



Archivist of the
United States

November 17, 2021

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 October 21, 2021, concerning my role under 1 U.S.C. § 106b with respect to the constitutional amendment process as it relates to the Equal Rights Amendment.

As you know, in 2018, I requested advice from the Department of Justice on this issue, and on January 6, 2020, the Office of Legal Counsel (OLC) concluded "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." The OLC opinion went on to state that "the ERA's adoption could not be certified under 1 U.S.C. § 106b." In response, I authorized the release of a press statement that stated: "NARA defers to DOJ on this issue and will abide by the OLC opinion, unless otherwise directed by a final court order."

As you are also aware, there is ongoing litigation related to this issue in federal court against the National Archives, which is being defended by the Department of Justice. It is longstanding OLC policy not to opine on the legality of government action presently being challenged in litigation.

Accordingly, it is my understanding that OLC would not reconsider the question now if I were to ask it again.

Sincerely,

DAVID S. FERRIERO
Archivist of the United States