2021 SENATE GOVERNMENT AND VETERANS AFFAIRS

SCR 4010

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Room JW216, State Capitol

SCR 4010
2/5/2021

Resolution clarifying the 1975 ratification by the 44th Legislative Assembly of the proposed 1972 Equal Rights Amendment to the US Constitution only was valid through March 22, 1979.

Chair Vedaa opened the hearing at 9:45 a.m. with Sen Vedaa, Meyer, Elkin, K Roers, Wobbema, Weber, and Marcellais present.

Discussion Topics:

- Procedure of US Amendments

Sen David Clemens introduced SCR 4010 #5664
Rose Christianson testified in favor #5666
Mark Jorritsma - Family Policy Alliance of ND - testified in favor #5629
Christopher Dodson – ND Catholic Conference – testified in favor
Bea Streifel – Bismarck – testified in favor
Linda Thorson – Concerned Women for American – via Zoom in favor #4289
Brandi Hardy – ND Human Rights - opposed #5625
Kristie Wolff – ND Women's Network Ex. Dir. - opposed #5631

Additional written testimony:

Curtis Olafson in favor #5628
Lori VanWinkle in favor #5616
Amber Vibeto in favor #5610
Kayla M Johnson in favor #5597

Karen Ehrens - opposed #5630

Steven Andersson – GOP4ERA - opposed #5567
Elizabeth Skarin – ALCU of ND – opposed #5197
Amy Ingersoll Johnson – opposed #4509

Adjourned at 10:57 a.m.

Pam Dever, Committee Clerk

#5664

February 5, 2021

State Government and Veterans Affairs

Senate Concurrent Resolution 4010

I am David Clemens, Senator from District 16 in West Fargo and Fargo. I am here to introduce Senate Concurrent Resolution 4010.

When the proposed 1972 Equal Rights Amendment was approved by the 92nd Congress of the United States, it had an expiration Date of March 22, 1979. This was a result of the Congress setting a deadline of 7 years, or March 22, 1979, in which ¾ of the states had to ratify the amendment.

Since the deadline has passed many years ago, several states have continued to ratify the Equal Rights Amendment. In 2018, 39 years after the deadline, Illinois ratified the amendment and in 2020, Virginia Legislature voted to ratify the amendment, 41 years after the deadline.

The purpose of this resolution is to resolve that any State Legislature ratifying after March 22, 1979, should not be counted.

I would ask for your support of SCR 4010.

Questions.

#5666

Testimony in support of SCR 4010 - February 5, 2021

Mr. Chairman, Members of the Committee,

My name is Rose Christensen. I am here today in support of SCR 4010, a resolution that simply declares that North Dakota's ratification of the Equal Rights Amendment expired when the seven year period given by Congress for its consideration expired. That seven year period began March 22, 1972, and expired on March 22, 1979, with the proposed amendment still short at least three states of the 38 needed to become the 28th amendment to the US Constitution.

I was involved in the effort to stop the ratification of the ERA, and attended every hearing held during the three year campaign to secure North Dakota's ratification. While the battle was mainly a war of words, and the clash of ideas, philosophies and even cultures, there were at least **two significant irregular procedural maneuvers** associated with the ratification effort that **weighed heavily in favor of the proponents,** to the disadvantage of those in opposition. To make a long story short, in l973, the ERA was introduced in the House, and the House killed it.

But , not to be thwarted by the uncooperative House, proponents simply went across the hall and got it reintroduced in the Senate which then passed it and sent it back to the House. The House killed it a second time. That gave proponents three chances to get their proposal through in the 1973 session, but they failed! Two years later however, the Legislature did ratify the ERA by a single vote in the House. It stayed on the books until the seven year ratification period ended on March 22, 1979.

I have distributed to you copies of a report from Eagle Forum which summarized the national legislative history of the ERA. You will note in the lower right hand corner, the entire verbatim text of the Resolution that Congress adopted when it sent the amendment to the states for possible ratification.

The main clause reads as follows: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

On this same sheet (on the lower left side) you will see the text of eight amendments that were offered by Senator Sam Ervin to try to modify this harsh and rigid mandate of

"equality of rights under the law." Ervin foresaw that such a bare-boned mandate for "equality" was, in reality, a threat to the rights of women.

These proposed amendments would have:

1. Allowed exemption of women from compulsory military service. It was rejected by proponents.
2. Allowed exemption of women from combat duty. Proponents rejected this amendment.
3. Allowed the federal government and state law to grant protections and exemptions to wives, mothers and widows. Proponents rejected this amendment.
4. Allowed states to impose upon fathers the responsibility for the support of their children. Proponents rejected this amendment.
5. Allowed the federal government and state laws to secure privacy to men or women, boys or girls. Proponents rejected this amendment.
6. Allowed the federal government and states to make sexual offenses punishable as crimes. Proponents rejected this amendment, too.
7. And finally, Ervin proposed this all-encompassing amendment to the ERA:

"Neither the United States nor any state shall make any legal distinction between the rights and responsibilities of male and female persons **unless such distinction is based on physiological or functional differences between them**." Proponents rejected this proposed amendment, too. They simply OPPOSED these guarantees of the traditional rights of women. Refusing to include this last amendment has created the problem which has taken stage front and center today.

Ironically, ... this 67th legislature, nearly one half-century later, will be considering such bills as HB 1298 which is a late-in-the-game attempt to salvage "same sex" sports from the ravages of politically correct gender-neutrality! If the ERA had been ratified by 38 states, you would not have the opportunity this bill gives you to protect women's sports from being co-opted by biological males.

But, back to the history of the ERA, picking it up in l972. The US Constitution required a 2/3 vote of both chambers on this resolution, and Congress obliged, sending the amendment off to an enthusiastic reception in a number of well-primed state legislatures. We often see this kind of pump-priming to whip up enthusiasm for an item on someone's agenda! North Dakota had been well prepared for this event!

But slowly, as ERA worked its way through legislative hearings in the fifty state legislatures, the haze cleared, and the PR hype and enthusiasm began to wane. Some people who were not blinded by the frenzied "popularity" of this media-created "issue of the day", had begun to witness changes in the laws of states that were progressively preparing for the anticipated ratification of ERA. The public was finally realizing that ERA would forever make it illegal to extend any benefits, privileges or exemptions to women. ERA, in fact, would do nothing for women. It doesn't even MENTION women. The ERA should more properly be considered unisex legislation. And if you've visited a public unisex bathroom recently, you know the unisex standard may not be as good an idea as the giddy gender-neutral crowd imagined it would be!

When legislatures began to examine how this amendment would actually negatively impact the women of their states, the enthusiasm evaporated, the ratifications trickled to a halt, and ERA began to actually lose ground. Several states rescinded their previous ratifications. Referenda in several states showed huge majorities in opposition to ERA. Facing certain death with the rapidly approaching arrival of the March 22, 1979 deadline imposed by Congress, a **second highly irregular procedural action** was initiated to try to save it! Proponents went back to Washington to ask Congress for **a time extension**, which Congress granted by a simple majority vote...not by the 2/3 vote the Constitution required. This procedure was subsequently challenged in court where it languished until ERA officially died again, on March 22, 1982. Even the three year time extension was not sufficient to get 38 states to ratify it.

But before this long, drawn-out battle ran its course, **the North Dakota Senate had gone on record to defy this unconstitutional time extension**! In February, 1979, just weeks before the original seven year time limit was due to lapse, the Senate passed a resolution almost identical to this resolution you are considering today.

A letter to newspapers, dated February 22, 1979, noted in reference to the March 22, 1979 deadline that "Friday's action in the Senate**.... does not retract our ratification**; it simply provides that **our ratification becomes null and void at the termination of the seven year ratification period**, unless 38 states have concurred in ratification prior to that date...."

This hearing today has nothing to do with the merits or demerits of the Equal Rights Amendment. This hearing is to foster a more thorough understanding of how and why

the ERA failed to be ratified, and specifically **why North Dakota at this late date wants to, and needs to, once again affirm that its ratification died with the passage of the original deadline, March 22, 1979.**

As you may have heard by now, there is presently a strong progressive push to revive the ERA, a plan called "The Three State Strategy." The plan is to ignore both previous expiration dates, to ignore all the rescissions, and to brazenly attempt to simply add a few new ratifications to those of the l970's and voila, declare ERA "ratified" as the 28th amendment to the U. S. Constitution. Accordingly, Leftist majorities in the legislatures of Nevada (2017); Illinois (2018) and now Virginia (2020) have gone through the motions of "ratifying" the long-dead ERA.

Encouraged by Virginia's audacious action, US Rep. Speier (D-CA) quickly ramrodded through the US Congress the adoption of **SJR 79 which seeks to completely and retroactively remove any deadline at all from the ERA's 1972 consideration**! Voila! The ERA has been resurrected from the dead, and will be tottering around the courts of the country on very wobbly legs unless and until the states whose ratifications are being dragged out of the grave along with this corpse and into this inevitable court ordeal, DEMAND that their long-ago-expired "ratifications" BE declared null and void, and NOT be aggregated with these new so-called "ratifications".

It is always wise to have a good exit strategy! In 2001, one legislator noticed that a number of defunct applications for congressional action were cluttering the books. They included several outdated actions that the North Dakota legislature had taken in respect to constitutional changes it had once favored, but which had since died in the dust of the archives. He introduced SCR 4028 to rescind all applications for an ART V constitutional convention. His resolution was well received and passed without much ado, wiping the slate clean. I urge this committee to do similar house-cleaning. Please give a DO PASS to this resolution SCR 4010 to clean the 1975 ratification of the ERA off the books, by declaring ND's ratification null and void , having expired at the end of the seven year period allowed by Congress. Now is the time to end this discussion once and for all! Please vote YES on SCR 4010.

#5629

Family Policy ALLIANCE of North Dakota

Testimony in Support of SCR 4010

Mark Jorritsma, Executive Director
Family Policy Alliance of North Dakota
February 5, 2021

Good morning Chairman Vedaa and members of the Senate Government and Veterans Affairs Committee. My name is Mark Jorritsma and I am the Executive Director of Family Policy Alliance of North Dakota. I am testifying on behalf of our organization and its constituents across North Dakota for you to please render a "DO PASS" on Senate Concurrent Resolution 4010.

The Federal Equal Rights Amendment was submitted to the states for ratification in 1972 with a seven-year deadline. In 1972, federal and state laws were still woefully inadequate in protecting women, though with the earlier passage of women's suffrage and the Civil Rights Act of 1964 the ball was already rolling. Still, in 1972, schools could discriminate against girls, refuse to offer girl athletic programs or extracurricular activities. Women could be fired for becoming pregnant, couldn't attend military academies, and didn't necessarily have the right to sit on juries.

Against this landscape, North Dakota ratified the Federal ERA[1] in 1975. But since ratification, the legal protections of women in the law have cascaded into a significant collection of rights.

In 1972, Title IX was passed, ensuring equal protection and access for girls and women in school academics and athletics. In 1975, the Supreme Court held that the exclusion of women from juries was unconstitutional.[2] In 1978, the Pregnancy Discrimination Act protect employed pregnant women. Legal protections for women from sexual harassment, discrimination in schools, and domestic violence were instituted. Women's rights regarding jury-duty, military service and family leave were codified. Today, the law unequivocally protects women.[3] And all of this happened without a federal ERA. In other words, women and men have achieved equal legal rights through alternate means, in absence of the 1972 Equal Rights Amendment.

Further, we often hear about the pay gap between sexes as evidence for an ERA, as I'm sure you will encounter in testimony opposed to this resolution. However, one of the most recent comprehensive studies from Pew Research Center, a nationally respected firm, noted that, "Much of the gap has been explained by measurable factors such as educational attainment, occupational segregation and work experience."[4]

So, what do supporters of the ERA really want? Looking at state-level ERAs provides ample evidence. ERA language offers "equal rights" which leaves a blank slate for courts to essentially erase protections for women from the law and make-up rights out of thin air. That may sound extreme, but it has already been happening.

In Maryland, the Court of Appeals held a husband was no longer required to pay alimony, because a law compelling such payments violated the state's ERA, placing a husband and wife in an unequal position.[5] Under a Pennsylvania ERA, the courts found a father did not have to pay child support for his children because, they claimed, it placed mothers and fathers in an unequal position.[6] There are quite a few more examples of courts erasing the legal protections women have obtained simply because of state-level ERAs.

Biology is not bigotry. Our society and laws should acknowledge and respect valid sex-based distinctions. For example, pregnancy accommodations can only apply to women, because only women get pregnant. It's absurd to say that because pregnancy accommodations can't also apply to men, this is discrimination so it should be erased. But this is the effect of the ERA in our modern political landscape.

In addition, and probably most egregiously, some states have found a Constitutional right to abortion within the language of their ERAs, arguing that to not provide abortions is sex-based discrimination.[7] Again, this is an example of an ERA being used to force so called "rights" into the law.

This is all to say nothing of when courts choose to interpret the word "sex" to mean gender. Some state legislatures and courts have decided wherever prohibitions on sex-discrimination appear in the law, sex should also be interpreted to mean gender.[8] This means a man, who says he is a woman, will be entitled to all the protections women have from male discrimination. This man will suddenly have the constitutional right to enter women's bathrooms, play on women's sports teams, gain admission into women's clubs, and earn women's scholarships. Programs that were designed to allow women the same opportunities as men. Men are literally stealing opportunities away from women under their state ERAs.

And this was all prior to the *Bostock v. Clayton County* case and President Biden's recent Executive Orders, which both underscore the urgency of this situation. It is precisely why we are, for example, currently considering legislation such as the Fairness in Girls' Sports bill (HB 1298) this session. To add yet another confirmation of these unfortunate actions with ratification of the ERA would be disastrous.

The radical language of the ERA is no longer in the interest of protecting a woman or her unique place in the law. Five other states have rescinded their ratification; Idaho, Kentucky, Nebraska, South Dakota, and Tennessee, bringing the number of states who do not support the Federal ERA to 18.[9]

On a personal level, my wife and daughter have certainly benefited from all the anti-discrimination laws enacted over the past 50 years, and I'm very thankful for that. They have had equal job opportunities, equal academic opportunities, been protected from sexual harassment, and many more positives. However, this was without any ERA being in place. I would be the first to admit that there are areas of life where sex discrimination still exists, but the sweeping and ambiguous language in the proposed federal ERA is going to cause a significant undermining of pro-life and pro-family values as it is interpreted by activist courts.

We agree North Dakota should have no part in the experiment that is being pushed on us. The Federal ERA would erase women's status in the law by ignoring necessary factual differences between the sexes, and potentially be used to require every state to provide a right to abortion. We support this resolution that declares that North Dakotans no longer need nor want a Federal ERA.

Therefore, I respectfully ask that you please vote Senate Concurrent Resolution 4010 out of committee with a "DO PASS" recommendation. Thank you for the opportunity to testify and I am now happy to stand for any questions.

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[1] Senate Concurrent Resolution No. 4007 (44th Legislative Assembly). 1975; Of Note House Concurrent Resolution No. 3032 (2007) was a resolution reconfirming ND commitment to the ratification of the federal ERA.
[2] *Taylor v. Louisiana*, 419 U.S. 522 (1975).
[3] Pregnancy Discrimination Act (Pub. L. 95-555).
[4] https://www.pewresearch.org/fact-tank/2019/03/22/gender-pay-gap-facts/
[5] *Coleman v. State*, 37 Md. App. 322 (1977) (holding: To require a husband to pay alimony but not a wife was a distinction based solely upon sex and a violation of the sates ERA).
[6] *Conway v. Dana*, 456 Pa. 536 (1974) *see also* Albert Einstein Medical Center v. Nathan 1978 Pa. Dist. & Cnty. Dec. LEXIS 421 (1978) finding similarly that a husband should not be liable for a wife's hospital bills.
[7] *New Mexico Right to Choose/NARAL v. Johnson*, Supreme Court of New Mexico. November 25, 1998.
[8] Phyllis A. Dow, *Sexual Equality, the Era and the Court - A Tale of Two Failures*, 13 N.M. L. Rev. 53 (1983).
[9] 13 States have not ratified: AL, AZ, AR, FL, GA, LA, MS, MO, NC, OK, SC, UT, VA

CONCERNED
WOMEN for AMERICA
LEGISLATIVE ACTION COMMITTEE

February 5, 2021
Government and Veteran's Affairs Committee
Testimony in Support of SCR 4010

Chairman Shawn Vedaa and members of the committee, I am Linda Thorson, the State Director of Concerned Women for America (CWA) of North Dakota. We are the state's largest public policy women's organization and country's largest public policy women's organization with hundreds of thousands of members across the country.

On behalf of our North Dakota members, we submit testimony in support of SCR 4010, a Senate Concurrent Resolution clarifying the 1975 ratification, by the North Dakota 44th Legislative Assembly, of the proposed 1972 Equal Rights Amendment to the Constitution of the United States.

Originally the ERA was given a deadline of seven years for ratification, beginning March 22, 1972, and expiring March 21, 1979. When it became clear that three-fourths of the states (38 states) would not ratify ERA, Congress passed an ERA Time Extension resolution to extend the time limit for ratification to June 30, 1982. Even with this extension the ERA proponents failed to deliver on the 38 states necessary for ratification.

This poorly worded amendment to the U.S. Constitution states in 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." If ratified again, the Equal Rights Amendment (ERA) would restrict all laws and practices that make any distinctions based on gender.

The ERA is not about equal rights; it is about the **promotion of a genderless agenda** through the suppression of natural differences between men and women. The ERA is not about equal rights for women. If it were, it would duplicate the 14th Amendment, the equal amendment clause of our Constitution that covers gender or sexual distinction and gives all equal protection under the law. In the U.S. Supreme Court ruling in *Reed v Reed* in 1971, the court decided the 14th Amendment did prohibit unequal treatment on the bases of sex and declared sex discrimination a violation of the Amendment. REED V. REED, 404 U.S. 71 (1971).

Men and women are biologically different, and we must retain the ability to legally provide for these differences.

- **Despite claims of protecting women's interests, the ERA actually hurts women.**

  The ERA would eliminate the exemption of women from the military draft and compulsory front-line combat.

  In former Supreme Court Justice Ruth Bader Ginsburg's book, *Sex Bias in the U.S. Code*, she writes that the ERA would require that all women be drafted into the military when men are

drafted and placed on the front-line in equal ratios to men. Women must not be exempted from military combat.[1]

Women who feel they are physically able can choose to enlist in the military. Ms. Toni DeLancey, former Concerned Women for America State Director of Virginia, graduated from the U.S. Military Academy was commissioned as an officer in the U. S. Army and led other men and women in a Tactical Intelligence Unit. DeLancey states, "I didn't need the ERA to accomplish this." Like her fellow female graduates, Ret. Officer DeLancey volunteered to serve our country and was able to contribute based upon her individual strengths and abilities.[2]

- **The ERA will be used to mandate Medicaid funding for elective abortions.**

  Any attempt to restrict a woman's access to abortion, under the ERA, is a form of sex discrimination. Women could not be singled out for a characteristic that is unique to them and be treated differently based on that physical characteristic, such as a pregnancy. Abortion proponents (including the National Abortion and Reproductive Rights Action League and Planned Parenthood) have long argued in court filing that state-level ERAs guarantee a right to abort children with public funding. State courts in Connecticut and New Mexico have agreed with this interpretation.

  The New Mexico Supreme Court unanimously ruled that under their state ERA since only women undergo abortions, the denial of taxpayer funding for abortions is "sex discrimination" (N.M. Right to Choose/NARAL v. Johnson, 975 P.2d 841, 1998) [3]. As a result, New Mexico now provides Medicaid funding for elective abortions.

  By adopting the ERA, Connecticut's state superior court ruled that the state should no longer be permitted to disadvantage women because of the sex including their reproductive capabilities. "It is therefore clear, under the Connecticut ERA, that the regulation (prohibiting Medicaid funding) discriminates against women, and, indeed, poor women." (Doe v. Maher, 515 A. 2d 134)[4]

- **The ERA could end conscience clauses for nurses, doctors and hospitals who do not want to participate in performing abortions.**

  Courts do not allow conscience clauses in race discrimination, and they would not be able to allow it under the ERA.

  Be aware, the ERA empowers courts, not women. Because the language is so vague, courts would be called upon to interpret its application to innumerable situations – some of which were not even contemplated in the 1970s, such as the meaning of "sex." Thus, citizens' right

[1] Ginsburg, Ruth Bader, "*Sex Bias in the U.S. Code",* 1977, University of Maryland, p 26, 218, https://www2.law.umaryland.edu/marshall/usccr/documents/cr12se9.pdf
[2] https://www.youtube.com/watch?v=5m-5Wcosqoc
[3] http://www.nmcompcomm.us/nmcases/NMSC/1999/1999-NMSC-028.pdf
[4] http://www.ct.gov/chro/lib/chro/Warner_v_NERAC_denial_motion_to_dismiss.pdf

to govern themselves on contentious present-day issues would be usurped by unaccountable federal courts.

Women do not need the ERA to flourish in America. The 14th Amendment to the Constitution and multiple federal and state statutes guarantee women all the rights inherent to American citizens — equal employment, equal pay, education, credit eligibility, housing, public accommodations, etc. – and women are thriving and succeeding as in no other time in history. They have done this without the assistance of ERA.

The proposed 1972 ERA to the Constitution of the United States, a poorly worded Amendment, should not be counted by lawmakers in any state, any court of law, or any other person, as a live ratification to the Constitution of the United States.

We, again, urge your "Do Pass" vote on SCR 4010.

#5625

Testimony on SCR 4010
Brandi Hardy
February 5th, 2021

RE: In Opposition of SCR 4010

Greetings Chairman Vedaa and Members of the Committee,

I am Brandi Hardy and I am the Legislative Coordinator for the North Dakota Human Rights Coalition. Founded in 2002, we are a statewide, membership-based organization established to increase the visibility of human right needs and violations and barriers to residents within North Dakota. Our membership base is state-wide with people who are of different races, religions, gender identities, socio-economic class status, sexual orientation, from rural communities, and larger cities. The core of our mission is to champion policies that allow all North Dakotans to enjoy a free and safe existence in our state.

I am also a veteran. Something I will speak to more in a moment.

Today, I am here to urge the committee members to vote DO NOT PASS on SCR 4010. This resolution is a clear sign that those who want to rescind this 46 year old ratification, are those who still want to discriminate against others. Since 1975, we have evolved as a state. We have adapted changes to support agriculture and energy industries. We have evolved with the rapid changes of technology, this session proving this point. And forty-six years ago, the leaders of North Dakota evolved with our equal rights for all.

History tells us that once a state ratifies, it can't take the ratification back. Making these attempts to "rescind" or limit a ratification ineffective. This is non-issue for the state of North Dakota This is an issue for Congress.

There is the question, "would the ERA make it impossible to have an all-male draft?" Yes, most likely. The argument that by nulling this 1975 ERA ratification, we would be protecting our women from the draft doesn't make sense, now that women serve in all aspects of the military—including in combat. In fact, the Senate passed a bill in 2016 that would have required women to register. The bill had the support of the late Senator John McCain, who noted that women already serve with great distinction in our armed forces. Congress and the Pentagon have already taken steps in this direction anyway. There is currently nothing that prevents the draft from being extended to women. According to the The Selective Service System website it states, "if given the mission and modest additional resources, it is capable of registering and drafting women with its existing infrastructure." Recently, a federal court in Texas held that a male-only draft would be unconstitutional even under the 14th Amendment.

As an Operations Iraqi Freedom veteran with the US Army, I find this resolution offensive. Protecting our country is a privilege NOT a punishment. There is honor, dignity, and integrity

serving in our Armed Forces. To suggest women are incapable or too fragile for service or a draft is demeaning to our long fight for true equality.

I joined the military at 17 years old in 2003, when women were still excluded from ground combat MOS's. Yet, I graduated Basic Training in the top five out of over 600 recruits in Ft. Jackson, SC, before I even graduated from Bismarck High School. I again graduated at the top of my class in AIT, in Ft. Lee, VA after graduating high school early. Two weeks after turning 19 years old, I was flying into Baghdad, Iraq with the 3rd Infantry Division. I went on multiple, dangerous missions, grieved the losses of comrades and commanders, and found forever friendships during my time downrange. I finished my time in the service with the 92nd MP unit in Baumholder, Germany. I share this experience with you today because as a soldier, I was taught to have courage and serve selflessly for the freedom of all citizens and to uphold our constitutional rights. I still hold these values true to this very day. And although I wasn't allowed to join as an 11B, like I had originally wanted, I believe there would've been far more barriers without the ERA.

There should never be an expiration date on equality. This resolution suggests otherwise. It aims to preserve the right to discriminate, NOT to protect the right to live free and equally in North Dakota. For those reasons, I strongly urge the committee to vote DO NOT PASS on SCR 4010.

Kristie Wolff – Executive Director, North Dakota Women's Network
Opposition SCR 4010
North Dakota Senate Government and Veteran's Affairs Committee

Good morning Chairman Vedaa and members of the Senate Government and Veteran's Affairs Committee. My name is Kristie Wolff and I am the Executive Director of the North Dakota Women's Network.

North Dakota Women's Network is a statewide organization with members and advocates from every corner of the state. I am testifying today in opposition to SCR 4010.

We can all agree that the joint resolution that introduced the ERA included a deadline for ratification of 1979.

Because the ERA time limit is only in a joint resolution—not in the text of the ERA itself—it can be changed by another joint resolution passed by a simple majority. This issue was discussed at length in Congress in 1978, and both Houses did vote to extend the ERA time limit by three years to 1982. There are currently bipartisan resolutions in Congress to remove the deadline. These actions are occurring under the basic principle that one Congress cannot bind another Congresses.

Under Article V of the Constitution, the only question for a state is whether to ratify. North Dakota has done their part in the process. Historically once a state ratifies, it cannot rescind that ratification. The 14th Amendment became part of the Constitution even though two states attempted to rescind their ratifications. Those states were included on the list of ratifying states.

Let's talk briefly about why the ERA is so important. The Equal Rights Amendment would guarantee that the rights affirmed by the U.S. Constitution are held equally by all citizens without regard to their sex.

We have all seen the statistics on violence against women and the truly horrible numbers of Indigenous women who suffer from violence or who end up missing or murdered. We have all read the reports about disparities in pay – as women are paid 71 cents for every dollar paid to men in North Dakota.

But this isn't just about women. As its sex-neutral language makes clear, the ERA's guarantee of equal rights would protect both women and men against sex discrimination under the law.

How many fathers and families would greatly benefit from paternity leave, allowing a father to spend adequate time with his spouse and newborn child post-delivery. Fathers take their children out in public, yet the number of changing tables in men's bathrooms vs women's bathrooms creates an unnecessary barrier for fathers to adequately care for their child.

Clearly, work needs to be done. So, my question is do we move forward? Or do we turn back the clock?

North Dakota has done their part in the process, by ratifying the ERA. Let us honor all those who fought and sacrificed simply to be treated equal. Let us move forward and be part of adding a critically important statement about equality to our constitution. Let us send an important message to children that one of our most cherished values as a nation is equality.

SCR 4010 turns back the clock, therefore I am asking the Committee for a Do Not Pass recommendation.

Thank you,

Kristie Wolff

kristie@ndwomen.org

Curtis Olafson

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Testimony on Senate Concurrent Resolution 4010

I am writing in support of SCR 4010. As I watch and listen to the past debates on this matter, it is clear to me that much of the debate is over what may or may not be the end result of the ratification of the Equal Rights Amendment. Most of those prognostications are pure speculation that takes the debate far off its proper track and miss the crux of the matter.

The overarching issue at hand is whether We the People still honor deadlines, rules and the law of the land. Those supporting the ratification of the ERA today are positing an untenable position. To support and justify their position, they have no choice but to argue that deadlines, rules and laws don't matter and can and should be ignored.

We have seen disregard for rules and laws at the national level in Congress and in many other federal institutions, the most troubling of which was at the FBI, which is supposed to be the highest law enforcement agency in our nation. We saw disregard for rules and laws in Portland, in Seattle, and in many other cities where governors, mayors and local officials turned a blind eye to wanton lawlessness and destruction on the part of their own citizens. We saw disregard for rules and laws during lawless riots at our US Capitol by a fractional percentage of the hundreds of thousands of people who were invoking their Constitutional right to peacefully assemble. We see disregard for rules and laws in the court system, in state legislatures, and we see it right down to the local level.

If supporters of the ERA truly want it adopted as an amendment to our Constitution, they have two options.
1) Organize an effort to secure passage of a new amendment proposal from Congress to be sent to the states for ratification.
2) Organize an effort to invoke the rights wisely provided to the state legislatures by our Founding Fathers in Article V to propose and ratify such an amendment.

It is unfortunate that it is necessary for the North Dakota Legislature to spend time reaffirming what should already be a matter that was settled decades ago. Unfortunately, the effort to ignore rules and laws and to push tardy ratification is pervasive and deserves a response. The question you need to ask yourself is whether you still believe that, here in North Dakota, we need to respect rules and laws. You can take a stand. North Dakota can send a clear message that we don't and won't support disregard for deadlines, rules and laws by passing SCR 4010.

Dear Committee members,

Please support SCR 4010 and no longer support the ratification of the ERA because it is not beneficial to ND and it's future generations.

Thank you
Lori VanWinkle

#5610

Dear Committee Members,

Please render a DO PASS on Senate Concurrent Resolution 4010.
Passage of the ERA would have many unintended negative consequences including the overturning of laws and practices that benefit women because they would be viewed as showing preferential treatment. Women do not need the ERA because their rights are already protected by the Constitution, including the 14th and 19th Amendments, and several federal and state laws.
In addition, the ERA would be used to overturn all restrictions on abortion, including the partial birth abortion ban, 3rd-trimester abortion ban, and parental notice of minors seeking an abortion, all of which would contribute significantly to the continued killing of the unborn. In both New Mexico and Connecticut, their state ERAs were used in the courts to overturn restrictions on abortions and mandate taxpayer funding of elective Medicaid abortions with the rationale that since abortion is unique to women, restricting abortions is a form of sex discrimination. (*N.M. Right to Choose/NARAL v. Johnson*, 975 P.2d 841, 1998; and *Doe v. Maher*, 515 A.2d 134 [Conn Super. Ct. 1986])

For these reasons and more, please render a DO PASS on Senate Concurrent Resolution 4010.

Thank you for your service and leadership to our state.

Dear Committee Members,

Please render a DO PASS on Senate Concurrent Resolution 4010. Passage of the ERA would have many unintended negative consequences including the overturning of laws and practices that benefit women because they would be viewed as showing preferential treatment. Women do not need the ERA because their rights are already protected by the Constitution, including the 14th and 19th Amendments, and several federal and state laws.

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For these reasons and more, please render a DO PASS on Senate Concurrent Resolution 4010 as North Dakotans do not need or want a

#5630

Testimony in opposition to SCR 4010
February 5, 2021

Chair Vedaa and Members of the Government and Veterans Affairs Committee:

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

Good day. I am Karen Ehrens, a resident of Bismarck and member of the League of Women Voters. The Equal Rights Amendment (ERA) is that simple, really. The amendment is needed because the Constitution of the United States does not prohibit discrimination on the basis of sex.

Women have made progress toward equality over the years. However, we continue to battle systematic discrimination in the forms of unequal pay, workplace harassment, and domestic violence, as examples. I look at the list of members of this committee; I see only one woman. I look at the wage gap between what men earn in North Dakota and what women earn, and I see that women earn 76 cents for each dollar a man earns (U.S. Census Bureau, Current Population Survey, 2020). We still have a ways to go.

Once a state has sent their certified copy of their ratification action to the National Archives and Records Administration (NARA) and NARA has formally certified it, a state cannot rescind its ratification action. "The Archivist does not make any substantive determinations as to the validity of State ratification actions, but it has been established that the Archivist's certification of the facial legal sufficiency of ratification documents is final and conclusive," according to the National Archives.

With respect to the women and men who have worked on this amendment since 1923, and to the North Dakotans and members of the League of Women Voters who worked long and hard for the passage and ratification of this amendment, I ask you to oppose Senate Concurrent Resolution 4010. For all of your daughters and granddaughters and descendants, do not leave for them a legacy of voting against equal rights for them across this nation.

Karen Ehrens
Bismarck, ND 58501

#5567

STATE REPRESENTATIVE STEVEN A. ANDERSSON (RETIRED)
521 WEST LANE
GENEVA, ILLINOIS 60134
STEVE@STEVEMAIL.US

February 4, 2021

Members of the North Dakota, Senate Government and Veterans Affairs Public Hearing

Re: Republican Support for the Equal Rights Amendment and in opposition to SCR 4010

Members of the Senate Government and Veterans Affairs Committee,

Thank you for giving me an opportunity to share my position in opposition to SCR 4010. By way of background, I am a retired State representative from Illinois. I was proud to be the Republican Chief Co-Sponsor of the ERA in 2018 during our successful effort to become the 37th state to ratify the ERA. I think it is important to note two things about me:

1) I am a lifelong Republican and 2) I am Pro-Life.

For too long, the ERA has been viewed as a partisan issue; we need to realize that it is not and never has been. From the beginning, Equal Rights for Women and passing the Equal Rights Amendment was a plank in both parties platform. And today it remains so. Polling shows overwhelming support by both parties. I can proudly say that in my own effort in Illinois, a quarter of my Republican caucus joined our Democratic colleagues to pass the ERA.

This is because we recognized that the ERA reflects at least three core Republican principles.

1) We believe in individual rights and responsibilities. The ERA is fundamentally about leaving people alone and allowing them to govern their own lives and make the most of what they can do.

2) The ERA is about limited government. It is about keeping government out of the business of discrimination. It does not create additional rights or protections. It only protects all people from governmental discrimination.

3) The ERA supports a fundamental free market basic principle. It improves our workforce, by forcing men and women to compete on the same level playing field; more competition by men and women results in stronger, faster and more adaptable businesses and employees.

Of course, I would be doing you a disservice if I did not address the "800 pound gorilla" in the room: Abortion.

Contrary to the position of many opponents (and some supporters) of the ERA, abortion has nothing to do with the ERA, and never did. If it did, I would not support it and I would not be writing you this letter. Simply put, in 50 years of state level ERA's, not a single state court has held that the ERA mandates elective abortions, or full term abortions, or any of the other horror stories that have been thrown out there. NOT ONE. The only impact on abortions based on an ERA is the one exception that most Republicans already acknowledge; that a Doctor recommended medically necessary abortion (to protect the health/life of the mother) must be covered by insurance. That's it.

Simply put, the narrative about abortion is false.

Lastly, I would like to address the "process" arguments that suggest that the time has expired for ratification of the ERA. This is simply untrue. A plain reading of the United States Constitution provides two elements for amending the Constitution; 1) supermajority passage in the US House and Senate (done) and 2) ratification by 38 states (also done). You will not find any provision for a time limit on ratification in the Constitution. As strict constructionists, I would assume that most Republicans would oppose efforts to insert requirements into the Constitution that aren't actually written there.

Moreover the Supreme Court has made clear that even a 200 year old proposed amendment can still be ratified. Lastly, the Supreme Court has also recognized that the US Congress has its own power to remove the deadline (which the House of Representatives did last year) and that will be accomplished this year in the House and the Senate. Arguments to the contrary simply choose to ignore the clear precedent on this issue.

The fight for the ERA is not over and no one can put a time limit on equality.

North Dakota is currently on the right side of history on the ERA. I urge you to remain there.

Again, I thank you for the opportunity to explain why Republicans should support the ERA. I wish you well in your efforts and I would welcome any opportunity to assist. Please feel free to forward this letter as you deem fit.

Best Regards,

Representative Steven A. Andersson – Illinois (Retired

February 5, 2021

Dear Chairman Vedaa and Members of the Senate Government and Veterans Affairs Committee:

I write today on behalf of the ACLU of North Dakota, which opposes SCR 4010, legislation that would rescind North Dakota's ratification of the Equal Rights Amendment to the Constitution.

ACLU
AMERICAN CIVIL LIBERTIES UNION
North Dakota

P.O. Box 1190
Fargo, ND 58107
aclund.org

In 1975, North Dakota's 44th Legislative Assembly voted to ratify the proposed 1972 Equal Rights Amendment to the U.S. Constitution. This was a principled and important decision that signaled to North Dakotans and the nation that women deserve equality. The ERA would, for the first time, provide an explicit guarantee in the U.S. Constitution of equal rights for all without regard to gender. The proposed amendment states that "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex," and has been ratified by 37 states. In order for ratification to happen, a minimum of 38 states must ratify the bill. But today, North Dakota legislators want to rescind their support of the Equal Rights Amendment.

The ACLU of North Dakota disagrees with supporters' assertions or analysis that North Dakota's approval to ratify the Equal Rights Amendment expired 40 years ago. In fact, attempts to "rescind" or limit a ratification have never been effective.

Article V of the U.S. Constitution speaks only to the states' power to ratify an amendment but not to the power to *rescind* a ratification. Looking to Congress' historical practice of not validating the rescissions from state legislatures in the context of constitutional amendments, it is likely that Congress would act accordingly in the case of the ERA. The Supreme Court decision in *Coleman v. Miller*, 307 U.S. 433 (1939) asserts that Congress retains wide discretion in shaping the ratification process. The Supreme Court explicitly held that *Congress* has the sole power to determine whether an amendment is sufficiently contemporaneous, and thus valid, or whether, "the amendment ha[s] lost its vitality through the lapse of time" and that congress can fix a reasonable time for ratification. The Court in *Coleman* concluded that, "Article V, speaking solely of ratification, contains no provision as to rejection. Nor has the Congress enacted a statute relating to rejections."

To put it another way, a ratification is something that happens at a moment in time—for North Dakota, in 1975–and once it's done, it's done. For example, that's why, in the case of the 14th Amendment, all three branches of the federal government treated that amendment as fully ratified and effective even though two of the necessary states had ratified but later voted to rescind. During the ratification process of the 15th Amendment, New York rescinded its vote before the last state necessary to ratify voted in favor in 1870. Despite this, New York was still listed as a ratifying state. Congress is likely to follow its historical pattern and not count rescissions.

Although a District Court in Idaho court held in 1981 that a state does have the power to rescind its ratification of the ERA, the Supreme Court vacated that decision after the ERA deadline had passed, so it is no longer on the books.[1] Thus, effectively, the Coleman decision is the leading authority.

[1] *State of Idaho v. Freeman* 529 F. Supp. 1107 (D. Idaho 1982).

Therefore, it is most likely that if SCR 4010 advances, the vote to rescind North Dakota's ratification of the ERA is a legal nullity.

The Equal Rights Amendment is as critical today as it was in 1972. In 2021, women are still not treated equally in our society. More than 50 years after the Equal Pay Act was passed, women are on average paid only 80 cents on the dollar nationally compared to men, and, for women of color, the wage gap is even greater. Women in North Dakota fare much worse being paid a mere 71 cents for every dollar paid to a man in the state, amounting to an annual wage gap of $15,026.[2] Women are vastly overrepresented among those living in poverty and women are disproportionately impacted by gender-based violence and other forms of harassment. Women are also vastly underrepresented among those holding political office and other positions of power.

ACLU
AMERICAN CIVIL LIBERTIES UNION
North Dakota

P.O. Box 1190
Fargo, ND 58107
aclund.org

Leveling the playing field between women and men should be a priority for North Dakota legislators. The ERA would ensure that discrimination and exclusion on the basis of pregnancy is recognized as sex discrimination under the Constitution, and authorize Congress to enact legislation to protect women against such discrimination. At the ACLU of North Dakota, we've heard from women whose employers refuse to accommodate their pregnancies at work or force them to pump breast milk in dirty supply closets. This discriminatory treatment is often based on paternalistic notions and outdated misconceptions about whether pregnant women should be working and is particularly prevalent in physically demanding or male-dominated fields. We cannot just pay lip service to the notion of gender equity. If we want equal participation – if we want women to be able to work to support their families and communities to benefit from their participation in professional and civic life – we must start from a place of equality.

In 1975, North Dakota legislators took a bold and principled position—that equality of rights shall not be denied or abridged on account of sex. The ACLU of North Dakota urges legislators vote **do not pass** on SCR 4010 and send a strong message: North Dakotans continue to value equality just as they did in 1975.

Sincerely,

Libby Skarin
Campaigns Director
ACLU of North Dakota
northdakota@aclu.org

[2] https://www.nationalpartnership.org/our-work/economic-justice/wage-gap/the-wage-gap-in-north-dakota.html

#4509

Amy Ingersoll-Johnson

District 32

Opposition SCR 4010

Chairman Vedaa and members of the Senate Government & Veteran Affairs Committee. My name is Amy Ingersoll-Johnson and I am an advocate, a community participant, an employee, a mother and a woman. I am providing testimony in opposition to Senate Concurrent Resolution 4010, clarifying that the ERA missed the 1979 deadline and initial extension to become ratified into the US Constitution, thereby nullifying the ratification in the 1975 44th ND Legislative Assembly. I have two courses of thought for why I am opposed to it.

This concurrent resolution may be moot in the eyes of Congress. The deadline imposed in the ERA was not listed in the text of the amendment, rather in the proposing clause. Additionally, precedent has been set that deadlines to not determine absolute validity. The Madison Amendment ratified as the 27th in 1992 after more than 203 years, shows us that Congress has the power to extend original deadlines and maintain legal viability of ratifications to an amendment.

What's more, is there appears to be legal precedent invalidating rescission of other amendment ratifications.

- 14th Amendment - New Jersey and Ohio voted to rescind but were both included in the published list in 1868.
- 15th Amendment – New York retracted but it was listed as one of the ratifying states
- 19th Amendment – Tennessee "non-concurred" but had already been listed in inclusion to the Constitution.

The rule that ratification once made may not be withdrawn has been applied in every case so far. The Supreme Court even upheld its constitutionality with supporting language indicating that once a state ratifies a federal amendment, so ends its ability to further participate in that amendment ratification process. I am no legal expert, but it seems to be that our resolution reaffirming support for the ERA in 2007 and this resolution are both unnecessary. Additional time and resources spent on this concurrent resolution are valuable time and resources wasted.

My second thought is more a profound disappointment that there appears to be waning support for the ERA. Legislators must acknowledge the inherent rights presumed in a man's involvement towards his own economic prosperity as well as the presumed control over his own property (to include his body). He has the right to worship as he chooses and apply his chosen morals to his own wellbeing. Yet these same rights are only outlined in limited scope for women through patchwork legislation across states and court decisions, which can be rolled back and reversed on the whims of changing legislative bodies and at the discretion of newly appointed courts. The 19th Amendment explicitly affirms a woman's right *only* to vote. Simply stating that we already have equal rights does not make it so.

Support of the ERA ensures a more robust tax base enabling our government to be more effective. When women earn dollar for dollar what men earn, the economic outcome helps women, their families and their communities. Women become fully involved in our own economic prosperity. When women have authority in when or whether to start a family, we are less likely to rely on government support and resources. We truly become the executers of our own property.

My morals should be regulated by my beliefs - not legislated by government. My healthcare should be decided between myself and my physician, not between law makers and church leaders. My rights should be protected by the constitution, not afforded by proxy from court rulings or differentiated by state laws. I am not a hidden agenda. I am a citizen of the United States deserving of Equal Rights guaranteed in the constitution. With all due respect to the committee, I would like a guarantee that all my inherent rights are protected; as I suspect some of you might too, if the vote was the only constitutionally protected right you could enjoy.

I am inspired by the education and experience that my representatives apply when crafting good legislation, and the caution and restraint they exercise when legislation might cross the line from personal belief to effective governance. My sincere hope is this is exemplified in a Do Not Pass for Senate Resolution 4010. Thank you.

The 1981 Idaho v. Freeman decision in US District Court of District of Idaho does not support the claim that ERA time extension was invalid and rescission votes are permissible. That decision was appealed to the Supreme Court, which did not hear arguments before the June 30th ratification deadline passed. They also vacated the lower court decision which made it useless as a precedent because it was wiped off the books.

Without the ERA in the Constitution, the statutes and case law that have produced major advances in women's rights since the middle of the last century are vulnerable to being ignored, weakened, or even reversed. Congress can amend or repeal anti-discrimination laws by a simple majority, the Administration can negligently enforce such laws, and the Supreme Court can use the intermediate standard of review to permit certain regressive forms of sex discrimination.

Previous testimony provided outlined the fear surrounding abortion. I am not here to get into a philosophical or religious argument about abortion, although facts do matter. It would be appropriate to note that a zygote, an embryo and a fetus are just that and are not yet considered a human being.

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Room JW216, State Capitol

SCR 4010
2/11/2021

Clarifying the 1975 ratification by the 44th Legislative Assembly of the proposed 1972 Equal Rights Amendment of the US Constitution only was valid through March 22, 1979,

Chair Vedaa called to order at 3:54 p.m. with Sen Vedaa, Meyer, Elkin, K Roers, Wobbema, Weber, and Marcellais present.

Discussion Topics:

- Committee Work

Sen K Roers: I move a **Do Not Pass**
Motion dies because lack of a second

Sen Elkin: I move a **Do Pass**
Sen Weber: I second

Roll Call Vote: 6 -- YES 1 -- NO -0- ab Motion Passed

Senators	Vote
Senator Shawn Vedaa	Y
Senator Scott Meyer	Y
Senator Jay R. Elkin	Y
Senator Richard Marcellais	Y
Senator Kristin Roers	N
Senator Mark F. Webber	Y
Senator Michael A. Wobbema	Y

Sen Elkin will carry the resolution

Adjourned at 3:56 p.m.

Pam Dever, Committee Clerk

REPORT OF STANDING COMMITTEE

SCR 4010: Government and Veterans Affairs Committee (Sen. Vedaa, Chairman) recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SCR 4010 was placed on the Eleventh order on the calendar.

2021 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SCR 4010

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

SCR 4010 AM
3/18/2021

Clarifying the 1975 ratification by the 44th Legislative Assembly of the proposed 1972 Equal Rights Amendment to the Constitution of the US only was valid through March 22, 1979

Chairman Kasper opened the hearing at 8:55 a.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

Discussion Topics:

- 1972 equal rights amendment
- Ratification time clarification

Senator Clemens introduced and testified in favor, #8771.

Senator Myrdahl testified in favor.

Douglas Johnson, Senior Policy Advisor, National Right to Life, testified in favor, #9994, #8420, #8421, #8422.

Linda Thorson, State Director, Concerned Women for America of ND, testified in favor, #9023.

Mark Jorritsma, Executive Director, Family Policy Alliance of ND, testified in favor, #9981.

Christopher Dodson, Executive Director, ND Catholic Conference, testified in favor, #9932.

Rose Christensen testified in favor, #10050.

Kristie Wolff, Executive Director, ND Women's Network, testified in opposition, #9963.

Brandi Hardy, Legislative Coordinator, ND Human Rights Coalition, testified in opposition, #9962.

Kati Gunkelman Hornung, testified in opposition, #9951, #9950.

Martin Fredricks testified in opposition, #9830.

Additional written testimony: #8605, 9551, 9765, 9820, 9851, 9860, 9889, 9897, 9898, 9923, 9924, 9926, 9929, 9935, 9937, 9941, 9944, 9948, 9949, 9964, 9965, 9966, 9969, 9982, 10059

Chairman Kasper closed the hearing at 10:34 a.m.

Carmen Hart, Committee Clerk

#8771

February 5, 2021

State Government and Veterans Affairs

Senate Concurrent Resolution 4010

I am David Clemens, Senator from District 16 in West Fargo and Fargo. I am here to introduce Senate Concurrent Resolution 4010.

When the proposed 1972 Equal Rights Amendment was approved by the 92nd Congress of the United States, it had an expiration Date of March 22, 1979. This was a result of the Congress setting a deadline of 7 years, or March 22, 1979, in which ¾ of the states had to ratify the amendment.

Since the deadline has passed many years ago, several states have continued to ratify the Equal Rights Amendment. In 2018, 39 years after the deadline, Illinois ratified the amendment and in 2020, Virginia Legislature voted to ratify the amendment, 41 years after the deadline.

The purpose of this resolution is to resolve that any State Legislature ratifying after March 22, 1979, should not be counted.

I would ask for your support of SCR 4010.

Questions.

national RIGHT TO LIFE committee, inc.
1446 Duke Street | Alexandria, Virginia 22314
(202) 626-8800 (voice) | www.nrlc.org | nrlc@nrlc.org

Testimony of Douglas D. Johnson

Senior Policy Advisor

Director, ERA Project

National Right to Life Committee

nrlc.stateleg@gmail.com

Before the House Government and Veterans Affairs Committee

North Dakota Legislative Assembly

In Support of Senate Concurrent Resolution No. 4010 – "Count Us Out"

March 18, 2021

Chairman Kasper and distinguished members of the Committee:

I am Douglas Johnson. I serve as Senior Policy Advisor to the National Right to Life Committee (NRLC), which is a federation of right-to-life organizations, including North Dakota Right to Life, on behalf of which I also testify today. For about a half century now, our organizations have worked in support of public policies that recognize the right to life of all members of the human family, including unborn children.

I previously served as the congressional affairs director for National Right to Life for a period of 36 years, from 1981 through 2016. I have been dealing with issues pertaining to the proposed 1972 Equal Rights Amendment since about 1982.

I testify today in strong support of Senate Concurrent Resolution No. 4010. We implore you to approve this resolution at the earliest

possible date. It sends a message that urgently needs to be heard in certain quarters.

I understand that the House already passed such a resolution (HCR 3037) on March 5, 2019, by a vote of 67-21, but that measure expired at the end of the previous legislative session. That is the way it is with respect to matters of legislation—things that are not enacted, expire. Yet this is a principle that some people are confused about, or are pretending to be confused about, with respect to the Equal Rights Amendment.

Mr. Chairman, I speak to you today because there are some powerful players, in Washington, D.C. and elsewhere, who have been working for years now on a plan – I might even be so bold as to call it a scheme. It is an intricate scheme, and North Dakota plays an essential part in it. Indeed, they cannot pull it off without North Dakota. The persons pushing this plan have appropriated a legislative action taken by the North Dakota Legislative Assembly in 1975 – 46 years ago – and are claiming that it constitutes rock-solid evidence that North Dakota is on board with their current project.

Their goal is to drop three new paragraphs of text into the U.S Constitution – the text of the so-called Equal Rights Amendment, as proposed by the 92nd Congress in 1972 – 49 years ago.

If they are able to accomplish this bold scheme, there are many people who have big plans for what they are going to do with that new constitutional text. Among other things, they intend to employ that language to create a new, firm, and permanent foundation for a federal constitutional right to unimpeded abortion on demand. Then intend to employ it to send judicial and federal regulatory bulldozers through your state codes, and every other law or policy at any level of government, that treats abortion any differently from, say, vasectomies.

Based on what I have been told by our associates at North Dakota Right to Life, based on what I have observed as to the actions of this legislature over a period of many years in seeking to protect unborn children and others whose intrinsic right to life may be in jeopardy, I do

not believe that anything like a majority of members of this legislature would favor those goals. In the end, that is for you to say, not me. But if my surmise is correct, then I respectfully submit that it is time for you to send a clear message to those are appropriating North Dakota's good name in their extra-constitutional scheme.

That message should be, "Count us out!" This is the message embodied in Senate Concurrent Resolution No. 4010.

WHY DO NATIONAL RIGHT TO LIFE AND NORTH DAKOTA RIGHT TO LIFE SO STRONGLY OPPOSE THE 1972 ERA?

I will say a bit more about what is afoot in a minute – but first I would like to say a little more about how it came to be that National Right to Life and our affiliates, including as North Dakota Right to Life, came to be so strongly opposed to placing the language of the 1972 ERA into the federal Constitution, and to very briefly summarize the evidence for what we call, by way of shorthand, the "ERA-abortion connection."

The federal ERA Resolution, House Joint Resolution 208 of the 92nd Congress, was approved by the U.S. House of Representatives overwhelmingly in 1971 – 50 years ago – and by the U.S. Senate on March 22, 1972. Unborn children were protected by law in North Dakota at that time; abortion was unlawful, except to save the life of the mother.

This state, like every state, contained the entire resolution. Like every constitutional amendment including the Bill of Rights, it contained not only text proposed to be inserted into the Constitution, but also a Proposing Clause -- which is not just a "preamble," but a component that is required by Article V itself, which says that Congress shall specify the "Mode of Ratification" of each proposed amendment. In the Proposing Clause of the ERA Resolution, there appeared a seven-year deadline for ratification. This was in no way unusual – such a deadline has appeared

in the Proposing Clause of every constitutional amendment proposed by Congress since 1960.

Abortion was not really as issue with respect to the ERA in those early days. Indeed, 22 states ratified the even ERA before the U.S. Supreme Court knocked flat the pro-life laws of North Dakota and every other state, in its January 1973 ruling in *Roe v. Wade*.

The Supreme Court decision created much turmoil and debate, but as near as I can tell, that debate did not impinge to any great degree on the debates on ratification of the ERA until around 1976, when the issue of government funding of abortion erupted into a high-profile issue nationwide.

How did that happen? Well, it came to light that one of the many side effects of the Supreme Court willy-nilly decreeing that elective abortion was a federal constitutional right, was that the federal Medicaid program began paying for all abortions sought by Medicaid-eligible women. It is the general rule with Medicaid that the program pays only for services that are deemed "medically necessary." However, it is well established, and well understood by anyone who has spent any time seriously studying the matter, that there are certain types of services provided by such health programs which the term "medically necessary" is a term of art-- a term that does not connote any form of illness or disorder.

For example, if a Medicaid-eligible woman is of reproductive age and wishes to obtain a prescription for contraceptive pills, they are provided without question—the medical necessity is simply her capacity to become pregnant, and her desire not to become pregnant. The result of *Roe v. Wade* was that abortion now fell into the same category. If a woman was Medicaid eligible, was pregnant, and did not wish to be, then the program automatically paid for an abortion. There was never any requirement that some health risk or health difficulty be involved – the medical necessity was the desire for an abortion, which required a licensed medical professional.

This is well established, it has been explicitly acknowledged by prominent champions of abortion, and I will submit some such statements for the hearing record. To cite just two of many examples, Judith Feder, principle deputy assistant secretary of the federal Department of Health and Human Services under the Clinton Administration, said on Jan. 26, 1994, "When we're talking about medically necessary or appropriate [abortion] services, we are also talking about all legal services." In 1993, William Hamilton, vice president of the Planned Parenthood Federation of America, said "medically necessary" abortions include "anything a doctor and a woman construe to be in her best interest, whether prenatal care or abortion."

So, it came to light in 1976 or so that the federal Medicaid program was paying for about 300,000 abortions a year, and the number was climbing rapidly. Congress had never voted to fund abortions, but they had created a program to fund "medically necessary" services, and now that included all abortions. This is why Congressman Henry Hyde first offered his famous Hyde Amendment, first enacted in 1976, which barred Medicaid funding of abortion, except to save the life of the mother.

There were years of court challenges, but ultimately the Hyde Amendment was upheld the U.S. Supreme Court in 1980. The effect, in that era, was to reduce that 300,000 annual number to roughly 300 per year, which were the abortions still allowed to be funded under the Hyde Amendment, to prevent the death of the mother. So when you hear the term "medically necessary" in the abortion context, keep that mind: the ratio of life-of-mother cases to so-called "medically necessary" abortions was found to be roughly 1 to 1,000.

In 1984, four years after the Supreme Court upheld the Hyde Amendment, Ruth Bader Ginsburg, then a judge on the U.S. Court of Appeals for the District of Columbia, published a law journal article titled, "Some Thoughts on Autonomy and Equality in Relation to *Roe v. Wade*." She suggested that it would have been better if the Supreme

Court had crafted the right to abortion in terms of sexual equality, rather than "a patient-physician autonomy" doctrine. She suggested that if the court had approached abortion in sex equality terms, the Hyde Amendment case might have been struck down. She noted, however, near the end, "I understand the view that for political reasons the reproductive autonomy controversy should be isolated from the general debate on equal rights, responsibilities, and opportunities for women and men."

And this is the nub of the problem with the 1972 ERA. It would subject all government law and policies to the strictest judicial scrutiny to determine whether they deny some right or benefit "on the basis of sex." Many ERA advocates, and even the U.S. House Judiciary Committee, have suggested this would apply not just to laws that explicitly treat men and women differently, but also to laws that treat people differently on the basis of their unique physical or biological attributes (such as pregnancy), and even to policies that are deemed to have different net effects on the sexes – the term of art here is "disparate impact."

Certainly, laws that deal with pregnancy in any manner, or with the welfare of human beings in utero, do affect women differently from men. This "disparate impact" flows from biological realities – that only one sex directly nurtures the life of an member of the human family during the pre-natal period. But under the ERA, that biological distinction would not justify regulation of abortion – regulations based explicitly or implicitly on physical distinctions between the sexes would be subjected to strict judicial scrutiny. This "strict scrutiny" is another term of art – but as they say in the legal textbooks, it is "strict in theory – but fatal in fact."

THE ERA-ABORTION DEFLECTION GAME

When I first got directly involved in the ERA debate in the early 1980s, it was still routine for most ERA supporters to deny that there was any ERA-abortion connection. When the concern was raised, they would typically engage a rather transparent form of misdirection. They

would say something like, “The Supreme Court has dealt with abortion as a privacy matter, not as a sex discrimination matter, and ERA would not change that.”

Well, this is almost childish in its evasiveness. Of course, abortion laws were being reviewed under the “fundamental right” that the Supreme Court had fabricated in *Roe v. Wade*, because that was the most powerful weapon in the pro-abortion litigation arsenal, and the Supreme Court was not yet interpreting the 14th Amendment to apply a very heightened standard of review to sex-based distinctions. But the ERA was designed precisely to require strict scrutiny, and even more than strict scrutiny according to some authoritative advocates, to any policies deemed to deny or abridge rights “on account of sex.”

All those past Supreme Court opinions on abortion matters, decided without the ERA in the Constitution, tell you nothing about how pro-life laws and policies would fare when attacked by new lawsuits based on the ERA. The “privacy” precedents are essentially irrelevant to the outcome of future lawsuits based on the ERA’s absolute prohibition on abridgement of “equality of rights…on account of sex,” So this was basically a dodge, a method of deflection.

At about that same time, the late 1970s, early to mid-1980s, we noticed that pro-abortion groups were filing lawsuits in which they employed state ERAs – many of which were very close in wording to the proposed federal ERA – in attacks on state laws limiting government funding of elective abortions. In those early days, the ERA claims were often mixed with other claims, such as due process or equal protection, and the courts sometimes sidestepped the ERA part, but the pattern was disturbing. Then in Connecticut such an attack succeeded – the state “Hyde Amendment” analog was struck down solely on the basis of the state ERA.

I’d like to add here that there was one pro-abortion group in that era that did not go along with the party line, among ERA advocates, to deflect or deny the ERA-abortion connection. That organization was the

American Civil Liberties Union. From an early date, the ACLU took a more candid, unapologetic approach to the ERA-abortion connection.

For example, in a speech given on October 24, 1986, Lynn Paltrow, staff attorney with the ACLU Reproductive Freedom Project, said, "They say the ERA will lead to funding for abortion. I say, I hope so."

The ACLU also published a manual on how to file legal challenges to state parental notification and consent laws, and they recommended using state ERAs when they were available.

So abortion did become an issue, I believe, during the last years of legislative debates over the ERA, leading up to the deadline in March 1979. This played some role, I believe, in the fact that state ratified the ERA after Indiana did so in January, 1977.

As the deadline approached, 35 states had ratified ERA, but four (at that time) had rescinded their ratifications. ERA advocates demanded that the deadline be extended. In 1978, Congress adopted, by simple majority votes (not two-thirds votes), a resolution that purported to extend the deadline for 39 months, through June 1982. The only federal court to consider the matter ruled that was unconstitutional in two different ways--but it became a moot case, because no more states ratified during the additional 39 months. At the end of the second, pseudo-deadline, the total remained at 35 states, and that was without taking into account the recissions.

1983—ERA ADVOCATES REJECT OPPORTUNITY TO RENDER THE EQUAL RIGHTS AMENDMENT NEUTRAL ON ABORTION

Everyone on all sides agreed that the 1972 ERA was dead. The U.S. Supreme Court even implicitly recognized this, by declaring moot the lawsuits that had arisen about the constitutionality of the deadline extension and the rescissions. It didn't matter, because the ERA was

dead any way you resolved those questions. It did not receive the required 38 state ratifications.

In January, 1983, the top priority of the majority party leadership in the U.S. House of Representatives was to start the process all over again. A new ERA, with the exact same language, was designated as H.J. Res. 1.

National Right to Life and other pro-life groups, including pro-life religious bodies such as the U.S. Conference of Catholic Bishops, were by this point felt there was more than ample evidence that the traditional ERA language could be and would be employed as a pro-abortion legal weapon, and so we all opposed this attempt to send the exact same language out again to the states for ratification.

There were five hearings held in the House Judiciary Committee. I attended them. The likely impact of the ERA on abortion law was a major issue. It was at that time that we formulated, in concert with pro-life lawmakers, what became known as the *abortion-neutralization amendment*, a one-sentence rule of construction that we proposed to be added to the start-over ERA, in 1983. This is what it said:

> Nothing in this Article [the ERA] shall be construed to grant, secure, or deny any right relating to abortion or the funding thereof.

We said then to the ERA supporters in Congress (and we say it still): National Right to Life would no longer oppose your ERA language; National Right to Life would be *neutral* on your ERA language; if you will add this single sentence, a rule of construction that would bar the courts from applying the ERA to change abortion law *in either direction.*

The sponsors refused. They realized, however, that on the floor of the House of Representatives, that abortion-neutralization amendment would command a majority. So they did a remarkable thing, on November 15, 1983 – they brought the ERA, a proposed constitutional

amendment, to the House floor under a shortcut procedure called "suspension of the rules," usually used only for non-controversial bills, which permits only brief debate and, most importantly, no consideration of amendments. To their shocked astonishment, the ERA went down to defeat on the floor of the House of Representatives. It fell short of two-thirds, as 14 co-sponsors voted against it -- and that almost entirely due to the abortion issue.

In 1971, 94 percent of the House had voted for the ERA. Now, in 1983, it had dropped to 65 percent – and the single greatest factor was the ERA-abortion connection. It was to drop much further still, in the ensuing years. On a U.S. House roll call that occurred just yesterday, the level of support for the 1972 ERA language was only 52%, and the tally was 62 votes short of the two-thirds majority that would be required to approve a new constitutional amendment.

Mr. Chairman, that remains the position of National Right to Life today. If Congress wants to send a new ERA proposal to the states, and they include that one-sentence, then we would be neutral on it.

But what we saw then, and what we saw now, is an ideological determination to preserve the capacity to use the ERA as a pro-abortion legal weapon. And as time went on, the mask slipped more and more, and eventually, it was tossed aside.

THE ERA-ABORTION EVIDENCE GROWS

In the years following that vote, some pro-abortion litigants became even more open and aggressive in their use of *state* ERAs to challenge pro-life policies.

For example, in New Mexico, state affiliates of Planned Parenthood and NARAL relied on the state ERA in a legal attack on the state version of the "Hyde Amendment," prohibiting Medicaid funding of elective abortions. In its 1998 ruling in *NM Right to Choose / NARAL v. Johnson*, No. 1999-NMSC-005, the New Mexico Supreme Court *unanimously* agreed that the state ERA required the state medical assistance program to fund abortions performed by medical

professionals, since procedures sought by men (e.g., prostate surgery) were funded. In a ruling based *solely* on the ERA, Justice Pamela Minzner wrote that "there is no comparable restriction on medically necessary services relating to physical characteristics or conditions that are unique to men. Indeed, we can find no provision in the Department's regulations that disfavor any comparable, medically necessary procedure unique to the male anatomy… [the restriction on funding abortions] undoubtedly singles out for less favorable treatment a gender-linked condition that is unique to women."

It is noteworthy that the ERA/abortion equation had been urged upon the court in briefs submitted by Planned Parenthood, NARAL, the ACLU, the Center for Reproductive Law and Policy, and the NOW Legal Defense and Education Fund. The doctrine that the ERA language invalidates limitations on tax-funded abortion was also supported in briefs filed by the state Women's Bar Association, Public Health Association, and League of Women Voters. You can read or download the ruling here:
http://nrlc.org/uploads/era/ERANewMexicoSupremeCourt.pdf

THE ERA-ABORTION CONNECTION: THE NEW CANDOR

On this question of the ERA-abortion connection, there has been a very significant development just in the past few years. Increasingly, the younger generation of leaders of major abortion-rights organizations seemingly came to find it intolerable to continue to deny that a constitutional amendment that prohibits any level of government from denying any right or benefit "on account of sex," would not strike down limitations on abortion. In their world view, what stronger example of invidious discrimination "on account of sex" could there be, than a law that restricts access to a "medical procedure" that only women seek? They found it ideologically unacceptable to continue that pretext.

And so, over the last several years, we have seen, and we have collected, many very explicit statements from leaders and attorneys associated with prominent abortion-rights organizations and causes,

quite explicitly stating that they believe the ERA, if inserted into the U.S. Constitution, would protect "abortion rights." Some say that they believe it would be a far more secure constitutional platform that the judicially constructed "privacy" right. I have submitted a document that we refer to as the "ERA-abortion quotesheet," that contains four pages of such citations in small print, all footnoted. Let me read you just a couple.

NARAL Pro-Choice America, in a March 13, 2019 national alert, asserted that "the ERA would reinforce the constitutional right to abortion . . . [it] would require judges to strike down anti-abortion laws . . ."

A National Organization for Women factsheet on the ERA states that "...an ERA -- properly interpreted -- could negate the hundreds of laws that have been passed restricting access to abortion care and contraception."

The general counsel of the National Women's Law Center told AP that the ERA would allow courts to rule that limits on abortion "perpetuate gender inequality."

This week, the U.S. House of Representatives considered, and passed, a resolution (H.J. Res. 17) purporting to "remove the deadline" on the long-expired 1972 ERA. Into my inbox I find a new crop of statements by pro-abortion groups, explicitly affirming the ERA-abortion connection.

Here is part of what Alexis McGill Johnson, president and CEO of the Planned Parenthood Federation of America, the nation's largest abortion provider, said in a release yesterday, March 17, 2021, celebrating the House vote on the ERA "deadline removal" resolution:

> "The Equal Rights Amendment is an important tool for strengthening the existing legal foundation created by the courts. We know an equal society cannot exist unless all people have the right to make their own decisions, plan their own futures, and

control their own bodies. And we know the fight for reproductive rights – including access to abortion – is inextricably linked to the fight for women's equality."

The ACLU, in a letter sent to the House on March 16, 2021 in support of the ERA "deadline removal" measure, stated that the ERA "could provide an additional layer of protect against restrictions on abortion, contraception, and other forms of reproductive healthcare….The Equal Rights Amendment could be an additional tool against further erosion of reproductive freedom…"

WHAT S.C.R. NO. 4010 SAYS, AND WHAT IT DOES NOT SAY

Mr. Chairman, while I have had no opportunity to review the records of the debate over the ERA that occurred in the North Dakota Legislative Assembly in early 1975, I will hazard that few if any of the legislators who voted to ratify the ERA, had any intention of placing into the U.S. Constitution the pro-abortion bulldozer that these modern abortion-rights attorneys and activists are describing. Those legislators voted on what they knew at the time. I do not fault them.

But now we *know*. They have *told* us. They have *shown* us – for example, in the unanimous ruling of the New Mexico Supreme Court. Whatever else it may also be, the 1972 Equal Rights Amendment was also a pro-abortion Trojan Horse. It was a stealth strategy. It was understood by some smart, sophisticated ERA champions such as Ruth Bader Ginsburg, but it was not understood by state legislators of that era, and in most cases, probably not understood either by local pro-ERA activists, who innocently believed what they were told – that there was no connection.

Your predecessors in 1975 voted on the ERA based on what they understood about it at the time. I do not fault them. There is nothing in the text of Senate Concurrent Resolution No. 4010 that imputes any

blame or fault to the legislators of 1975, who voted on the basis of what they perceived at the time that the ERA meant, and what they were told it meant.

But now we sit here 46 years later. The world has changed. If by some magic this exact same language was submitted by Congress to this legislature today, I am sure that you would give it much more exactly scrutiny with respect to the implications for laws protecting the unborn, limitations on government funding of abortion, and quite likely, some other things as well. I would go so far as to predict that this legislature, like many of the others that ratified back in the period of 1972 through 1975, would not again ratify that same language.

So what do they do? The activists on the Left badly want their pro-abortion nuke in the Constitution, but pro-life state legislators, and pro-life members of Congress too, have seen what is inside the Trojan Horse. They are wise to the con. What to do?

THE THREE-STATE SCHEME, AND NORTH DAKOTA'S UNWITTING ROLE IN THAT SCHEME

What they did was some up with a scheme under which they thought the dead 1972 ERA could be resuscitated. It was cooked up in 1993, and given the name the "three-state theory." Basically, the premise was that ratification deadlines didn't matter. Either they were unconstitutional if done in the usual way, or that Congress could change them retroactively at any time. The other key element of the theory was that rescissions were never permissible at any time, whether before or after a deadline.

Under either variation of this theory, resolution for a proposed constitutional amendment, structured in the usual way, can never die. And a state that once consents to that proposal is forever committed to that position, no matter how much time passes, or much the meaning of certain terms in law may change. It is what one law professor, Grover

Joseph Rees, once aptly referred to as the "gotcha!" theory of amending the Constitution.

So starting in 1994, they went forth with this three-state theory, and tried to get any of the 15 states that had never ratified the ERA to embrace it. They were opposed by National Right to Life and its affiliates, among others. For 23 years, they completely failed. But then finally they were able to get such a resolution approved in Nevada in 2017, and then in Illinois in 2018, and then finally in Virginia in January, 2020. When it passed in Nevada, the advocates proclaimed, "We are number 36." When it passed in Illinois, "We are no. 37." And when it passed in Virginia in January 2020, the national news media proclaimed that the half-century struggle had crossed the finish line – the 38th state had ratified, millions of Americans were informed by the mainstream news media.

But on what basis did those three states claim to be numbers 36, 37, and 38? Well, they did it by counting you.

That's right. As far as the current generation of Democrats in Congress, and left-leaning advocacy groups are concerned, you all are in the bag. The legislatures of Indiana, Kansas, Ohio, Michigan, Montana Texas, Wisconsin, Wyoming, and other states, that would never ratify this 1972 ERA language again, knowing what we know now – you're all in their bag, under their theory.

I am not just talking about what these people say in press releases or the newspapers. It is much more serious than that. In January 2020 the Justice Department issued a very thorough legal opinion that explained that the ERA had expired on March 22, 1979, therefore, the Archivist of the U.S. must not certify it as part of the Constitution. So the attorneys general of Virginia, Nevada, and Illinois sued the Archivist, in federal court in the District of Columbia, in case called *Virginia v. Ferriero*. Their claim was that ERA was already part of the Constitution, because the deadline was unconstitutional, and that 38 states had ratified. In their original complaint dated January 30, 2020, on page 7, they submitted a list of the states they were counting, and

North Dakota was on the list. Immediately under that, they stated in bold face, "Recent ratifications by Nevada, Illinois, and Virginia bring the total number of ratifying states to 38."

They told the federal court that North Dakota is their constitutional pocket, so to speak. Moreover, Democratic attorneys general for 18 other states supported this position in a friend-of-the-court brief submitted June 29, 2020. They too, counted North Dakota as in the bag, helping make up the claimed 38-state bundle.

Arguments went back and forth in that case for a year. In the meantime, a presidential candidate named Joe Biden issued a position paper state stated, "Now that Virginia has become the 38th state to ratify the ERA, Biden will proudly advocate for Congress to recognize that three-quarters of states have ratified the amendment and take action so that our Constitution makes clear that any government-related discrimination against women is unconstitutional." So the new President, as a candidate at least, also took the position that Virginia was the 38th cumulatively ratifying state -- so he, too, was counting you as being in the bag.

Just yesterday, Mr. Chairman, the Democratic leadership of the House of Representatives brought to the floor of that body a resolution that purports to retroactively remove the deadline from the 1972 ERA. The backers of that resolution say that if both houses of Congress adopt it, it will have the effect of completing the ratification of the ERA, because (they repeated over and over), "38 states have ratified the ERA." They are counting North Dakota. North Dakota being in the bag is essential to their scheme.

The U.S. House of Representatives yesterday passed that resolution, which is premised on the 38-state claim, albeit by the smallest pro-ERA margin in 50 years 222-204. A majority of U.S. senators are on record in favor of it – but, more than a majority will be required to surmount procedural obstacles. Mr. Chairman, we think this is all unconstitutional.

On March 5, 2021, the judge hearing the Virginia case, Judge Rudolph Contreras, a well-respected jurist who was appointed by President Obama, handed down a 37-page ruling in which he said that the deadline was unconstitutional and real, and that the actions of the Nevada, Illinois, and Virginia legislatures came too late. They didn't really ratify anything, in the judge's view.

But that ruling can be appealed. The resolution adopted yesterday by the House of Representatives is premised on the continued claim that North Dakota and the other 34 states that ratified prior to the deadline, are still on board—even those that explicitly rescinded prior to the deadline.

The pro-ERA people have a plan. If they could get the U.S. Senate to go along, they would go into federal court and argue that the federal legislative branch and the federal Executive Branch have come to agreement that the ERA is now part of the Constitution -- but they can only do that by counting North Dakota and every other state that ratified before the deadline.

Our view is different. We believe that the ERA ceased to exist on March 22, 1979, in the same manner that a bill not enacted ceases to exist at the end of a session of this legislative body. We believe that all of the ratifications expired on that date as well, which is the position that is stated in SCR 4010.

But there seem to be a great many important people who are confused about that, or at least pretending to me. The Democrat attorneys general. Nearly every Democratic member of Congress. The President of the United States, and the Vice President. They all consider North Dakota to be in the bag for their continuing efforts to air drop the ERA into the text of the U.S. Constitution.

We think it is past time that you helped clear the air.

S.C.R. NO. 4010 IS NOT PROPERLY DESCRIBED AS A "RECISSION"

I do not know who drafted Senate Concurrent Resolution No. 4010, but I think it is very well worded. Sometimes in the press I see it described as *rescinding* North Dakota's ratification. I do not mean to split hairs, but that is not accurate. Your resolution is not a rescission. That word *rescind* does not appear anywhere in the resolution, nor any synonym such as "nullify" or "render null and voice," or any other language of that kind. Rather, the resolution quite properly states that "the vitality of" the 1975 ratification "officially lapsed" at the expiration of the ERA, on March 22, 1979.

Whether a state can rescind a ratification, prior to a deadline and prior to a proposed amendment achieving the required three-fourths margin, is a disputed legal issue--mostly because there has never been a case in which it made the difference in determining whether a constitutional amendment had been ratified or not. But rescissions, if possible, can occur only while a constitutional amendment proposal is still a live entity. An expired proposal no longer exists, and cannot longer be the subject either of a valid ratification or a valid rescission. The 1972 ERA expired and ceased to exist on March 22, 1979.

So, SCR No. 4010 is not a rescission, but it 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. The resolution mere explains what happened back in 1975 and in 1979. The Legislative Assembly in 1975 ratified the ERA Resolution just as it was submitted by Congress, which had a deadline in its Proposing Clause, and when that deadline arrived without the ERA having become part of the Constitution, the ERA ceased to exist. The consent to that specific proposal also expired, ceased to exist.

So, you are not undoing anything, which is what rescind means. Rather, in this resolution you are *explaining* what you already did. Some

might say, "This should not be necessary," bur regrettably it is necessary, because a great many people in high places are apparently confused about it, or pretending to be confused.

As we speak, those confused people are trying to convince U.S. senators to adopt their view that North Dakota and of the other 34 pre-1979 ratifying states are on board. Before too long, quite likely, they will be trying to convince additional judges higher federal courts that the ERA should be deemed part of the Constitution because 38 states have consented to it.

On behalf of National Right to Life and North Dakota Right to Life, I strongly urge that you give speedy approval to SCR 4010. Let those notices be sent to the Archivist of the United States. Let the notice be sent to your congressional delegation, who perhaps can discuss it with their colleagues and help them come to better understand the dynamics and dangers of the "gotcha" approach to amending the Constitution.

SCR 4010 states that 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 subtext of SCR 4010, as I read it, is something like this – polite, but crisp and clear: "It has come to our attention what you are up to. We are not in your bag. We are not on board for your extra-constitutional end run. The ERA expired on March 22, 1979, and so did our consent to it. We tell you this now in this formal way, to remove any ambiguity, to correct the confusion. Count us out. Count us out!

I believe that if your body takes this step, other state legislatures which are similarly situation may well follow in your footsteps, adopting these helpful explanatory resolutions. This will be helpful in clearing the air in the U.S. Senate, perhaps. Down the road a bit, it may even help some judges see the absurdity of these theories that proposed amendments and ratification actions live forever, even when they are stamped with explicit expiration dates.

I thank you, and would be happy to address any questions.

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Addendum:

There was no one who wanted an ERA in the Constitution more than Ruth Bader Ginsburg. She said more than once that if there was one amendment she could add to the Constitution, it would be the ERA. And yet during 2019 and 2020, she was twice asked about this matter, and on both occasions she indicated quite clearly that she believed the proper course was to *start over*.

On February 10, 2020, Justice Ginsburg, at a forum at Georgetown University Law Center, said:

> **"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'?"**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMONWEALTH OF VIRGINIA, STATE OF ILLINOIS, and STATE OF NEVADA, Plaintiffs, v. DAVID S. FERRIERO, in his official capacity as Archivist of the United States, Defendant.	)	**COMPLAINT** Case No. _____

The United States Constitution now declares, once and for all, that equality of rights under the law shall not be denied or abridged on account of sex. For nearly 150 years, our Nation's foundational document did not acknowledge the existence of women. In 1920, the concept of equality among the sexes appeared in the Constitution for the first time, but was limited to the right to vote. Now—after 231 years and on the centennial of the 19th Amendment—the American people have committed to equality regardless of sex by adopting the Equal Rights Amendment as the 28th Amendment to the U.S. Constitution.

On January 27, 2020, the Commonwealth of Virginia became the 38th State to ratify the Equal Rights Amendment. At that moment, the process set forth in Article V of the U.S. Constitution was complete. Plaintiff States Nevada, Illinois, and Virginia—the three States to most recently ratify—ask this Court for an order: (1) directing the Archivist of the United States to perform his purely ministerial duty under 1 U.S.C. § 106b to "cause the amendment to be published, with his certificate, specifying . . . that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States," and (2) declaring that the Equal Rights Amendment has become the 28th Amendment to the U.S. Constitution.

> "ARTICLE —
>
> "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."

28. Both the House and the Senate approved H.J. Res. 208 by far more than the required two-thirds majority. The House adopted the resolution in October 1971 by a vote of 354-24, and the Senate adopted the resolution in March 1972 by a vote of 84-8. In both chambers, the Equal Rights Amendment passed with strong bipartisan support.

29. While Congress was considering the Equal Rights Amendment, President Richard Nixon endorsed it, noting in a letter to Senate Republican leadership that he had co-sponsored the equal rights amendment as a Senator in 1951 and remained committed to its adoption.

30. Once approved by two-thirds of each chamber, the Equal Rights Amendment was formally proposed to the States as provided in Article V.

31. By the end of 1972, 22 States had ratified the Equal Rights Amendment: Hawaii, New Hampshire, Delaware, Iowa, Kansas, Idaho, Nebraska, Texas, Tennessee, Alaska, Rhode Island, New Jersey, Colorado, West Virginia, Wisconsin, New York, Michigan, Maryland, Massachusetts, Kentucky, Pennsylvania, and California. The total number of ratifications reached 35 by the end of 1977, as Wyoming, South Dakota, Oregon, Minnesota, New Mexico, Vermont, Connecticut, Washington, Maine, Montana, Ohio, North Dakota, and Indiana each ratified the amendment.

B. Recent Ratifications by Nevada, Illinois, and Virginia Bring the Total Number of Ratifying States to 38

32. In recent years, three more States have ratified the Equal Rights Amendment.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

COMMONWEALTH OF VIRGINIA, STATE OF ILLINOIS, and STATE OF NEVADA,

Plaintiffs,

v.

DAVID S. FERRIERO, in his official capacity as Archivist of the United States,

Defendant,

ALABAMA, LOUISIANA, NEBRASKA, SOUTH DAKOTA, and TENNESSEE,

Intervenor-Defendants.

Case No. 1:20-cv-242-RC

BRIEF FOR THE STATES OF NEW YORK, COLORADO, CONNECTICUT, DELAWARE, HAWAI'I, MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, WASHINGTON AND WISCONSIN, AND THE GOVERNOR OF KANSAS AND THE DISTRICT OF COLUMBIA AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS

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(*Complete counsel listing appears on signature pages.*)

Dated: June 29, 2020

INTEREST OF AMICI CURIAE

Amici are the States of New York, Colorado, Connecticut, Delaware, Hawai‘i, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and Wisconsin ("amici States"), as well as the Governor of Kansas and the District of Columbia. Amici submit this brief under Local Civil Rule 7(o)(1) to support the plaintiffs, the States of Virginia, Illinois and Nevada, in opposing the motion to dismiss filed by the defendant Archivist of the United States.

Amici have two distinct interests in this litigation. First, amici States have a strong interest in vindicating their role as sovereign participants in the constitutional amendment process. Article V of the U.S. Constitution confers on the States the plenary power to ratify proposed amendments to the Constitution. Like plaintiffs, seventeen of the amici States have exercised that power in voting to ratify the Equal Rights Amendment ("ERA"). And because a total of thirty-eight—or three-quarters—of the States have now ratified the ERA, Article V commands that it "shall be valid to all intents and purposes, as part of this Constitution." By refusing to perform his ministerial duty to certify the ERA as a valid amendment, the Archivist undermines the States' role in the constitutional amendment process. Amici States have a strong interest in vindicating that role and maintaining the effectiveness of their ratifications. Indeed, that strong interest, combined with the fact that plaintiffs cast the last three votes needed to ratify the ERA, is precisely what gives plaintiffs standing here.

Second, all amici here have an interest in ensuring that their residents receive the highest level of protection from discrimination on the basis of sex, both when they interact with the federal government and when they travel to other States. While many amici have passed their own laws and some amici States have passed their own constitutional amendments guaranteeing equality on

EQUAL RIGHTS AMENDMENT - PROPOSED MARCH 22, 1972
LIST OF STATE RATIFICATION ACTIONS

The following dates reflect the date of the state legislature's passage, the date of filing with the Governor or Secretary of State, or the date of certification by the Governor or Secretary of State, whichever is the earliest date included in the official documents sent to the NARA, Office of the Federal Register. (Updated as of: 03/24/2020)

STATE	RATIFICATION	STATE	RATIFICATION
Alabama	not ratified	Montana	Jan. 25, 1974
Alaska	April 5, 1972	Nebraska*	March 29, 1972
Arizona	not ratified	Nevada**	March 22, 2017
Arkansas	not ratified	New Hampshire	March 23, 1972
California	Nov. 13, 1972	New Jersey	April 17, 1972
Colorado	April 21, 1972	New Mexico	Feb. 28, 1973
Connecticut	March 15, 1973	New York	May 18, 1972
Delaware	March 23, 1972	North Carolina	not ratified
Florida	not ratified	North Dakota	Feb. 3, 1975
Georgia	not ratified	Ohio	Feb. 7, 1974
Hawaii	March 22, 1972	Oklahoma	not ratified
Idaho*	March 24, 1972	Oregon	Feb. 8, 1973
Illinois**	May 30, 2018	Pennsylvania	Sept. 26, 1972
Indiana	Jan. 24, 1977	Rhode Island	April 14, 1972
Iowa	March 24, 1972	South Carolina	not ratified
Kansas	March 28, 1972	South Dakota*	Feb. 5, 1973
Kentucky*	June 27, 1972	Tennessee*	April 4, 1972
Louisiana	not ratified	Texas	March 30, 1972
Maine	Jan 18, 1974	Utah	not ratified
Maryland	May 26, 1972	Vermont	March 1, 1973
Massachusetts	June 21, 1972	Virginia**	January 27, 2020
Michigan	May 22, 1972	Washington	March 22, 1973
Minnesota	Feb. 8, 1973	West Virginia	April 22, 1972
Mississippi	not ratified	Wisconsin	April 26, 1972
Missouri	not ratified	Wyoming	Jan. 26, 1973

* Purported Rescission

Nebraska	March 15, 1973
Tennessee	April 23, 1974
Idaho	Feb. 8, 1977
Kentucky	March 20, 1978
South Dakota	March 5, 1979

** Ratification actions occurred after Congress's deadline expired. *See* U.S. Dep't of Justice, Office of Legal Counsel, *Ratification of the Equal Rights Amendment*, 44 Op. O.L.C. __, Slip Op. (Jan. 6, 2020).

The Equal Rights Amendment (ERA) and Abortion

Quotes from Pro-Abortion Groups:

The ERA could be used to permanently overturn pro-life laws and require legal abortion until birth for any reason, without limits on taxpayer funding, throughout the nation.

> **NARAL Pro-Choice America**: "With its ratification, the ERA would reinforce the constitutional right to abortion by clarifying that the sexes have equal rights, which would require judges to strike down anti-abortion laws because they violate both the constitutional right to privacy and sexual equality."[1]
>
> **NARAL Pro-Choice America**: "The ERA will help protect women's rights to… abortion. With five anti-choice justices on the Supreme Court and *Roe v. Wade* on the chopping block, it's more important than ever that we codify women's bodily autonomy in our laws."[2]
>
> **National Organization for Women (NOW):** "An ERA –properly interpreted – could negate the hundreds of laws that have been passed restricting access to abortion care and contraception."[3]
>
> **Senior Counsel, National Women's Law Center:** "The ERA would help create a basis to challenge abortion restrictions. We see the ERA as another tool that would strengthen our existing protections."[4]
>
> **Emily Martin (general counsel for the National Women's Law Center)** said that the ERA would enable courts to rule that restrictions on abortion "perpetuate gender inequality." [5]
>
> **Erin Matson (co-director of Reproaction):** "Abortion restrictions amount to sex discrimination because they single out people for unfair treatment on the basis of sex, and a federal ERA could provide a backstop to fight the wave of restrictions on abortion."[6]
>
> **Erin Matson (co-director of Reproaction): "**In a 1986 case in Connecticut and a 1999 case in New Mexico, ERAs adopted into state constitutions were cited when striking down restrictions on funding for abortions."
>
> **Planned Parenthood/Women's Law Project** say past ruling that state ban on government funding of elective abortion is consistent with ERA "is contrary to a modern understanding" of ERA. [7]

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[1] "ERA Y-E-S." NARAL Pro-Choice America. https://www.prochoiceamerica.org/campaign/era_yes/
[2] The ERA, Explained! NARAL Pro-Choice America. April 10, 2019. https://www.youtube.com/watch?v=3dWiJNfiX5U&feature=youtu.be
[3] "Is the Equal Rights Amendment Relevant in the 21st Century?" National Organization for Women (NOW). https://now.org/resource/is-the-equal-rights-amendment-relevant-in-the-21st-century/
[4] National Women's Law Center. May 1, 2019. https://nwlc.org/nwlc-in-the-press/republicans-want-to-make-a-debate-over-discrimination-into-an-abortion-battle/
[5] Rankin, Sarah and David Crary. "Lawmakers pledge ERA will pass in Virginia. Then what?" January 1, 2020. https://apnews.com/959a29cfbdc59029bba9e97887331f07
[6] Matson, Erin. "Abortion Rights Opponents Are Terrified of the Equal Rights Amendment." Rewire. January 21, 2020. https://rewire.news/article/2020/01/21/abortion-rights-opponents-are-terrified-of-the-equal-rights-amendment/
[7] "Allegheny Reproductive Health Center v. Pa. Department of Human Services ." Women's Law Project. Pg. 2.

Ongoing litigation in Pennsylvania and past cases in New Mexico and Connecticut demonstrate that the ERA could require taxpayer-funded abortion on demand:

Pennsylvania [Ongoing Lawsuit]:

- **Background:**
  - Abortion providers (including Planned Parenthood) are suing Pennsylvania ***because state Medicaid does not pay for elective abortions.*** The abortion providers claim this violates the Pennsylvania Equal Rights Amendment. *Note: the abortion providers are represented by the Women's Law Project.*[8]

- **Planned Parenthood/Women's Law Project:** The "central claims" of the brief "are that the abortion coverage ban violates the Equal Rights Amendment and equal protection provisions of the Pennsylvania Constitution."

- **Susan J. Frietsche (senior staff attorney at the Women's Law Project)**: "Pennsylvania's ban on Medicaid coverage of abortion is a decades-long injustice that deprives low-income women of reproductive health care in violation of the state Constitution's Equal Rights Amendment,"

- **Susan J. Frietsche (senior staff attorney at the Women's Law Project)**: "The coverage ban discriminates on the basis of sex because Medicaid comprehensively covers men's health care but not women's. It inflicts severe harm on women because of their reproductive capacity, and it does so in service to discredited sex-role stereotypes that continue to limit women's equal participation in society."

- **Planned Parenthood/ Women's Law Project Brief:**

  - "By singling out and excluding abortions from Medical Assistance, women throughout this Commonwealth are denied coverage for essential health care services solely on the basis of their sex."

  - "Because the Pennsylvania coverage ban improperly discriminates against women based on their sex without sufficient justification, the ban… violates women's constitutional right to equality of rights under the law, as guaranteed by [the Pennsylvania ERA]."

New Mexico [1998]

- This lawsuit was brought by Planned Parenthood against the state.

- The Supreme Court of New Mexico ruled unanimously that **the state was required to fund abortions** based *solely* on the state ERA.

[8] "Allegheny Reproductive Health Center v. Pa. Department of Human Services." Women's Law Project. https://www.womenslawproject.org/project/allegheny-reproductive-health-center-v-pa-department-of-human-services-medicaid-case/

- It found that the law "undoubtedly singles out for less favorable treatment a gender-linked condition that is unique to women" and therefore "violates the Equal Rights Amendment."[9]

Connecticut [1986]

- **Background:** The plaintiffs challenged a Connecticut Medicaid's refusal to pay for elective abortion, claiming that it violated the Connecticut Equal Rights Amendment.

- **The Court agreed**: "It is therefore clear, under the Connecticut ERA, that the regulation excepting medically necessary abortions from the medicaid [sic] program discriminates against women." [10]

Quotes from Third-Party Reporting:

David Crary, Associated Press: "Another subplot in this year's abortion drama involves the Equal Rights Amendment.... Abortion-rights supporters are eager to nullify the [ERA ratification] deadline and get the amendment ratified so it could be used to overturn state laws restricting abortion. Abortion opponents cite that stance in arguing that the deadline should be enforced and the ERA sidelined."[11]

Noah Feldman (Harvard Law Professor): …"[I]t's not implausible that a newly ratified ERA could be used by pro-choice advocates to make a fresh constitutional case for abortion rights. If the current Supreme Court reverses Roe v. Wade — a possibility that must be taken very seriously — then new constitutional arguments will be needed... The ERA could provide the basis for an updated version of that argument, because anti-abortion laws can be said to target women in particular."[12]

Alexis McGill Johnson (quoted by *Politico*): "Advocates for the ERA acknowledge that abortion needs to be part of the conversation. Any debate over women's rights, they say, must also address control over when and whether to have children. ***'There are no equal rights for women without access to abortion, plain and simple,'*** said Alexis McGill Johnson, acting president and CEO of Planned Parenthood."[13]

National Women's Law Center (quoted by *Politico*): "...some anti-abortion groups including the NRLC say they would be neutral on the amendment if it included language explicitly stating that it doesn't apply to abortion. ERA supporters say such a carve-out is a nonstarter. 'The ability of women to participate equally and the idea of equality in our economy is fundamentally bound up with the ability to access reproductive rights,' said Fatima Goss Graves, the president of the National Women's Law Center."[14]

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[9] New Mexico Right to Choose/NARAL v. Johnson. 1998. https://law.justia.com/cases/new-mexico/supreme-court/1998/23239-0-0.html

[10] Doe v. Maher, 515 A.2d 134 (Conn. Super. Ct. 1986). https://www.courtlistener.com/opinion/3349959/doe-v-maher/

[11] Crary, David. "Supreme Court Case Looms Large for Rivals in the Abortion Debate." Associated Press in the Washington Times, January 21, 2020.

[12] Feldman, Noah. "The Equal Rights Amendment Could Still Do Some Good." February 15, 2020. Yahoo Finance. https://finance.yahoo.com/news/equal-rights-amendment-could-still-130014475.html?soc_src=social-sh&soc_trk=tw

[13] Mueller, Eleanor and Alice Miranda Ollstein. "How the debate over the ERA became a fight over abortion." *Politico.* February 11, 2020. https://www.politico.com/news/2020/02/11/abortion-equal-rights-amendment-113505

[14] Ibid.

Julie Suk (quoted by *Politico*): CUNY professor Julie Suk, often cited as an expert in comparative constitutional law who is writing a book on the ERA, agreed ... 'That is an argument that I think is a persuasive argument, and some state Supreme Courts have been persuaded by that argument, but there are also arguments on the other side....My own view as a legal thinker is that the right to make decisions about reproductive health care, including abortion, is central to any understanding of gender equality,' Suk said. 'I'm not saying it's unlikely to be the law of the land, but I'm saying it's not a certainty that the ERA would lead to abortion funding.'"[15]

The Daily Beast, quoting Jennifer Weiss-Wolf (Vice President, Brennan Center for Justice): "Both the basis of the privacy argument and even the technical, technological underpinnings of [Roe] always seemed likely to expire." … "Technology was always going to move us to a place where the trimester framework didn't make sense." … "'If you were rooted in an equality argument, those things would not matter," she said.[16]

> *Daily Beast follows by explaining,* "The Equal Rights Amendment, which would prohibit sex discrimination the way the Constitution currently prohibits discrimination based on race, religion and national origin, could do just that."[17]

Pete Williams, NBC News: "The ERA has been embraced by advocates of abortion rights. NARAL Pro-Choice America has said it would 'reinforce the constitutional right to abortion' and 'require judges to strike down anti-abortion laws.' Abortion opponents agree with that analysis… 'It would nullify any federal or state restrictions, even on partial-birth or third-trimester abortions,' the National Right to Life Committee said."

Sady Doyle, Elle Magazine: "Questions of discrimination -- like… legal abortion… often come down to the Supreme Court... It would be reassuring, to say the least, if those justices were forced to rule that laws which discriminate against women's healthcare are unconstitutional."[18]

Daily Kos: "Ratifying the Equal Rights Amendment… would…expand reproductive rights..."

V: 03/05/2020

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[15] Ibid.

[16] Russell-Kraft, Stephanie. "Wanna Save Roe v. Wade? Don't Look To The Courts." July 30, 2018. https://www.thedailybeast.com/wanna-save-roe-v-wade-dont-look-to-the-courts

[17] Ibid.

[18] Doyle, Sady. "The ERA Is Suddenly Within Reach. Does It Matter?" Elle Magazine. June 1, 2018. https://www.elle.com/culture/career-politics/a20980485/equal-rights-amendment-ratify-illinois/

Quotes from Pro-Life Groups:

National Right to Life (NRLC): "under this doctrine . . . it would nullify any federal or state restrictions even on partial-birth abortions or third trimester abortions (since these too are sought only by women)."[19] "the proposed federal ERA would invalidate the federal Hyde Amendment and all state restrictions on tax-funded abortions."[20]

Susan B. Anthony List: "Any law limiting abortion or imposing upon it such conditions as a funding limit will be struck down as violating the amendment's plain language."[21]

March for Life Action: "Since their inception these 'equal rights amendments' (ERAs) have been used to further the scourge of abortion through the court systems."[22] "It is with little doubt that if such language was enshrined in the United States Constitution it would be of great harm to taxpayers and lead to the elimination of most, if not all, pro-life protections in current law.[23]

U.S. Conference of Catholic Bishops: "One consequence of the ERA would be the likely requirement of federal funding for abortions. At least two states have construed their own equal rights amendments, with language analogous to that of the federal ERA, to require government funding of abortion." "Arguments have been proffered that the federal ERA would… restrain the ability of the federal and state governments to enact other measures regulating abortion, such as third-trimester or partial birth abortion bans, parental consent, informed consent, conscience-related exemptions, and other provisions."[24]

V: 03-05-2020

[19] Letter to the U.S. House of Representatives. National Right to Life Committee. January 27, 2020.
[20] Ibid.
[21] Score Letter. Susan B. Anthony List. November 12, 2019.
[22] Score Letter. March for Life Action. January 31, 2020.
[23] Ibid.
[24] Letter to U.S. House of Representatives. United States Conference of Catholic Bishops. February 6, 2020.

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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

To: The Honorable Members of the North Dakota Legislative Assembly

From: Douglas D. Johnson, Senior Policy Advisor, National Right to Life Committee
nrlc.stateleg@gmail.com, 202-378-8859
Sierra Heitkamp, Executive Director, North Dakota Right to Life
director@ndrl.org, 701-640-9685

Re: Urging your support for Senate Concurrent Resolution No. 4010, reaffirming that the Legislative Assembly's ratification of the 1972 version of the Equal Rights Amendment (now recognized as employable as a pro-abortion legal weapon) lapsed on March 22, 1979

Date: February 15, 2021

SUMMARY: In March, 1972, the 92nd Congress approved and submitted to the states H.J. Res. 208, which contained both a proposed amendment to the U.S. Constitution -- the "Equal Rights Amendment" (ERA) – and a 7-year ratification deadline. The 44th North Dakota Legislative Assembly ratified H.J. Res. 208 on February 3, 1975. However, the ratification deadline arrived in March 1979 – 42 years ago -- without the ERA having garnered the required 38 state ratifications. The 1972 ERA ceased to exist at that time, and the ratification instrument approved by the North Dakota Legislative Assembly likewise lost its vitality. However, in more recent years, there have been two important developments that now justify adoption of SCR No. 4010.

First, many leaders and attorneys associated with prominent pro-abortion organizations now openly proclaim that they intend to employ a federal ERA to reinforce and expand federal constitutional "abortion rights," and they believe the ultimate result will be the invalidation of hundreds of state and federal pro-life laws and policies. Indeed, they have already successfully employed state-constitution ERAs in that fashion in several states. Thus, the language of the 1972 ERA is now being construed in ways different from those presented to the North Dakota Legislative Assembly 46 years ago.

Secondly, a national scheme has emerged to evade the ratification requirements contained in Article V of the U.S. Constitution, and to "air drop" into the Constitution the 1972 ERA language. For example, Democratic attorneys general from Virginia and other states are currently urging a federal judge in Washington, D.C., to rule that the 1972 ERA has already been ratified – and in so doing, they are counting North Dakota as a ratifying state. It is time for the Legislative Assembly to take note of this ongoing subterfuge and to formally say, "Count us out," through adoption of SCR No. 4010.

The proper course for advocates of an ERA is to start over in Congress-- to see if language can be crafted that would garner the required two-thirds support after honest debate, and if so, then to allow the current generation of state legislators to review and debate what Congress submits.

FURTHER DISCUSSION OF THE ERA-ABORTION CONNECTION

There is now broad agreement between key pro-life and pro-abortion groups that the language of the 1972 ERA could be employed as a legal weapon to reinforce and expand "abortion rights." For example, NARAL Pro-Choice America, in a March 13, 2019 national alert, asserted that "the ERA would reinforce the constitutional right to abortion . . . [it] would require judges to strike down anti-abortion laws . . ." A National Organization for Women factsheet on the ERA states that "...an ERA -- properly interpreted -- could negate the hundreds of laws that have been passed restricting access to abortion care…" The general counsel of the National Women's Law Center told AP that the ERA would allow courts to rule that limits on abortion "perpetuate gender inequality." Many other such examples are readily available for your examination in documents separate from this memo, including some collected in a "quotesheet" available at this URL: https://www.nrlc.org/uploads/era/ERA-AbortionQuotesheet3-5-20.pdf

Moreover, pro-abortion litigants already have aggressively employed *state* ERAs to challenge pro-life policies. For example, in New Mexico, state affiliates of Planned Parenthood and NARAL relied on the state ERA in a legal attack on the state version of the "Hyde Amendment," prohibiting Medicaid funding of elective abortions. In its 1998 ruling in *NM Right to Choose / NARAL v. Johnson*, No. 1999-NMSC-005, the New Mexico Supreme Court *unanimously* agreed that the state ERA required the state medical assistance program to fund abortions performed by medical professionals, since procedures sought by men (e.g., prostate surgery) were funded. In a ruling based *solely* on the ERA, Justice Pamela Minzner wrote that "there is no comparable restriction on medically necessary services relating to physical characteristics or conditions that are unique to men. Indeed, we can find no provision in the Department's regulations that disfavor any comparable, medically necessary procedure unique to the male anatomy…[the restriction on funding abortions] undoubtedly singles out for less favorable treatment a gender-linked condition that is unique to women." It is noteworthy that the ERA/abortion equation had been urged upon the court in briefs submitted by Planned Parenthood, NARAL, the ACLU, the Center for Reproductive Law and Policy, and the NOW Legal Defense and Education Fund. The doctrine that the ERA language invalidates limitations on tax-funded abortion was also supported in briefs filed by the state Women's Bar Association, Public Health Association, and League of Women Voters. You can read or download the ruling here: http://nrlc.org/uploads/era/ERANewMexicoSupremeCourt.pdf.

Further, the Women's Law Project, in concert with Planned Parenthood, is currently pursuing a very similar lawsuit in Pennsylvania (*Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*), arguing that it is "contrary to a modern understanding" of an ERA to argue that an ERA is consistent with limitations on government funding of abortion.

Once a court adopts the understanding that a law limiting abortion is by definition a form of discrimination based on sex, that doctrine could invalidate virtually any limitation on abortion. For example, under this doctrine, the proposed federal ERA would invalidate the federal Hyde Amendment and all state restrictions on tax-funded abortions. **Likewise, it would nullify any federal or state restrictions even on partial-birth abortions or third-trimester abortions (since these too are sought only by women).** Also vulnerable would be federal and state "conscience laws," which allow government-supported medical facilities and personnel -- including religiously affiliated hospitals -- to refuse to participate in abortions. For additional documentation on the ERA-abortion connection, see the NRLC website at http://www.nrlc.org/federal/era.

THE "PRIVACY" DODGE

For decades, some ERA advocates have tried to deflect attention away from the ERA-abortion connection by observing that *past* Supreme Court rulings on abortion have relied on a purported due-process "privacy" or personal-autonomy right. Such observations are almost childish in their transparent evasiveness. Obviously, *past* U.S. Supreme Court rulings on abortion-related issues were interpretations of the *current* U.S. Constitution. Those precedents are essentially irrelevant to the outcome of future lawsuits based on the ERA's absolute prohibition on abridgement of "equality of rights…on account of sex," and the ERA's legislative history, which indicates that "the ERA could provide a basis for plaintiffs to challenge laws or policies that have a *disparate impact* on women" (U.S. House of Representatives Judiciary Committee report on H.J. Res. 79, purporting to remove ERA ratification deadline, no. 116-378, Jan. 16, 2020, emphasis added).

FURTHER DISCUSSION OF WHY THE 1979 DEADLINE WAS VALID AND FINAL

Each of the six constitutional amendment resolutions approved by Congress since 1960 – four of which were adopted -- has contained a seven-year ratification deadline in the Proposing Clause. (The Proposing Clause is not a mere "preamble," but a constitutionally required part of any submission to the states, instructing states regarding the mode of ratification.)

The U.S. Supreme Court has recognized that "Congress had the power to fix a reasonable time for ratification" for a proposed constitutional amendment (*Coleman v. Miller*, 1939). Such a deadline might appear, the Supreme Court indicated, "in the proposed amendment or in the resolution of submission." The Supreme Court earlier had held, "Whether a definite period for ratification shall be fixed, *so that all may know what it is and speculation on what is a reasonable time may be avoided*, is, in our opinion, a matter of detail which Congress may determine *as an incident of its power to designate the mode of ratification*," which clearly conveys that the deadline must be fixed at the time a proposed amendment is submitted to the states. (*Dillon v. Gloss*, 1921, emphasis added).

At the true deadline on March 22, 1979, only 35 of the required 38 states had ratified the ERA, and five had rescinded. **North Dakota's SCR No. 4010 is not a rescission** (rescissions, if possible, are possible only with respect to live proposals). **Rather, SCR No. 4010 is an affirmation that the Legislative Assembly's 1975 consent was to a specific proposal that included a deadline, and that consent lapsed when the 1979 deadline was reached without the required consensus by 37 other states.**

In a highly controversial move, Congress in 1978 passed (by *majority* vote, not two-thirds) a resolution that purported to extend the ERA ratification deadline to June 1982. But no additional states ratified during the purported 39-month extension. A federal district court in Idaho ruled that the deadline extension was unconstitutional *and* that a state could rescind before the original deadline. (*Idaho v. Freeman*, 1981) When various parties sought review of those issues by the U.S. Supreme Court, the Acting Solicitor General of the U.S. submitted a memorandum explaining that the ERA was dead any way you cut it -- under either deadline, and whether or not rescissions were valid. The U.S. Supreme Court agreed, dismissing the pending cases and vacating the district court ruling on grounds of mootness. (See documents posted at http://www.nrlc.org/uploads/era/ERASupremeCourtDeclaresDead1982sg.pdf)

In subsequent years, ERA supporters in Congress repeatedly introduced proposals to begin the entire amendment process anew-- explicitly or implicitly recognizing that the 1972 ERA was dead. Indeed, such a start-over ERA (numbered as H.J. Res. 1) was brought to the floor of the U.S. House of Representatives on November 15, 1983, but it went down to defeat, failing to muster the required two-thirds vote.

Nevertheless, beginning in 1993, some ERA advocates have claimed that the 1972 ERA could still be ratified -- because the "Congressional Pay Amendment" (CPA) was deemed by many to have been ratified in 1992, 203 years after Congress proposed it. However, the U.S. Supreme Court in 1921 said that it was "quite untenable" to assert that the CPA was still a viable candidate for ratification – and to this day, no court has reviewed the CPA or ruled that it has been validly ratified. In any event, the question of whether or not the CPA was actually ratified has little relevance to the ERA, since the CPA had no deadline attached, nor did any state take action to rescind its ratification. **There is no plausible constitutional theory by which a later Congress can retroactively alter any component of what a previous Congress submitted to the states by the required two-thirds votes**.

In January, 2020, the federal Department of Justice Office of Legal Counsel (OLC) explained in a well-reasoned opinion that Congress may not retroactively modify a proposal, including any element of the Proposing Clause such as the ratification deadline, once it has been submitted to the states (an exercise that the OLC compared to the current Congress purporting to override a veto issued by a President who left office decades in the past). Thus, proposals that purport to "remove" the ratification deadline (and to do so by simple majority votes), such as S.J. Res. 1 and H.J.Res. 17 in the current 117th Congress, should be recognized as attempts to run roughshod over the Article V requirements for amending the Constitution.

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"?"***

THE ABORTION-NEUTRALIZATION AMENDMENT FOR ANY START-OVER ERA

If ERA supporters ever return to the proper Article V process -- starting over -- pro-life members of Congress will urge (as they have done since 1983) the addition of a simple "abortion-neutralization" clause. The proposed revision – which obviously *cannot* be added to the language of the lapsed 1972 ERA, but which could be added by Congress to any *new* ERA proposal – reads as follows:

> *Nothing in this Article [the ERA] shall be construed to grant, secure, or deny any right relating to abortion or the funding thereof.*

This proposed revision would not change the current legal status of abortion, nor would it permit the ERA itself to be employed for anti-abortion purposes. Rather, the proposed revision would simply make *any new ERA itself* neutral regarding abortion policy. Yet prominent pro-ERA advocacy groups have emphatically repudiated such a revision. It should be clear why that is.

CONCERNED
WOMEN *for* AMERICA
OF NORTH DAKOTA

March 18, 2021
Government and Veteran's Affairs Committee
Testimony in Support of SCR 4010

Chairman Jim Kasper and members of the committee, I am Linda Thorson, State Director of Concerned Women for America (CWA) of North Dakota, testifying for Concerned Women for America Legislative Action Committee. We are the state's largest public policy women's organization and country's largest public policy women's organization with hundreds of thousands of members across the country.

On behalf of our North Dakota members, we submit testimony in support of SCR 4010, a Senate Concurrent Resolution clarifying the 1975 ratification, by the North Dakota 44th Legislative Assembly, of the proposed 1972 Equal Rights Amendment to the Constitution of the United States.

Originally the ERA was given a deadline of seven years for ratification, beginning March 22, 1972, and expiring March 21, 1979. When it became clear that three-fourths of the states (38 states) would not ratify ERA, Congress passed an ERA Time Extension resolution to extend the time limit for ratification to June 30, 1982. Even with this extension the ERA proponents failed to deliver on the 38 states necessary for ratification.

This poorly worded amendment to the U.S. Constitution states in 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." If ratified again, the Equal Rights Amendment (ERA) would restrict all laws and practices that make any distinctions based on gender.

The ERA is not about equal rights; it is about the **promotion of a genderless agenda** through the suppression of natural differences between men and women. The ERA is not about equal rights for women. If it were, it would duplicate the 14th Amendment, the equal amendment clause of our Constitution that covers gender or sexual distinction and gives all equal protection under the law. In the U.S. Supreme Court ruling in *Reed v Reed* in 1971, the court decided the 14th Amendment did prohibit unequal treatment on the bases of sex and declared sex discrimination a violation of the Amendment. REED V. REED, 404 U.S. 71 (1971).

Men and women are biologically different, and we must retain the ability to legally provide for these differences.

- **Despite claims of protecting women's interests, the ERA actually hurts women.**

  The ERA would eliminate the exemption of women from the military draft and compulsory front-line combat.

  The former Supreme Court Justice Ruth Bader Ginsburg's book, *Sex Bias in the U.S. Code*, she writes that the ERA would require that all women be drafted into the military when men are drafted and placed on the front-line in equal ratios to men. Women must not be exempted from

military combat.[1]
Women who feel they are physically able can choose to enlist in the military. Ms. Toni DeLancey, former Concerned Women for America State Director of Virginia, graduated from the U.S. Military Academy was commissioned as an officer in the U. S. Army and led other men and women in a Tactical Intelligence Unit. DeLancey states, "I didn't need the ERA to accomplish this." Like her fellow female graduates, Ret. Officer DeLancey volunteered to serve our country and was able to contribute based upon her individual strengths and abilities.[2]

- **The ERA will be used to mandate Medicaid funding for elective abortions.**

  Any attempt to restrict a woman's access to abortion, under the ERA, is a form of sex discrimination. Women could not be singled out for a characteristic that is unique to them and be treated differently based on that physical characteristic, such as a pregnancy. Abortion proponents (including the National Abortion and Reproductive Rights Action League and Planned Parenthood) have long argued in court filing that state-level ERAs guarantee a right to abort children with public funding. State courts in Connecticut and New Mexico have agreed with this interpretation.

  The New Mexico Supreme Court unanimously ruled that under their state ERA since only women undergo abortions, the denial of taxpayer funding for abortions is "sex discrimination" (N.M. Right to Choose/NARAL v. Johnson, 975 P.2d 841, 1998) [3]. As a result, New Mexico now provides Medicaid funding for elective abortions.

  By adopting the ERA, Connecticut's state superior court ruled that the state should no longer be permitted to disadvantage women because of the sex including their reproductive capabilities. "It is therefore clear, under the Connecticut ERA, that the regulation (prohibiting Medicaid funding) discriminates against women, and, indeed, poor women." (Doe v. Maher, 515 A. 2d 134)[4]

- **The ERA could end conscience clauses for nurses, doctors and hospitals who do not want to participate in performing abortions.**

  Courts do not allow conscience clauses in race discrimination, and they would not be able to allow it under the ERA.

  Be aware, the ERA empowers courts, not women. Because the language is so vague, courts would be called upon to interpret its application to innumerable situations – some of which were not even contemplated in the 1970s, such as the meaning of "sex." Thus, citizens' right to govern themselves on contentious present-day issues would be usurped by unaccountable federal courts.

  Women do not need the ERA to flourish in America. The 14th Amendment to the Constitution and multiple federal and state statutes guarantee women all the rights inherent to American citizens — equal employment, equal pay, education, credit eligibility, housing,

[1] Ginsburg, Ruth Bader, "*Sex Bias in the U.S. Code",* 1977, University of Maryland, p 26, 218, https://www2.law.umaryland.edu/marshall/usccr/documents/cr12se9.pdf
[2] https://www.youtube.com/watch?v=5m-5Wcosqoc
[3] http://www.nmcompcomm.us/nmcases/NMSC/1999/1999-NMSC-028.pdf
[4] http://www.ct.gov/chro/lib/chro/Warner_v_NERAC_denial_motion_to_dismiss.pdf

public accommodations, etc. – and women are thriving and succeeding as in no other time in history. They have done this without the assistance of ERA.

The proposed 1972 ERA to the Constitution of the United States, a poorly worded Amendment, should not be counted by lawmakers in any state, any court of law, or any other person, as a live ratification to the Constitution of the United States.

We, again, urge your "Do Pass" vote on SCR 4010.

Family Policy ALLIANCE of North Dakota

Testimony in Support of SCR 4010

Mark Jorritsma, Executive Director
Family Policy Alliance of North Dakota
March 18, 2021

Good morning Chairman Kasper and members of the House Government and Veterans Affairs Committee. My name is Mark Jorritsma and I am the Executive Director of Family Policy Alliance of North Dakota. I am testifying on behalf of our organization and its constituents across North Dakota for you to please render a "DO PASS" on Senate Concurrent Resolution 4010.

The Federal Equal Rights Amendment was submitted to the states for ratification in 1972 with a seven-year deadline. In 1972, federal and state laws were still woefully inadequate in protecting women, though with the earlier passage of women's suffrage and the Civil Rights Act of 1964 the ball was already rolling. Still, in 1972, schools could discriminate against girls, refuse to offer girl athletic programs or extracurricular activities. Women could be fired for becoming pregnant, couldn't attend military academies, and didn't necessarily have the right to sit on juries.

Against this landscape, North Dakota ratified the Federal ERA in 1975.[1] But since ratification, the legal protections of women in the law have cascaded into a significant collection of rights.

In 1972, Title IX was passed, ensuring equal protection and access for girls and women in school academics and athletics. In 1975, the Supreme Court held that the exclusion of women from juries was unconstitutional.[2] In 1978, the Pregnancy Discrimination Act protect employed pregnant women.[3] Legal protections for women from sexual harassment, discrimination in schools, and domestic violence were instituted. Women's rights regarding jury-duty, military service and family leave were codified. Today, the law unequivocally protects women. And all of this happened without a federal ERA. In other words, women and men have achieved equal legal rights through alternate means, in absence of the 1972 Equal Rights Amendment.

Further, we often hear about the pay gap between sexes as evidence for an ERA, as I'm sure you will encounter in testimony opposed to this resolution. However, one of the most recent comprehensive studies from Pew Research Center, a nationally respected firm, noted that, "Much of the gap has been explained by measurable factors such as educational attainment, occupational segregation and work experience."[4]

So, what do supporters of the ERA really want? Looking at state-level ERAs provides ample evidence. ERA language offers "equal rights" which leaves a blank slate for courts to essentially erase protections for women from the law and make-up rights out of thin air. That may sound extreme, but it has already been happening.

In Maryland, the Court of Appeals held a husband was no longer required to pay alimony, because a law compelling such payments violated the state's ERA, placing a husband and wife in an unequal position.[5] Under a Pennsylvania ERA, the courts found a father did not have to pay child support for his children because, they claimed, it placed mothers and fathers in an unequal position.[6] There are quite a few more examples of courts erasing the legal protections women have obtained simply because of state-level ERAs.

Biology is not bigotry. Our society and laws should acknowledge and respect valid sex-based distinctions. For example, pregnancy accommodations can only apply to women, because only women get pregnant. It is absurd to say that because pregnancy accommodations can't also apply to men, this is discrimination so it should be erased. But this is the effect of the ERA in our modern political landscape.

In addition, and probably most egregiously, some states have found a Constitutional right to abortion within the language of their ERAs, arguing that to not provide taxpayer-funded abortions is sex-based discrimination.[7] Again, this is an example of an ERA being used to force so called "rights" into the law.

This is all to say nothing of when courts choose to interpret the word "sex" to mean gender. Some state legislatures and courts have decided wherever prohibitions on sex-discrimination appear in the law, sex should also be interpreted to mean gender.[8] This means a man, who says he is a woman, will be entitled to all the protections women have from male discrimination. This man will suddenly have the constitutional right to enter women's bathrooms, play on women's sports teams, gain admission into women's clubs, and earn women's scholarships. Programs that were designed to allow women the same opportunities as men. Men are literally stealing opportunities away from women under their state ERAs.

And this was all prior to the *Bostock v. Clayton County* case and President Biden's recent Executive Orders, which both underscore the urgency of this situation. It is precisely why we and over two dozen other states, for example, are currently considering legislation such as the Fairness in Girls' Sports bill (HB 1298) this session. To add yet another confirmation of these unfortunate actions with ratification of the ERA would be disastrous.

The radical language of the ERA is no longer in the interest of protecting a woman or her unique place in the law. Five other states have rescinded their ratification; Idaho, Kentucky, Nebraska, South Dakota, and Tennessee, bringing the number of states who do not support the Federal ERA to 18. Further, a federal judge in Boston in August of 2020 threw out a lawsuit seeking to compel the United States Archivist to add the 1970s-era Equal Rights Amendment to the Constitution, which was then followed up by a ruling in March of this year where the United States District Court for the District of Columbia ruled that the ratification period for the ERA "expired long ago" and that three states' recent ratifications had come too late to be counted in the amendment's favor.[9] In the words of Supreme Court Justice Ruth Bader Ginsburg, "I would like to see a new beginning. I would like to start over".[10]

On a personal level, my wife and daughter have certainly benefited from all the anti-discrimination laws enacted over the past 50 years, and I am very thankful for that. They have had equal job opportunities, equal academic opportunities, been legally protected from sexual harassment, and many more positives. However, this was without any ERA being in place. I would be the first to admit that there are areas of life where sex discrimination still exists, but the sweeping and ambiguous language in the proposed federal ERA is going to cause a significant undermining of pro-life and pro-family values as it is interpreted by activist courts.

We agree that North Dakota should have no part in the Washington experiment that is being pushed on us. The Federal ERA would erase women's status in the law by ignoring necessary factual differences between the sexes, and potentially be used to require every state to provide a right to abortion. We support this resolution that declares that North Dakota's ratification of the Federal ERA has expired.

Therefore, I respectfully ask that you please vote Senate Concurrent Resolution 4010 out of committee with a "DO PASS" recommendation. Thank you for the opportunity to testify and I am now happy to stand for any questions.

[1] Senate Concurrent Resolution No. 4007 (44th Legislative Assembly), 1975.
[2] *Taylor v. Louisiana*, 419 U.S. 522 (1975).
[3] Pregnancy Discrimination Act (Pub. L. 95-555).
[4] https://www.pewresearch.org/fact-tank/2019/03/22/gender-pay-gap-facts/
[5] *Coleman v. State*, 37 Md. App. 322 (1977) (holding: To require a husband to pay alimony but not a wife was a distinction based solely upon sex and a violation of the sates ERA).
[6] *Conway v. Dana*, 456 Pa. 536 (1974) *see also* Albert Einstein Medical Center v. Nathan 1978 Pa. Dist. & Cnty. Dec. LEXIS 421 (1978) finding similarly that a husband should not be liable for a wife's hospital bills.
[7] *New Mexico Right to Choose/NARAL v. Johnson*, Supreme Court of New Mexico. November 25, 1998.
[8] *Sexual Equality, the Era and the Court - A Tale of Two Failures*, Phyllis A. Dow, 13 N.M. L. Rev. 53 (1983).
[9] *Commonwealth of Virginia v. Ferriero,* No. 1:20-cv-242 U.S. District Court (D.C.)
[10] *Searching for Equality: The Nineteenth Amendment and Beyond: A conversation between United States Supreme Court Justice Ruth Bader Ginsburg and Ninth Circuit Court of Appeals Judge M. Margaret McKeown*, Georgetown University Law Center event, February 10, 2020.

North Dakota Catholic Conference

Representing the Diocese of Fargo and the Diocese of Bismarck

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To: House Government and Veteran's Affairs Committee
From: Christopher Dodson, Executive Director
Subject: SCR 4010 - Equal Rights Amendment
Date: March 18, 2021

The North Dakota Catholic Conference supports House Concurrent Resolution 4010.

This resolution is not about whether women and men should be treated with equal dignity. The call for equal respect is rooted in who we are as human persons. It is not about ensuring just wages and fair treatment for women. The Catholic bishops of the United States have advocated for that for over a hundred years. This resolution is solely about whether the time for ratification of the Equal Rights Amendment has passed and about whether Congress and others should attempt to resurrect a dead amendment in light of what we now know about how the amendment, if revived, would be interpreted.

When introduced, the nation's Catholic bishops opposed the Equal Rights Amendment because of concerns that the word "sex" could be interpreted to mean a "right" to abortion and more. Their concerns proved accurate. "Sex" has since been interpreted by some courts and government agencies to require payment for, and performance of, elective abortions and transgender surgery.[1]

To demonstrate that this is not a far-fetched claim, we can look to a case close to home.

Passed in 2010, the Affordable Care Act prohibits any federally funded or administered health program or activity — broadly defined — from engaging in discrimination. Rather than listing the types of discrimination prohibited, the act incorporated several nondiscrimination provisions already in federal law, including Title IX, which prohibits discrimination "on the basis of sex."

Using that provision, Health and Human Services defined "sex" to include "discrimination on the basis of . . . termination of pregnancy, . . . sex stereotyping, and gender identity."[2] It then defined discrimination based on "gender identity" to prohibit a healthcare provider from refusing to offer medical services for gender transitions if that provider offered comparable services, such as gynecological services, to others.[3] In short, prohibition on the basis of sex became a mandate to cover and perform elective abortions and transgender surgeries.

Why is this close to home? It is close to home because it impacted health care providers and employers here in North Dakota, including our own state government. In 2016, several Catholic entities, including the Diocese of Fargo, Catholic Charities of North Dakota, the University of Mary, and SMP Healthcare from Fargo, challenged the rules in federal court in North Dakota. Joining them was the State of North Dakota.

The state of North Dakota joined the suit for four reasons. First, the state operates a State Hospital that could have been required to provide elective abortions and transgender surgery. Second, it has a Medicaid program that excludes coverage for elective abortions and gender reassignment surgeries. Third, the state PERS plan excludes coverage for those procedures. Fourth, the state employs healthcare providers who, as state employees, would have had to perform elected abortions and gender reassignment surgery.

Eventually, in January of this year, U.S. District Court Judge Peter Welte in Fargo granted victory to the state and the Catholic plaintiffs, at least for now.[4] Appeals might be pending. The judgment is based on procedural matters and that, as applied to the religious plaintiffs, the rules violate the Religious Freedom Restoration Act. What is important for this committee to understand is that it was never disputed, even during the Trump Administration, that the rules, required coverage and performance of elective abortions and gender reassignment surgery and that this requirement stemmed solely from the word "sex."

The case illustrates the problem with the Equal Rights Amendment. It is not limited to "sex discrimination" as commonly understood. Unjust discrimination can be addressed without the far-reaching Equal Rights Amendment.

Considering the amendment's threats to human life, state laws, and religious freedom, North Dakota should pass SCR 4010 send a message that its prior ratification no longer stands and that Congress should not attempt to revive a long dead and seriously flawed amendment.

We urge a **Do Pass** recommendation on SCR 4010.

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[1] The attached Fact Sheet on the ERA released just last week from the United States Conference of Catholic Bishops summarizes the history and problems with the amendment.

[2] *Nondiscrimination in Health Programs and Activities*, 81 Fed. Reg. 31,467 (formerly codified at 45 C.F.R. § 92.4)

[3] "A provider specializing in gynecological services that previously declined to provide a medically necessary hysterectomy for a transgender man would have to revise its policy to provide the procedure for transgender individuals in the same manner it provides the procedure for other individuals." Id. at 31,455.

[4] *North Dakota, State of et al v. Burwell et al; The Religious Sisters of Mercy v. Azar; Catholic Benefits Association v. Azar*; consolidated in Case 3:16-cv-00386; January 16, 2021. https://www.govinfo.gov/app/details/USCOURTS-ndd-3_16-cv-00386/USCOURTS-ndd-3_16-cv-00386-0/summary

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The Equal Rights Amendment (ERA)

Catholic teaching speaks very clearly and strongly about the equality of men and women. "In creating [humans] 'male and female,' God gives man and woman an equal personal dignity." *Catechism of the Catholic Church,* no. 2334. The bishops' explicit concern for just wages and the fair treatment of women goes back at least 100 years. In a February 12, 1919, statement entitled *Programs of Social Construction*, the bishops said that "women who are engaged at the same tasks of men should receive equal pay for equal amounts and qualities of work." Moreover, recent popes like St. John Paul II and Francis have spoken powerfully about the need to do more to address unjust inequities between women and men[1]. That being said, the USCCB has concern about a number of consequences that will arise from the proposed Equal Rights Amendment (ERA).

Legal controversy: The Equal Rights Amendment (ERA) to the Constitution was passed by Congress in 1972 when two-thirds of each chamber voted for the amendment. However, it failed to achieve ratification by 38 states (three-fourths) within the 7-year time limit established by Congress. While Congress did purport to pass, before the deadline, a 39-month extension, it is legally questionable whether the extension was valid and, in any event, no further states ratified during the "extension." It is extremely doubtful that "ratifications" after the deadline have any legal effect, with or without the retroactive blessing of Congress. Also disputed is the effect of rescissions that were passed by five states before the deadline.

Only if the five rescissions are disregarded, and the deadline is disregarded, was Virginia's January 2020 legislative action the "38th ratification." However, the legal ruling of the Department of Justice's Office of Legal Counsel (Jan 6, 2020) prevents the Archivist from certifying the ERA of 1972 (and thereby making it part of the Constitution) due to OLC's determination that ratifications after the congressionally-mandated time limit are not valid. (Because they determined the 1972 ERA is no longer pending, it was unnecessary to also rule on whether states could rescind their ratifications).

The present congressional effort is notably not to reintroduce the ERA and begin the process again as many legal experts have recommended, including most famously Ruth Bader Ginsburg[2], as the only constitutional path forward. Instead, Congress is considering a resolution to retroactively remove the deadline imposed by the original 1972 ERA. If passed by a simple majority, the resolution would be challenged as surpassing congressional authority, likely both because it would be passed with only simple majorities (instead of the 2/3 required for a constitutional amendment) and because the previous congressionally-enacted date change was struck down. It should also be noted that this

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[1] *See, e.g.*, Pope St. John Paul, II, *Letter to Women* (June 29, 1995) (insisting on "real equality" between men and women in terms of "equal pay for equal work," fairness for working mothers, equality between spouses and parents, and the "recognition of everything that is part of the rights and duties of citizens in a democratic State") http://www.vatican.va/content/john-paul-ii/en/letters/1995/documents/hf_jp-ii_let_29061995_women.html; Pope Francis, General Audience (Apr. 29, 2015) (calling for Christians to demand equal pay for women because the "disparity is an absolute disgrace!"), http://www.vatican.va/content/francesco/en/audiences/2015/documents/papa-francesco_20150429_udienza-generale.html.

[2] https://apnews.com/article/3510fbca261198d9ea63c30db2aa2033.

resolution does not attempt to resolve the legal controversy over the states that have attempted to rescind their ratification.

Language: The operating language of the 1972 ERA is extremely short: "*Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex*." However, in the almost 50 years since its initial passage by Congress, debate remains over the meaning of this provision. Supporters claim the ERA would prevent discrimination, promote equal pay, and so on. But discrimination against women is already prohibited by a multitude of federal and state laws, and is covered by the Constitution's Equal Protection Clause under precedent that was developed after the ERA was submitted to the states. Supporters also assert that adding the ERA would become, among other things, a powerful tool against pro-life abortion laws.

Abortion controversy: In the early years of the ERA, proponents commonly denied concerns that the amendment would entrench and expand the legality and practice of abortion. However, in recent years, some promoters of the ERA have boldly celebrated and advocated for the ERA precisely *because* of its ability to overturn abortion laws throughout the country. In fact, some state ERAs have already been used in this way. New Mexico's Supreme Court, for example, overturned a state "Hyde amendment" in 1998 saying, "*We conclude from this inquiry that the Department's rule violates New Mexico's Equal Rights Amendment because it results in a program that does not apply the same standard of medical necessity to both men and women, and there is no compelling justification for treating men and women differently with respect to their medical needs in this instance*."[3]

The general argument is that since abortion is a procedure that only women undergo, the government's decision to prohibit it, to decline to fund it, or to condition its availability on compliance with such requirements as parental notice and informed consent, is inherently discriminatory if the government does not impose those same conditions or requirements upon medical procedures that are unique to men or applicable to both men and women. It is also believed that sexual equality, as embodied in the ERA, would provide an additional argument for a constitutional right to abortion. Particularly at a time when *Roe v. Wade* is seen as vulnerable to being overturned (precisely because it is not grounded in the Constitution), proponents have been very clear that the ERA is *needed* to ensure abortion access and knock down current pro-life laws. For example:

- NARAL Pro-Choice America, claims: "*With its ratification, the ERA would reinforce the constitutional right to abortion by clarifying that the sexes have equal rights, which would require judges to strike down anti-abortion laws because they violate both the constitutional right to privacy and sexual equality*."[4]
- National Women's Law Center: "*[Emily] Martin [general counsel for NWLC] affirmed that abortion access is a key issue for many ERA supporters: she said adding the amendment to the constitution would enable courts to rule that restrictions on abortion 'perpetuate gender inequality*.'"[5]
- NOW: "*...an ERA –properly interpreted – could negate the hundreds of laws that have been passed restricting access to abortion care . . . a powerful ERA should recognize and prohibit that most harmful of discriminatory actions*."[6]

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[3]*Right to Choose/NARAL v. Johnson*, 975 P.2d 841, 844 (N.M. 1998), available at https://nrlc.org/uploads/era/ERANewMexicoSupremeCourt.pdf.

[4]NARAL email, March 13, 2019.

[5]Rankin, Sarah and David Crary, "Lawmakers Pledge ERA will pass in Virginia. Then what?", Associated Press, January 1, 2020.

[6]Grabenhofer, Bonnie and Jan Erickson, "Is the Equal Rights Amendment relevant in the 21st Century?", National Organization for Women, available at https://now.org/resource/is-the-equal-rights-amendment-relevant-in-the-21st-century/.

- ERA activist-attorney Kate Kelly (in response to the question, "Would the ERA as it is written codify Roe v. Wade?"): "My hope is that what we could get with the ERA is FAR BETTER than Roe."[7]

Gender and Related Concerns: In the last several years, many courts and agencies at both the state and federal levels have reinterpreted discrimination on the basis of "sex" in law to include "sexual orientation" and "gender identity" or "transgender status." Last summer, the Supreme Court construed sex as used in Title VII to forbid workplace discrimination on the basis of sexual orientation and transgender status. If the ERA were to be ratified, many would argue that its prohibition of discrimination on the "basis of sex" extends constitutional-level protections to sexual conduct and "transgender" identities. For example:

- NOW: "*The ERA would require strict scrutiny in challenges to the many state laws that deny LGBTQIA persons equal access to public accommodations, permit discrimination in housing, employment discrimination, credit and retail services, jury service and educational programs, among others.*"[8]

If this is correct, the result could be a radical restructuring of settled societal expectations with respect to sexual difference and privacy. For example, the ERA could be asserted as a basis for arguing that locker rooms and bathrooms in public facilities can no longer be reserved for members of a single sex. This would apply to a broad range of public institutions, including K-12 schools, colleges, universities, libraries, parks, hospitals, courthouses, townhalls, social welfare agencies, and government workplaces – and could also be asserted as a basis for compelling speech to conform to "preferred pronouns." The ERA could bolster the claim that public social services devoted to the most vulnerable of women, including homeless and domestic abuse shelters, must admit men.

Healthcare workers in public facilities could be forced to provide, and taxpayers made to pay for, "gender transition" procedures. School athletics and dormitories, and sleeping quarters in many prisons, could be forced to abandon current single-sex participation and residency criteria regardless of the privacy interests of other participants and residents. Finally, private charities that offer a broad range of services to their communities might be forced to change their facilities, speech, and practices to affirm "gender identities" or living situations contrary to their sincerely-held religious and moral beliefs.

Religious Liberty and Conscience Protection: The ERA could also have an impact on the ability of churches and other faith-based organizations to obtain and utilize conscience protections anytime there is a perceived conflict with the sexual nondiscrimination norms that the ERA would adopt. The ERA could likewise make it more difficult for faith-based organizations to compete on a level playing field with secular organizations in applying for and obtaining government resources to provide needed social services. For example, the government could argue that a decision not to perform an abortion or transgender surgery is sex discrimination, so that a health care provider is ineligible to receive federal funds if it declines to perform such a procedure.

Possible Setbacks for Women in the Workplace and Education: Because the ERA only applies to sex discrimination by the government and not to the private sector, it may not be helpful on issues like unequal pay or sexual harassment in the workplace, or other important issues like violence

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[7] Kelly, Esq., Kate. Twitter Post. January 24, 2021, 5:57 PM. https://twitter.com/Kate_Kelly_Esq/status/1353477069959790594.

[8] Grabenhofer, Bonnie and Jan Erickson, "Is the Equal Rights Amendment relevant in the 21st Century?", National Organization for Women, available at https://now.org/resource/is-the-equal-rights-amendment-relevant-in-the-21st-century/; *see also* Kelly, Kate, "The ERA Is Queer and We're Here For It!", Advocate, February 23, 2019, available at https://www.advocate.com/commentary/2019/2/23/era-queer-and-were-here-it.

against women. In fact, the ERA could be deemed to prohibit government policies designed to benefit women.

There are several federal and state programs designed to promote women's advancement in the workplace and in education that might be deemed to be unconstitutional if the ERA were adopted. These include government efforts to increase women's participation in STEM fields, corporate management, and business ownership. Other government distinctions that are designed to promote the interests of women—such as single-sex educational settings, dormitories, locker rooms, or even prisons—may be deemed to conflict with the ERA as presently drafted.

March 12, 2021

Testimony in support of SCR 4010 – March 11, 2021

Mr. Chairman, Members of the Committee,

My name is Rose Christensen. I am here today in support of SCR 4010, a resolution that simply declares that North Dakota's ratification of the Equal Rights Amendment expired when the seven year period given by Congress for its consideration expired. That seven year period began March 22, 1972, and expired on March 22, 1979, with the proposed amendment still short at least three states of the 38 needed to become the 28th amendment to the US Constitution.

During those years, there were here in North Dakota at least **two significant irregular procedural maneuvers** associated with the ratification effort that **weighed heavily in favor of the proponents,** to the disadvantage of those in opposition.

To make a long story short, in l973, the ERA was introduced in the House, and the House killed it. But, not to be thwarted by the uncooperative House, proponents simply went across the hall and got it reintroduced in the Senate which then passed it and sent it back to the House. The House killed it a second time. That gave proponents three chances to get their proposal through in the 1973 session, but they failed! Two years later however, the Legislature did ratify the ERA by a single vote in the House. It stayed on the books until the seven year ratification period ended on March 22, 1979.

I have distributed to you copies of a report from Eagle Forum which summarized the national legislative history of the ERA. You will note in the lower right hand corner, the entire verbatim text of the Resolution that Congress adopted when it sent the amendment to the states for possible ratification.

The main clause reads as follows: "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

On this same sheet (on the lower left side) you will see the text of eight amendments that were offered by Senator Sam Ervin to try to modify this harsh and rigid mandate of "equality of rights under the law." Ervin foresaw that such a bare-boned mandate for "equality" was, in reality, a threat to the rights of women.

These proposed amendments would have:

But slowly, as ERA worked its way through legislative hearings in the fifty state legislatures, the haze cleared, and the PR hype and enthusiasm began to wane. Some people who were not blinded by the frenzied "popularity" of this media-created "issue of the day", had begun to witness changes in the laws of states that were progressively preparing for the anticipated ratification of ERA. The public was finally realizing that ERA would forever make it illegal to extend any benefits, privileges or exemptions to women. ERA, in fact, would do nothing for women. It doesn't even MENTION women. The ERA should more properly be considered unisex legislation. And if you've visited a public unisex bathroom recently, you know the unisex standard may not be as good an idea as the giddy gender-neutral crowd imagined it would be!

When legislatures began to examine how this amendment would actually negatively impact the women of their states, the enthusiasm evaporated, the ratifications trickled to a halt, and ERA began to actually lose ground. Several states rescinded their previous ratifications. Referenda in several states showed huge majorities in opposition to ERA. Facing certain death with the rapidly approaching arrival of the March 22, 1979 deadline imposed by Congress, a **second highly irregular procedural action** was initiated to try to save it! Proponents went back to Washington to ask Congress for **a time extension**, which Congress granted by a simple majority vote...not by the 2/3 vote the Constitution required. This procedure was subsequently challenged in court where it languished until ERA officially died again, on March 22, 1982. Even the three year time extension was not sufficient to get 38 states to ratify it.

But before this long, drawn-out battle ran its course, **the North Dakota Senate had gone on record to defy this unconstitutional time extension**! In February, 1979, just weeks before the original seven year time limit was due to lapse, the Senate passed a resolution almost identical to this resolution you are considering today.

A letter to newspapers, dated February 22, 1979, noted in reference to the March 22, 1979 deadline that "Friday's action in the Senate**.... does not retract our ratification**; it simply provides that **our ratification becomes null and void at the termination of the seven year ratification period**, unless 38 states have concurred in ratification prior to that date...." That proposal passed the Senate, but did not pass the House, so here we are today, the intervening 42 years having given us some real life examples of the problems the ERA would have created.

A

PROPOSED U.S. CONSTITUTIONAL AMENDMENT, RATIFIED

CHAPTER 609

SENATE CONCURRENT RESOLUTION NO. 4007
(Redlin, Lips, Homuth, Pyle)

EQUAL RIGHTS AMENDMENT

A concurrent resolution for the ratification of a proposed amendment to the Constitution of the United States, prohibiting states from denying a citizen equality of rights under law on account of sex.

WHEREAS, the 92nd Congress of the United States of America at its second Session, in both Houses, by a Constitutional majority of two-thirds thereof, adopted the following proposition to amend the Constitution of the United States of America in the following words, to wit:

JOINT RESOLUTION

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the 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 Legislature of three-fourths of the several States within seven years from the date of its submission by the Congress:

ARTICLE

"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."

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the said proposed amendment to the Constitution of the United States of America be and the same is hereby ratified by the Forty-fourth Legislative Assembly of the state of North Dakota; and

BE IT FURTHER RESOLVED, that certified copies of this resolution be forwarded by the Governor of the state of North Dakota to the Administrator of General Services, Washington, D.C., and to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States.

Filed February 11, 1975

Legislative History of ERA

B

The legislative history of the Equal Rights Amendment provides conclusive proof that ERA is intended to wipe out any and all distinctions between men and women, no matter how reasonable or how much such distinctions or separations might be desired by the majority of our citizens.

When ERA went through Congress the first time, in 1971 and 1972, certain amendments were proposed to prevent ERA from taking away traditional rights and benefits from women. All these modifying clauses were defeated, thereby leaving ERA in strict, absolute, rigid language.

The House rejected the Wiggins Amendment on October 12, 1971, which stated:

> *"This article shall not impair the validity of any law of the United States which exempts a person from compulsory military service or any other law of the United States or of any State which reasonably promotes the health and safety of the people."*

When the Senate voted on ERA on March 21 and 22, 1972, Senator Sam J. Ervin, Jr., proposed nine separate amendments to ERA to protect the traditional rights of women. Every one was defeated on a roll-call vote, thus establishing the legislative history that ERA was intended to do exactly what the Ervin Amendments would have prevented ERA from doing. The Ervin Amendments show how far-reaching ERA would be and how massive and radical its effect. Here are the nine Ervin Amendments:[2]

> Amendment 1065: *"This article shall not impair, however, the validity of any laws of the United States or any State which exempt women from compulsory military service."*
>
> Amendment 1066: *"This article shall not impair the validity, however, of any laws of the United States or any State which exempt women from service in combat units of the Armed Forces."*
>
> Amendment 1067: *"This article shall not impair the validity, however, of any laws of the United States or any State which extend protections or exemptions to women."*
>
> Amendment 1068: *"This article shall not impair the validity, however, of any laws of the United States or any State which extend protections or exemptions to wives, mothers, or widows."*
>
> Amendment 1069: *"This article shall not impair the validity, however, of any laws of the United States or any State which impose upon fathers responsibility for the support of their children."*
>
> Amendment 1070: *"This article shall not impair the validity, however, of any laws of the United States or any State which secure privacy to men or women, or boys or girls."*
>
> Amendment 1071: *"This article shall not impair the validity, however, of any laws of the United States or any State which make punishable as crimes sexual offenses."*
>
> Amendment 472: *"Neither the United States nor any State shall make any legal distinction between the rights and responsibilities of male and female persons unless such distinction is based on physiological or functional differences between them."*
>
> Amendment 1044: *"The provisions of this article shall not impair the validity, however, of any laws of the United States or any State which exempt women from compulsory military service, or from service in combat units of the Armed Forces; or extend protections or exemptions to wives, mothers, or widows; or impose upon fathers responsibility for the support of children; or secure privacy to men or women, or boys or girls; or make punishable as crimes rape, seduction, or other sexual offenses."*

ERA Ratification Difficulties

Congress sent ERA out to the states on March 22, 1972. Within twelve months, 30 states had ratified it. Then the disillusionment set in. In the next six years, only five more states ratified ERA, but five of the 30 states rescinded their previous ratifications of ERA, leaving a net score of zero for six years of lobbying for ERA. The five states that rescinded their previous ratifications were:

Nebraska	3/15/73
Tennessee	4/23/74
Idaho	2/08/77
Kentucky	3/16/78
South Dakota	3/01/79

The following 15 states never ratified ERA:

Alabama	Missouri
Arizona	Nevada
Arkansas	North Carolina
Florida	Oklahoma
Georgia	South Carolina
Illinois	Utah
Louisiana	Virginia
Mississippi	

ERA Time Extension

The original ERA resolution which passed Congress on March 22, 1972 included the following preamble before the three sections of the text of ERA:

> *"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the 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:*
>
> *"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."*

21.0140.02000

Sixty-seventh
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1298

C

Introduced by

Representatives B. Koppelman, Meier, Paulson, Schauer, Skroch, Steiner, Vetter

Senators Clemens, Kannianen, Myrdal

A BILL for an Act to create and enact a new section to chapter 14-02.4 of the North Dakota Century Code, relating to participation in athletic events exclusively for males or females.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-02.4 of the North Dakota Century Code is created and enacted as follows:

Athletic events exclusively for males or exclusively for females.

1. The state, a political subdivision of the state, or an entity that receives public funding from the state or from a political subdivision of the state may not:
   a. Allow an individual of the opposite sex who is under eighteen years of age or who is enrolled in high school to participate on an athletic team sponsored or funded by the state, political subdivision, or entity and which is exclusively for females or exclusively for males.
   b. Sponsor an athletic event exclusively for males or exclusively for females which allows participation by an individual of the opposite sex who is under eighteen years of age or who is enrolled in high school.
   c. Use or permit to be used an athletic facility, stadium, field, structure, or other property owned by or under the control of the state, political subdivision, or entity for an athletic event conducted exclusively for males or exclusively for females in which an individual of the opposite sex who is under eighteen years of age or who is enrolled in high school is allowed to participate.
2. For purposes of this section, sex means an individual's biological sex and is based solely on an individual's reproductive biology and genetics at birth.
3. This section may not be construed to prohibit a female from participating in a school-sponsored athletic team or event that is exclusively for males.

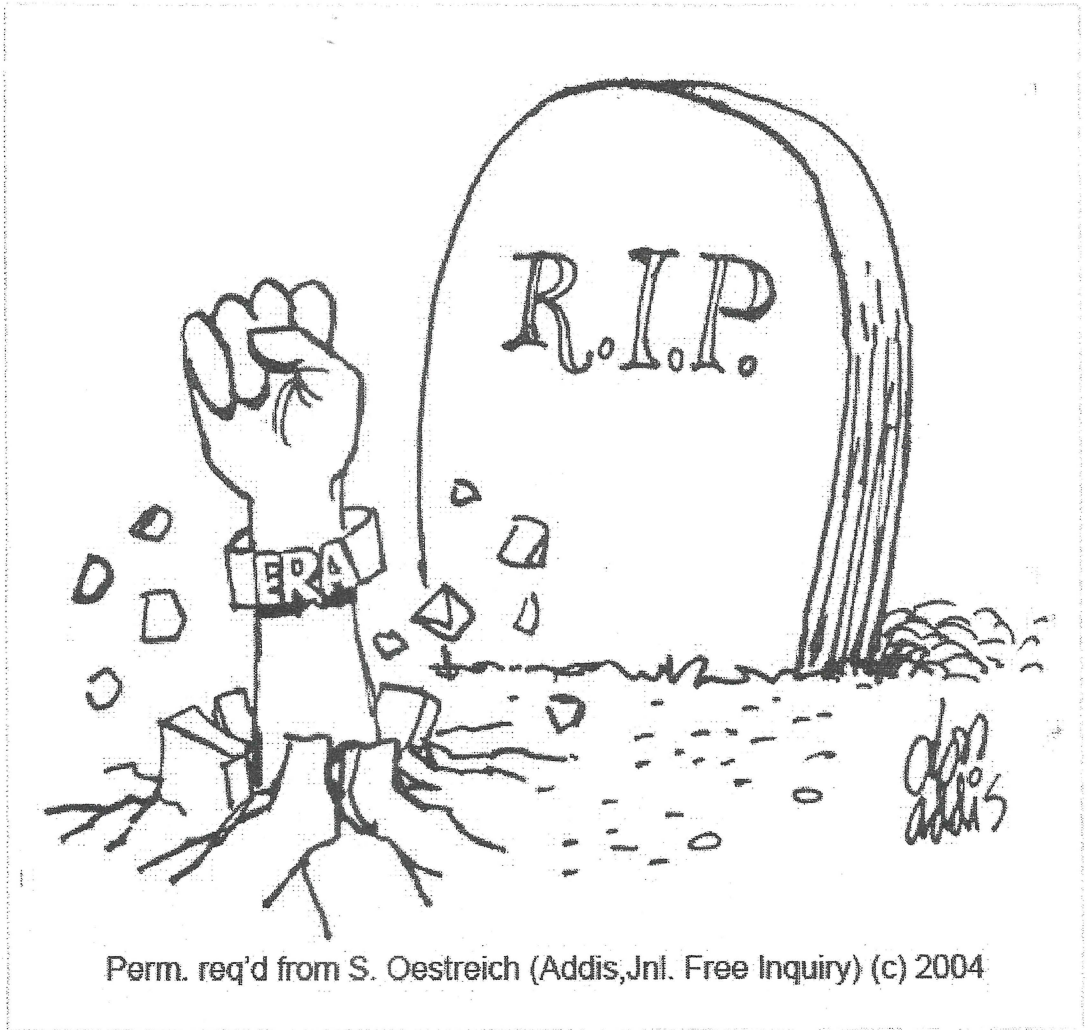
D

Virginia ERA Network

Fighting for passage of the Equal Rights Amendment

The Three State Strategy

There are actually **TWO** different ERA bills in the Congress. One is the original Equal Rights Amendment and the other is called the Women's Equality Act. The first one is the old ERA and is referred to as the Three State Strategy. The second bill is actually what we call the "do over" bill which means we start from scratch. This bill exists because some say the first is no longer viable, and we have to start over since we originally had a time limit on ratification. The time limit was seven years, and it was extended for another three years. No other amendment had ever had a time limit placed on it before.



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E

117TH CONGRESS
1ST SESSION

H. J. RES. 17

Removing the deadline for the ratification of the equal rights amendment.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 21, 2021

Ms. SPEIER (for herself, Mr. REED, Mrs. CAROLYN B. MALONEY of New York, Ms. ADAMS, Mr. AGUILAR, Mr. AUCHINCLOSS, Mrs. AXNE, Ms. BARRAGÁN, Ms. BASS, Mrs. BEATTY, Mr. BERA, Mr. BEYER, Mr. BISHOP of Georgia, Mr. BLUMENAUER, Ms. BLUNT ROCHESTER, Ms. BONAMICI, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BROWN, Ms. BROWNLEY, Mrs. BUSTOS, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CARSON, Mr. CASE, Mr. CASTEN, Ms. CASTOR of Florida, Ms. CHU, Mr. CICILLINE, Ms. CLARK of Massachusetts, Ms. CLARKE of New York, Mr. CONNOLLY, Mr. COOPER, Mr. COSTA, Mr. CRIST, Mr. CROW, Mr. DANNY K. DAVIS of Illinois, Ms. DEAN, Mr. DEFAZIO, Ms. DEGETTE, Ms. DELAURO, Ms. DELBENE, Mr. DELGADO, Mrs. DEMINGS, Mr. DESAULNIER, Mr. DEUTCH, Mrs. DINGELL, Mr. MICHAEL F. DOYLE of Pennsylvania, Ms. ESCOBAR, Ms. ESHOO, Mr. ESPAILLAT, Mr. EVANS, Mr. FOSTER, Ms. LOIS FRANKEL of Florida, Mr. GALLEGO, Mr. GARAMENDI, Ms. GARCIA of Texas, Mr. GARCÍA of Illinois, Mr. GOMEZ, Mr. GOTTHEIMER, Mr. GREEN of Texas, Mr. GRIJALVA, Mr. HASTINGS, Mrs. HAYES, Mr. HIMES, Mr. HORSFORD, Ms. HOULAHAN, Mr. HUFFMAN, Ms. OMAR, Ms. JAYAPAL, Mr. JOHNSON of Georgia, Mr. JONES, Ms. KAPTUR, Mr. KEATING, Ms. KELLY of Illinois, Mr. KHANNA, Mr. KILDEE, Mr. KILMER, Mr. KIM of New Jersey, Mr. KIND, Mrs. KIRKPATRICK, Mr. KRISHNAMOORTHI, Ms. KUSTER, Mr. LANGEVIN, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mrs. LAWRENCE, Mr. LAWSON of Florida, Ms. LEE of California, Mrs. LEE of Nevada, Ms. LEGER FERNANDEZ, Mr. LEVIN of Michigan, Mr. LEVIN of California, Mr. LIEU, Mr. LOWENTHAL, Mr. LYNCH, Mr. MALINOWSKI, Mr. SEAN PATRICK MALONEY of New York, Mrs. LURIA, Ms. MANNING, Ms. MATSUI, Mrs. MCBATH, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCGOVERN, Mr. MCNERNEY, Mr. MEEKS, Ms. MENG, Ms. MOORE of Wisconsin, Mr. MORELLE, Mr. MOULTON, Mrs. NAPOLITANO, Mr. NEGUSE, Ms. NEWMAN, Mr. NORCROSS, Ms. NORTON, Mr. O'HALLERAN, Ms. OCASIO-CORTEZ, Mr. PALLONE, Mr. PANETTA, Mr. PAPPAS, Mr. PAYNE, Mr. PERLMUTTER, Mr. PETERS, Ms. PINGREE, Ms. PLASKETT, Mr. POCAN, Mr. PRICE of North Carolina, Mr. QUIGLEY, Mr. RASKIN, Miss RICE of New York, Ms. ROYBAL-ALLARD, Mr. RUIZ, Mr. RUPPERSBERGER, Mr. RUSH,

★

Gmail

Rose Christensen <christensen1776@gmail.com>

US District Court for District of Columbia Mar 5, 2021

1 message

Rose Christensen <christensen1776@gmail.com> Wed, Mar 10, 2021 at 11:40 AM
To: Rose Christensen <christensen1776@gmail.com>

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMONWEALTH OF VIRGINIA, et al., :
:
Plaintiffs, : Civil Action No.: 20-242 (RC)
:
v. : Re Document Nos.: 29, 74, 100
:
DAVID S. FERRIERO, :
:
Defendant, :
:
v. :
:
ALABAMA, et al., :
:
Intervenor-Defendants. :

MEMORANDUM OPINION
GRANTING DEFENDANT'S MOTION TO DISMISS;

GRANTING INTERVENOR-DEFENDANTS' MOTION FOR SUMMARY JUDGMENT;
DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Hoping to secure a place in the Constitution for sex equality, Plaintiffs Nevada, Illinois, and Virginia ratified the Equal Rights Amendment ("ERA") years after many presumed it was dead. They now challenge the refusal of the Archivist of the United States to publish and certify the amendment as part of the Constitution. Laudable as their motives may be, Plaintiffs run into two roadblocks that forbid the Court from awarding the relief they seek. First, the Archivist's publication and certification of an amendment are formalities with no legal effect. His failure to perform those formalities does not cause Plaintiffs any concrete injury, so they lack standing to sue. Second, even if Plaintiffs had standing, Congress set deadlines for ratifying the ERA that
Case 1:20-cv-00242-RC Document 117 Filed 03/05/21 Page 1 of 37

2

expired long ago. Plaintiffs' ratifications came too late to count. For those two reasons, the Court dismisses Plaintiffs' suit.

North Dakota Women's Network

March 18, 2021

Kristie Wolff – Executive Director, North Dakota Women's Network
Opposition SCR 4010
North Dakota House Government and Veterans Affairs Committee

Chairman Kasper and members of the House Government and Veterans Affairs Committee. My name is Kristie Wolff, I am the Executive Director of the North Dakota Women's Network.

North Dakota Women's Network is a statewide organization with members and advocates from every corner of the state. I am testifying today in opposition to SCR 4010.

We can all agree that the joint resolution that introduced the ERA included a deadline for ratification of 1979.

Because the ERA time limit is only in a joint resolution—not in the text of the ERA itself—it can be changed by another joint resolution passed by a simple majority. This issue was discussed at length in Congress in 1978, and both Houses did vote to extend the ERA time limit by three years to 1982. Just yesterday, the US House of Representatives voted to remove the deadline. These actions are occurring under the basic principle that one Congress cannot bind another Congress.

Under Article V of the Constitution, the only question for a state is whether to ratify. North Dakota has done their part in the process. Historically once a state ratifies, it cannot rescind that ratification. For example, the 14th Amendment became part of the Constitution even though two states, New Jersey and Ohio, attempted to rescind their ratifications. Those states were included on the list of ratifying states.

Let's talk briefly about why the ERA is so important. The Equal Rights Amendment would guarantee that the rights affirmed by the U.S. Constitution are held equally by all citizens without regard to their sex.

We have all seen the statistics on violence against women and the truly horrible numbers of Indigenous women who suffer from violence or who end up missing or murdered. We have all read the reports about disparities in pay.

But this isn't just about women. As its sex-neutral language makes clear, the ERA's guarantee of equal rights would protect both women and men against sex discrimination under the law.

How many fathers and children would greatly benefit from increased fairness in regard to parenting time and custody. Fathers take their children out in public, yet the number of changing tables in men's bathrooms vs women's bathrooms creates an unnecessary barrier for fathers to adequately care for their child.

Clearly, work needs to be done. So, my question is do we move forward? Or do we turn back the clock?

North Dakota has done their part in the process, by ratifying the ERA. Let us honor all those who fought and sacrificed simply to be treated equal. Let us move forward and be part of adding a critically important statement about equality to our constitution. Let us send an important message to children that one of our most cherished values as a state and a nation is equality.

SCR 4010 turns back the clock, therefore I am asking the Committee for a Do Not Pass recommendation.

Thank you,

Kristie Wolff

kristie@ndwomen.org

Brandi Hardy
Testimony on SCR 4010
March 18th, 2021

RE: In Opposition SCR 4010

Greetings Chairman Kasper and Committee members,

My name is Brandi Hardy. I am the Legislative Coordinator for the North Dakota Human Rights Coalition.

Today, I am here to urge the committee to vote DO NOT PASS on Senate Concurrent Resolution 4010, an effort to rescind the 1975 ratification for the Equal Rights Amendment (ERA). An amendment that would insert the language “Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex” into the United States Constitution.

Our nation was founded in the pursuit of equality and fairness. So what values of discrimination are being held onto so dearly that keeps our ND legislators so willing to create a chamber of hate? Bravery, not fear, drives this country’s best decisions and that should be the same for ND legislators.

When this bill was heard on the Senate side, it became very obvious there was a wealth of misinformation that was an attempt to pigeon hole the true purpose of the ERA.

1) Our Military: Rescinding the ERA would protect women from the draft. I became an Operations Iraqi Freedom veteran with the US Army three years before I could drink a beer. To suggest women are incapable or too fragile for the draft is ridiculous and offensive.

The United States has fought two consecutive wars, and the draft has never been enacted for either. If we are worried about the fragility of women, then it makes MORE sense to SUPPORT the ERA because it would SIGNIFICANTLY reduce the sexual assault cases of women and men, in our Armed Forces.

2) Abortion: Although I am not the expert to speak to this, I would be remiss not to address it. Roe v. Wade, the landmark Supreme Court decision that established a woman's legal right to an abortion, was decided on January 22, 1973. The Court ruled, in a 7-2 decision, that a woman's right to choose an abortion was protected by the privacy rights guaranteed by the Fourteenth Amendment to the U.S. Constitution.

3) The Genderless Agenda. The ERA will lead to a genderless society. This fearful and ignorant propaganda creates an environment where people within the LGBTQ+ community continue to be abused and murdered. This misguided attempt to demonize the queer community is tragic and does not represent the ERA or North Dakota citizens.

Brandi Hardy
Testimony on SCR 4010
March 18th, 2021

The ERA means the right to education and the right to credit. ERA means there is equal access to housing and employment. ERA means that there is equal support for sexual assault and domestic violence victims.

Like many of you, I have a daughter. I hope someday our daughters would be able to go to the school of their choice, make FAIR and EQUAL wages and have many more opportunities without her gender being viewed as a weakness.

Betty White once said "**Butterflies Are Like Women - We May Look Pretty And Delicate, But We Can Fly Through A Hurricane."**

Equality cannot be left to the political whims of who is sitting in the seat of today. As in past years, North Dakota had an opportunity to do what was right. In this case, we have an opportunity to fight for the futures of all of our children in our state.

This is why I urge the committee to vote DO NOT PASS Senate Concurrent Resolution 4010.

Brandi Hardy

Legislative Coordinator

NDHRC

brandihardy60@gmail.com

Kati Gunkelman Hornung
Co-Founder / Director

Testimony in opposition of SCR 4010
Thursday, March 18

Thank you, Chairman Kasper and members of the committee, for including my testimony today.

My name is Kati Gunkelman Hornung and I grew up in Fargo. My late grandparents, Tod & Do Gunkelman, were very involved in North Dakota's Republican party and I am confident they would oppose SCR 4010.

After graduating from Fargo South in 1991, I moved to Virginia for the weather (college). Last year, I led Virginia's successful ratification of the Equal Rights Amendment. Afterwards our team pivoted to the national effort of congressional deadline removal and publication of the amendment. Our team represents the last three states to ratify and is comprised of Republicans, Democrats, and Independents.

I am here today because America has a gender inequality problem and fixing it starts with closing the gender gap in our Constitution. We are the only major nation in the world that does not explicitly guarantee gender equality. Over 165 constitutions worldwide include gender equality. Ours does not.

This purposeful, historical exclusion of women from our Constitution has led to generations of unintended consequences, some of which have been deadly.

In 2018, America ranked as the 10th most dangerous country in the world for women and we tied for third place with Syria for riskiest environments of sexual violence, harassment, and coercion into sex. In multiple studies published in 2020, we no longer rank in the top 1/3 of countries for gender equality.

When Justice Scalia said the Constitution does not prohibit gender equality he was speaking from an originalist framework, one that is shared by others on the Supreme Court and The Federalist Society.

Kati Gunkelman Hornung
Co-Founder / Director

The 14th Amendment is the first place in our Constitution where the word male was used because supporters worried the amendment would not pass if it included women.

Despite the limiting language, women tried to use the 14th Amendment and were denied. If the 14th Amendment had included women, we would not have needed the 19th Amendment. It was over 100 years before a 1970s court FINALLY decided to extend the 14th Amendment to gender discrimination.

However, because this was new territory, the court did not grant the same framework the 14th Amendment provides to discrimination based on race, religion, or country of origin. Instead it came up with “intermediate scrutiny.”

The impact of intermediate scrutiny is that unlike race, religion, and country of origin discrimination cases, gender discrimination cases fail more often than they succeed.

The kids in North Dakota are watching and they need leaders to lead in a way that is fair and equitable to all constituents. Boys and girls both need to see themselves and each other as worthy of equality.

In 1943 the Equal Rights Amendment was rewritten to match our 19th Amendment. The wording is gender neutral and will also apply to men experiencing gender discrimination.

Our legacy as a country is that we put a man on the moon before many state colleges and universities opened their doors to women. Please consider your legacy today and the message you send to our future, our youth.

America is making progress toward gender equality, but we are not keeping up with the rest of the world. We all deserve more. Equality is for all of us. Everyone needs to see themselves in the word equality just as we do the words freedom and liberty. Equality cannot be partisan.

For the pro-life legislators in the room, please consider that being pro-life does not have to mean being anti-equality. The Equal Rights Amendment is simply a statement of non-discrimination. No single constitutional right is absolute and all

issues will continue to be legislated and litigated on a case-by-case basis from both directions in perpetuity.

All the scary arguments of the 1970s came to pass without the Equal Rights Amendment. Change is inevitable and our society will continue to change over time. But let us not leave women with a lower level of judicial scrutiny because of the sexism of the past 150 years.

If you are weighing the arguments today on the proverbial scales of justice, do not offset the grand totality of America's gender inequality, as experienced daily by American women, against one single medical procedure.

On the one side of the scales you would place our pay inequality, our lack of opportunity for advancement, our experiences with sexual harassment, our assaults, our rapes, our beatings and our murders. On the other side is… abortion.

How could you prioritize one medical procedure above the fact that we are the 10th most dangerous nation in the world for women?

Pendulums swing and your votes this year on gender equality will one day be viewed with an historical lens. Get on the right side of history. Walk away from this sham of a resolution that does nothing but send a terrible message of support for gender discrimination.

Ratification is a one way street or as we like to say, "No backsies." America has three other constitutional amendments (the 14th, the 15th, and the 19th) added despite purported rescissions.

Constitutional gender equality is no longer a matter of if, but a matter of when. Anyone voting against equality and justice today does nothing to stop the Equal Rights Amendment but you will leave a mark on North Dakota's history books.

I urge you to recommend a "DO NOT PASS" vote on SCR 4010 and am now happy to answer any questions.

#9950

28A - EQUAL RIGHTS AMENDMENT

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, through appropriate legislation, the provisions of this article.

Section 3 This amendment shall take effect two years after the ratification.

IT'S ABOUT EQUALITY

THE EQUAL RIGHTS AMENDMENT WILL:

- Close the current equality gap in the Constitution.
- Provide a framework for the Supreme Court to interpret "equality of rights under the law" related to government actions.
- Anchor equality laws in the U.S. Constitution to prevent rollback of hard-won and popular legislation.

THE EQUAL RIGHTS AMENDMENT WILL NOT:

- Automatically create new laws. It simply ensures existing and new rights are not denied or abridged based on sex.

It's 2021 and we still see gender discrimination everywhere.

Childcare • Child Marriage • COVID-19 Response • Criminal Justice System
Domestic Violence • Economy • Education • Employment Law • Essential Workers
Female Genital Mutilation • Healthcare • Housing • Immigration • Labor Regulations
Low Income Communities / Wealth Gap • Maternal Healthcare • Military / Veterans
Police • Property • Sexual Exploitation / Human Trafficking • Welfare Reform

Pre-COVID, gender inequality cost the United States $2,000,000,000,000 (trillion) per year. It is worse now.

What unexpected organizations support the Equal Rights Amendment?

American Bar Association • AIG • Chobani • Citigroup • CVS Health • Equitable
Gilead Sciences • Goldman Sachs • Google • Hershey • Kimberly-Clark • Levi Strauss
Mastercard • Microsoft • Morgan Stanley • NFL • National Women's Soccer League
PepsiCo • Pfizer • Prudential • salesforce.com • Tiffany & Co • TransUnion
...and many more

For more information, please visit www.VoteEquality.US

The Equal Rights Amendment prohibits federal and state governments from discriminating on the basis of sex. By anchoring laws and acts in our U.S. Constitution we strengthen protections against discrimination and help prevent rollback and discriminatory implementation of laws.

This constitutional basis for equality does not change or create any new laws automatically. Laws will continue to be written by legislators and enforced and challenged in courts on a case by case basis.

No constitutional right is absolute. Courts and legislatures will continue to weigh competing rights, just as they have always done.

Equal Pay

The amendment will provide a stronger constitutional basis for protecting against employment discrimination. Over 100 organizations and businesses publicly support publishing the Equal Rights Amendment, clearly stating that it is needed if we are to recover economically from COVID-19.

Family Law

The Equal Rights Amendment will be applicable to the many cases of state (and federal) sanctioned sex discrimination in areas of child marriage, custody, adoption, divorce, and citizenship. This will include sex discrimination against girls, women, mothers, fathers and LGBTQ+ people.

Judicial Review

The 5th and 14th 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 applied for race, national origin, or religious discrimination. This essentially preserves the structures and systems that perpetuate second-class status for women and LGBTQ+ people. The Equal Rights Amendment moves us one step closer to America's promise of liberty and justice for all.

LGBTQ+

The Equal Rights Amendment prohibits government discrimination “on account of sex.” The Supreme Court recently held in a 6-3 decision that government discrimination on the basis of sex includes LGBTQ+ people.
See Bostock v. Clayton County (Jun. 15, 2020)

Military

Under the Equal Rights Amendment, the military will be held to the standard of "equality of rights under the law" in cases of sex discrimination. The military justice system would have a new framework with which to adjudicate cases of military sexual assaults and harassment.

Pregnancy Related Care

The Equal Rights Amendment will be applicable to sex discrimination in cases of pregnancy related care, including childbirth, breastfeeding, maternal health, and reproductive health.

Sports / Education

The Equal Rights Amendment does not void Title IX and other protections for girls and women. Additionally, it will apply directly to government action, not private organizations such as the NFL or National Women's Soccer League, which both support the Equal Rights Amendment.

North Dakota House of Representatives
Government and Veterans Affairs Committee

Chair Jim Kasper	Rep. Mitch Ostlie
Vice Chair Ben Koppelman	Rep. Karen M. Rohr
Rep. Pamela Anderson	Rep. Austen Schauer
Rep. Jeff Hoverson	Rep. Mary Schneider
Rep. Karen Karis	Rep. Vicky Steiner
Rep. Scott Louser	Rep. Greg Stemen
Rep. Jeffery J. Magrum	Rep. Steve Vetter

March 18, 2021

Chair Kasper and members of the House Government and Veterans Affairs Committee:

Thank you for allowing me to speak here today. My name is Martin Fredricks. I am a husband, a father of three children, a lifelong North Dakotan and a resident of Fargo.

I am here today to testify in opposition to Senate Concurrent Resolution 4010, which would invalidate North Dakota's ratification of the Equal Rights Amendment.

I developed my testimony collaboratively with my spouse and two daughters, ages 19 and 13. They are all amazing, intelligent and strong women. I asked my wife because, through every day over nearly 27 years of marriage, our equality and value to one another have never been in question. I asked my daughters because this legislation, if passed, will negatively impact them, directly, immediately and into their futures.

Let me repeat that.

It will negatively impact my daughters, directly, immediately and into their futures.

It's as simple and straightforward as that.

In fact, it's as simple and straightforward as the language of the Equal Rights Amendment itself, which 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."

This is not language that should cause any decent human being pause. In fact, this statement should be a given in an evolved society. It really should go without saying.

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

Sadly, the long history of discrimination against women has made it abundantly clear that these words must be written down. More than that, they must be codified in the Constitution of the United States of America.

As you know, words and actions are powerful. What the North Dakota House says, what it writes down and how it votes on SCR 4010 will have consequences that reverberate through time, across this country and in the minds of all people.

If the North Dakota Legislature invalidates this state's ratification of the Equal Rights Amendment, you will be telling girls and women they are not valuable enough to merit equality to men in the eyes of the law. You will be saying it not just to girls and women here, but across the entire nation. And, finally, you will be saying it to boys and men, too.

My third child is 17 years old, on the cusp of manhood.

If you pass this legislation it will be a strong message to him that no matter how much he hears about gender equality and equitable treatment, it's just talk. You'll be telling him that, regardless of what his parents have been modeling for nearly 18 years, none of that matters because, under the law of the land, girls and women simply are not as valuable to North Dakota and the USA as he and his male friends are.

How will that impact the way they view and interact with girls and women during their lives?

It will matter.

Invalidating North Dakota's approval of the Equal Rights Amendment will move us several steps backward. I'm asking that you, instead, send a positive message. Make your recommendation to the full House a reaffirmation of support for girls, women and, indeed, every one of us.

You'll be saying, YES!, I believe men and women are now and forever shall be equal in the eyes of the law. You'll be saying YES! to affording the dignity, respect and the equal shot in life that *every single person* deserves, regardless of their gender. And you'll be saying YES! to moving forward in our evolution as a society.

As I said, every single person deserves dignity, respect and truly equal opportunities. So, please, give this unnecessary, misguided and discriminatory legislation the DO NOT PASS recommendation that *it* deserves.

Thank you.

Martin C. Fredricks IV

March 11, 2021

Dear Chairman Kasper and Members of the House Government and Veterans Affairs Committee:

I write today on behalf of the ACLU of North Dakota, which opposes SCR 4010, legislation that would rescind North Dakota's ratification of the Equal Rights Amendment to the Constitution.

ACLU
AMERICAN CIVIL LIBERTIES UNION
North Dakota

P.O. Box 1190
Fargo, ND 58107
aclund.org

In 1975, North Dakota's 44th Legislative Assembly voted to ratify the proposed 1972 Equal Rights Amendment to the U.S. Constitution. This was a principled and important decision that signaled to North Dakotans and the nation that women deserve equality. The ERA would, for the first time, provide an explicit guarantee in the U.S. Constitution of equal rights for all without regard to gender. The proposed amendment states that "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex," and has been ratified by 37 states. In order for ratification to happen, a minimum of 38 states must ratify the bill. But today, North Dakota legislators want to rescind their support of the Equal Rights Amendment.

The ACLU of North Dakota disagrees with supporters' assertions or analysis that North Dakota's approval to ratify the Equal Rights Amendment expired 40 years ago. In fact, attempts to "rescind" or limit a ratification have never been effective.

Article V of the U.S. Constitution speaks only to the states' power to ratify an amendment but not to the power to *rescind* a ratification. Looking to Congress' historical practice of not validating the rescissions from state legislatures in the context of constitutional amendments, it is likely that Congress would act accordingly in the case of the ERA. The Supreme Court decision in *Coleman v. Miller*, 307 U.S. 433 (1939) asserts that Congress retains wide discretion in shaping the ratification process. The Supreme Court explicitly held that *Congress* has the sole power to determine whether an amendment is sufficiently contemporaneous, and thus valid, or whether, "the amendment ha[s] lost its vitality through the lapse of time" and that congress can fix a reasonable time for ratification. The Court in *Coleman* concluded that, "Article V, speaking solely of ratification, contains no provision as to rejection. Nor has the Congress enacted a statute relating to rejections."

To put it another way, a ratification is something that happens at a moment in time—for North Dakota, in 1975–and once it's done, it's done. For example, that's why, in the case of the 14th Amendment, all three branches of the federal government treated that amendment as fully ratified and effective even though two of the necessary states had ratified but later voted to rescind. During the ratification process of the 15th Amendment, New York rescinded its vote before the last state necessary to ratify voted in favor in 1870. Despite this, New York was still listed as a ratifying state. Congress is likely to follow its historical pattern and not count rescissions.

Although a District Court in Idaho court held in 1981 that a state does have the power to rescind its ratification of the ERA, the Supreme Court vacated that decision after the ERA deadline had passed, so it is no longer on the books.[1] Thus, effectively, the Coleman decision is the leading authority.

[1] *State of Idaho v. Freeman* 529 F. Supp. 1107 (D. Idaho 1982).

Therefore, it is most likely that if SCR 4010 advances, the vote to rescind North Dakota's ratification of the ERA is a legal nullity.

The Equal Rights Amendment is as critical today as it was in 1972. In 2021, women are still not treated equally in our society. More than 50 years after the Equal Pay Act was passed, women are on average paid only 80 cents on the dollar nationally compared to men, and, for women of color, the wage gap is even greater. Women in North Dakota fare much worse being paid a mere 71 cents for every dollar paid to a man in the state, amounting to an annual wage gap of $15,026.[2] Women are vastly overrepresented among those living in poverty and women are disproportionately impacted by gender-based violence and other forms of harassment. Women are also vastly underrepresented among those holding political office and other positions of power.

ACLU
AMERICAN CIVIL LIBERTIES UNION
North Dakota

P.O. Box 1190
Fargo, ND 58107
aclund.org

Leveling the playing field between women and men should be a priority for North Dakota legislators. The ERA would ensure that discrimination and exclusion on the basis of pregnancy is recognized as sex discrimination under the Constitution, and authorize Congress to enact legislation to protect women against such discrimination. At the ACLU of North Dakota, we've heard from women whose employers refuse to accommodate their pregnancies at work or force them to pump breast milk in dirty supply closets. This discriminatory treatment is often based on paternalistic notions and outdated misconceptions about whether pregnant women should be working and is particularly prevalent in physically demanding or male-dominated fields. We cannot just pay lip service to the notion of gender equity. If we want equal participation – if we want women to be able to work to support their families and communities to benefit from their participation in professional and civic life – we must start from a place of equality.

In 1975, North Dakota legislators took a bold and principled position—that equality of rights shall not be denied or abridged on account of sex. The ACLU of North Dakota urges legislators vote **do not pass** on SCR 4010 and send a strong message: North Dakotans continue to value equality just as they did in 1975.

Sincerely,

Libby Skarin
Campaigns Director
ACLU of North Dakota
northdakota@aclu.org

[2] https://www.nationalpartnership.org/our-work/economic-justice/wage-gap/the-wage-gap-in-north-dakota.html

Amy Ingersoll-Johnson
District 32
Opposition SCR 4010

Chairman Kasper and members of the House Government & Veteran Affairs Committee. My name is Amy Ingersoll-Johnson and I am an advocate, a community participant, an employee, a mother and a woman. I am providing testimony in opposition to Concurrent Resolution 4010, clarifying that the ERA missed the 1979 deadline and initial extension to become ratified into the US Constitution, thereby nullifying the ratification in the 1975 44th ND Legislative Assembly. I have two courses of thought for why I am opposed to it.
This concurrent resolution may be moot in the eyes of Congress. The deadline imposed in the ERA was not listed in the text of the amendment, rather in the proposing clause. Additionally, precedent has been set that deadlines to not determine absolute validity. The Madison Amendment ratified as the 27th in 1992 after more than 203 years, shows us that Congress has the power to extend original deadlines and maintain legal viability of ratifications to an amendment.

What's more, is there appears to be legal precedent invalidating rescission of other amendment ratifications.

- 14th Amendment - New Jersey and Ohio voted to rescind but were both included in the published list in 1868.
- 15th Amendment – New York retracted but it was listed as one of the ratifying states
- 19th Amendment – Tennessee "non-concurred" but had already been listed in inclusion to the Constitution.

The rule that ratification once made may not be withdrawn has been applied in every case so far. The Supreme Court even upheld its constitutionality with supporting language indicating that once a state ratifies a federal amendment, so ends its ability to further participate in that amendment ratification process. I am no legal expert, but it seems to be that our resolution reaffirming support for the ERA in 2007 and this resolution are both unnecessary. Additional time and resources spent on this concurrent resolution are valuable time and resources wasted.

My second thought is more a profound disappointment that there appears to be waning support for the ERA. Legislators must acknowledge the inherent rights presumed in a man's involvement towards his own economic prosperity as well as the presumed control over his own property (to include his body). He has the right to worship as he chooses and apply his chosen morals to his own wellbeing. Yet these same rights are only outlined in limited scope for women through patchwork legislation across states and court decisions, which can be rolled back and reversed on the whims of changing legislative bodies and at the discretion of newly appointed courts. The 19th Amendment explicitly affirms a woman's right *only* to vote. Simply stating that we already have equal rights does not make it so.

Support of the ERA ensures a more robust tax base enabling our government to be more effective. When women earn dollar for dollar what men earn, the economic outcome helps women, their families and their communities. Women become fully involved in our own economic prosperity. When women have authority in when or whether to start a family, we are less likely to rely on government support and resources. We truly become the executers of our own property.
My morals should be regulated by my beliefs - not legislated by government. My healthcare should be decided between myself and my physician, not between law makers and church leaders. My rights should be protected by the constitution, not afforded by proxy from court rulings or differentiated by state laws. I am not a hidden agenda. I am a citizen of the United States deserving of Equal Rights guaranteed in the constitution. With all due respect to the committee, I would like a guarantee that all my inherent rights are protected; as I suspect some of you might too, if the vote was the only constitutionally protected right you could enjoy.

I am inspired by the education and experience that my representatives apply when crafting good legislation, and the caution and restraint they exercise when legislation might cross the line from personal belief to ineffective governance. My sincere hope is this is exemplified in a Do Not Pass for Concurrent Resolution 4010. Thank you.

Chairman Kasper and members of the House Government & Veteran Affairs Committee. My name is Daniella Ramirez-Thiedeman. I am here today to urge you to VOTE NO on Concurrent Resolution 4010.

When I was in my early 20's, my friend was date raped. I had attended a house party which they were hosting along with 4 of their roommates, right here in Bismarck ND. The party started off as a small backyard get together and quickly grew, as parties do. Soon it became a number of people that consisted of both friends and strangers. One of these strangers was constantly approaching my friend and making continuous unwanted advancements. This was noticed by most of our close friends in attendance. The drinks kept pouring and my friend's alertness continued to decline, with much help from the stranger. Until my friend was nowhere in sight, and neither was the stranger.

It wasn't until the next morning when I came back to their house to help cleanup, that I saw my friend on the verge of tears and indulging in self shame, that the horrifying truth surfaced. The stranger had waited until my friend was incapacitated to take them into a room and fondle, pressure, and eventually force them into unwanted sex. If this account has made you feel disgusted and maybe even angry, it should. Now imagine how infuriated you would be if my friend was a woman and his rapist was a man.

If that were the case, maybe there would have been government funding equally allocated towards a Men's Domestic Violence and Rape Shelter to go to, in order to seek help. Maybe his friends would have urged him to seek Men's Rape Survivor Counseling instead of making fun of him for sleeping with the "Ugly Chick"or mockingly saying things like, "Dude, she was holding you like a little baby because you couldn't even sit up". Perhaps, he would have realized that he had been raped if there were equal education programs in schools to help boys identify when they had been assaulted. Perhaps when she showed up that afternoon, with gifts,in an attempt to bribe him into "forgetting about it", the police would have been waiting to question her about perpetrating "Gross Sexual Imposition".

None of those things happened and because sex discrimination clearly is not enforced nor protected, a predator got away with rape in an environment full of witnesses. There is clearly an inconsistency between women and men and it is demonstrated everywhere in society.

The ERA is not distinctly a female or male issue as demonstrated in Section 1 which states: *The Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex*.

That is why it is important for our state to remain one of the great 38 states to ratify the Equal Rights Amendment. Let's work to ensure that there is legislation in place to support survivors like my friend and offer a nation that is truly enriched in equality.

In closing, I am going to leave you with a question that I would like you to think about during your decision making process. If the future is in fact female, shouldn't our son's rights be protected too?

Please VOTE NO on SCR 4010.

Thank you.

Daniella Ramirez-Thiedeman

I was born and raised in Fargo ND and have lived here most of my life. I am old enough to remember when ND first ratified the ERA and I am confident that most of you do not support rescinding it. But you feel obligated to vote with the pack. Please vote with your conscience and do the right thing. You know that women – your wives, your mothers, your sisters, your daughters, your granddaughters, and future generations – deserve to be equal under the US Constitution. Do something that will cause you to be proud when you are asked by your daughter or granddaughter how you voted.

Dear Committee Members,

Please render a DO PASS on Senate Concurrent Resolution 4010.

Passage of the ERA would have many unintended negative consequences including the overturning of laws and practices that benefit women because they would be viewed as showing preferential treatment. Women do not need the ERA because their rights are already protected by the Constitution, including the 14th and 19th Amendments, and several federal and state laws. In addition, the ERA would be used to overturn all restrictions on abortion, including the partial birth abortion ban, 3rd-trimester abortion ban, and parental notice of minors seeking an abortion, all of which would contribute significantly to the continued killing of the unborn. In both New Mexico and Connecticut, their state ERAs were used in the courts to overturn restrictions on abortions and mandate taxpayer funding of elective Medicaid abortions with the rationale that since abortion is unique to women, restricting abortions is a form of sex discrimination. (N.M. Right to Choose/NARAL v. Johnson, 975 P.2d 841, 1998; and Doe v. Maher, 515 A.2d 134 [Conn Super. Ct. 1986]) For these reasons and more, please render a DO PASS on Senate Concurrent Resolution 4010.

Thank you!!

Bea Streifel

NDCA

District 8 Bismarck

#9860

STATE REPRESENTATIVE STEVEN A. ANDERSSON (RETIRED)
521 WEST LANE
GENEVA, ILLINOIS 60134
STEVE@GOP4ERA.COM
WWW.GOP4ERA.COM

March 17th, 2021

Members of the North Dakota, House Government and Veterans Affairs Public Hearing

Re: Republican Support for the Equal Rights Amendment and in opposition to SCR 4010

Members of the House Government and Veterans Affairs Committee,

Thank you for giving me an opportunity to share our position in opposition to SCR 4010. By way of background, I am a retired State representative from Illinois and the Executive Director of Republicans for the ERA. I was proud to be the Republican Chief Co-Sponsor of the ERA in 2018 during our successful effort to become the 37th state to ratify the ERA. I think it is important to note two things about me:

1) I am a lifelong Republican and 2) I am Pro-Life.

For too long, the ERA has been viewed as a partisan issue; we need to realize that it is not and never has been. From the beginning, Equal Rights for Women and passing the Equal Rights Amendment was a plank in both parties platform. And today it remains so. Polling shows overwhelming support by both parties. I can proudly say that in my own effort in Illinois, a quarter of my Republican caucus joined our Democratic colleagues to pass the ERA.

This is because we recognized that the ERA reflects at least three core Republican principles.

1) We believe in individual rights and responsibilities. The ERA is fundamentally about leaving people alone and allowing them to govern their own lives and make the most of what they can do.

2) The ERA is about limited government. It is about keeping government out of the business of discrimination. It does not create additional rights or protections. It only protects all people from governmental discrimination.

3) The ERA supports a fundamental free market basic principle. It improves our workforce, by forcing men and women to compete on the same level playing field; more competition by men and women results in stronger, faster and more adaptable businesses and employees.

Of course, I would be doing you a disservice if I did not address the "800 pound gorilla" in the room: Abortion.

Contrary to the position of many opponents (and some supporters) of the ERA, abortion has nothing to do with the ERA, and never did. If it did, I would not support it and I would not be writing you this letter. Simply put, in 50 years of state level ERA's, not a single state court has held that the ERA mandates elective abortions, or full term abortions, or any of the other horror stories that have been thrown out there. NOT ONE. The only impact on abortions based on an ERA is the one exception that most Republicans already acknowledge; that a Doctor recommended medically necessary abortion (to protect the health/life of the mother) must be covered by insurance. That's it.

Simply put, the narrative about abortion is false.

Lastly, I would like to address the "process" arguments that suggest that the time has expired for ratification of the ERA. This is simply untrue. A plain reading of the United States Constitution provides two elements for amending the Constitution; 1) supermajority passage in the US House and Senate (done) and 2) ratification by 38 states (also done). You will not find any provision for a time limit on ratification in the Constitution. As strict constructionists, I would assume that most Republicans would oppose efforts to insert requirements into the Constitution that aren't actually written there.

Moreover the Supreme Court has made clear that even a 200 year old proposed amendment can still be ratified. Lastly, the Supreme Court has also recognized that the US Congress has its own power to remove the deadline (which the House of Representatives did last year) and that will be accomplished this year in the House and the Senate. Arguments to the contrary simply choose to ignore the clear precedent on this issue. The fight for the ERA is not over and no one can put a time limit on equality.

North Dakota is currently on the right side of history on the ERA. I urge you to remain there.

Again, I thank you for the opportunity to explain why Republicans should support the ERA. I would welcome any opportunity to assist or to explain in more detail. Please feel free to forward this letter as you deem fit.

I have also attached our Fact Sheet on the Congressional resolution to remove the deadline that passed today with Republican support.

Best Regards,

Executive Director of GOP4ERA.com
Representative Steven A. Andersson – Illinois (Retired)

For more information contact Steve Andersson at Director@GOP4ERA.com or 312-598-3716
www.GOP4ERA.com

GOP4ERA
REPUBLICANS FOR EQUAL RIGHTS

Support H.J. Res 17 (Speier -Reed) & S.J.Res.1 (Cardin - Murkowski) Remove the deadline for the ratification of the Equal Rights Amendment

In Brief:
Removal of the arbitrarily applied deadline for the passage of the ERA would further the goal of ensuing the protection of the rights of all people in the United States making the ERA the 28th Amendment to the U.S. Constitution.

Rationale:
Congress has the inherent power to amend its own legislation. There is no procedural prohibition to Congress removing a deadline contained in a Preamble to a bill.

Moreover the deadline is contrary to the plain language of the Constitution itself which has no provision for inclusion of deadlines on constitutional amendments. **Principles of Strict Construction** support corrective action by the current Congress to remove an invalid attempt to graft new requirements onto constitutional actions.

The ERA reflects core Republican principles and **90 percent of Republicans support the amendment**[1]

We believe in individual rights and responsibilities.

The ERA is fundamentally about leaving people alone and allowing them to govern their own lives and make the most of what they can do.

The ERA is about limited government.

It keeps government out of the business of discrimination. It **does not create additional rights** or protections. It only protects all people from governmental discrimination.

The ERA supports a fundamental free market basic principle.

It improves our workforce, by forcing men and women to compete on the same level playing field; more competition by men and women results in stronger, faster and more adaptable businesses and employees.

VOTE YES on H.J. Res 17 (Speier -Reed) & S.J.Res.1 (Cardin - Murkowski)

[1] According to a 2016 poll by research firm DB5 and Enso.

For more information contact Steve Andersson at Director@GOP4ERA.com or 312-598-3716
www.GOP4ERA.com

#9898, #9965, #9966, #10059

Dear Committee Members,

Please render a DO PASS on Senate Concurrent Resolution 4010. Passage of the ERA would have many unintended negative consequences including the overturning of laws and practices that benefit women because they would be viewed as showing preferential treatment. Women do not need the ERA because their rights are already protected by the Constitution, including the 14th and 19th Amendments as well as several federal and state laws.

In addition, the ERA would be used to overturn all restrictions on abortion, including the partial birth abortion ban, 3rd-trimester abortion ban, and parental notice of minors seeking an abortion, all of which would contribute significantly to the continued killing of the unborn. In both NewMexico and Connecticut, their state ERAs were used in the courts to overturn restrictions on abortions and mandate taxpayer funding of elective Medicaid abortions with the rationale that since abortion is unique to women, restricting abortions is a form of sex discrimination. (*N.M. Right to Choose/NARAL v. Johnson*, 975 P.2d 841, 1998; and *Doe v. Maher*, 515 A.2d 134 [Conn Super. Ct. 1986])

For these reasons and more, please render a DO PASS on Senate Concurrent Resolution 4010.

High Plains Fair Housing Center

#9923

March 17, 2021

Dear Chairman Kasper and Members of the House Government and Veterans Affairs Committee,

The High Plains Fair Housing Center stands in support of the Equal Rights Amendment and against SCR 4010. As a nonprofit civil rights organization that works across the state of North Dakota to combat housing discrimination, we see firsthand unequal treatment based on sex. We receive calls, for example, from women whose landlords let themselves into the women's apartments, unannounced and uninvited, to intimidate them. We hear from domestic violence survivors whose landlords decide to evict them due to the abuse of their partners. We hear from women who are outright blocked from housing just because they are women. Sex discrimination is real and pervasive.

While our work focuses on housing, we see how much sex discrimination in other areas (wages, health care, violence, etc.) intersect in people's lives. In North Dakota, female-led households, which make up about 19% of all households, experience far greater rates of poverty than the general population. The issues that lead to this disparity are complex and deeply entrenched in our society. To combat them, we must have broad protections.

We urge you to vote NO on SCR 4010.

Respectfully,

Maura Ferguson
High Plains Fair Housing Center

House of Representatives
Government and Veterans Affairs Committee
North Dakota Legislature

March 17, 2021

Mr. Chairman, members of the committee,

Please vote NO in SCR4010.

When I was a young mother in 1973 working in student affairs at NDSU. I became involved in the effort to ratify the Equal Rights Amendment. I gave speeches, testified, wrote letters, and generally got a political baptism. I remember vividly that we felt everything depended on the Republican Senate Majority Leader at the time, Senator Warner Litten of Fargo. He turned out to be a tremendous champion. I got to know some amazing Republican women, including national committeewoman Gerridee Wheeler and Senator Aloha Eagles.

Back then, the opponents said it would lead to unisex bathrooms, gay marriage, women in combat - all kinds of scare tactics, and all of them happened anyway! It's not a law, it's "just" a principle - the most fundamental principle in every kindergarten: fairness.

I hope you will champion equality by voting against HCR 4010. ERA benefits men, too, as in having access to paternity leave or opportunity for custody of children in divorce. Gender equality is in the constitution of 168 nations around the world. The federal government will have to settle the deadline issue - it's not up to the states. Our legislature has no need to make a statement.

Please Vote NO on 4010.

Thank you for your service,

Ellen Chaffee
Bismarck North Dakota
District 8

#9926

Testimony in opposition to SCR 4010
March 18, 2021

Chair Kasper and Members of the Government and Veterans Affairs Committee:

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

Good day. I am Karen Ehrens, a resident of Bismarck and member of the League of Women Voters. The Equal Rights Amendment (ERA) is that simple, really. The amendment is needed because the Constitution of the United States does not prohibit discrimination on the basis of sex. I urge you to vote "no" on this resolution.

Women have made progress toward equality over the years. However, we continue to battle systematic discrimination in the forms of unequal pay, workplace harassment, and domestic violence, as examples. I look at the list of members of the North Dakota Legislative Assembly, and I see only 23 percent are women. I look at the wage gap between what men earn in North Dakota and what women earn, and I see that women earn 76 cents for each dollar a man earns (U.S. Census Bureau, Current Population Survey, 2020). We still have a ways to go.

Just yesterday, on March 17, 2021, the United States House of Representatives voted to advance the Equal Rights Amendment by removing its arbitrary ratification deadline. And, according to the National Archives, once a state has sent their certified copy of their ratification action to the National Archives and Records Administration (NARA) and NARA has formally certified it, a state cannot rescind its ratification action. "The Archivist does not make any substantive determinations as to the validity of State ratification actions, but it has been established that the Archivist's certification of the facial legal sufficiency of ratification documents is final and conclusive." It is likely the protestations about the year of passage in North Dakota will do anything to take away the vote.

With respect to the women and men who have worked on this amendment since 1923, and to the North Dakotans and members of the League of Women Voters who worked long and hard for the passage and ratification of this amendment, I ask you to oppose Senate Concurrent Resolution 4010. For all of your daughters and granddaughters and descendants, do not leave for them a legacy of voting against equal rights for them.

Karen Ehrens
Bismarck, ND 58501

Good morning Chairman Vedaa and members of the Senate Government and Veteran's Affairs Committee. My name is Christi McGeorge, and I am proud to live and work in Fargo, ND. I am urging you for a Do Not Pass recommendation on SCR 4010.

The ratifications of the ERA by those the citizens of North Dakota elected in the 1970s reflects a brave and important step that legislators took, after much debate and conversation, to help ensure that all citizens of North Dakota were treated equally under the law. This legislation was needed in the 1970s and continues to be needed today. I wish our world had reached a place where all citizens were treated equally, and the ERA was no longer relevant, but that simply is not the case. We could look at countless examples, including the incidences of violence against women or lack of parental leave for many fathers, or the pay gap between women and men.

In 2005 and 2006, I had the privilege of interviewing North Dakotan women who were actively involved in helping to advocate for the ratification of the ERA. I heard them explain how seeing the ERA ratified in ND was one of the proudest moments in their lives as they felt that they were a part of something that would benefit their children and grandchildren and great-grandchildren. These were smart, brave, and selfless women who understood the importance of ERA, and having been raised in ND they knew that the ERA reflected the essential values that ND had instilled in them; namely, that we all deserve to be treated equally under the law and that unless we stand up for each other and for legislation that seeks to honor the worth of all of the citizens of ND we will not succeed as a state or as a country. I ask you to honor the legacy of these women and vote to recommend that SCR 4100 is not passed.

I also learned from these interviews about the lies that were told about the ERA in an attempt to prevent its ratification in ND. Many of these same lies are being repeated today. I ask you to take the time needed to educate yourself about what the ERA does and does not do – in 1975, your counterparts saw through these lies and understand that the ERA would benefit the citizens of ND and not harm them. Thank you for receiving my testimony today, and thank you for your hard work during this legislative session.

Testimony for SCR 4010
North Dakota should no longer support ratification of the Equal Rights Amendment due to its misuse on issues such as abortion and sexual/gender identity in states that currently have ERAs.
Passage of the ERA would have many unintended negative consequences including the overturning of laws and practices that benefit women because they would be viewed as showing preferential treatment.
Please vote yes on SCR 4010

Thank you,
Hannah

Honorable Chair and members of the committee, my name is Amy Howard from Bismarck. I am strongly opposed to SCR 4010.

As the honorable Ruth Bader Ginsburg stated the Equal Rights Amendment looks toward a legal system in which each person will be judged on the basis of individual merit and not on the basis of an unalterable trait of birth that bears no necessary relationship to need or ability. The Equal Rights Amendment is necessary because the Constitution has never been interpreted to guarantee the rights of women as a class and the rights of men as a class to be equal.

North Dakota ratified the Equal Rights Amendment on February 3, 1975 which was well before the original deadline of March 22, 1979. It is insulting to the women of North Dakota to attempt to withdraw North Dakota's ratification. Women should be treated equally, and this equality needs to be included in the US Constitution. Only a federal Equal Rights Amendment can provide the highest and broadest level of legal protection against sex discrimination.

Article V of the US Constitution grants no power of rescission to the states, and based on both precedent and statutory language, a state withdrawal of its ratification of a constitutional amendment has never been accepted as valid.

The ERA would make sex a suspect classification protected by the highest level of judicial scrutiny. Without the ERA in the Constitution, the statutes and case law that have produced major advances in women's rights since the middle of the last century are vulnerable to being ignored, weakened, or even reversed. Ratification of the ERA would also improve the United States' credibility globally with respect to sex discrimination. The majority of the world's countries affirm legal equality of the sexes in their governing documents. The late Supreme Court Justice Antonin Scalia disregarded 40 years of 14th Amendment precedent when he stated that the Constitution does not protect against sex discrimination. This remark has been widely cited as clear evidence of the need for an Equal Rights Amendment, in order to guarantee that all judges, regardless of their judicial or political philosophy, will have to interpret the Constitution to prohibit sex discrimination.

Without an ERA women's equal access to military career ladders and their protection against sex discrimination in their chosen profession are not guaranteed. Sexual harassment and sexual assault by fellow service members continue to be a disproportional threat for women on military duty and at the service academies. The issue of women and the draft is often raised as an argument against the ERA. In fact, the lack of an ERA in the Constitution does not protect women against involuntary military service. Congress already has the power to draft women as well as men, and the Senate debated the possibility of drafting nurses in preparation for a possible invasion of Japan in World War II.

Support for a constitutional guarantee of equal rights on the basis of sex is nearly unanimous. In a 2016 poll for the national ERA Coalition, the research agency db5 found that 94% of Americans support an amendment to the Constitution to guarantee equal rights for men and women. This support reached 99% among 18-to-24-year-olds and African-Americans, Asian-Americans, and Hispanic-Americans. However, 80% of those polled thought the Constitution already guarantees equal rights to males and females. The responses show that people in the United States overwhelmingly, almost unanimously, support a constitutional guarantee of equal rights on the basis of sex.

North Dakota needs to support women, stand up for women, and prove that women should be guaranteed they have protection against sex discrimination by not revoking the ratification of the Equal Rights Amendment that was passed by North Dakota over 46 years ago. There is no reasonable excuse for this state to take steps backwards for the women in North Dakota. I implore you to vote NO on SCR 4010!

NASW. North Dakota Chapter ...the power of social work
National Association of Social Workers

Chairperson Kasper and Members of the Government and Veterans Affairs Committee Committee,

My name is Kristin Rubbelke, and I am Executive Director of the National Association of Social Workers, North Dakota Chapter (NASW-ND). On behalf of NASW-ND, we ask that you oppose SCR 4010 due to its discriminatory nature and the previous reaffirming ratification in 2007.

The ERA is designed to necessitate place guards (via the Constitution) permitting all citizens have equal legal rights regardless of sex or gender. Removing the ERA only causes disadvantages to populations (e.g., females) that already face significant obstacles in society.

In ratifying the ERA in the United States Constitution, it increases the crucial necessity of sex and gender equality, spanning across a spectrum of society justice. It pushes for the enactment of legislation that would protect against discrimination and violence based on sex or gender. It also assists in tackling discrimination in government, education, law enforcement, and the military.

North Dakota ratified the ERA in 1975, reaffirming the ratification in 2007. The ND 2007 resolution passed by the ND Legislative Assembly states that “affirming the equal application of the United States Constitution to all citizens through the passage of the Equal Rights Amendment; declaring Friday, March 9, 2007, North Dakota Equal Rights Amendment Recognition Day; and encouraging a recommitment to the ratification of the Equal Rights Amendment in all states and final passage in Congress.” As a result, SCR 4010 counteracts relatively recent legislation.

The only laws affected by the ERA are those that discriminate. Women’s rights are under ongoing threats and constitutional safeguards, such as the ERA, are required to protect gains women have made. Referencing the NASW Code of Ethics (4.02), “Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability.”

On behalf of NASW-ND, I thank you for your consideration and ask that you oppose SCR 4010.

Sincerely,

Kristin Rubbelke
Executive Director
NASW-ND

Our names are Sharon E. Buhr and Dr. James B. Buhr . We live in Valley City, North Dakota.

We are writing today to urge a DO NOT PASS recommendation to SCR 4010.

Our nation was founded in the pursuit of equality and fairness. Today's Americans continue to advocate for equality in our society. A 2015 study showed 94% of Americans believe gender equality should be in the Constitution and 80% thought it was already there. It is not.

To quote Justice Antonin Scalia, "Certainly the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. It doesn't."

Every international constitution written since 1950 affirms gender equality. Only 16% of the world's nations do not include gender equality in their constitution. The United States is in that 16%, in the company of countries like Iran, Sudan, and Somalia.

Equality opponents portray the 5th and 14th Amendments as providing gender equality, when in fact they do not. The courts have interpreted gender discrimination to be covered with a lesser protection (intermediate scrutiny) in comparison to the strict scrutiny provided to race, religion, and country of origin discrimination cases. The difference in judicial scrutiny levels means it is easier to discriminate based on gender than it is on race, religion, or country of origin. It is time to level the playing field.

Legal advances for women in the last 40 years - the right to credit, the right to participate in school sports, the right to education - are based in laws or court decisions, which can be changed or reversed. Equality cannot be left to the political whims of who is sitting in a seat and must be enshrined in our Constitution.

The Equal Rights Amendment would modernize our Constitution and fix a purposeful and historical exclusion. Twenty-four simple words: Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

Let's not turn back the clock in North Dakota.

Please give a DO NOT PASS recommendation to SCR 4010.

Thank you for allowing me to testify.

Sharon E. Buhr
Dr. James B. Buhr
613 Chautauqua Blvd
Valley City, ND 58072
701-845-5197

March 17, 2021

To: Government and Veterans Affairs Committee

Representative Jim Kasper, Chair
Representative Ben Koppelman, Vice Chair
Representative Jeff Hoverson
Representative Jeffrey Magrum
Representative Karen Rohr
Representative Vicky Steiner
Representative Steve Vetter
Representative Scott Louser
Representative Mitch Ostlie
Representative Austen Schaur
Representative Greg Stemen
Representative Karen Karls
Representative Pam Anderson
Representative Mary Schneider

I write to you in opposition to SCR4010 and ask that you do not pass it. The Equal Rights Amendment is simply stated as follows:

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

Your committee consists of nine men and five women. Do you consider their rights to be equal to each other? The answer needs to be yes. If you vote to pass SCR4010, it will show that you do not believe that men and women are equal. It is that as simple.

That SCR4010 even exists is an insult to the girls and women of North Dakota. It was brought up in 2019 too and failed. Why is this being brought forward? There is no procedural reason. It is a waste of our taxpayer's money and your time. Who is behind this effort to undermine women?

Today in Washington the House passed with bipartisan support an ERA Time Limit Removal Bill. SCR4010 is on the wrong side of history, and the wrong side by not supporting North Dakota girls and women. A "Do Pass" from the committee is destructive to the girls and women in your families, your communities and most certainly our state.

Sincerely,

Kaye Carlson

Kaye Carlson

Opposition SCR 4010

Chairman Vedaa and members of the Senate Government & Veteran Affairs Committee. I write today on behalf of my daughters, my clients, my sisters, and all the incredible North Dakotan women in this great state. I oppose SCR 4010, legislation that would rescind North Dakota's ratification of the Equal Rights Amendment to the Constitution.

The Equal Rights Amendment is as critical today, and every day in the future, as it was back in 1972. Unfortunately, in our modern time, women are still not treated equally in our society. More than 50 years after the Equal Pay Act was passed, women are on average paid only 80 cents on the dollar compared to men (Women of color are paid even lower). Women disproportionately make up the population of folks living in poverty, and women are more significantly impacted by gender-based violence and other forms of harassment. I should know first hand, as an experienced social service provider and leader in the nonprofit world. In 2019 and 2020, 85% of the clients at the homeless shelter that I run self-reported being survivors of domestic violence. This is only the percentage of those willing to discuss their experiences with my team.

I am asking the Committee for a Do Not Pass recommendation. Please show our neighbors that equality is an important value.

Liz Larsen

Testimony in opposition to SCR4010

Angie Schmidt Benz – D28 – Moffit, ND

Chairperson Kasper and Members of the Government and Veteran's Affairs Committee,

My name is Angie Schmidt Benz and I am a constituent of D28. I am a mother, professional, and a proud woman. I come before you today to request a Do Not Pass recommendation on SCR 4010.

What is the ERA? It is simple. It states that the "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex". That is it. Nothing more. It says that you as a man and me as a woman will not be denied rights due to our sex. It creates equality amongst men and women. Something that is long overdue.

During the 2019 Legislative session this same resolution was brought up and my D28 senator was a co-sponsor of the resolution. I reached out to him as I normally do and I was taken back by his response to me. When asking why he would support a resolution that does nothing more than create equality between men and women he responded, "Do what you want to within the abilities and graces that God has given you, but don't demand it because you're mad you're not a man". It was then that I knew that there is no equality in ND. I have never been mad that I'm not a man. I am mad that I am still fighting for equal rights, but I don't demand them because I am mad that I am not a man. I have been raised to be a strong, independent woman. In return I have raised two strong, independent men and one very strong and independent young lady. In our house our kids are taught that we all have the same roles and responsibilities regardless of sex. We share in the workload of our home and ranch. We have equality. I would hope my state would want the same for our future generations.

I have spent time listening to the hearings and floor sessions this year. I have heard numerous times how our state is creating laws that are all in the name of women's rights. If we are truly for women's rights why are we spending our time and resources to rescind our 1975 ratification by the 44th Legislative Assembly? What are people so afraid of? We don't get to say that HB1298 is all about women's sports rights and then rescind our ratification of the ERA. It is contradictory. Our citizens deserve better.

Our 67th Legislative Assembly has the opportunity to keep our state moving forward. You have the opportunity to show that you truly believe in equility. You have the opportunity to not turn the clock back to 1975 in our state. Ironically, 1975 was the year I was born. To think that we are still fighting for equality after 45 years is astounding to me. I will continue to fight for our equality for all men and women. We deserve it.

Please vote Do Not Pass on SCR 4010 and let's move our state forward to equality.

Thank you,

Angie Schmidt Benz

3/17/2021

Dear members of the committee,

Today you sit in a position of inflection. A point at which a change in direction will occur in the state of North Dakota and the message it will send out into the world depending on how you vote on Resolution 4010. A resolution which attempts to rescind North Dakota's 1975 ratification of the Equal Rights Amendment. You can choose to recommend a No Pass on Resolution 4010 and send the message that women are valued and are welcome in North Dakota. Or, you can recommend a Pass on Resolution 4010 and send the message that women are less than and are only welcome in North Dakota to bear its children. As a woman, if Resolution 4010 passes, I will no longer consider myself a North Dakotan, which I am sure is no big loss in your eyes as I have borne no children for the state. But, North Dakota will also have a public relations nightmare on its hands as people and business flee the state for more welcoming locales. And, they need not go far. Minnesota is just next door and is currently moving in the opposite direction of North Dakota and advocating for an Equal Rights Amendment to the Minnesota state constitution. In which direction will you take North Dakota? I hope you choose to value women, support the Equal Rights Amendment, and oppose this offensive resolution.

Sincerely,

Tara L. Johnson
Grand Forks, North Dakota

Thank you for considering my written testimony in opposition to the rescinding of the ERA amendment in SCR 4010.

Women have been fighting for equal footing for decades. Actions to lessen what women already deal with will give an unfavorable impression of North Dakota and will drive talent away from here.

I would think, after watching much of the legislative body stand up to see a North Dakota legislator ousted for terrible behavior toward women, that it would give credence to keeping this amendment as is. Rescinding this amendment only gives fuel to continue such abhorrent behavior toward women.

Also, companies are looking for diversity, so a company looking to move into North Dakota will pause on that, knowing the state is unsupportive in its view of women.

Many bills being brought forward this session are painting North Dakota as an unprogressive, unwelcoming body of people. That saddens me and it should concern those who look at the fiscal impact of chasing away progress.

It saddens me that I have to look my daughters in the eye and say they matter less, according to the message being sent by this bill.

I encourage a no vote on this bill, SCR 4010.

Marsha Johnson
410 Level Plains Circle
Grand Forks, N.D. 58201

2021 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

SCR 4010 PM
3/18/2021

Clarifying the 1975 ratification by the 44th Legislative Assembly of the proposed 1972 Equal Rights Amendment to the Constitution of the US only was valid through March 22, 1979

Chairman Kasper opened the committee work meeting at 4:04 p.m.

Representatives	Roll Call
Representative Jim Kasper	P
Representative Ben Koppelman	P
Representative Pamela Anderson	P
Representative Jeff A. Hoverson	P
Representative Karen Karls	P
Representative Scott Louser	P
Representative Jeffery J. Magrum	P
Representative Mitch Ostlie	P
Representative Karen M. Rohr	P
Representative Austen Schauer	P
Representative Mary Schneider	P
Representative Vicky Steiner	P
Representative Greg Stemen	P
Representative Steve Vetter	P

Discussion Topics:

- Clarification of Equal Rights Amendment
- Rules of US Congress

Rep. B. Koppelman moved **Do Pass. Rep. Rohr** seconded.

Representatives	Vote
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Pamela Anderson	N
Representative Jeff A. Hoverson	Y
Representative Karen Karls	Y
Representative Scott Louser	Y
Representative Jeffery J. Magrum	Y
Representative Mitch Ostlie	Y
Representative Karen M. Rohr	Y
Representative Austen Schauer	Y
Representative Mary Schneider	N
Representative Vicky Steiner	Y
Representative Greg Stemen	Y
Representative Steve Vetter	Y

Motion passes. 12-2-0. **Rep. Rohr** is the carrier.

Chairman Kasper adjourned the meeting at 4:26 p.m.

Carmen Hart, Committee Clerk

REPORT OF STANDING COMMITTEE

SCR 4010: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SCR 4010 was placed on the Fourteenth order on the calendar.