2024-02-21 SJ1 (Support).pdf
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February 21, 2024

TO: The Honorable Will Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: Adam Spangler
Legislative Aide, Legislative Affairs, Office of the Attorney General

RE: Senate Joint Resolution 1 - Affirming the Federal Equal Rights Amendment - **Support**

The Office of the Attorney General urges the Judicial Proceedings Committee to report Senator Ariana Kelly's Senate Joint Resolution 1 - Affirming the Federal Equal Rights Amendment favorably. Senate Joint Resolution 1 (SJ1) would urge the President Biden Administration to publish the federal Equal Rights Amendment as the 28th Amendment to the U.S. Constitution. SJ1 would urge the U.S. Congress to affirm the Equal Rights Amendment as the 28th Amendment.

The Office of the Attorney General believes that there should be no time limit on equality. Throughout his time in Congress, Attorney General Brown has co-sponsored House Resolutions that sought to reaffirm and remove the deadline for the passage of the Equal Rights Amendment (ERA) enshrining it as the 28th Amendment of the Constitution.[1] The ERA would enshrine women's equality in the Constitution by mandating that "equality of rights under the

[1] Anthony G. Brown (2024), https://www.congress.gov/member/anthony-brown/B001304.

law shall not be denied or abridged by the United States or by any state on account of sex." [2] Currently, the only right explicitly guaranteed regardless of sex in the U.S. Constitution is the 19th Amendment right to vote. Passage of the ERA would create a new tool to advance equality in the fields of employment and pay, pregnancy discrimination, sexual harassment, violence, reproductive autonomy, and protections for LGBTQ+ individuals.

Every American deserves a fair and equal opportunity to thrive and provide for themselves and their families. Inequality is unacceptable, harmful and runs counter to our values as a country. Passage of SJ1 affirms the Maryland General Assembly's belief in equal rights for all.

For the foregoing reasons, the Office of the Attorney General urges a favorable report on SJ1.

cc: Senator Ariana B. Kelly
Judicial Proceedings Committee Members

[2] Text - H.J.Res.82 - 118th Congress (2023-2024): Expressing the sense of Congress that the article of amendment commonly known as the "Equal Rights Amendment" has been validly ratified and is enforceable as the Twenty-Eighth Amendment to the United States Constitution, and the Archivist of the United States must certify and publish the Equal Rights Amendment as the Twenty-Eighth Amendment without delay, H.J.Res.82, 118th Cong. (2023), https://www.congress.gov/bill/118th-congress/house-joint-resolution/82/text.

ERA Affirming Resolution - Letter to Legislators.d
Uploaded by: Camila Reynolds-Dominguez
Position: FAV

January 8, 2024

To the Members of the Maryland General Assembly:

As partners in pursuit of equal rights under the law for all Marylanders, regardless of race, color, ethnicity, national origin, age, disability, creed, religion, or sex—which includes equality on the basis of sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and decisions regarding reproductive healthcare and/or other aspects of an individual's bodily autonomy—we respectfully urge you to introduce a resolution in the 2024 General Assembly to clearly affirm the Legislature's view that the federal Equal Rights Amendment is the 28th Amendment to the United States Constitution.

The Equal Rights Amendment states:

> ***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.*

The Equal Rights Amendment is needed now more than ever to ensure we are all recognized by our country's Constitution as equal citizens:

- The United States has fallen out of the top third of countries internationally when ranked by gender equality and is ranked as the 10th most dangerous country in the world for women.[1]
- The ERA will make it easier for people who face discrimination on the basis of sex to seek legal recourse because it requires judges to apply the highest standard of constitutional scrutiny when deciding cases involving sex discrimination. Without the ERA, sex discrimination receives only "intermediate constitutional scrutiny" under judicial review, making it easier for the government and other entities to discriminate against individuals on the basis of sex without recourse.
- The ERA will give Congress greater power to enact laws that ensure adequate protection against sexual assault and domestic violence.
- The ERA will prevent Congress from enacting laws that curtail access to medical treatment and infringe upon civil rights, thus protecting abortion, contraception, equal

[1] https://www.reuters.com/article/us-women-dangerous-poll-factbox/factbox-which-are-the-worlds-10-most-dangerous-countries-for-women-idUSKBN1JM01Z

pay guarantees, no-fault divorce, gender affirming care, marriage equality, and a host of other rights.

- The ERA will set a clear expectation of sex equality in all aspects of life, making gender equality a fundamental and irrevocable tenet of society.
- As a constitutional amendment, the ERA could only be removed or revised with another constitutional amendment and therefore would be more enduring than legislation or court decisions. Without the ERA, state and federal legislation advancing gender equality can be repealed or replaced, court decisions are not necessarily permanent and can be retreated from or abandoned, and state-level equal rights amendments can be overridden by federal legislation or adverse court rulings.
- For decades the rights of women and LGBTQ+ people were guaranteed as a protected privacy interest under the 14th Amendment's substantive due process clause. However, the recent Supreme Court decision overruling *Roe v. Wade* illustrates that the decisions creating those 14th Amendment privacy protections against sex discrimination could be rolled back. As Justice Thomas' concurrence in *Dobbs* shows, some on the court believe that previous decisions extending the 14th Amendment's substantive due process protections specifically to sex discrimination, contraception, same-sex marriage, and same-sex intimacy should be overturned because, in their view, the framers of the 14th Amendment did not have sex equality in mind.

Article V of the US Constitution sets forth the following requirements for an amendment to be added to the Constitution: 2/3 of both houses of Congress must pass a proposed amendment and 3/4 of the states must ratify it. The first requirement was met when two-thirds of both houses of Congress passed the Equal Rights Amendment in 1972.[2] And in January 2020, Virginia became the 38th state to ratify the ERA, meeting the constitutionally prescribed 3/4 of states threshold and satisfying Article V's requirements.[3]

Although the Equal Rights Amendment should be considered as part of the constitution, the federal government doesn't currently recognize it as such. Weeks before Virginia's ratification, the Trump Administration directed the U.S. Archivist not to certify it. According to the administration, the final three ratifications were invalid because they took place after Congress' self-imposed deadline contained in the preamble to the amendment.[4] The Archivist is the official who collects ratifications, publishes ratifications in the Federal Register, and then certifies when enough states ratify. Publication is not listed in Article V, and thus not a requirement for an amendment. Despite a change in the White House in 2021, the Trump Administration's directive continues to stand in the way of formal federal recognition of equality on the basis of sex.

[2] https://catalog.archives.gov/id/7455549
[3] https://www.nytimes.com/2020/01/15/us/era-virginia-vote.html
[4] https://www.justice.gov/d9/opinions/attachments/2020/01/16/2020-01-06-ratif-era.pdf

By the plain text of Article V's requirements, the US Constitution changed in January 2020 when Virginia ratified the ERA. Per Section 3 of the ERA, it took legal effect as the 28th Amendment to the Constitution in January 2022. By Article V's terms, Congress "*shall propose Amendments to this Constitution*" and, as soon as ¾ of state legislatures ratify an amendment, it "*shall be valid to all Intents and Purposes, as Part of this Constitution.*" Article V makes both Congress and the States necessary and co-equal parties in the process to adopt a constitutional amendment. Even though Congress and the States have each completed their portion of the Amendment process for the ERA, the federal government has not acted accordingly, and so it is incumbent on the State Legislatures—as co-equal players in this process—to urge the federal government to follow its constitutional mandate and recognize the ERA as the 28th Amendment to the Constitution.

Attorneys General for the final three states to ratify the ERA (Nevada, Illinois, and Virginia) filed a lawsuit to require the Archivist of the United States to "carry out his statutory duty of recognizing the complete and final adoption" of the ERA as the 28th Amendment to the Constitution. Maryland's Attorney General issued an amicus brief in support of the lawsuit.[5] The D.C. Circuit Court ultimately left the issue in the hands of Congress to remove the time limit contained in its preamble and affirm the ERA as the 28th Amendment.

In a statement released after the D.C. Circuit Court's ruling, Illinois Attorney General Kwame Raoul and Nevada Attorney General Aaron Ford emphasized that the D.C. Circuit didn't validate the ratification deadline or deny the power of Congress to affirm the ERA, stating, "[t]he court's opinion makes it all the more important for the federal government and Congress to act—today—to ensure that the Amendment is acknowledged as the 28th Amendment to the Constitution."[6]

In the current Congress, identical resolutions have been introduced to remove the deadline imposed in the amendment's preamble and affirm the ERA as the 28th Amendment to the Constitution.[7] President Biden said in a statement that he will sign the bill once it passes both houses of Congress and then direct the Archivist to publish the ERA in the National Register as part of the U.S. Constitution.[8] Polls indicate 85% of voters approve of the ERA being part of the Constitution.[9] Despite the polls, at a recent hearing, opponent senators argued that the people of the United States do not need or want the Equal Rights Amendment in the Constitution. It is

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[5]https://www.cadc.uscourts.gov/internet/opinions.nsf/1D7BCC9C5AF51F968525896400549E2C/$file/21-5096-1987839.pdf

[6]https://news.bloomberglaw.com/daily-labor-report/equal-rights-amendment-backers-100-year-fight-turns-to-congress

[7] SJ Res 4 is the Senate resolution; HJ Res 25 is the House resolution

[8]https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/27/statement-from-president-biden-on-the-equal-rights-amendment/

[9]https://www.dataforprogress.org/blog/2022/6/2/fifty-years-later-voters-support-passing-the-equal-rights-amendment

clear that the Maryland General Assembly must act to ensure the will of Marylanders is recognized and acknowledged by the federal government.

Resolutions such as the ERA-affirming resolution we are urging you to introduce in the 2024 General Assembly (a) raise awareness that the ERA has met the ratification threshold to be included in the US Constitution, but is unrecognized by the federal government, and (b) make a clear statement that the States, especially the 38 states that have already ratified the ERA, affirm its validity and expect the Congress and Biden Administration to do so. To date California, Colorado, Hawaii, Illinois, and Minnesota have passed resolutions to affirm the ERA, and Georgia, Indiana, Massachusetts, New Jersey, New York, Ohio, and Tennessee have introduced ERA-affirming resolutions.[10] Additionally, advocates in some of those states are also suing their Attorneys General with the goal of securing state court rulings that affirm the ERA's legal effect and forcing state law to come into compliance with the Amendment.[11]

Strong deeds, gentle words. Marylanders have long been leaders in the fight for sex equality, with the Free State being one of the first to ratify the Equal Rights Amendment in 1972. However, we are falling behind our sibling state legislatures in this final stretch.

Why is the federal Equal Rights Amendment an issue for state legislatures? Article V of the US Constitution gives states a clear role in amending the Constitution: ratification of proposed amendments. In 2020, the required ¾ of states ratified the ERA, completing the Article V process and making it the 28th Amendment. When the federal government declines to affirm the validity of an amendment that has been duly ratified, as it is doing with the ERA, this calls into question federal recognition of state government and disregards the will of the people. Marylanders must not delay in making a clear statement that we expect the Constitutional powers of our legislature in the amendment process to be respected.

On a more practical level, absent the ERA in the Constitution, federal laws could be enacted that eliminate the rights Marylanders are guaranteed by our state-level Equal Rights Amendment, legislative action, or court rulings. Rights currently enjoyed by Marylanders that could be jeopardized include the right to equal pay, contraception, abortion care, gender-affirming care, and same-sex marriage and intimacy, among others. And even our own state Supreme Court may deliver rulings that weaken or eliminate sex-based protections that would be guaranteed by the Equal Rights Amendment, as we've just seen in this year's *John Doe v. Catholic Relief Services* ruling.

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[10] https://eracoalition.blog/2023/03/22/state-legislators-on-the-front-lines-in-fight-for-equal-rights-amendment-and-equal-protections-on-the-basis-of-sex/

[11] Elizabeth Cady Stanton Trust v. Nessel , Mich. Ct. Cl., 22-000066-MB, (2022) , Elizabeth Cady Stanton Trust v. Neronha , R.I. Super. Ct., PC-2022-02942, (2022), and Elizabeth Cady Stanton Trust v. James , N.Y. Sup. Ct., 903819-22, (2022) https://www.bloomberglaw.com/bloomberglawnews/daily-labor-report/XF3A1GFO000000?bna_news_filter=daily-labor-report#jcite

What influence could state legislatures have on the final affirmation, certification, publication, and judicial backing of a US constitutional amendment? According to Columbia Law Professor David Pozen, a renowned constitutional law scholar, clear statements by state legislatures could have a strong impact. He asserts the process for constitutional amendments is not clear cut, and virtually every amendment has faced legal challenges as to its adherence to Article V of the Constitution. Professor Pozen contends, "at the end of the day, whether an amendment has crossed the line and deserves to be considered part of the Constitution is a function of whether enough government officials, lawyers and ordinary citizens treat it as such."[12] And, as Justice Sotomayor wrote in her dissent in *303 Creative v. Elenis*, "The meaning of our Constitution is found not in any law volume, but in the spirit of the people who live under it." It is time for the Maryland General Assembly to declare that the people in our state understand the Constitution to guarantee 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.*"

As a coalition, our organizations represent a diverse range of Marylanders, all of whom stand to benefit from the protection from discrimination guaranteed by the Equal Rights Amendment, including those who continue to be discriminated against based on their sex and the intersections of their sex with their race, color, ethnicity, national origin, age, disability, creed, and religion.

We ask you to join us in our efforts to see the Equal Rights Amendment affirmed as the 28th Amendment to the US Constitution by introducing a resolution during the 2024 session of the Maryland General Assembly that:

- Affirms that the Equal Rights Amendment has met all procedural requirements for an amendment set by Article V of the US Constitution;
- Clearly asserts the Legislature's position as a ratifying State body that the ERA is the 28th amendment of the US Constitution;
- Urges the US Congress to pass a joint resolution affirming the Equal Rights Amendment as our 28th Amendment to the US Constitution;
- Urges President Biden to publish, without delay, the Equal Rights Amendment as our 28th Amendment to the US Constitution; and
- Calls on other states to pass the same or similar resolutions

We look forward to working with you on this and future legislation to guarantee equal rights for all Marylanders, especially those who face discrimination on the basis of sex—which includes discrimination because of sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and decisions regarding reproductive healthcare and/or other aspects of

[12]https://abcnews.go.com/Politics/democrats-unveil-new-effort-enforce-equal-rights-amendment/story?id=101220031

an individual's bodily autonomy—and any other protected class. We hope the Maryland General Assembly recognizes its important role in this process and understands that its actions bear significant consequences at this crucial moment for our Nation and state.

With sincere appreciation,

Allegany County Women's Action Coalition - Sarah Parsons

American Association of University Women (AAUW) Maryland - Tracy Lantz, President

AAUW Anne Arundel County - Roxann King

AAUW of Bethesda and Chevy Chase - Margaret Tevis

AAUW Garrett Branch - Judy A. Carbone, President

AAUW Harford County Branch - Sheila Allen, PhD

AAUW Howard County Branch - Beth Hayden

AAUW Kensington-Rockville Branch - Dian Belanger and Maritsa George, co-Presidents

AAUW Easton Branch - Susan Regier

Anne Arundel County Maryland NOW - Sandy Bell

Baltimore Safe Haven

Baltimore Safe Haven - Iya Dammons

Business & Professional Women - Maryland (BPW MD) - Alicia Hannon, President

Concerned Black Women
Working Together To Build More Opportunities!

The Concerned Black Women of Calvert County - Sinetra Bowdry, President

FreeState JUSTICE
MARYLAND'S LGBTQ ADVOCATES

FreeState Justice - Camila Reynolds-Dominguez, Policy Advocate & Legal Impact Coordinator

NAACP
GCNAACP
#7139
Garrett County

Garrett County NAACP branch #7139 - Devin Barroga, President

GLSEN Maryland - Brendon Bailey, Chair

League of Women Voters of Maryland, Inc.

League of Women Voters Montgomery County MD

Maryland Coalition Against Sexual Assault - Lisae C Jordan, Esquire

Maryland Commission for Women - Tawanda A. Bailey, Chair

Maryland Legislative Agenda for Women (MLAW) - Michaele Cohen

Maryland LGBTQ+ Chamber of Commerce - Terri Hett

Maryland NOW - Barbara Hays

Maryland Women's Heritage Center - Kathi Santora, President

Montgomery County Business & Professional Women (MC BPW) - Alicia Hannon, President

Montgomery County Maryland NOW - Jeannette Feldner

Montgomery County Women's Democratic Club - Tazeen Ahmad

Mountain Maryland Alliance for Reproductive Freedom - Cresta Miller-Kowalski, President

The National Coalition of 100 Black Women Prince George's County - Thedosia Munford

National Congress of Black Women-Prince George's County Maryland, Inc. - Dr. Evelyn Y. Jenkins, Ph.D., President

National Council of Jewish Women

National Council of Jewish Women, Maryland SPA - Lesley Frost

THE pride center OF MARYLAND

Pride Center of Maryland - Tramour Wilson

Reproductive Justice Maryland

Reproductive Justice Maryland - Jakeya Johnson

TALBOT DEMOCRATIC WOMEN'S CLUB - Dr. Lynne Fahey McGrath

Women's Law Center of Maryland

The Women's Law Center of Maryland - Michelle Siri

SJ001 FAVORABLE - FreeState Justice1.pdf
Uploaded by: Camila Reynolds-Dominguez
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Testimony of FreeState Justice -- IN SUPPORT OF SENATE JOINT RESOLUTION 1

To the Honorable Chair Smith, Vice Chair Waldstriecher, esteemed Senate Judicial Proceedings committee members:

FreeState Justice—Maryland's LGBTQ+ pro-bono legal services and policy advocacy organization—loudly and proudly supports SJ001, 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

SJ 01 - Affirming the Federal Equal Rights Amendme

Uploaded by: Catherine OMalley

Position: FAV

Women's Law Center of Maryland
JUSTICE FAIRNESS EQUALITY
102 West Pennsylvania Avenue, Suite 100 Towson, MD 21204
phone 410-321-8761 fax 410-321-0462 www.wlcmd.org

BILL NO:	Senate Joint 0001
TITLE:	Affirming the Federal Equal Rights Amendment
COMMITTEE:	Judicial Proceedings
HEARING DATE:	February 21, 2024
POSITION:	**SUPPORT**

The Women's Law Center supports SJ0001, the ERA affirming resolution which makes a clear statement that the states affirm the validity of the ERA and urges Congress and the Biden administration to do so. Certifying and publishing the ERA so it is a part of the U.S. Constitution is urgent considering the Supreme Court decision *Dobbs v. Jackson Women's Health Organization*, 597 U.S. __ (2022) overturning *Roe v. Wade*, 410 U.S. 113 (1973).

It is imperative that the Constitution explicitly state that that women and people across the gender spectrum are equal to men, and to affirm that gender-based discrimination is unconstitutional. This is especially important now considering recent attacks on women's rights and the rights of members of the LGBTQ+ community. The ERA has enormous support among democratic and republican voters. The concept of equal rights for all people should not be debatable. Enshrining this in our Constitution will guarantee that all our citizens have equal protection under the law.

The ERA was introduced in Congress over 100 years ago. The amendment would provide a fundamental constitutional remedy against sex discrimination by guaranteeing that legal rights may not be denied or diminished based on sex. The sex and or sexual orientation of an individual would be considered a suspect classification for constitutional analysis. Any governmental actions that treat men and women differently would be subject to strict judicial scrutiny.

The Women's Law Center of Maryland believes that the ERA affirming resolution is vital to protecting the rights of all citizens regardless of their sex, sexual orientation, or gender identity. Therefore, we urge a favorable report on SB0001.

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Testimony in Support for SJ 0001
Affirming the Federal Equal Rights Amendment
Judicial Proceedings Committee
February 21, 2024

FAVORABLE

TO: Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

FROM: Kay Schuster and Ellen Sizemore, Co-Presidents
Hadassah Greater Baltimore

On behalf of the Greater Baltimore Region of Hadassah, representing over 4,100 Marylanders, we are writing to urge you to **vote FOR Senate Joint Resolution 1 (SJ0001) Affirming the Federal Equal Rights Amendment.**

This resolution urges the Administration of President Joseph Biden to publish the Federal Equal Rights Amendment (ERA) as the 28th Amendment to the U.S. Constitution and for the U.S. Congress to affirm, by joint resolution, the ERA as the 28th Amendment.

Hadassah vigorously supports all efforts to eliminate discrimination and to promote women's economic equality and security. We believe that without the ERA in the U.S. Constitution, federal laws could be enacted that jeopardize or eliminate rights that are currently guaranteed to us by Maryland's Equal Rights Amendment, including equal pay, contraception, abortion care, gender-affirming care, same-sex marriage, among others.

Maryland was one of the first states to ratify the ERA in 1972. Please confirm the will of the people.

We strongly urge you to support Senate Joint Resolution 1 (SJ0001).

Thank you,
Kay Schuster and Ellen Sizemore
Co-Presidents, Hadassah Greater Baltimore
P.O. Box 21571
Pikesville, MD 21282-1571
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PPM_SJ 1 Testimony_2024 Feb 20.pdf
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Committee: **Judicial Proceedings Committee**

Bill number: **SJ1 – Affirming the Federal Equal Rights Amendment**

Hearing Date: **February 21, 2024**

Position: **Favorable**

Planned Parenthood of Maryland (PPM) applauds the Maryland Senate for taking up *SJ 1 - Affirming the Federal Equal Rights Amendment*. Despite gains made to offer people protections on the basis of sex, sex has remained an ambiguous classification under the United States Constitution and federal law. This is in large part due to the absence of the Federal Equal Rights Amendment. Governmental actions discriminating on the basis of sex are subject to a lower degree of scrutiny than those impacting other protected categories, such as race, religion, national origin, and alienage.[1] As a result, these laws and statutes have been left open to a greater degree of inconsistency in interpretation and application.[2]

Although the Maryland Constitution has guaranteed protection from sex-based discrimination, these hard-earned individual rights and freedoms are still subject to the capriciousness of federal politicians, who are rapidly overturning settled precedent. The uptick of patients forced to seek care in Maryland shows that a federal Equal Rights Amendment (ERA) is necessary to protect the bodily autonomy and reproductive freedom of women and all pregnant people in states that refuse to do so.

PPM's work is rooted in the principles of bodily autonomy and reproductive freedom and the conviction that health care decisions should be between only people and their health care providers. To protect these rights and freedoms, now is the time to secure protections from discrimination on the basis of sex in the United States Constitution.

Nowhere is this need clearer than in sexual and reproductive health care. In 2022, the Supreme Court struck down nearly 50 years of precedent by overturning *Roe v. Wade*, severely inhibiting access to abortion care for a third of women in America despite the fact that abortion has been shown to be

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[1] Cornell Law School Legal Information Institute. "suspect classification." Accessed: February 20, 2024. https://owl.purdue.edu/owl/research_and_citation/chicago_manual_17th_edition/cmos_formatting_and_style_guide/web_sources.html.

[2] Francis, Roberta W. "Frequently Asked Questions." Last updated June 5, 2023. https://www.equalrightsamendment.org/faq#:~:text=Advocates%20contend%20that%20having%20the,and%20comprehensive%20reproductive%20health%20care.

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significantly safer than childbirth.[3] This year, the Court will hear a case that could have major impacts on women and pregnant people's access to mifepristone, a drug used in medication abortions that the Food and Drug Administration approved more than 20 years ago. Time and again, federal politicians and activist judges have colluded to upend decades of precedent and placed undue barriers on women and pregnant people to access safe and approved health care. We believe these efforts are a form sex discrimination.

They have also thrown sexual and reproductive health care into disarray. Patients struggle to find the care they need; many go without it. Rather than focusing on advancing health equity, PPM and other providers have been forced to pivot to maintain services for Marylanders while meeting increased demand from out-of-state residents. The percentage of out-of-state patients coming to PPM clinics has doubled since the *Dobbs* decision; out-of-state patients now account for nearly 10 percent of all clinic appointments.

For the foregoing reasons, and to establish Maryland as a national leader in guaranteeing equal rights and securing protections from discrimination based on sex for all Americans, we urge a favorable report on SJ 1. If we can provide any further information, please contact Erin Bradley at Erin.Bradley@ppm.care or (443) 604-3544.

[3] Raymond EG, Grimes DA. "The comparative safety of legal induced abortion and childbirth in the United States. Obstet Gynecol." 2012 Feb; 119 (2 Pt 1): 215-9. doi: 10.1097/AOG.0b013e31823fe923. PMID: 22270271.

MLAW Testimony - SJ1 - Affirming the Federal Equal
Uploaded by: Jessica Morgan
Position: FAV

Bill No:	SJ1
Title:	Affirming the Federal Equal Rights Amendment
Committee:	Judicial Proceedings
Hearing:	February 21, 2024
Position:	SUPPORT

The Maryland Legislative Agenda for Women (MLAW) is a statewide coalition of women's groups and individuals formed to provide a non-partisan, independent voice for Maryland women and families. MLAW's purpose is to advocate for legislation affecting women and families. To accomplish this goal, MLAW creates an annual legislative agenda with issues voted on by MLAW members and endorsed by organizations and individuals from all over Maryland. **SJ1 - Affirming the Federal Equal Rights Amendment** is a priority on the **2024 MLAW Agenda** and we urge your support.

SJ1 expresses the sense of the Maryland Legislature that the federal article of amendment commonly known as the "Equal Rights Amendment" has met all Article V requirements for an amendment to the Constitution of the United States and is valid as the 28th Amendment to the Constitution of the United States and urges the President and Congress of the United States to affirm the validity of the Equal Rights Amendment and direct the Archivist of the United States to certify and publish the Equal Rights Amendment as the 28th Amendment without delay.

Marylanders adopted a state-level equal rights amendment in our state constitution in 1972, protecting all Marylanders from discrimination based on sex. Absent the federal Equal Rights Amendment in the United States Constitution, Maryland's state-level equal rights amendment can be overridden. In addition, state and federal laws advancing sex equality can be readily repealed or replaced, as we have seen recently with federal bills being introduced to prohibit abortion and court decisions prohibiting the sale of abortion medication.

The federal Equal Rights Amendment has met all requirements in the United States Constitution for an amendment having been passed by 2/3 of Congress in 1972 and fully ratified by ¾ of the states in 2020. It is the first fully ratified amendment not to be certified and published as part of the United States Constitution. This resolution reflects the decades-strong collective will of Marylanders for sex equality and sends a strong message to the federal government that, as a ratifying state, the Maryland Legislature expects its constitution powers in the amendment process and to be respected.

This resolution benefits women by sending a clear message to the federal government, other states, and Marylanders themselves that the Maryland Legislature views the federal Equal Rights Amendment as part of the United States Constitution and enforceable as such. The federal Equal Rights Amendment benefits women by:

- making it easier for women who face discrimination on the basis of sex to seek legal recourse;
- giving the United States Congress greater power to enact laws that ensure adequate women's protection against sexual assault and domestic violence;

• preventing the United States Congress from enacting laws that curtail women's access to medical treatment and infringe upon their civil rights, thus protecting abortion, contraception, equal pay guarantees, no-fault divorce, gender affirming care, marriage equality and a host of other rights; and

• setting a clear expectation of sex equality in all aspects of life and making it a fundamental and irrevocable tenet of society.

Five states have passed resolutions to affirm the federal Equal Rights Amendment, and seven others have introduced such resolutions. According to constitutional law scholars, clear statements by state legislatures could have a strong impact on the final affirmation, certification, publication, and judicial backing of an amendment to the United States Constitution. Maryland women have historically benefited from and will continue to benefit from the leadership role of the Maryland Legislature in the fight for sex equality.

For these reasons, MLAW strongly urges the passage of SJ1.

MLAW 2024 Supporting Organizations

The following organizations have signed on in support of our 2024 Legislative Agenda:

1199 SEIU United Healthcare Workers East
AAUW Anne Arundel County
AAUW Garrett Branch
AAUW Kensington-Rockville Branch
AAUW Maryland
Adolescent Single Parent Program (PGCPS)
Anne Arundel County Commission for Women
Anne Arundel County NOW
Baltimore County Commission for Women
Black Women for Positive Change, Baltimore Chapter
Bound for Better, Advocates for Domestic Violence
Bound for Better, advocates for Domestic Violence
Business & Professional Women/Maryland
Center for Infant & Child Loss
Child Justice, Inc.
Church Women United, Inc.
Climate XChange Maryland
Court Watch Montgomery
CTLDomGroup Inc
DABS Consulting, LLC
Engage Mountain Maryland
Frederick County Commission For Women
If/When/How at University of Baltimore School of Law
Lee Law, LLC
Les Etoiles in Haiti
Maryland Coalition Against Sexual Assault
Maryland Legislative Coalition
Maryland Network Against Domestic Violence
Maryland WISE Women
Miller Partnership Consultants
MomsRising
Montgomery County Alumnae Chapter, Delta Sigma Theta Sorority, Inc.
Montgomery County NOW
National Coalition of 100 Black Women, Inc., Anne Arundel County Chapter
National Organization for Women, Maryland Chapter
Rebuild, Overcome, and Rise (ROAR) Center at UMB
REHarrington Plumbing and Heating
Reproductive Justice Maryland
Stella's Girls Inc
The Federation of Jewish Women’s Organizations of Maryland
The Hackerman Foundation
The Relentless Feminist
The Salvation Army Catherine’s Cottage
Top Ladies of Distinction, Inc., Patuxent River
Top Ladies of Distinction, Prince George's County
TurnAround Inc.
University System of Maryland Women's Forum
Women of Action Maryland
Women's Equity Center and Action Network (WE CAN)
Women's Law Center of Maryland
Zeta Phi Beta Sorority, Incorporate - Alpha Zeta Chapter
Zonta Club of Annapolis

Maryland Legislative Agenda for Women
102 W. Pennsylvania Avenue, Suite 100 ▪ Towson, MD 21204 ▪ 443-519-1005 phone/fax
mdlegagenda4women@yahoo.com ▪ www.mdlegagendaforwomen.org

WDC 2024 Testimony_SJ0001_FINAL.pdf
Uploaded by: JoAnne Koravos
Position: FAV

MONTGOMERY COUNTY, MARYLAND
WOMEN'S DEMOCRATIC CLUB
P.O. Box 34047, Bethesda, MD 20827 www.womensdemocraticclub.org

Senate SJ0001- Affirming the Federal Equal Rights Amendment
Judicial Proceedings Committee – February 21, 2024
SUPPORT

Thank you for this opportunity to submit written testimony concerning an important priority of the **Montgomery County Women's Democratic Club (WDC)** for the 2024 legislative session. WDC is one of Maryland's largest and most active Democratic clubs with hundreds of politically active members, including many elected officials.

WDC urges you to pass SJ0001, to clearly affirm that the federal Equal Rights Amendment is the 28th Amendment to the United States Constitution. The fight to add the Equal Rights Amendment to the Constitution began over 100 years ago. Now that it has been passed by Congress and fully ratified by the States, it is past time to recognize Maryland's (and all ratifying states') co-equal role in the Article V Amendment process and certify and publish the ERA as the 28th Amendment once and for all.

Marylanders have long been leaders in the battle for gender equality. On May 26, 1972, Maryland became the 18th state to ratify the federal ERA. Later that same year, Maryland enacted its own-state-ERA, incorporating Article 46 into the Maryland Declaration of Rights, which declares, "Equality of rights under the law shall not be abridged or denied because of sex." However, as we've seen, without a federal ERA in our Constitution, our state constitutional protections could be jeopardized by opportunistic meddling by future courts or Congress.

In today's political climate, it's urgent that we secure gender and social equity for all. With the Equal Rights Amendment in our federal Constitution we safeguard abortion care, defeat bans on gender-affirming healthcare and other policies attacking trans people, protect marriage equality across race and gender, close the outrageous gender wage gap, combat violence against women and girls, and so much more.

Equality is the birthright of each and every one of us. We all deserve the unalienable right to live free from sex-based discrimination. At WDC we are unequivocally committed to this cause until the ERA is finally and universally recognized as the law of the land.

We ask for your support for SJ0001 and strongly urge a favorable Committee report.

Tazeen Ahmad
WDC President

Cynthia Rubenstein
Co-Chair
WDC Advocacy Committee

SJ0001 Testimony 20240220.pdf
Uploaded by: Judy A. Carbone
Position: FAV

POSITION: Favorable SJ0001 "Affirming the Federal Equal Rights Amendment"

TO: Senate Judicial Proceedings Committee

DATE: February 20, 2024

FROM: Judy A. Carbone, Swanton, Garrett County, MD
AAUW-Maryland, ERA Task Force Chair
AAUW-Garrett Branch, President

My name is Judy Carbone, and I am providing this testimony today as a member of the American Association of University Women (AAUW) of Maryland, for which I am the Chair of the Equal Rights Amendment Task Force. I am also the President of the Garrett County Branch of AAUW.

As you may know, AAUW is the nation's largest and oldest women's equity organization, having been empowering women since 1881. Our mission is to advance gender equity for women and girls through research, education, and advocacy. Our work is based on the values of being nonpartisan, fact-based, principled, inclusive, and intersectional.

I ask that the committee deliver a favorable vote on SJ0001, Affirming the Federal Equal Rights Amendment. To guarantee equality, individual rights, and social justice for a diverse and inclusive society, AAUW advocates the passage and ratification of the Equal Rights Amendment.

The majority of Americans mistakenly believe that women and men have equal rights under the Constitution. The 14th Amendment of the Constitution explicitly states that men are guaranteed equality under law but is poignantly silent about women. The advancement of women's equality continues incrementally through patchwork legislation and court decisions, but women's equality under law remains illusory as these laws can be changed or even revoked at the whim of legislators and judges. The Equal Rights Amendment (ERA) would provide, once and for all, the constitutional guarantee that all men and women are truly equal under the law and that these rights cannot easily be abridged.

Make no mistake, we need the Equal Rights Amendment to include women in the U.S. Constitution. The progress our country has made on gender equality through the courts and patchwork legislation can be reversed. We have seen that clearly during the past few years. Sex discrimination does not have the same legal protection as other constitutional classes, such as race, religion, or nationality. This constitutional double standard means that hard-won legislative and court victories against sex discrimination are not permanent—and can be rolled back or difficult to enforce. The lack of constitutional equality reaches every aspect of women's

lives. The ERA would clarify, once and for all, that sex discrimination in employment and wages, reproductive rights, insurance, Social Security, education, and more is a violation of constitutional rights. Importantly, the ERA would also provide new opportunities to seek legal recourse when an individual faces sex discrimination and would place the burden of proof on those who discriminate instead of those fighting for equality.

The legislators of Maryland understand the critical importance of this amendment. In 1961, they passed a joint resolution calling on the U.S. Congress to approve the ERA in both chambers as required in Article V, neither of which had done so even though it had been introduced in both chambers every year since 1923. Just two months after the ERA was finally approved in both chamber of Congress in 1972, Maryland became the 18th state to ratify the amendment. That same year in November, a ballot initiative was presented to the citizens of Maryland to add a state-level equal rights amendment to the Maryland Constitution, which they did by an overwhelming majority of supportive votes.

Maryland has done its job in ratifying the Federal Equal Rights Amendment. The States have done their job in ratifying the amendment when, in 2020, Virginia became the 38th state needed to meet the 3/4 ratification requirement of Article V. Congress now needs to do its job to see that the arbitrary deadline adopted in 1972 and extended in 1979 is removed, a deadline which has no mention in Article V and was not in the amendment language that the states ratified.

With a favorable vote on SJ0001 in this Committee, a favorable vote on HJ1 in the House Committee, and then a favorable vote in both chambers, we, the people of Maryland, can send a strong message to Congress that it is time to give full gender equality rights to all people of Maryland and all citizens of the United States.

It is time to certify the Equal Rights Amendment and officially recognize what many of us already know…having met Article V requirements, the ERA Is the 28th Amendment.

Thank you for your favorable vote on SJ0001.

MWHC SJ0001 Testimony 20240220.pdf
Uploaded by: Kathi Santora
Position: FAV

POSITION: Favorable SJ0001 "Affirming the Federal Equal Rights Amendment"

TO: Senate Judicial Proceedings Committee

DATE: February 20, 2024

FROM: Kathi Santora, President, Maryland Women's Heritage Center
www.marylandwomensheritagecenter.org

As President of the Maryland Women's Heritage Center's (MWHC) Board of Directors, I am pleased to share with you that MWHC and our volunteers recognize, document, and celebrate the contributions of Maryland women, past and present, to our state. We add "HERstory to history to tell OURstory." MWHC is a nonpartisan organization that believes that equality should be the principle on which everyone agrees.

Recently, the MWHC Board of Directors joined with more than 35 other women's organizations to co-sign a letter to Maryland State Legislators that urged them to introduce and adopt a resolution in the 2024 General Assembly that clearly affirms the Legislature's view that the federal Equal Rights Amendment is valid and should finally be published as a part of the United States Constitution. We are grateful to Senator Ariana Kelly that she was quick to enthusiastically answer the call and filed SJ0001, a Senate joint resolution Affirming the Federal Equal Rights Amendment.

This resolution will not be the first time Maryland has passed a joint resolution in support of the Equal Rights Amendment. With research completed by several of the Maryland Women's Heritage Center Board members, we learned that over 60 years ago, Maryland was the fourth state in the country to pass a bill urging Congress to adopt the ERA as a constitutional amendment.

The 1961 General Assembly, House Joint Resolution 14, passed by both the House and the Senate and signed by Governor Tawes in May 1961, stated:

> "*Be it resolved by the General Assembly of Maryland,* That the Congress of the United States is requested to adopt and to submit to the several states, an Equal Rights for Women Amendment in order that it may speedily be added as an integral part of the Constitution of the United States; and be it further
>
> *Resolved,* That the Secretary of State of Maryland be requested to send copies of this Resolution, under the Great Seal of the State of Maryland, to the President of the United States, the Secretary of the Senate of the United States, the Clerk of the House of Represenatives [sic] of the United States, and to each member of the Maryland delegation in the Congress of the United States. Approved May 3, 1961." (AGLC 4th ed., Maryland - General Assembly, pg. 1715).

When signing that bill, Governor Tawes gave the gold pen he used to the woman whom he credited with getting that bill passed, Harford County resident and suffragist Elizabeth Chew Forbes, as a "token of her 40 years fighting for women's rights."

Clearly, the movement to urge passage of the Equal Rights Amendment has stretched over many decades. Today, we hope that this recent effort will result in a long-awaited universal affirmation of the Equal Rights Amendment as part of the Constitution and recognition of equal rights as a tenet of American society.

In our view, this request to the Maryland legislature to urge the passage of the Equal Rights Amendment was the right thing to do in 1961 but became a forgotten part of Maryland women's history. Today, we urge you, the members of the Senate Judicial Proceedings Committee, to take up this cause again and vote favorably on SJ0001. We invite you to become a memorable part of Maryland history by advancing this resolution.

The Equal Rights Amendment benefits all Maryland residents by creating a precedent that ensures equality for all.

Thank you in advance for your favorable vote.

Testimony ERA pdf.pdf
Uploaded by: Lesley Frost
Position: FAV

TESTIMONY

Senate Judicial Proceedings Committee
Maryland General Assembly

February 20, 2024

Testimony in support of SJ01/HJ01 Affirming the Federal Equal Rights Amendment.

Lesley Frost,
Co Chair National Council of Jewish Women,
Maryland State Policy Advocacy Network.
ncjw.mdacts@gmail.com

My name is Lesley Frost, and I am a resident of Montgomery County, Maryland, and a volunteer with National Council of Jewish Women, or NCJW.

NCJW is the oldest Jewish feminist civil rights organization working for equity and justice for women, children, and families in the United States and Israel. My testimony today is as the representative of all NCJW Advocates in Maryland and in support of SJ01/HJ01 Affirming the Federal Equal Rights Amendment.

A core priority of NCJW is to "Ensure and Advance Individual and Civil Rights." To do this we advocate for policies that promote equal rights, end discrimination, and encourage opportunities for individuals of all backgrounds. From the Civil Rights Act of 1964 to the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, NCJW has been and continues to be on the front lines helping to enact landmark civil rights legislation.

Since the Supreme Court issued a more rigid interpretation of the Fourteenth Amendment, asserting that Fourteenth Amendment protections do not apply to sex discrimination, contraception or same sex marriage, protections from discrimination for women and LGBTQ+ individuals have been substantially weakened.

Without the ERA in the US Constitution, federal laws could, in future, jeopardize or eliminate rights that are guaranteed to Marylanders by our state-level Equal Rights Amendment, including equal pay, contraception, abortion care, gender-affirming care, same- sex marriage and intimacy. It is to protect the residents of this state from losing any of those rights that NCJW urges this committee to support SJ01.

It has been 100 years since the Federal Equal Rights Amendment was first introduced, and 42 years since Maryland ratified it. NCJW believes that it is time to set a constitutionally clear expectation of sex equality in all aspects of life, and make gender equality a fundamental and irrevocable tenet of society.

Consequently we are asking this committee and the 2024 Maryland General Assembly to support SJ1 and HJ1 and clearly affirm that the federal Equal Rights Amendment is the 28th Amendment to the United States Constitution.

ERA - senate testimony - 2024 SJ1 FAV.pdf
Uploaded by: Lisae C Jordan
Position: FAV

MCASA
Maryland Coalition Against Sexual Assault

Working to end sexual violence in Maryland

P.O. Box 8782
Silver Spring, MD 20907
Phone: 301-565-2277
Fax: 301-565-3619

For more information contact:
Lisae C. Jordan, Esquire
443-995-5544
www.mcasa.org

Testimony Supporting Senate Joint Resolution 1
Lisae C. Jordan, Executive Director & Counsel
February 21, 2024

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence. We urge the Judicial Proceedings Committee to report favorably on Senate Joint Resolution 1.

Senate Bill Joint Resolution 1 – Equal Rights Amendment
This joint resolution expresses the sense of the Maryland Legislature that the federal article of amendment commonly known as the "Equal Rights Amendment" has met all Article V requirements for an amendment to the Constitution of the United States and is valid as the 28th Amendment to the Constitution of the United States and urges the President and Congress of the United States to affirm the validity of the Equal Rights Amendment and direct the Archivist of the United States to certify and publish the Equal Rights Amendment as the 28th Amendment without delay.

The federal Equal Rights Amendment is an amendment to the United States Constitution that prohibits discrimination based on sex. The Equal Right Amendment not only restores protections for women, but strengthens them.

The Maryland Coalition Against Sexual Assault urges the Judicial Proceedings Committee to report favorably on Senate Joint Resolution 1

2-21 SJ 001 Affirming the Federal Equal Rights Am

Uploaded by: Nancy Soreng

Position: FAV

TESTIMONY TO THE SENATE JUDICIAL PROCEEDINGS COMMITTEE

SJ001 - Affirming the Federal Equal Rights Amendment

POSITION: Favorable

BY: Linda Kohn, President

Date: February 21, 2024

Our national organization, the League of Women Voters of the United States, has supported and pushed for ratification of the Equal Rights Amendment (ERA) since it was first passed by Congress in 1972. In January of 2020, Virginia became the 38th and final state needed to ratify the ERA. As the ERA has met all requirements to be added to the US Constitution, the League is pushing for Congress to officially recognize it as the 28th Amendment.

More than 100 years after some women gained the right to vote, women continue to battle systematic discrimination in the form of unequal pay, workplace harassment, pregnancy discrimination, domestic violence, limited access to comprehensive health care, and more.

We must address the root cause of inequality by amending our Constitution.
The ERA will elevate the standards by which the courts scrutinize sex-based discrimination, and it will pave the way for further legislative progress towards sex and gender equality.

We urge a favorable report on SJ001.

121 Cathedral Street, Suite 2B, Annapolis, MD 21401
410-269-0232 * info@lwvmd.org * www.lwvmd.org

February 21st, 2023 SJ0001 Testimony- The Young Fe

Uploaded by: Pooja Dharmendran

Position: FAV

YOUNG FEMINIST PARTY

Written Testimony of Claudia Nachega and Pooja Dharmendran, Maryland Gender Justice Advocates
On behalf of the Young Feminist Party

Submitted for the Record to the Judicial Proceedings Committee for the Hearing on

"SJ0001: Affirming the Federal Equal Rights Amendment"
February 21st, 2023

Chairman Smith, Vice Chairman Waldstreicher, and Members of the Maryland Senate Judicial Proceedings Committee, thank you for the opportunity to submit this written testimony on behalf of the Young Feminist Party and young women and queer people across Maryland who demand our inclusion in the U.S. Constitution. We are grateful for this crucial hearing on Senate Joint Resolution 1 (SJ0001), Senator Kelly's resolution to affirm the Equal Rights Amendment (ERA) as the 28th Amendment and urge federal action to put young women and LGBTQ+ Marylanders in the U.S. Constitution.

The Young Feminist Party is a movement of over 13,000 young people organizing for the publication of the Equal Rights Amendment (ERA) and advancement of gender justice in the United States. Eight hundred of these young people, including ourselves, hail from Maryland. Maryland has always been at the forefront of the movement for the ERA. In 1972, our home state was one of the first states to ratify the ERA. In 2024, Maryland Senator Ben Cardin has spearheaded efforts in Congress to remove the arbitrary deadline on the ERA and affirm the ERA as the 28th Amendment. Now, Maryland has another opportunity to be a leader on gender justice by passing SJ0001.

The ERA has met all the requirements for publication in the U.S. Constitution–passage by 2/3rds of Congress and ratification by 3/4ths of states. The states, led by Maryland, have given a clear constitutional mandate to our federal government to enshrine sex equality in our nation's most foundational document. It is now President Biden's constitutional and moral duty to immediately certify and publish the ERA. However, he is allowing an arbitrary, unconstitutional deadline to neglect this duty, intentionally leaving women and LGBTQ+ people out of the Constitution. Young Marylanders call on our state legislature to pass SJ0001 and put the pressure on President Biden to put us in the Constitution.

Young people across our state are taking the fight for the Equal Rights Amendment to the streets, to our schools, to the legislatures, and to the courts. Just this past Monday we were rallying on Lawyers Mall to show our support for this resolution. We know that our freedoms, bodies, and futures are on the line. We have the most to gain from constitutional gender equality, and the most to lose from inaction. Every young Marylander joined our movement for a reason. We understand the ERA will change our life for the better. We've shared these stories with many of your offices through constituent meetings and demonstrations. We would like to highlight a few of our shared stories to show the necessity of the Equal Rights Amendment to young people and why you must vote yes on SJ0001.

YOUNG FEMINIST PARTY

We are students at educational institutions with pervasive sex discrimination. We are students at schools that protect sexual abusers over our safety. We are survivors who have been failed by weak Title IX protections and forced to leave our schools. If Congress recognized the ERA as the 28th amendment of the United States Constitution, survivors of sexual assault and harrassment would have a legal tool to combat sexual violence and strengthen Title IX. **We are also students who have missed class because of our periods and sexist dress codes.** An astounding 84% of high school students have reported missing school at least once because they didn't have access to menstrual products. Nearly 1 in 7 undergraduate women report being unable to afford the menstrual products they needed at some point in the past-year. Black and Latine menstruators are more likely to be unable to afford menstrual products. Further, a National Women's Law Center report found dress codes to harm female students academic performance, particularly Black students. **The ERA will promote gender equality in education and fight inequities that keep young women and queer people, particularly students of color, from succeeding in school.**

We are young people who must have control over our reproductive healthcare to stay in school and pursue our dreams. Many young people do not have the resources to bring a child into this world—but in the 24 states that have fully or partially banned abortion since the overturning of *Roe v. Wade*, we are forced to make decisions about our reproductive healthcare that are against our best interest. Unintended parenthood poses a barrier to receiving a college degree and employment. Further Title X, which exists to provide low-income people with accessible birth control and reproductive care, is under attack. Just this December, a federal judge ruled in *Deanda v. Becerra* that a parent's right to control their children supersedes a child's right to bodily autonomy. The same judge vacated FDA approval of mifepristone, a pill that is necessary to safely perform a medication abortion. Although the Supreme Court temporarily halted enforcement of the decision, it has agreed to hear the case on its merits, marking the first time it will consider an abortion-related case since Dobbs. A national injunction on mifepristone would disproportionately harm young people of color living in communities where abortion is heavily restricted. The ERA is the solution. State-level ERAs in Utah and Minnesota blocked trigger abortion bans that went into effect last year, and a recent decision out of the Pennsylvania Supreme Court relied in part on the state's ERA to remove a ban on funding for abortions Likewise, legal scholars posit that adding the ERA to the Constitution would prompt a reevaluation of *Dobbs*. **We must recognize the ERA as the 28th amendment to the United States Constitution to defend the bodily autonomy and reproductive freedom of America's youth.**

We are queer youth whose identities and right to exist are under attack. Gen-Z is disproportionately queer, with ⅛ members of Gen-Z identifying as a member of the LGBTQ+ community. NPR reports that in the first four months of 2022, over 200 homophobic laws were introduced in state legislatures. These bills restricted access to life saving gender affirming healthcare, outlawed education about the LGBTQ+ community, and banned trans students from competing in sporting competitions. Homophobia and transphobia kills. In 2023, 32 trans individuals were murdered in America. From a youth standpoint, in 2023, LGBTQ+ teens were also twice as likely to attempt suicide. **We must recognize the ERA as the 28th amendment to the United States Constitution because the ERA will protect queer youth and let us know that we are seen, respected, and validated in our experiences.**

YOUNG FEMINIST PARTY

Ultimately, the ERA is the *only* comprehensive response to today's attacks on young women and queer people. On behalf of young people across the country, we thank you for your commitment to advancing the ERA. We look forward to working together to enshrine gender equality in our Constitution.

Young Feminist Party - https://youngfeministparty.org/

SJ0001 - Executive Alliance Favorable.pdf
Uploaded by: Rebecca Snyder
Position: FAV

EXECUTIVE ALLIANCE
A CATALYST FOR WOMEN LEADERS IN MARYLAND

To: Judicial Proceedings Committee

From: Rebecca Snyder, Executive Director, Executive Alliance

Date: February 20, 2024

RE: FAVORABLE SJ 0001

Executive Alliance focuses on creating opportunities for professional women in Maryland's boardrooms and executive leadership levels through education, advocacy and mentorship.

We are pleased to support SJ 0001, which would reaffirm Maryland's commitment to constitutional rights regardless of sex. Maryland was one of the first states in 1972 to ratify the ERA, which is an amendment that would provide a constitutional foundation for addressing gender-based discrimination, promoting fairness, and ensuring that the rights of all citizens are protected equally.

The ERA, first introduced in Congress in 1923, seeks to enshrine in the U.S. Constitution 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." Despite decades of progress in the fight for gender equality, women still face disparities and discrimination in various aspects of life. The ERA is a crucial step towards ensuring that all individuals, regardless of gender, are afforded the same legal protections and opportunities.

Constitutional Equality: The ERA would provide a clear and unequivocal statement in the U.S. Constitution that gender-based discrimination is unconstitutional, reinforcing the principle of equal protection under the law.

Closing Legal Loopholes: While existing laws have made significant strides in addressing gender inequality, the ERA would serve as a constitutional guarantee, closing any remaining legal loopholes and providing a solid foundation for addressing current and future challenges.

Reflecting Maryland's Values: Ratifying the ERA aligns with Maryland's commitment to justice, fairness, and equality. It sends a powerful message that the state values the rights and dignity of all its citizens.

P.O. Box 26224, Baltimore, MD 21210 | (443) 768-3281 | info@executivealliance.org |
www.executivealliance.org

We stand for women's leadership.

ADVOCACY • EDUCATION • MENTORSHIP

Setting a National Example: Maryland's ratification of the ERA would contribute to a national momentum, encouraging other states to follow suit and bringing us closer to achieving gender equality across the United States.

We urge a favorable report.

Executive Alliance is a Maryland 501(c)(3) organization dedicated to accessing power as women leaders in Maryland's workplace. We measure that power by representation in the c-suite, board room, and other places of power and nurture a network of women leaders that support each other in their development. Learn more at executivealliance.org.

P.O. Box 26224, Baltimore, MD 21210 | (443) 768-3281 | info@executivealliance.org | www.executivealliance.org

We stand for women's leadership.

ADVOCACY • EDUCATION • MENTORSHIP

2024 ACNM SJ 1 Senate Side.pdf
Uploaded by: Robyn Elliott
Position: FAV

AFFILIATE OF
AMERICAN COLLEGE of NURSE-MIDWIVES
With women, for a lifetime®

Committee: **Senate Judicial Proceedings Committee**

Bill Number: **SJ 1**

Title: **Affirming the Federal Equal Rights Amendment**

Hearing Date: **February 21, 2024**

Position: **Support**

The Maryland Affiliate of the American College of Nurse Midwives (ACNM) strongly supports *Senate Joint Resolution 1 - Affirming the Federal Equal Rights Amendment.* This Senate Joint Resolution calls upon the Administration of President Biden to publish the Equal Rights Amendment (ERA) as the 28th Amendment to the U.S. Constitution. The ERA is three sentences long:

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.

ACNM supports any issue that is important for mother and child welfare; working to stand up for human dignity and bodily autonomy as basic human rights that should be protected and respected in all ways. Since 1978, the organization has supported the ERA, and we stay firm in our conviction. Maryland ratified the ERA in May 1972 and adopted the Maryland Equal Rights Amendment to the Maryland Constitution that same year. It is time for the federal government to do the same.

We strongly urge a favorable report on this legislation. If we can provide any further information, please contact Robyn Elliott at relliott@policypartners.net or (443) 926-3443.

2024 MOTA SJ 1 Senate Side.pdf
Uploaded by: Robyn Elliott
Position: FAV

Maryland Occupational Therapy Association

PO Box 36401, Towson, Maryland 21286 ♦ mota-members.com

Committee: **Senate Judicial Proceedings Committee**

Bill Number: **Senate Joint Resolution 1**

Title: **Affirming the Federal Equal Rights Amendment**

Hearing Date: **February 21, 2024**

Position: **Support**

The Maryland Occupational Therapy Association (MOTA) *Senate Joint Resolution 1 - Affirming the Federal Equal Rights Amendment*. This Senate Joint Resolution calls upon the Administration of President Biden to publish the Equal Rights Amendment (ERA) as the 28th Amendment to the U.S. Constitution. The ERA is three sentences long:

> 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.

MOTA affirms the inalienable right of every individual to feel welcomed, valued, a sense of belonging, and respected while accessing and participating in society, regardless of the internal or external factors that make every individual unique. Yet, women's rights are regularly tested by all branches of the federal government, most recently with the *Dobbs* decision. Maryland was one of the first states to ratify the Equal Rights Amendment in 1972 and that same year Maryland adopted the Maryland Equal Rights Amendment to the Maryland Constitution. We urge Maryland to continue supporting equality with a favorable report.

If we can provide any further information, please contact Robyn Elliott at relliott@policypartners.net or (443) 926-3443.

Senator Kelly SJ01 FAV Testimony.pdf
Uploaded by: Senator Ariana Kelly
Position: FAV

ARIANA KELLY
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Judicial Proceedings Committee

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

February 21st, 2024

Testimony in Support of SJ1:
Affirming the Federal Equal Rights Amendment

Dear Chair Smith, Vice Chair Waldstreicher, Members of the Committee:

SJ1 is a Senate Joint Resolution urging President Biden and his administration to publish the federal Equal Rights Amendment as the 28th Amendment to the U.S. Constitution and for the U.S. Congress to affirm, by joint resolution removing the timeframe for ratification, the Equal Rights Amendment as the 28th Amendment.

If passed, SJ1 makes known that the General Assembly of Maryland believes that The Equal Rights Amendment meets the requirements of Article V of the Constitution and should be recognized as the 28th Amendment. It also calls on other states to pass similar resolutions.

The Equal Rights Amendment guarantees equal rights for women under the United States Constitution. In 1972, Maryland ratified the federal ERA and adopted a state Equal Rights Amendment into the State's Constitution. Back in 1972, the state ERA was voted on and passed in every County except Garrett. Today, more than 50 years later, polling in support of the federal ERA is overwhelming.

In 2022, Maryland's Attorney General filed an amicus brief in support of a lawsuit brought by three ratifying states to require the Archivist of the United States to certify and publish the Equal Rights Amendment as an amendment to the U.S. Constitution. The DC Circuit affirmed Congress's constitutional authority under Article V to resolve legal issues within the ratification process, as it has done for previous amendments to the Constitution.

Five other states, California, Colorado, Hawaii, Illinois, and Minnesota have already passed similar resolutions to affirm the Equal Rights Amendment as the 28th Amendment.

The Maryland General Assembly has dedicated itself to creating and upholding equal protection under the law for all Marylanders. This measure demonstrates this and reaffirms the values of Marylanders.

Today, you will hear from our sponsor panel, including Katie Curran O'Malley, *Executive Director of the Women's Law Center of Maryland*, Tazeen Ahmad, *President of the Montgomery County Women's Democratic Club*, and Jakeya Johnson, *Executive Director of Reproductive Justice Maryland*.

I urge a favorable report on SJ1.

SJR.1.ERA.24.pdf
Uploaded by: Virginia Crespo
Position: FAV

Maryland Retired School Personnel Association

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Senate Joint Resolution 0001
In Support Of
Affirming the Federal Equal Rights Amendment
Judicial Proceedings Committee
Hearing: February 21, 2024 – 1:00 p.m.

Dear Honorable Senator William Smith, Jr., Chair, and Honorable Senator Jeff Waldstreicher, Vice Chair, and distinguished members of the Judicial Proceedings Committee,

The Maryland Retired School Personnel Association (MRSPA) supports the Senate Joint Resolution 0001 Affirming the Federal Equal Rights Amendment.

MRSPA agrees that a copy of the Resolution be forwarded by the Department of Legislative Services to the Honorable Joseph R. Biden, President of the United States of America, and to the other named federal and state leaders with the request that it be circulated among leadership of the legislative branch of the state governments.

Having been around when this amendment was brought forward in the 1970's, the "fear" that women are not prepared to fight in war for our country has proven to be folly. While no woman has yet to become president of the United States, women have broken most every other glass ceiling. There should be no more excuses for delaying this amendment to the Constitution.

The majority of Maryland's teachers are female as are the majority of our MRSPA members. Women have had the right to vote for over one hundred years. It is time women are recognized as equal under the law via this Equal Rights Amendment.

On behalf of the 12,000 members of the Maryland Retired School Personnel Association, we urge support for SJ 0001.

Sincerely,

Carla J. Duls
President

Virginia G. Crespo
Legislative Aide

Testimony of Douglas Johnson in Opposition to Sena

Uploaded by: Douglas Johnson

Position: UNF

Testimony of Douglas Johnson

In Opposition to Senate Joint Resolution 1

Before the Judicial Proceedings Committee, Maryland State Senate

February 21, 2024

Executive Summary: *Regarding the ratification deadline for the federal Equal Rights Amendment, Senate Joint Resolution No. 1 ignores multiple federal court rulings, including a unanimous 2023 ruling by the U.S. Court of Appeals for the District of Columbia. Regarding rescissions, Senate Joint Resolution 1 contradicts a legal position formally embraced by unanimous votes of the Maryland Senate and Maryland House of Delegates in 2014.*

Mr. Chairman and members, my name is Douglas Johnson. I am a 40-year resident of Prince George's County. For even longer, I have intermittently written for diverse publications and platforms about developments in the courts and elsewhere pertaining to viability of the proposed 1972 Equal Rights Amendment (ERA),

THE DEADLINE

In Senate Joint Resolution 1 we find 32 "whereas" clauses, which can be distilled down to two major assertions. The first assertion is that the ERA proposed by Congress in 1972 has been ratified and should now be published as part of the Constitution, on grounds that the seven-year ratification deadline was constitutionally defective and is not binding, because the deadline appeared in what this measure calls the "preamble" (which is more properly referred to as the Proposing Clause, which is a required part of every constitutional amendment proposal submitted to the states by Congress).

It is striking, and revealing, that Senate Joint Resolution 1 makes no reference whatever to the outcomes of the many attempts by pro-ERA litigants, over the past 42 years, to find a federal court that would embrace one or another of various theories asserting that the 1972 ERA remains viable. They have run up an unbroken 42-year chain of defeats. As I have expounded in detail elsewhere, since

1982, pro-ERA litigants have presented 30 federal judges and justices with opportunities to take some action to advance or accept their claims regarding the deadline and other issues affecting the ERA's viability, but they have yet to win a single vote, from a single judge, on a single component of their collection of novel legal claims. By the way, from 2021 through 2023, the federal judges who ruled against ERA-revival legal claims were appointed by Democratic presidents by a 10 to 2 ratio. [1]

S.J. Res. 1 is silent even regarding the unanimous ruling by a three-judge panel of the U.S. Court of Appeals for the District of Columbia in *Illinois v. Ferriero*, issued on February 28, 2023, written by Judge Robert Wilkins (an appointee of President Obama). ((*Illinois v. Ferreiro*, 60 F.4th 704, 713 (D.C. Cir. 2023)). The panel flatly rejected the pleas of Illinois and Nevada that the Archivist of the U.S. should be ordered to publish the ERA. The claim that a deadline in the Proposing Clause is not binding was squarely addressed, and crushed, by this unanimous panel, on page 25 of that ruling ("…if that were the case, then the specification of the mode of ratification in every amendment in our nation's history would also be inoperative" [!])[2] The panel upheld the dismissal of the pro-ERA lawsuit by U.S. District Judge Rudolph Contreras (also appointed by President Obama), who in a lengthy and tightly reasoned ruling, said twice that it would have been "absurd" for the Archivist to disregard the ratification deadline. ((*Virginia v. Ferriero*, 525 F.Supp.3d 36, 40 (D.C. 2021)).

In the face of this judicial record, when Senate Joint Resolution 1 calls on "the Biden Administration" to publish the ERA as part of the Constitution, it calls for a lawless act. This resolution is, implicitly, an appeal to the President and other officials of the federal Executive Branch to ignore the law, and obey the politics. It is an appeal that the President, and those in lesser offices who have taken oaths to uphold the Constitution, ought to disregard. [3][4]

DOUBLETHINK ON RECISSIONS

S.J. Res. 1 also asserts a second proposition: That states may never rescind a ratification, even before a deadline set by Congress. The authors find this assertion necessary for their purposes, because four state legislatures rescinded their ratifications of the ERA, before the seven-year deadline was reached on March 22,

1979. If those rescissions were valid, then when the ERA expired, it had been ratified by only 31 states, not 35.

But this assertion raises another issue for this body: In what cases are federal officials, or the public, to take your pronouncements on such matters seriously?

Ten years ago, a college student brought to the attention of a previous chairman of this committee, Senator Brian Frosh, that the Maryland General Assembly was one of a only handful of legislatures that had ratified the Corwin Amendment, a proposed constitutional amendment that would have forever forbidden Congress to interfere with "the domestic institutions" of any state, which everyone at the time clearly understood to refer to the institution of *slavery*. The Corwin Amendment contained no ratification deadline, so it was and is still available for ratification. [5]

Once Senator Frosh learned of this, he rightfully referred to the Corwin Amendment ratification resolution that Maryland had sent to Washington, D.C., as "a blot." He promptly authored a joint resolution, also numbered Senate Joint Resolution 1, that did one thing and one thing only: It *rescinded* Maryland's ratification of the Corwin Amendment. [6] I have attached Senator Frosh's resolution to my testimony.

The rescission resolution progressed through the General Assembly to much favorable coverage and commentary in the print and broadcast news media. It was approved by unanimous roll call votes in both houses. The text of the resolution required that it be transmitted to the Archivist of the United States, and presumably that was done, so the Archivist now holds it there in the file cabinet containing ratification-related documents for constitutional amendments that have not expired.

Personally, I take no position on whether recissions are properly allowed or not. But, if the assertion contained in Senator Kelly's joint resolution pending before you today is legally correct, that rescissions or ratifications are flatly unconstitutional, then this resolution ought to be amended to add an additional request that the Archivist return to this body the text of the rescission resolution on the Corwin Amendment, transmitted in 2014, since it must now be deemed to have been an unconstitutional exercise.

I hope that no member of the General Assembly believes that the rules for amending the federal Constitution should be regarded as a set of toggle switches that one can flip up or down, according to whether one regards a given constitutional amendment proposal as good or bad. If we are to be "a nation of laws, not men," that will not do. [6]

END NOTES

[1] "Federal Judges Scorn ERA-revival Legal Claims," by Douglas Johnson. March 18, 2021, updated February 20, 2024. https://www.nrlc.org/uploads/era/FederalJudgesScornERAResuscitation.pdf

[2] In *Illinois v. Ferriero* (February 28, 2023), the unanimous D.C. Circuit panel (Judges Wilkins, Rao, and Childs) said:

> Significantly, the States cite no persuasive authority suggesting that Congress is prohibited from placing the mode of ratification-- ratification either by convention or the state legislature--in the proposing clause of an amendment. At oral argument, the States conceded that Congress has placed the mode of ratification (ratification by legislature or ratification by convention) in the proposing clause of every constitutional amendment in the nation's history, Oral Arg. at 13:00--13:40; see 2020 OLC Opinion at 15 n.15 (collecting proposing resolutions), and the States further concede that Congress's specification of this aspect of the "mode" in the proposing clause does not invalidate any of those amendments. Id. If one aspect of the mode of ratification can be placed in the proposing clause, then why not also the ratification deadline? 8The States' argument that the proposing clause is akin to the inoperative prefatory clause in a bill is unpersuasive, not just because proposed constitutional amendments are not "ordinary cases of legislation," *Hollingsworth v. Virginia*, 3 U.S. (3 Dall.) 378, 381 n.* (1798), but also because if that were the case, then the specification of the mode of ratification in every amendment in our nation's history would also be inoperative. ((60 F.4th 704, 713 (D.C. Cir. 2023))

[3] On February 9, 2022, the *Washington Post Fact Checker* awarded a member of Congress "Four Pinocchios" (the maximum rating for deception) for claiming that the Archivist of the U.S. could and should unilaterally add the ERA to the U.S. Constitution. The *Fact Checker* stated:

> [E]very 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 Republican…. Moreover, 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 has passed. ("The ERA and the U.S. archivist: Anatomy of a false claim," *Washington Post*, February 9, 2022)

[4] S.J. Res. 1 also calls on *Congress* to affirm that the ERA is part of the Constitution. This is in effect an embrace of what is known as "congressional promulgation theory"—the notion that Congress, after the ratification process is over, gets to decide by majority vote whether or not a proposed amendment has been ratified. Congress has no such retroactive power. As U.S. District Judge Rudolph Contreras wrote in his 2021 ruling in *Virginia v. Ferriero* ((525 F.Supp.3d 36, 40 (D.C. 2021)):

> Commentators have widely panned the [congressional promulgation] theory as out of sync with the text of Article V, prior precedent, and historical practice.... Indeed, Plaintiffs and the Archivist both denounce the theory." Contreras also wrote that "the effect of a ratification deadline is not the kind of question that ought to vary from political moment to political moment…Yet leaving the efficacy of ratification deadlines up to the political branches would do just that.

On the appeal of Judge Contreras' ruling to the D.C. Circuit, during oral argument on September 28, 2022, Judge Robert Wilkins asked, "Why shouldn't the Archivist just certify and publish [the ERA], and let Congress decide whether the deadline should be enforced...?" The senior lawyer from the Biden Administration Justice Department arguing on behalf of the Archivist, Deputy Assistant Attorney General Sarah Harrington, replied: "The Constitution doesn't

contemplate any role for Congress at the back end. Congress proposes the amendment, it goes out into the world, and the states do what they're going to do." Harrington's answer could only be understood as dismissive of the "congressional promulgation" theory.

[5] An excellent, detailed article on the history of Maryland's ratification of the Corwin Amendment appeared in the *Baltimore Sun* on January 30, 2014: "Maryland lawmakers asked to revisit vote for slavery," by Timothy B. Wheeler. https://www.baltimoresun.com/2014/01/30/maryland-lawmakers-asked-to-revisit-vote-for-slavery

[6] After a series of whereas clauses, Sen. Frosh's Senate Joint Resolution 1 of 2014 contained two operative clauses. The first: "Resolved by the General Assembly of Maryland, that the State of Maryland rescinds its ratification of the Corwin Amendment to the United States Constitution." The second Resolved clause instructed that copies of the resolution should be transmitted to several congressional leaders and to the Archivist of the United States. The final designation of the measure was Joint Resolution 1, signed by the President of the Senate and the Speaker on May 5, 2014.

Joint Resolution 3

(Senate Joint Resolution 1)

A Senate Joint Resolution concerning

Rescission of Maryland's Ratification of the Corwin Amendment to the United States Constitution

FOR the purpose of rescinding Maryland's ratification of the Corwin Amendment to the United States Constitution.

WHEREAS, On February 27, 1861, in an attempt to avert the secession of Southern states, United States Representative Thomas Corwin of Ohio proposed an amendment to the United States Constitution that would prohibit the United States Constitution from being amended in a manner that authorizes Congress to abolish or interfere with the states' domestic institutions, including slavery; and

WHEREAS, On March 2, 1861, the Corwin Amendment passed the United States Congress and was submitted to the states for ratification; and

WHEREAS, With the enactment of Chapter 21 of the Acts of 1862, the General Assembly of Maryland ratified the Corwin Amendment; and

WHEREAS, The Corwin Amendment has not been ratified by three–fourths of the states and, therefore, is not part of the United States Constitution; and

WHEREAS, With the end of the Civil War and the ratification of the 13th Amendment to the United States Constitution, the purposes of the Corwin Amendment have become moot; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the State of Maryland rescinds its ratification of the Corwin Amendment to the United States Constitution, viz:

"Article

No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State."; and be it further

RESOLVED, That the Governor of the State of Maryland is requested to forward authentic copies of this Resolution, under the Great Seal of the State of Maryland, to: ~~the Honorable John F. Kerry, Secretary of State of the United States,~~

~~2201 C Street, N.W., Washington, D.C. 20520~~ the Honorable Joseph R. Biden, Jr., Vice President of the United States, President of the United States Senate, Suite S–212, United States Capitol Building, Washington, D.C. 20510; the Honorable Harry Reid, Majority Leader, United States Senate, 528 Hart Senate Office Building, Washington, D.C. 20510; the Honorable John Boehner, Speaker of the House of Representatives of the United States, 1011 Longworth House Office Building, Washington, D.C. 20515; and ~~the Honorable Dan M. Tangherlini, Administrator of General Services of the United States, 1800 F Street, N.W., Washington, D.C. 20405~~ the Honorable David S. Ferriero, Archivist of the United States, National Archives and Records Administration, 709 Pennsylvania Avenue, N.W., Washington, D.C. 20408.

Signed by the President and the Speaker, May 5, 2014.

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Uploaded by: Laura Bogley
Position: UNF

Opposition Statement HB/SJ0001/HB0001

Laura Bogley-Knickman, JD
Executive Director, Maryland Right to Life

We Strongly Oppose Senate Joint Resolution 0001/House Joint Resolution 0001

On behalf of the Board of Directors for Maryland Right to Life, I strongly oppose SJ1/HJ1 that attempt to incite executive fiat to force the failed Equal Rights Amendment (ERA) of 1972 into the Constitution of the United States. The ERA would not empower women but would empower the abortion industry to use taxpayer funds to wield a monopoly over women's reproductive health and deny women access to lifesaving alternatives to abortion violence. National Right to Life and its affiliates across all fifty states have consistently opposed the ERA on this basis and will continue to do so.

The 1972 Equal Rights Amendment (ERA) Resolution submitted to the states by Congress on March 22, 1972, contained a seven-year ratification deadline. The deadline expired on March 22, 1979 with the ERA short of the 38 states required for ratification.

Despite incontrovertible legal precedent and the rule of law, pro-abortion groups, seeking a replacement for *Roe v. Wad*e, are engaged in an intensive, long term effort to trample constitutional guardrails and ram the long-expired ERA into the U.S. Constitution. ERA revivalists have asserted that the ERA is already part of the Constitution—or at least, that it will become part of the Constitution if so declared by the Archivist of the United States, or by the Congress, or both.

We agree with Douglas Johnson, a researcher who has covered the ERA ratification process since 1983, who wrote:

> "ERA revivalism at this point is best recognized not as a serious constitutional theory or set of theories, but as an extended exercise in political theater, sustained mainly by a cooperative news media, and by principle-free political opportunism among many office holders and office seekers." ("*Federal Judges Scorn ERA Revival Legal Claims*," copyright 2024 Douglas Johnson).

The ERA-Abortion Connection: The Mask Comes Off

In the wake of the U.S. Supreme Court's June 24, 2022 ruling in *Dobbs v. Jackson Women's Health Organization*, overturning *Roe v. Wade*, pro-abortion activists now loudly proclaim as true a position that for decades they denied or deflected: The Equal Rights Amendment (ERA) in the form proposed by Congress in 1972, if it ever became part of the U.S. Constitution, could be employed as a strong legal foundation for challenges to (and in their view, invalidation of) virtually all state and federal limits on abortion, and to require funding of elective abortion at all levels of government.

National Right to Life has opposed the ERA for decades, recognizing that the ERA language proposed by Congress in 1972 could be construed to invalidate virtually all limitations on abortion, and to require government funding of abortion. In decades past, such pro-life objections were publicly rejected by most ERA advocates, who often derided assertions of an ERA-abortion link with such terms as "misleading," "scare tactic," and even "a big lie." Some prominent ERA advocates now acknowledge that such denials were merely a strategic deception.

By the latter half of 2020, ERA champions in and out of Congress were openly proclaiming that the ERA was urgently needed precisely to preserve federal constitutional "abortion rights." Since the Court's overturning of *Roe v. Wade*, these proclamations have only become louder and more insistent. A few examples:

- The National Organization for Women, in a monograph circa 2015, making numerous sweeping claims about the hoped-for pro-abortion legal effects of the ERA—stating, for example, that "an ERA—properly interpreted —could negate the hundreds of laws that have been passed restricting access to abortion care . . ."

- The Daily Beast (July 30, 2018) reported remarks by Jennifer Weiss-Wolf, vice president of the 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." She also said, "If you were rooted in an equality argument, those things would not matter."

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

- The Associated Press on January 1, 2020 reported that Emily Martin, general counsel for the National Women's Law Center, "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.'" ("*Lawmakers pledge ERA will pass in Virginia. Then what?*" by Sarah Rankin and David Crary, Associated Press, January 1, 2020.)

- National AP reporter David Crary wrote, "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." (January 21, 2020).

- Kate Kelly, an attorney-activist who worked for Congresswoman Carolyn Maloney in 2021, was asked on January 24, 2021 whether the ERA would "codify Roe v. Wade." She answered, "My hope is that what we could get with the ERA is FAR BETTER than Roe."

- The ACLU, in a letter to the U.S. House of Representatives (March 16, 2021): "The Equal Rights Amendment could provide an additional layer of protection against restrictions on abortion... [it] could be an additional tool against further erosion of reproductive freedom..."

- On March 4, 2022, the Columbia Law School ERA Project sponsored a two-hour symposium panel about grounding "reproductive rights" in the Equal Rights Amendment.

- Kate Kelly also wrote in an essay titled "*The Equal Rights Amendment Is a Comprehensive Fix That Can Save Roe*": "Roe is on the brink of failing. So what is the comprehensive fix that can save Roe and perhaps even expand access to abortion? The Equal Rights Amendment." And: "Though some ERA advocates have shied away from making the connection between these issues in the past, they should be touted as the main reasons we still need the ERA today." (published March 22, 2022)

- "The Equal Rights Amendment…would protect the right to abortion and the full range of reproductive healthcare and is more critically needed now than ever before." (Columbia Law School, ERA Project May 3, 2022)

In addition to such predictive statements, ERAs that have been added to various state constitutions, containing language nearly identical to the proposed federal ERA, have actually been used as pro-abortion legal weapons. The following cases serve as examples:

- The New Mexico Supreme Court in 1998 unanimously struck down a state law restricting public funding of elective abortions, solely on the basis of the state ERA, in a lawsuit brought by affiliates of Planned Parenthood and NARAL (*New Mexico Right to Choose v. Johnson*).
- Moreover, on January 29, 2024, the Pennsylvania Supreme Court construed a state law limiting public funding of abortion to be a form of sex-based discrimination and therefore "presumptively unconstitutional" under the 1971 Pennsylvania Equal Rights Amendment, which contains language virtually identical to the 1972 federal ERA proposal (*Allegheny Reproductive Health Center v. Pennsylvania Department of Human Services*).

Congress Has No Power to Revive an Amendment After Enacted Deadline

Article V of the Constitution spells out two possible methods of amending the Constitution. Only one of the methods has ever been employed: Congress, by a two-thirds vote of each house, adopts a joint resolution that proposes a constitutional amendment to the states. If three-quarters of the states (currently, 38) ratify the amendment, then the amendment becomes part of the Constitution.

The proposed text to be added to the Constitution is always preceded by a "Proposing Clause" specifying the "mode of ratification." The Proposing Clause is not a mere "preamble," but a constitutionally required element of every constitutional amendment submission, which instructs the states on what method of ratification to employ. In the case of the ERA, Congress included in the proposing clause, a seven-year deadline for ratification by the states, making operable the March 23, 1979 expiration date.

The second method, as yet unemployed, is a Constitutional Convention, which under Article V may be convened by a call of two-thirds of the state legislatures.

After the ERA failed to be ratified by 1979, the only constitutionally sound option for ERA supporters was to re-start the process by seeking congressional approval again. Democratic leaders in Congress attempted to do just that in 1983. Democratic leaders and pro-ERA groups were stunned when the ERA went down to defeat on the House floor on November 15, 1983, in large part because of opposition from National Right to Life and other pro-life groups.

Despite obvious Constitutional impediments, ERA revivalists, including President Biden, have urged that Congress adopt a joint resolution purporting to retroactively "remove" the seven-year ratification deadline enacted through the Proposing Clause of the ERA. Such a measure failed in the U.S. Senate in April 2023 and has no prospect of success in the House of Representatives during 2024.

Although the real ERA proposed by Congress ceased to exist in the constitutional sense on March 22, 1979, the ERA re-emerged as a political construct in 1993, with the development of what came to be called "the three-state strategy." Under a federal statute enacted in 1984, when a state legislature ratifies a proposed constitutional amendment, it sends notification to the Archivist of the United States. When an

Archivist receives 38 valid ratifications, he or she publishes the amendment in the Federal Register, which is a formal notification that the text of the U.S. Constitution has been revised.

On January 6, 2020, Assistant Attorney General for the Office of Legal Counsel (OLC) Steven A. Engel issued a 38-page legal opinion, noting that a unanimous 1921 Supreme Court opinion held that Congress had power to include a binding ratification deadline in a constitutional amendment resolution before submitting it to the states—an element of Congress's power to set the "mode of ratification." Because the ERA Resolution contained such a deadline, it was no longer before the state legislatures after that deadline, and had not been ratified, the opinion argued. The OLC opinion also said that once Congress submits a constitutional amendment proposal to the states, the role of Congress has ended—it may not retroactively modify that proposal, including any deadline. Therefore, the OLC opinion concluded, the only constitutional course for ERA supporters was to re-start the entire process (as Democrats in Congress had tried but failed to achieve in 1983). Two days after OLC issued the opinion, the National Archives and Records Administration (NARA), the agency headed by the Archivist, posted a statement: "NARA defers to DOJ on this issue and will abide by the OLC opinion, unless otherwise directed by a final court order." That remains the NARA position to this day.

Still Democrats in Congress and state legislatures like the Maryland General Assembly, continue to demand that the Archivist of the United States certify the ERA without waiting for congressional action, or that the President order her to do so. The tension between objective requirements for amending the Constitution and political gamesmanship are illustrated by the fact that President Biden has endorsed the unsuccessful congressional proposals to proclaim the ERA as having been ratified, even though his Justice Department has recognized in federal court that the ERA has not been ratified—a position affirmed in a 42-year unbroken string of federal court decisions.

Federal Courts Affirm Ratification Deadline

There is no judicial authority to support any claim that the ERA continued to exist as a viable proposal after March 22, 1979. Despite numerous legal challenges over the past four decades, the Supreme Court and federal judges of every political stripe have rebuffed the politically contrived, legally untenable claims of the ERA revivalists and affirmed that the ERA has in fact expired.

Since 1981, pro-ERA litigants have presented six federal courts with one or more legal theories under which the ERA remains viable. A total of 29 federal judges and justices have had an opportunity to act or vote to advance one or more of those claims. The ERA-revival litigants have yet to obtain a single affirmative vote or action, from a single federal judge, on a single one of their essential legal claims. Every judge who reached the merits of a key legal premise of the ERA-is alive movement rejected the claim. Of the 29 judges, 15 were appointed by Republicans, 14 by Democrats. In the most recent cases, most of the judges have been Democrat-appointed.

The most recent major judicial blow to ERA deadline-denialism occurred on February 28, 2023, when a unanimous three-judge panel of the U.S. Court of Appeals for the District of Columbia rejected a lawsuit by the attorneys general of Illinois and Nevada. Those two states had asked that the court order the Archivist of the United States to certify ("publish") the ERA as part of the Constitution. The Court, by a unanimous three-judge panel rejected the claim that the Archivist must publish the ERA, gave no credence whatever to the ERA-revivalist claim that the placement of the deadline in the Proposing Clause

rendered it non-binding. The panel noted that "[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 appeals panel ruling was written by Judge Robert Wilkins, appointed by President Obama; he was joined by Judge Michelle Childs, appointed by President Biden, and Neimo Rao, appointed by President Trump.

The questions surrounding the constitutional status of the ERA are purely questions of law, and it is the role of the judiciary "to say what the law is." Yet many ERA advocates have been engaged in strenuous attempts to short-circuit judicial review of those constitutional questions, or even to assert that the federal courts do not have authority to decide whether the ERA has been ratified or is long expired.

Doublethink by Democrats on Rescissions

Four state legislatures (Nebraska, Tennessee, Idaho, and Kentucky) ratified the 1972 ERA, but then, before the ratification deadline of March 22, 1979, adopted new resolutions rescinding their previous ratifications. The South Dakota legislature did something different: On March 5, 1979, it adopted a resolution making it clear that its original ratification would expire on March 22, 1979, which arguably would have been the case anyway, but South Dakota sometimes appears on lists of "rescinding" states.

Nearly all Democratic state attorneys general have now explicitly argued in briefs submitted to federal courts in ERA-related litigation, or elsewhere, that Article V does not mention rescissions and therefore rescissions must be rejected as unconstitutional. All or nearly all current Democratic members of Congress have also rejected the constitutionality of rescissions, by cosponsoring and/or voting for resolutions that implicitly or explicitly disavow the rescissions on the ERA.

Yet, many of these same Democratic office holders—for example, prominent **Congressman Jamie Raskin (MD)**, the ranking Democrat on the House Oversight Committee—have supported rescissions on other constitutional amendments, and/or have supported state legislatures' rescissions of applications for a constitutional convention, which is the alternative method of amending the Constitution under Article V.

This hypocrisy is further proof that ERA revivalists are employing political gamesmanship to contravene the law in wanton disregard of the objective requirements for amending the Constitution and of the duties of their elected offices.

For these reasons we strongly oppose SB1/HJ1 and urge you to uphold your oath of office to defend the Constitution of the United States by issuing an unfavorable report.

(Source: "*The State of Abortion in the United States*" 11th Edition, 2024 National Right to Life.)