserve equal rights
- Sara Helfer, Marines - Virginia

I believe Virginia needs to sign the ERA immediately. There is no reason that half the population should have less rights than men.
- Shawn Newman, Navy - Virginia

We protect the values of this country. It is time you also uphold those values—for all people regardless of sex. We take the protection of people to the grave; do the same.
- Amy Hjerstedt, Coast Guard - Virginia

The ERA is way overdue!
- Lori Heyler, Air Force - Florida

I’ve fought in combat for my country, it’s a shame that there is still no protection to guarantee me equal rights in the US Constitution. Please change that, Virginia legislatures!
- Amanda Yoder, Navy - Virginia

Please ratify the ERA
- GySgt L. C., Marines - Virginia

Please ratify the ERA
- Donna Cerwensky, Marines - Virginia

Ratify the ERA!
- Carl Patow, Army - Virginia

Get it done!
- Morgayne Love, Army - Washington

Do the right thing. Pass the ERA.
- Kathy Fowler, Army - Virginia

Please ratify the ERA it is an important step forward.
- Elaine K. Stone-Arthur, Air Force - Virginia

Ratify now!
- Ebony Rankin, Navy - Virginia

This amendment is long overdue. Be on the right side of history.
- Melissa Kowalski, Air Force - Virginia

We joined the military to fight for freedom. Not for the freedom of a few but for all. Where did we drop the ball?
- Michael S Boyd, Air Force - Washington

Let’s get this done. Why are we waiting??
- Donald L. McCarthy, US Navy, Virginia

If you’re doubt, I want you to look yourself in the mirror and say out loud, not everyone as equal as me. If you feel horrible saying that, vote yes, if not abstain from voting and resign from office.
- DS, U.S. Army - Oregon

VAratifyERA.org
Military Petition - Comments for Virginia Legislators

Yes. This is a top priority, do it now now.
- R.R., Army - Virginia

Please move on this
- Steven Specht, Air Force - Virginia

When I swore to uphold the Constitution I DID KNOW that gender equality was missing from it. I knew as a woman that I suffered discrimination in the military because of my sex. I also knew that the Constitution could be amended to correct this deficiency and that we could be a more perfect union by doing so. I served in order to demonstrate my rightful equality with my fellow servicemen. It's been almost 30 years since I completed my service. When will you finally complete my equality?
- Stephanie Malady, Navy - Virginia

This is way overdue! We've served for freedom and equality for all!
- Nicole Carry, Navy - Virginia

As an Army veteran with over 12 years of service, collectively in the Regular Army, Army Reserves and Army National Guard, I have had the privilege to serve with some of this nation's great female war fighters and service members. The mere fact these women are not recognized as equal to men is completely and utterly unacceptable.

The Equal Rights Amendment (ERA) states: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." How could any American not agree with that? I ask you to tap and redirect your moral compass and do what is the only right thing to do and vote to ratify the Equal Rights Amendment (ERA). Doing so would have immense symbolic weight, giving the highest affirmation to the principle that discrimination against women is wrong. You do agree... don't you? Then prove it.
- Tavorise K. Marks, Army - Virginia

Women struggle with unfairness and personal safety issues on a regular basis. We need equal rights under the law across the board as a starting point. Many of us have have been working on this since the 1980s. Why is something so fundamental such a difficult task? What is there to lose for anyone?
- K. G., Marines - Virginia

Virginia ratification is far overdue. I was born in Virginia. When this began I was 3, Pennsylvania, where I spent most of my childhood, ratified when I was 4. My Navy service was in California, another early ratifier. As a Veteran returning to Virginia, I was dismayed, and frankly, shocked, to find Virginia has not taken this step. When we know better we should do better. NOT ANOTHER GENERATION.
- Anne Bell, Navy - Virginia

Time to do your job creating a better and more equal Virginia. I served 26+ years in the US Army defending your rights. Time to defend mine. Ratify now.
- Jenny W. Davis, Army - Virginia

It's time to pass the Amendment!
- Duncan M. Porter, Air Force - Vermont

Why is this still a question? Why is this taking so long? We need the ERA to pass now! I have two daughters and they need to have equal rights!
- Thomas D Burke, Air Force - Virginia

Long overdue!
- KCC, LCDR, SC, USN (Ret.)
Military Petition - Comments for Virginia Legislators

We the women of the USA have had to fight for every right we have. Nothing was given, everything was earned. And here, in the final years before our centennial anniversary of winning our suffrage, our voice in this nation, we stand again before those placed in power by those voices and demand equal treatment for all under the law to be enshrined in our Constitution. That document we hold so dear, that embodies all we are as a country.

Let all young boys and girls learning of that living document in school see that this nation, their nation, recognizes equality for all. That the law weighs them equally, that they each deserve the same rights as the person to their left and right, male or female.

Let men and women look at that document today and feel it has realized what has come to embody in the minds of all Americans that we are all created equal, and deserve and are entitled to certain rights by our creators-whoever we believe them to be.

Ladies, gentlemen, those who hold the keys to history in their hands in this moment, please, do our country proud. Make history today, give every citizen equal rights before the law.

- Hospital Corpsman Third Class, JEP, United States Navy, Hawaii
Family Foundation Letter – Aug 30

On August 30, 2018, The Family Foundation sent a letter to Republicans in the Virginia legislature titled: The “Equal Rights Amendment” (ERA) is About Abortion.

Generally speaking, the letter reads as an “us vs. them” letter and does not consider the perspective of equality as a shared value. Additionally, it mischaracterizes judgments and cases, construes court opinions and ignores specific language in the rulings that negate the case the author(s) attempt to make. It also recycles old material from the 1970s and ignores the context of today’s modern society.

Below are excerpts from the letter and a response from VARatifyERA with a link to a complete copy of the letter at the bottom of this page. This is not intended to be a line-by-line refutation to every single mischaracterization / misrepresentation nor is it a response to every faulty leap in logic. Instead, this is intended to address the main points and greatest falsehoods put forth as fact.

Unlike how some have treated the ERA in past years, your 2019 vote on the ERA will not be merely a symbolic gesture to certain constituent groups or a benign nod to the universally shared ideal of equality. Notwithstanding many of its supporters’ good intentions, this Amendment’s true impact, if legitimized, will strike at the very heart of life, liberty, and privacy. We do not need to speculate about this. It has already played out in many ways in states that have ratified the ERA into their state constitutions – and with grave consequences.
The Virginia state constitution is one of 24 states that includes a statement of gender equality. This inclusion in our constitution has not caused any grave consequences.

Footnote #2 on page 1 includes a statement “dismissing the ERA as moot” when, in fact, that case was dismissed, not the ERA.

That is why I am taking this special opportunity to make you aware that The Family Foundation considers your vote this year on the ERA to be a vote either for or against abortion.

This is, at the heart of the matter, the main point that the Family Foundation is making in this particular letter. We disagree with this assessment and consider it a conflation of issues. However, we assume they will pivot off this main point after enough people are aware of their mischaracterizations of the cases as discussed below.

As crazy as it may seem, among the possible consequences of Virginia’s ratification of the ERA – and by far the most troubling – is that it could be interpreted as enshrining in our Constitution a right to taxpayer-funded abortions at any time for any reason. This is what happened in Connecticut. In the case of Doe v. Maher the Connecticut Supreme Court held that, “Since only women become pregnant, discrimination against pregnancy by not funding abortions ... is sex-oriented discrimination ... The Court concludes that the regulation that restricts the funding for abortions ... violates Connecticut’s Equal Rights Amendment.” In New Mexico Right to Choose, NARAL, et al v. Johnson, the New Mexico Supreme Court unanimously held that, in light of its state version of the ERA, the state could not differentiate between abortions and medically necessary procedures sought by men, and ordered the state to pay for elective abortions under Medicaid.

This paragraph grievously mischaracterizes the findings in two legal cases.

The Family Foundation has misrepresented the issue before the court in the Connecticut case, and it is best put, in the words of the court itself, in the outset of the decision: “This case is concerned only with the narrow issue of funding of medically necessary or therapeutic abor-
tions. The issue of whether our state constitution mandates that the state fund nontherapeutic abortions for the poor has not been raised by the parties and is not addressed in this decision."

The Family Foundation has again misrepresented the issue before the court in the New Mexico case. This decision does not, as stated in the paragraph, include any judgment about elective abortions and in fact, the first sentence of the decision states: "This case concerns the authority of the Secretary of the New Mexico Human Services Department to restrict funding for medically necessary abortions under the State's Medicaid program.

1) The term “sex” could be interpreted to provide special legal rights on the basis of “sexual orientation” and “gender identity,” and in turn, severely threaten religious liberty.

The Equal Rights Amendment is essentially a nondiscriminatory values statement. It appears the Family Foundation is advocating for the ability to discriminate. Generally speaking, all advocates working on VAratify-ERA believe discrimination is an attack on our deeply held American value of respect and are surprised that doing the right thing (not discriminating) would upset anyone.

2) Gender designations for bathrooms, locker rooms, hospital rooms, nursing homes, etc. would be nullified because they make distinctions based on sex.

Fear of unisex bathrooms was a big issue raised over fifty years ago, but it turns out to have been “much ado about nothing.” Today we have public unisex bathrooms / changing rooms and we need only look at the local Target or YMCA to see examples of how helpful they are, particularly for parents with small children. With facilities designed for only one person / family at a time, privacy is retained.
3) Elimination of all-male and all-female school sports teams
   - In Pennsylvania v. Pennsylvania Interscholastic Athletic Association (1975), the state Supreme Court invalidated sex segregation policies in athletics, including contact sports, citing their state ERA. 7
   - In Darrin v. Gould (1975), the Supreme Court of Washington held that because of the state’s ERA, all school sports must be open to both sexes. 8

As we have already experienced with the implementation of Title IX, all-male and all-female sports teams have not been eliminated. Title IX requires that men and women’s programs receive the same levels of service, facilities, supplies, and the like. Men’s and women’s programs may differ as long as the government can justify the differences.

Additionally, the Family Foundation again misrepresents the cases it cites. In Pennsylvania, the state attorney general successfully challenged the athletic association’s prohibiting girls from playing on boys’ teams. In Washington, two fully qualified girls successfully challenged their school’s denying permission to play on the football team. Neither of these cases required that all sports be open to both sexes.

4) Women must be allowed to go topless in public the same as men. 9
   - See Va. Code § 18.2-390 (Definition of “nudity”)

This is already the status quo in some places around the country. The Equal Rights Amendment does not entirely remove the government’s ability to discriminate, it just ensures that the discrimination must serve a compelling government purpose and be narrowly tailored to meet this purpose.

5) Women will be drafted on the same terms as men into military and combat roles.

In November, 2017 the Pentagon recommended for women to begin registering for the Selective Service. The government has always had the authority to draft women and had prepared a draft of women as nurses days before WWII ended. In recommending women register for the Se-
lective Service our military is signaling that if a draft is necessary it will call up both men and women.

Although we all hope there is never another draft, it is difficult to imagine a situation in which volunteer men and women serve on the front lines and only men are drafted. In these modern days/times we would expect to see a discriminatory challenge by men if that occurred.

6) Increased auto and life insurance costs for women
   o In Hartford Accident & Indemnity Co. v. Insurance Commissioner (1984), Pennsylvania’s gender-based automobile insurance rates were invalidated because of the state’s ERA, forcing women to pay the same rates as men even if they statistically have better driving records.10
   o Virginia life insurance policies would become more expensive for women.11

Insurance rates are regulated by the states. Since Virginia has regulated insurance with a gender equality statement in our Virginia state constitution, it can be assumed no change would occur.

7) Integrated male/female prisons and harsher prison conditions for women
   o Supreme Court Justice Ruth Bader Ginsberg has stated that under the ERA, prisons would have to be sex-integrated.12
   o In DuPont v. Wyzanski (2004), Massachusetts’ state ERA was used to overturn the practice of using stricter discipline with male inmates who are much more violent in jail than female inmates. As a result, female inmates may be subjected to equally harsh discipline.13

The first bullet point is disingenuous as we looked up the footnote #12 and it is a book published by the United States Commission on Civil Rights and written by all men (link here). There are a couple of references to academic papers by Ruth Bader Ginsburg and others but there appears to be no specific reference to the Equal Right Amendment from Ruth Bader Ginsburg in this book. Further, in a law review article (link here) Ruth Bader Ginsburg has said, “The ERA... is not a ‘unisex’ amendment.”

Additionally, contrary to the Family Foundation’s argument, the court in DuPont v. Wyzanski did not overturn the prison’s practices. Instead the
court denied summary judgment in favor of the prison because there were unresolved factual issues.

8) The ERA will transfer large amounts of power from the state government to the federal government since it empowers Congress to enforce it.14

- In essence we would be handing the state’s legislative power on many areas that impact women and family law to Congress and the unelected judges of our federal courts.

We believe the Family Foundation makes this point because of this wording in the Equal Rights Amendment: “Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.”

The Equal Rights Amendment, just like the Thirteenth, Fourteenth, Fifteenth, Nineteenth, and Twenty-Sixth Amendments, specifically authorizes Congress to enforce its provisions by appropriate legislation. Just for fun, here are the sections from each of those amendments:

Thirteenth Amendment, Section 2. Congress shall have power to enforce this article by appropriate legislation.

Fourteenth Amendment, Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Fifteenth Amendment, Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Nineteenth Amendment, Congress shall have power to enforce this article by appropriate legislation.

Twenty-Sixth Amendment, Section 2. The Congress shall have power to enforce this article by appropriate legislation.

So yes, the Equal Rights Amendment specifies that Congress may enforce “the provision of the article” but that is no different than other constitutional amendments.
In reality, both women and men already have full claim to equal rights through the 5th and 14th Amendments to the U.S. Constitution. (i.e. “No person shall be deprived...”) In fact, the U.S. Supreme Court affirmed that the 14th Amendment applies to women in the well-known case of United States v. Virginia, involving cadets at VMI. There are also numerous other laws in virtually all areas of American life (e.g. employment, education, credit eligibility, housing, public accommodations, etc.) that prohibit sex discrimination. Moreover, women are already guaranteed equal pay for equal work under both federal and state law.

The Family Foundation is wrong. Men and women do not “already have full claim to equal rights through the 5th and 14th Amendments.” If they did, why would the 19th amendment, which gives women the right to vote, have been necessary?

The court’s interpretation of the 14th Amendment ensures “strict scrutiny” for discrimination based on race, religion, and country of origin. However, gender discrimination cases do not enjoy this same level of judiciary scrutiny. Instead, under the 14th Amendment, gender discrimination receives an intermediate level of scrutiny. Under intermediate scrutiny it is easier for the government to discriminate on the basis of sex than it would be to discriminate on the basis of race, religion, or country of origin.

We need the Equal Rights Amendment in part to correct a purposeful, historical exclusion from our founding documents. But we also need it to ensure that sex discrimination cases receive the same level of scrutiny as discrimination based on race, religion, and country of origin.

With regards to the last couple of sentences in this paragraph, the Family Foundation correctly points out there are numerous statutes barring sex discrimination. These statutes, however, have not provided and cannot guarantee the level of protection achieved by amending the Constitution. Statutes can be repealed. Court decisions can be reversed. A constitutional amendment, by contrast, delivers an enduring commitment to equality.

The Equal Pay Act of 1963 prohibited employers from paying employees differently based on sex. Fifty-five years later, women still make only 80% of what men make, and the numbers are much worse for women of color. Clearly, the Equal Pay Act, even when coupled with Title VII, has
not eradicated the gender pay gap.

Prior to the Lily Ledbetter Fair Pay Act of 2009, women had to bring pay discrimination claims within 180 days of the initial pay discrimination. This statute of limitations barred many claims because women often did not learn of pay discrepancies so quickly. The Lily Ledbetter Act amended Title VII to allow suits to be filed within 180 days of the most recent paycheck reflecting the discrimination.

Virginia, however, has not corrected its flawed statute of limitations applicable to pay discrimination claims. Under Virginia’s law, suits must be brought within two years of accrual, allowing employers to escape liability simply by keeping their discriminatory practices hidden. Keeping pay discrepancies under wraps is not all that difficult, especially in jurisdictions like Virginia that do not protect employees from retaliation for sharing employment information that would help women bring timely claims.

If one thing is clear in all of this, it’s that this so-called Equal Rights Amendment really has nothing to do with equality. And in light of recent developments, it has become very important for me to ensure that you fully comprehend what it really is about. In view of the very real possibility that a single federal judge could unilaterally decide to resurrect the ERA if Virginia becomes the 38th state to approve it, the importance of your vote this year cannot be overstated. Therefore, I urge you to oppose the ERA if you should have occasion to vote on it. The Family Foundation will be here backing you up when you do.

We appreciate the Family Foundation’s acknowledgement / agreement with our campaign that Virginia’s ratification could, indeed, be the historical ratification to amend the U.S. Constitution.

CONCLUSION: We find this letter to be deceptive and inflammatory and it reads as a bit of a threat to our legislators. It is designed to fear monger and appeal to emotions and that is not what we, as a democracy, should rely upon for good legislation. We anticipate the Family Foundation will shift to new arguments as their mischaracterizations of cases in this letter become better known by the Virginia legislators.

NOTE: We invite Victoria Cobb, President of The Family Foundation, to engage in a public debate with a representative of VAratifyERA. Virginians and their elected representatives may dis-
agree on whether to ratify the Equal Rights Amendment, but they should do so with proper facts, not mischaracterizations. Last year the Senate Rules Committee of the General Assembly erred by relying on a false report of the National Archivist’s position (email from the National Archives correcting the record is here). The General Assembly should not be fooled again because members relied upon the misrepresentations of the Family Foundation.

The full letter from the Family Foundation titled “The “Equal Rights Amendment” (ERA) is About Abortion” is available here

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