



Dear Mr. Ferriero:

We write in response to the recent assertion by **Rep. Carolyn Maloney**, Chair of the House Committee on Oversight and Reform, that you have the power and the duty to certify the 1970s-era Equal Rights Amendment (“ERA”) as an amendment to the U.S. Constitution. This statement is false, and we ask for your commitment not to certify this long-expired and moribund proposal.

As you are well aware, the joint resolution passed by Congress on March 22, 1972, clearly states that the ERA would be valid as part of the Constitution:

when ratified by the legislatures of three-fourths of the several States *within seven years* from the date of its submission by the Congress. H.R.J. Res. 208, 92d Cong., 86 Stat. 1523 (1972)(emphasis added).

Congress expressly commanded that the ERA become law only if ratified by a date certain. That deadline came and went in 1979, without the requisite 38 states. And that should be the end of the matter. *See Dillon v. Gloss*, 256 U.S. 368, 375-76 (1921) (finding “no doubt” that Congress could “fix a definite period for the ratification” of a constitutional amendment and concluding that “the ratification must be within some reasonable time after the proposal” is sent to the states).

In this case, ignoring the time constraints imposed by both Congress and the Constitution would pose a particular danger to democracy. That is because in the half century since the ERA was first sent to the states for consideration, the goals of the 1970s-era ERA have largely been achieved. At the same time, the population has changed radically. Not only have **two generations of new voters** come of age, but immigration to the United States and migration across state borders has fundamentally altered the American political landscape. We, therefore, simply have no way of knowing, without starting the process over, whether voters in 2022 would favor adoption of the ERA. Moreover, given the current state of sex equality, debates over the meaning of the word “sex”, and **recent legal precedents**, it is unclear whether the ERA today means what the public understood it to mean in 1972.

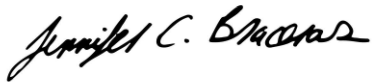
If granted, Rep. Maloney’s request would, in effect, allow a mere three states — those that ratified the ERA since 2017 — to speak for the entire country. This is clearly contrary to the purpose of Article V, which was intended to ensure broad and overwhelming support for amendments to the Constitution.

Given the uncertainty regarding current support for the ERA, as well as uncertainty as to the current meaning and application of the ERA, certifying this proposal would destroy the very foundation of our

democracy (the consent of the governed) and undermine the core holding in *Dillon* that ratification must be “contemporaneous” in order to reflect “the will of the people in all sections.” 256 U.S. at 375.

We therefore, respectfully, request that you affirm in writing your lack of authority to certify the long-expired ERA.

Sincerely,



Jennifer C. Braceras
Director



Inez Stepman
Senior Policy Analyst