

— TOP TAKEAWAYS —

# The Equal Rights Amendment is Expired: *Virginia v. Ferriero*

## THE PROPOSED EQUAL RIGHTS AMENDMENT EXPIRED LAST CENTURY

- Under Article V of the U.S. Constitution, three-quarters of states (38) must ratify a proposed amendment before it can be adopted. These state ratifications must be reasonably contemporaneous in order to reflect the will of the people in one general time period.
- In the 1970s, the ERA failed to gain approval from 38 states before the congressionally-imposed deadline for ratification expired.
- ERA supporters, nevertheless, have **sued** to demand that it be added to the Constitution.
- They argue that the ERA was resurrected when three states approved the measure this century—decades after the ratification deadline passed.
- Supporters of the fifty-year-old proposed amendment should not be allowed to bootstrap it to the Constitution with a handful of recent endorsements.

## A LOT HAS CHANGED SINCE 1972

- In 1972, when Congress sent the ERA to the states, the world was a different place.
- Since then, American women have achieved full legal equality with men, and they have made incredible social and economic progress without the ERA.
- Moreover, in 2020 the phrase “on account of sex” contained in the proposed amendment might be interpreted differently than in 1972.
- Given these changed legal, social, and cultural circumstances, it is unclear whether legislatures that ratified the ERA in the 1970s would do so again today.

## ADDING THE 1972 ERA TO THE CONSTITUTION NOW WOULD UNDERMINE REPRESENTATIVE DEMOCRACY

- More than 62 percent of eligible voters in 2020 were not born or were too young to vote when Congress sent the ERA to the states in 1972.
- These voters have not had a chance to consider the consequences of the proposed ERA or to weigh in, through their elected representatives, on whether it should be adopted.
- Adding an amendment proposed in 1972 to the Constitution now would undermine the right of today's voters to participate in the amendment process as required by Article V.

Read IWLC's *Amicus* Brief [HERE](#).