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**ERA Supporters Hold August 26 Rally at U.S. Supreme Court,
But Sharply Disagree on Legal Theories and Political Strategy;
“Deadline Removal” Measure Dead in Water in U.S. Senate;
Democrat-Appointed Judges Extend Unbroken
40-Year Losing Streak for ERA-Resuscitation Legal Claims**

WASHINGTON – Groups that believe that the 1972 Equal Rights Amendment can still become part of the U.S. Constitution will hold a rally in front of the U.S. Supreme Court on Thursday, August 26, under the slogan “No Time Limit on Equality.” Rally organizers will likely attempt to gloss over facts that cast substantial doubt on their narrative backdrop—too often accepted uncritically by journalists – that the 1972 ERA is alive, and perhaps only a step or two from becoming part of the Constitution.

- ERA-is-alive legal theories have compiled an unbroken record of rejection by federal judges of every political stripe, a losing streak now extending for 40 years. This year alone, the ERA-is-alive movement has suffered two major legal defeats. On June 29, a unanimous three-judge panel of the U.S. Court of Appeals for the First Circuit (including two Democrat-appointed judges) upheld the dismissal (by a female district court judge appointed by President Obama) of an ERA-is-ratified lawsuit brought by *Equal Means Equal*, one of the groups sponsoring the rally. Earlier, in the keystone ERA-is-alive lawsuit, *Virginia v. Ferriero*, Judge Rudolph Contreras, an appointee of President Obama, on March 5 ruled that the ERA ratification deadline was effective; that the so-called “ratifications” by Virginia, Nevada, and Illinois were ineffectual; and that the Archivist of the U.S. has no power to affect the ERA’s status. Douglas Johnson, director of the National Right to Life ERA Project and author of [a recent article summarizing four decades of legal efforts to revive ERA](#), commented, “Over a 40-year period, 23 federal judges and justices have taken adverse actions on ERA-revival legal claims. The ERA-is-alive legal theories have been scorned by judges of every political background. Not a single judge yet has accepted any element of the ERA-revival legal theories.”
- A joint resolution (H.J.Res.17, S.J. Res. 1) that purports to “remove” the ratification deadline retroactively, after passing the House of Representatives on March 17, 2021, on a near-party-line vote, has failed to attract even a single Republican supporter in the U.S. Senate, other than the two Republican senators (Murkowski and Collins) who have supported the measure for years. “The measure would fall well short of the 60 votes necessary to clear the Senate,” said NRLC’s Johnson. Moreover, the measure is patently unconstitutional. As Wendy Murphy, attorney for *Equal Means Equal* (one of the groups sponsoring the rally) explained during a May 1 “ERA Summit,” “It’s obvious that they [Congress] cannot retroactively remove a deadline.”

- *Equal Means Equal* President Kamala Lopez said August 24, “On behalf of the 45 million women who voted for President Biden and Vice President Harris, we demand that they keep their campaign pledge to enshrine the ERA in the U.S. Constitution and publish the ERA as the 28th Amendment now.” NRLC’s Johnson commented, “What Lopez demands would be a lawless act in the face of Judge Contreras’ March 5 ruling—and also ineffectual.” Moreover, Christopher Schroeder, nominated to head the Office of Legal Counsel in the U.S. Department of Justice, when asked about the Administration’s intentions pertaining to the ERA’s legal status at his confirmation hearing before the U.S. Senate Judiciary Committee on June 23, said, “I think we will be all best suited if we allow the litigation process to answer that question.”
- Nevertheless, Democrats in Congress, and mostly Democrat-aligned interest groups, will continue their ever-less-plausible efforts to sustain the ERA-is-alive narrative. Virginia, Nevada, and Illinois have appealed Judge Contreras’ ruling to the U.S. Court of Appeals for the District of Columbia, where it first will be argued before a three-judge panel, yet to be named, with no ruling likely until next year. The head of the Legal Task Force of the ERA Coalition, Linda Coberly, has said there will be a new wave of lawsuits against various government entities starting in late January 2022, based on the legal fantasy that the ERA becomes enforceable at that time (i.e., two years after Virginia’s bogus “ratification”).

In his thorough March 5 ruling in *Virginia v. Ferrerio*, Judge Contreras ruled that the deadline included by Congress in the Proposing Clause of the 1972 ERA Resolution was constitutional, and the ERA therefore expired more than three decades ago. The legislative actions by Nevada (2017), Illinois (2018), and Virginia (January 2020) were not real ratifications because they “came too late to count,” Contreras ruled. Contreras also said that the Archivist of the U.S. was justified in refusing to certify (“publish”) the ERA as part of the Constitution, and indeed that the claim (made by the attorneys general of Virginia, Nevada, and Illinois) that the Archivist should ignore the deadline was “absurd.”

On February 10, 2020, in remarks at Georgetown University Law Center, the late Justice Ruth Bader Ginsburg indicated that she believed that the proper approach for ERA supporters, such as herself, would be “a new beginning. I’d like it to start over.” Virginia’s January 2020 adoption of an ERA resolution was, she said, “long after the deadline passed.” If such “a latecomer” were to be recognized, she suggested, “how can you disregard states that said, ‘We’ve changed our minds’?”

National Right to Life opposes the 1972 ERA because it is likely to be employed as a textual constitutional foundation for judicial rulings that would invalidate virtually any state or federal law or policy that impedes access to abortion, or even that has a “disparate impact” on the availability of abortion, including any restrictions on government funding of elective abortion. While journalists sometimes write that “opponents claim” these things, in fact many of the strongest affirmations of the ERA-abortion link have come from leading abortion-rights advocates who support ERA. For example, NARAL Pro-Choice America asserted that “the ERA would reinforce the constitutional right to abortion... [it] would require judges to strike down anti-abortion laws...” A National Organization for Women factsheet on the ERA states that “...an ERA -- properly interpreted -- could negate the hundreds of laws that have been passed restricting access to abortion care...” The ACLU, in a March 16, 2021 letter to the House of Representatives, said that the ERA “could provide an additional layer of protection against restrictions on abortion...[it] could be an additional tool against further erosion of reproductive freedom...” Five pages of such footnoted quotes from leaders and attorneys associated with prominent abortion-rights organizations are found [here](#).

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

@ERANoShortcuts is a non-NRL but recommended Twitter account dedicated exclusively to tracking ERA-related legal and political developments in the courts, Congress, Executive Branch, and state legislatures, from an "ERA-skeptical" perspective.

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