



1446 Duke Street | Alexandria, Virginia 22314
(202) 626-8800 (voice) | www.nrlc.org | nrlc@nrlc.org



March 13, 2023

Senator Charles E. Schumer
Majority Leader
United States Senate
SH-322 Hart Senate Office Building
Washington, D.C. 20510

RE: Scheduling the show-vote on S.J. Res. 4, purporting
to place the Equal Rights Amendment into the U.S. Constitution

Dear Senator Schumer:

Regarding the scheduling of the coming performance on the Senate floor surrounding S.J. Res. 4, I would like to suggest that you schedule the show-vote on the political simulation of the long-dead Equal Rights Amendment for **Wednesday, March 22**.

A cloture vote on March 22 would be appropriate, since the date will mark the 44th anniversary of the day that the real Equal Rights Amendment irrevocably expired – a real event that has been followed by seemingly endless displays of political performance art, of which the upcoming vote on the absurd concept of retroactive “deadline removal” will be yet another.

Each of these political exhibitions involves the use of life-like simulations of a real (but long-dead) constitutional amendment proposal. There was the “deadline extension” exercise of 1978 – later held to be unconstitutional, in two different ways, by the only federal court ever to consider the matter. Then there were the exhibitions in various state legislatures, culminating in three legislatures pretending to ratify a proposal that was no longer before them – legislative actions that “came too late to count,” as U.S. District Judge Rudolph Contreras (an appointee of President Obama) patiently explained in his March 2021 ruling. And now we are on the brink of yet another spectacle: a Senate cloture vote on whether to advance a measure that purports to, Shazam!, insert a long-expired proposed amendment into the Constitution.†

Subsequent to the expiration of the real ERA in 1979, ERA revivalists have brought claims arguing for ERA’s continued vitality before six federal courts. Their pleas for judicial validation have been rejected in every case and by every judge – but the show must go on, right?

As recently as February 28, 2023, in a unanimous ruling, the U.S. Court of Appeals for the District of Columbia rejected the urgings of the attorneys general of Illinois and Nevada that the court declare the ERA to be ratified. The court demolished a key claim of the ERA revivalists – the absurd pretense that because the 92nd Congress placed the ratification deadline in the Proposing Clause of the ERA Resolution††, it was not legally binding. “[I]f that were the case, then the specification of the mode of ratification in every amendment in our nation’s history would also be inoperative,” the court dryly observed.

We expect you will agree that there is no need to rush and hold the vote any sooner than March 22. After all, in the last Congress, the House of Representatives sent over a similar measure (H.J. Res. 17) on March 17, 2021. You held it at the desk for 21 months and never called for a vote.†††. It would seem, then, that S.J. Res. 4 can also wait just a bit longer– until March 22.

It’s just a suggestion.

Sincerely,



Carol Tobias
President
National Right to Life Committee

(†) S.J.Res. 4 was drafted heedless of the inconvenient truths that Congress has no post-submission powers over constitutional amendment proposals; that the Senate lacks power to act on expired measures; and that when Congress exercises its powers under Article V, each house must muster two-thirds votes, not simple majorities. But the show must go on.)

(††) Every constitutional amendment resolution submitted by Congress to the states since 1960 has included a ratification deadline within the Proposing Clause, which is not a mere “preamble” but an operative provision that is binding on the states.)

(†††) As you understand, the Senate can no longer act on H.J. Res. 17 of the 117th Congress, because that measure has – if you’ll pardon us for using that pesky word again– *expired*.)