



Archivist of the  
United States

April 7, 2022

The Honorable Carolyn Maloney  
Chairwoman  
Committee on Oversight and Reform  
House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515-6143

Dear Chairwoman Maloney:

Thank you for your letter of March 22, 2022, bringing to my attention the legal analyses of Professor Laurence Tribe and Senator Russ Feingold concerning the Equal Rights Amendment.

As you know, there is ongoing litigation related to this issue in federal court against the National Archives, which is being defended by the Department of Justice. On March 4, 2022, the Department of Justice filed the attached brief in the U.S. Court of Appeals for the District of Columbia Circuit, arguing to uphold the District Court decision dismissing the lawsuit.

That recent DOJ Brief acknowledges that "it is far from 'clear and indisputable' that a deadline placed in a proposing clause must be less effective than one placed in the proposed amendment's text" (p.52), and it cites to the January 27, 2022, Statement from President Biden on the Equal Rights Amendment, which declared that "nothing prevents Congress from taking legislative action to "recogniz[e] ratification of the ERA." Id. at 15. The brief notes, however, that "Congress has repeatedly acted on the assumption that the deadline is valid (including by voting to extend it)," id. at 54, and, in support of the Archivist's decision not to certify the ERA as part of the Constitution, re-asserts the Department of Justice's view that a "deadline placed 'in a proposing resolution's introduction is just as effective as one in the text of a proposed amendment.'" Id. at 17.

Moreover, the Office of Legal Counsel's recently issued January 26, 2022, memorandum on the "Effect of 2020 OLC Opinion on Possible Congressional Action Regarding Ratification of the Equal Rights Amendment" acknowledges and does not modify the conclusion of the January 6, 2020, OLC opinion "that Congress had the constitutional authority to impose a deadline on the ratification of the ERA and, because that deadline has expired, the ERA Resolution is no longer pending before the States." This 2022 memorandum also states that "as a co-equal branch of government, Congress is

entitled to take a different view of these complex and unsettled questions” and that therefore “the 2020 OLC Opinion is not an obstacle either to Congress’s ability to act with respect to ratification of the ERA or to judicial consideration of the pertinent questions.”

Sincerely,

A handwritten signature in dark ink, appearing to read "David S. Ferriero". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

DAVID S. FERRIERO  
Archivist of the United States

cc: The Honorable James Comer, Ranking Member