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Testimony of FreeState Justice -- IN SUPPORT OF HOUSE JOINT RESOLUTION 1

To the Honorable Chair Healy, Vice Chair Holmes, esteemed House Rules and Executive Nominations Committee members:

FreeState Justice—Maryland's LGBTQ+ pro-bono legal services and policy advocacy organization—loudly and proudly supports HJ001, the Equal Rights Amendment Affirming Resolution. **It is past time for the federal government to respect states' co-equal powers in the Article V Constitutional amendment process.** The Federal Government must recognize that ¾ of states have ratified the Equal Rights Amendment by finally certifying and publishing the ERA as the 28th Amendment to the US Constitution.

The Equal Rights Amendment declares 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." Countless courageous advocates have been fighting to see this language added to the constitution for over 100 years. Almost as soon as the 19th Amendment was certified in 1920, Alice Paul and Crystal Eastman drafted the language of the Equal Rights Amendment, sending it to Congress for the first time in 1923, where it was introduced every year until 1972 when both the US Senate and the House of Representative adopted the Equal Rights Amendment.

Article V of the US constitution says that Congress proposes an amendment, and ¾ of the states ratify it. That's it! Ratification is the second and final step of the process-- and, per the plain language of the Constitution, it's clearly the states' exclusive role as co-equals in the Amendment process to ratify amendments. **Once that ratification step is completed, a proposed amendment should become part of the Constitution.**

Maryland was the 18th state to ratify the ERA in May 1972, two months after Congress sent the amendment to the states for ratification. In 1977, all but three states had ratified the amendment. After 4 decades of inactivity, Nevada ratified in 2017 and Illinois in 2018. The ERA crossed the constitutional threshold on January 27, 2020, when Virginia ratified it. But the federal government is not following the instructions outlined in Article V of the Constitution—it has so far declined to recognize that the ratification threshold has been reached.

States' powers under the constitution must be respected by the Federal government and vice versa—that's how our system of federalism is designed. It shouldn't be any different for the Article V ratification process. States have fulfilled their constitutional role in guaranteeing equality on the basis of sex, and this must be respected by the federal government. So, other states have passed resolutions urging the federal government to certify and publish the ERA as the 28th Amendment.

In my role at FreeState Justice, I helped found the Maryland Equal Rights Action Network— MERAN. Our mission is to coordinate advocacy efforts across the state, mobilizing Marylanders in pursuit of equality, justice, and intersectional policy change at the state and federal levels. Our immediate focus is on the final publication of the Equal Rights Amendment as the 28th Amendment to the U.S. constitution.

Over the summer, MERAN wrote a letter urging Maryland legislators to pass a similar resolution as has been passed in other states, urging the Federal Government to respect Maryland's constitutional powers as a ratifying state and finally certify and publish the ERA. Over 30 organizations signed on, representing Marylanders of all backgrounds from across the state. **Our message was clear: we NEED the ERA.**

In response to this letter, Delegate Edith Patterson and Senator Ariana Kelly agreed to introduce our Joint Resolution HJ1/SJ1 which models the ERA-affirming language passed in other states— and does a bit more.

This past summer, in *John Doe v. CRS*, the Maryland Supreme Court held that under Maryland law, sex-based discrimination does not also encompass discrimination based on sexual orientation or gender identity. This is directly at odds with US Supreme Court precedent in *Bostock v. Clayton County*, where Justice Gorsuch held in 2020 that it is impossible to discriminate against someone because of their sexual orientation or gender identity without simultaneously discriminating against that person because of their sex. The Maryland Supreme Court's rejection of this principle is clearly illogical and simply cannot stand. **In the final WHEREAS clause, the resolution articulates a broad understanding of what constitutes sex-based discrimination under Maryland law, squarely rejecting the *Doe v. CRS* court's misguided decision and clarifying that sex-based protections also cover Marylanders' gender identity and sexual orientation.** This is a critical statement for the General Assembly to articulate this session via the resolution.

Maryland's ERA-affirming resolution before you today has historical precedent and is squarely within our state's federal Constitutional powers. **Its passage is the duty of the Maryland General Assembly, which must ensure that the federal government respects our state's rights under the Constitution.** It says that in Maryland, we know that sex-based discrimination takes many harmful forms, that sex-based protections must be broad and expansive to protect us from that harm, and it makes it clear that Maryland, as state that's ratified the ERA, views the ERA as the 28th amendment. With this resolution, Maryland expects—demands—the federal government to respect our co-equal role in the Article V process and finally recognize ratification, and it urges other states to take similar action.

We urge this committee to give this resolution a favorable report and take one more historic step towards finally enshrining in our Constitution the principle 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."

Respectfully submitted,
Camila Reynolds-Dominguez