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MEDIA ADVISORY: THE EQUAL RIGHTS AMENDMENT RETURNS TO THE STAGE

In the weeks just ahead, the apparitional Equal Rights Amendment--now openly acknowledged as an intended pro-abortion legal weapon--faces renewed scrutiny in a federal court of appeals, and possibly in the U.S. Senate, even as the nominee for Archivist of the United States rejects activist demands that she certify the ERA as part of the Constitution

WASHINGTON (Sept. 26, 2022)— The campaign to jam the long-expired 1972 Equal Rights Amendment into the U.S. Constitution has suffered new setbacks in recent weeks, and now faces additional high hurdles in the courts and in Congress during the weeks and months just ahead. “ERA-revival activists have been relying on broad dissemination of legal fantasies and historical inaccuracies, a gullible and supportive news media, and raw political pressure, in an attempt to bulldoze over decades of judicial rulings and constitutional guardrails,” said **Douglas Johnson**, director of the NRLC *ERA Project*, who has covered ERA-related matters in Congress, the state legislatures, and the courts for 40 years.

For decades, ERA proponents denied or deflected pro-life objections to the 1972 ERA language, often flatly asserting that the ERA had “nothing to do” with abortion. Now, however, leaders of prominent pro-abortion groups [and lawmakers](#) openly proclaim that if interpreted in the manner they deem proper, the proposed federal ERA language would bar limits on abortion (including late abortion) and limits on government subsidies for abortion. As **Ting Ting Cheng**, director of the Columbia University ERA Project, [recently explained](#), “For a long time, it was kind of, ‘Don’t talk about that.’ Or, ‘That will just scare off the Republicans, or that will make people in Congress not support the ERA’.” At a September 23 DNC event, **President Biden**, in response to a suggestion by longtime activist Eleanor Smeal that he tie the ERA to abortion in speeches, reportedly said, “You know, that’s a good idea.”

On Wednesday, September 28, 2022, the U.S. Court of Appeals for the District of Columbia will hear oral arguments in *Illinois v. Ferriero*, a lawsuit in which the attorneys general of Illinois and Nevada seek to persuade the court that the ERA is now part of the Constitution. According to the court, “Live audio from the oral arguments is streamed through the court’s YouTube channel...An mp3 of the audio recording is posted on the court’s website in the afternoon, typically by 2:00 p.m.”

The two states are appealing a strongly worded March 5, 2021 opinion by federal district **Judge Rudolph Contreras** (appointed by President Obama), who ruled (among other things) that the ratification deadline included in the 1972 ERA Resolution was constitutional and valid; that it would have been “absurd” for the Archivist of the United States (then **David Ferriero**, also appointed by President Obama) to have disregarded the deadline; and that the ERA had not been ratified. Five states opposed to the 1972 ERA are participating in the case as intervenors (Alabama, Louisiana, Tennessee, Nebraska, and South Dakota).

More than four decades after the ERA expired, the legal-political claims of the ERA revival movement have failed to gain a single iota of validation from the federal judiciary. “Every time the issue has been litigated in federal court, most recently in 2021, the pro-ERA side has lost, no matter whether the judge was appointed by a Democrat or a Republican,” [wrote the Washington Post Fact Checker in February 2022](#), awarding “Four Pinocchios” to certain claims by **Congresswoman Carolyn Maloney** (D-NY) regarding the ERA’s current status. The Fact Checker added, “two major court rulings have concluded that the ERA’s ratification deadline, as set by Congress, has expired--a position embraced by both the Trump and Biden Justice Departments. The Supreme Court in 1982 also indicated support for the idea that the deadline had passed.”

NRLC’s Johnson commented, “Over a 40-year period, 26 federal judges and justices--14 appointed by Republican presidents, 12 by Democratic presidents-- have had a shot at one or more components of ERA-revival legal claims. [The ERA-revival movement has yet to win a single vote from a single federal judge on any piece of their popsicle-stick tower of legal claims.](#) But four decades of judicial disdain hasn’t inhibited prominent media organs such as the *New York Times*, [NPR](#), [NBC News](#), and [The Atlantic](#) from promoting the fantasy-based claim that the ERA is on the very verge of becoming part of the Constitution.”

As the D.C. Circuit panel ponders the mish-mash of untenable novelties being advanced by Illinois and Nevada, the U.S. Senate too may pay a visit to Fantasy Island – perhaps taking up, before its pre-election recess, a House-passed measure that purports to “remove” the ratification deadline that was contained in the ERA Resolution submitted by Congress to the state legislatures on March 22, 1972. The triply unconstitutional measure, H.J. Res. 17, passed the House of Representatives on March 17, 2021, on a near-party-line vote (222-204), with [the lowest level of ERA support in the House in 50 years of roll call votes](#).

The *ERA Coalition* began the current Congress with [bold talk of a “Roadmap to 60” votes in the Senate](#), but the group has made no such prediction in the recent past. President Biden has urged the Senate to take up the measure. ERA-revival groups feel that they were promised a vote on the House-passed measure, and have become increasingly insistent that such a vote occur before the general election. Senate Majority Leader **Chuck Schumer’s** staff participated in a conference call with pro-ERA leaders on September 16, and a pre-recess vote was left open as a possibility. Still, on September 21, one prominent pro-ERA activist group, *Equal Means Equal*, publicly attacked the chief sponsor of the Senate companion measure (S.J. Res. 1), **Senator Ben Cardin** (D-MD), “who is supposed to be our voice on this in the Senate but who is actually obstructing ERA(!)” [exclamation point in original].

Besides purporting to retroactively edit the 1972 ERA Resolution that received the required two-thirds votes in Congress, H.J. Res 17/S.J. Res. 1 also implicitly reject the validity of the *pre-deadline* rescissions by several states of their earlier ERA ratifications. The claim that rescissions of ratifications are *unconstitutional* has now been explicitly or implicitly embraced by every Democrat in Congress, and by all (or nearly all) Democratic attorneys general, *in the context of the ERA*. Yet, many of these same officials (and many Democrat-aligned interest groups) have actively supported rescissions of ratifications of other proposed constitutional amendments, and/or rescissions of state legislative applications for an Article V constitutional convention.

“Activist-author Russ Feingold and Congressman Jamie Raskin are among the many examples of the have-it-both-ways approach to whether state legislatures have rescissions authority under Article V, a form of confusion or doubletalk now endemic among Democratic officeholders and Democrat-aligned interest groups,” said Johnson. “They count on the press not caring, and so far they have seldom been disappointed. Recently there has been a new rash of press coverage about the purported dangers of a

constitutional convention, yet these stories uniformly ignore the Democrats' two-faced approach to rescissions.”

Meanwhile, ERA activists inside and outside of Congress have campaigned over the past year and more for President Biden to order the Archivist of the U.S. to certify the ERA as part of the Constitution, notwithstanding judicial rulings to the contrary. In February, Congresswoman Maloney – who chairs the committee of the House of Representatives that has direct oversight authority over the National Archives – told *The Atlantic*’s Russell Berman that a commitment to certify the ERA “should be a litmus test for whoever is appointed” to replace longtime Archivist David Ferriero, who retired at the end of April.

Johnson, [in an op-ed in *The New York Sun*](#) (Sept. 7, 2022), called Maloney’s demand “extraordinary and outrageous” for an office that by law is to be filled “without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist.” (44 U.S.C. § 2103).

Maloney and other activists targeted Ferriero (who was personally strongly pro-ERA) up to the day he left the job, sometimes with [sharp criticism](#). In an exit interview on C-SPAN (May 1, 2022), Ferriero explained, “I can tell you that Ruth Bader Ginsburg twice told me, in this building, we need to start over [on the Equal Rights Amendment]...the time limit has expired, so that’s a constitutional question.”

In testimony before the Senate Homeland Security & Governmental Affairs Committee on September 21, 2022, Archivist-nominee Dr. Colleen Shogan clearly rejected the pressure campaign to certify the ERA. Dr. Shogan was asked by Senator Rob Portman (R-OH), “If confirmed, would you continue to abide by the January 2020 OLC opinion, as your predecessor did?” [The January 2020 opinion by the Department of Justice’s Office of Legal Counsel (OLC) said that the ERA expired unratified.] [Dr. Shogan replied](#), “Yes, I would,” adding, “I think who will decide the fate of the ERA is the federal judiciary and/or Congress.” Kate Kelly, a pro-ERA attorney-activist-PBS commentator who left Rep. Maloney’s staff earlier this year, tweeted afterwards that Shogan’s testimony meant that for “the Biden Administration to just publish and certify the ERA...IS NOT going to happen without congressional/judicial action...Shogan’s testimony today was the final nail in that pipe dream [sic].”

Founded in 1968, the National Right to Life Committee (NRLC), the federation of affiliates in each of the 50 states and the District of Columbia and more than 3,000 local chapters, is the nation’s oldest and largest grassroots pro-life organization. Recognized as the flagship of the pro-life movement, NRLC works through legislation and education to protect innocent human life from abortion, infanticide, assisted suicide and euthanasia.

Douglas Johnson, director of the National Right to Life ERA Project, is NRLC’s subject matter expert on the Equal Rights Amendment, an issue on which he has worked directly, and written, for 40 years. Mr. Johnson is available for telephone interviews or email exchanges to discuss the congressional and ratification histories of the ERA, to comment on the legal and political aspects of the issue, and to discuss the ERA-abortion connection.

@ERANoShortcuts is a non-NRLC Twitter account dedicated exclusively to tracking ERA-related news “from an ERA-skeptical perspective.” @ERANoShortcuts often addresses ERA-related issues that are outside of NRLC’s purview, but it is an excellent resource for keeping up to date on ERA-related developments in the courts, Congress, Executive Branch, state legislatures, and the media, including developments pertaining to the “ERA-abortion connection.”