CONCERNED
WOMEN for AMERICA
LEGISLATIVE ACTION COMMITTEE

March 15, 2021

The Honorable
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative:

Concerned Women for America Legislative Action Committee (CWALAC), the nation's largest public policy women's organization, has long opposed the Equal Rights Amendment (ERA) because we believe women deserve fairness and equality under the law, not to be written out of it. Our opposition to the ERA is not rooted in a desire for women to face discrimination, but in the reality that erasing the legal distinction between men and women denies female dignity and leaves women unprotected.

The ERA proposes 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" and that "Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." Nowhere in the text of this amendment is "women" proposed to be written into the Constitution. In fact, protections and opportunities in law specifically for women could be erased under a sex-neutralized ERA.

A new generation of activism also proves how ERA supporters are using the ERA as a tool to promote abortion.[1] Proponents today say ratification would enable courts to rule that any restrictions on abortion would "perpetuate gender inequality."[2] NARAL Pro-Choice America claims: "With its ratification, the ERA would reinforce the constitutional right to abortion …"[3] **Those on the side of protecting the unborn must oppose the ERA**.

The pro-ERA Coalition has made clear that the ERA is no longer about equal rights for all women, or about upholding the status of women as female:

> *While the effort to amend the constitution to include sex equality began nearly a century ago, our renewed efforts are centered on Black, Indigenous and Women of Color, gender-nonconforming and transgender women and girls, and nonbinary people– those who are most impacted by systemic inequities.*

The idea of the Equal Rights Amendment might sound good, but a half century of progress for women coupled with current attempts to redefine sex to include "gender identity" in civil rights law – which nullifies protections for women based on the biological reality of being male and female - only intensifies why the ERA remains wrong for women.

1. **The ERA could erase women's progress**

Adding an equality amendment based on "sex" can have a reverse effect on women's progress—the legal gains, programs, and policy reforms aimed specifically at benefiting women could be challenged, even declared unconstitutional, such as: provisions in the Violence Against

Women Act; programs such as Women, Infants, and Children (WIC); special protections in marriage, divorce, alimony and child custody; accommodations for pregnant women in the workforce; spousal social security benefits; female protections on college campuses relating to safety; Title IX scholarships and admissions.

2. **The ERA could erase legal distinctions based on sex and leave women unprotected**

Adding an equality amendment based on "sex" allows federal courts and legislatures new powers to reinterpret every law making a distinction based on sex or gender.

- Any limits on abortion or denying taxpayer-funds for abortion could be seen as a form of sex discrimination and a violation of this amendment.
- Women-only safe spaces like sex-segregated bathrooms, locker rooms, or domestic violence shelters could be seen as a form of sex discrimination and a violation of this amendment.
- Women could be forced into military service, instead of this being a woman's choice.
- Current trends to neutralize the unique differences of males and females in policy and law (and redefine "sex" as "gender identity") could be supported, even coercively mandated, by this amendment.

3. **Women are already equal under U.S. law**

Women's "equality of rights under the law" is already recognized in our Constitution. The 14th Amendment states "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor … deprive any person of life, liberty, or property, without due process of law; nor … the equal protection of the laws."

4. **Women will continue to use established law to make progress**

Women deserve fairness and equality under the law. Through established law such as Title IX, Equal Opportunity Act of 1963, Equal Employment Opportunity Commission, Pregnancy Discrimination Act, and Equal Pay Act, women have made huge strides against institutional discrimination against women in education, employment, sports, politics, and many other aspects of society. Where other inequalities may exist, women will continue to use established law.

H.J. Res 17 is a misguided attempt to retroactively remove Congress' self-imposed deadline on the ERA. The joint resolution proposing the ERA in 1972 gave a seven-year deadline for ratification which expired with only 35 of the required 38 states having passed the ERA.[4] Despite additional attempts to extend the deadline, five states rescinding their ratification, and a recent ruling by the U.S. District Court for the District of Columbia in *Virginia v. Ferriero* declaring that recent state ERA ratifications "came too late to count", the House seeks to advance a resolution to remove the deadline that is both pointless and deceptive.

In 1921 the Supreme Court unanimously agreed that a self-imposed deadline on a Constitutional amendment was an "incident of its [Congress'] power to designate the mode of ratification under Article V. The Court stated in *Dillon v. Gloss*, 256 U.S. 358 (1921):

> "We do not find anything in the article [V] which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the states

> may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary."

Since then, legal scholars, including Supreme Court Justice Ruth Bader Ginsburg[5], agree that if the Equal Rights Amendment is to be added to the U.S. Constitution the process must begin again.[6]

H.J. Res. 17, therefore, is nothing more than a political messaging bill offering an empty promise that Congress could circumvent the process for ratification by removing the deadline.

CWALAC will score against a vote for H.J. Res. 17 and will include this vote on our annual scorecard. For all these reasons, we urge you to oppose H.J. Res. 17 and focus instead on needed measures that support and uphold the rights, dignity, and opportunities of women, not undermine them.

Sincerely,

Penny Young Nance
CEO and President
Concerned Women for America LAC

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[1] NARAL Pro-Choice America. (n.d.). ERA Y-E-S. Retrieved from https://www.prochoiceamerica.org/campaign/era_yes/

[2] Image of national email alert from NARAL Pro-Choice America, March 13, 2019, asserting that "the ERA would reinforce the constitutional right to abortion . . . [it] would require judges to strike down anti-abortion laws . . .". (2019, April 1). Retrieved from https://www.nrlc.org/federal/era/image-of-national-email-alert-from-naral-pro-choice-america-march-13-2019-national-alert-asserting-that-the-era-would-reinforce-the-constitutional-right-to-abortion-it-would-require-judg/

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[4] Equal Rights Amendment: Hearing before the Committee on the Judiciary, U.S. House of Representatives, 116th Cong. (2019) (Testimony of Ms. Elizabeth Foley Professor of Law, Florida International University College of Law).

[5] Whelan, E. (2019, September 13). Justice Ginsburg: ERA Ratification Process Would Need to 'Start Over Again'. Retrieved from https://www.nationalreview.com/bench-memos/justice-ginsburg-era-ratification-process-would need-to-start-over-again/

[6] Equal Rights Amendment: Hearing before the Committee on the Judiciary, U.S. House of Representatives, 116th Cong. (2019) (Testimony of Ms. Elizabeth Foley Professor of Law, Florida International University College of Law).