



January 7, 2020

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230 The Capitol
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
H-232 The Capitol
Washington, D.C. 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
S-221 The Capitol
Washington, D.C. 20510

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
H-204 The Capitol
Washington, D.C. 20515

Re: Passing S.J. Res. 6 and H.J. Res. 79, Removing the ratification deadline on the ERA

Dear Leader McConnell, Leader Schumer, Speaker Pelosi, and Leader McCarthy:

The year 2020 is significant as the United States marks the 100th anniversary of the ratification of the 19th Amendment which gave women the right to vote. Additionally, in February, the League of Women Voters will turn 100 years old. We are an organization born out of the movement to secure voting rights for women. Today, we write with another request to further equality, removing the deadline on the ERA.

The League of Women Voters encourages you to move forward with passage of S.J. Res. 6 and H.J. Res. 79. This resolution will eliminate the deadline for ratification of the Equal Rights Amendment (ERA).

Combating Discrimination

Despite the significant legal and legislative advances that have been made in recent decades, women continue to face discrimination on the basis of sex. The symptoms of this systemic discrimination are clear in the ongoing fights against unequal pay, workplace harassment, pregnancy discrimination, domestic violence, and limited access to comprehensive healthcare. It is not enough to treat the symptoms; we must address the root cause of inequality by amending the Constitution.

This month, it is likely that Virginia will be the final and 38th state to ratify the ERA. In order to ensure that the will of the states and ratification rights of the states are respected, Congress must immediately pass H.J. Res. 79 and S.J. Res. 6. This is an important step to ensuring that the efforts building in states across the country are not done in vain and will lead to real change.

Recent Developments

The ERA momentum is not new. In 2018, the ratification by Illinois and Nevada propelled this legislative initiative towards being one state away from achieving the 38-state threshold for ratification. Even if ERA ratification does not pass in VA, eleven out of the 13 states yet to ratify the ERA have introduced legislation to move this forward. Passing H.J. Res. 79 and S.J. Res. 6 and removing the timeline would ensure that work done by state legislatures to move this important amendment forward is not being done for nothing.

The U.S. Supreme Court has upheld the rights of Congress to determine whether an amendment has been ratified in a reasonable time.ⁱ In the ruling, *Dillon v. Gloss*, the Court noted that there was nothing in the Constitution, constitutional convention, or in state conventions during the original ratification of the Constitution, that provided any clarity on Congress' ability to set time limits. Instead, the Court determined that congressional authority to impose a time restraint on ratification is implied in the power to determine the mode of ratification.ⁱⁱ The Court reasoned against the idea 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 still be effective."ⁱⁱⁱ The Court held that an amendment should be ratified within a "reasonable" and "sufficiently contemporaneous" time frame.

The court further clarified how to properly define the reasonable amount of time for an ratifying an amendment. In *Coleman v. Miller*^{iv} the court recognized that upon ratification by three-fourths of the states, Congress has the power to consider the political, social, and economic conditions in considering whether the amendment was ratified in a reasonable amount of time, and whether the amendment is still necessary.

Congress has a clearly established basis for their authority to extend or remove the time limit from the resolving clause of the Equal Right Amendment. The idea of time limits on constitutional amendments is a modern congressional addition to the amendment ratification process. Prior to the twentieth century, there was no discussion of imposing a time constraint on the states' consideration of a proposed amendment. Congress derives its power to set a time limit from its authority to designate a mode of ratification.^v

In 2017, Nevada became the thirty-sixth state to ratify the ERA. Nevada expressly relied on the logic that "the restricting time limit for the ratification of the Equal Rights Amendment is in the resolving clause and is not part of the amendment which was proposed by Congress and which has been ratified by thirty-five states...having passed a time extension for the Equal Rights Amendment on October 20, 1978, Congress demonstrated that a time limit in a resolving clause may be disregarded if it is not part of



the proposed amendment.”^{vi} The states reasoned that under the precedent set in *Dillon* and *Coleman* that Congress has the authority to determine an amendment’s validity after the last state ratifies it.^{vii} In 2018, Illinois followed a similar logical argument as Nevada with the exceptions that the state questioned the constitutionality of the time limits and stated the need for a constitutional guarantee of equality between the sexes. Both states relied on the location of the time limit in the resolving clause as a basis for the legal viability of their ratification.

Request for Support

H.J. Res 79 and its companion in the U.S. Senate, S.J. Res. 6, are vital to ensuring that final ratification of the ERA is achieved over the course of the next year. As an organization that defends democracy, the League of Women Voters believes that there cannot be a time limit on establishing equality and final ratification of the ERA is needed to ensure equal rights for all regardless of sex or gender. As a country we are on the cusp of a victory for this long-awaited amendment. Congress must do the work to eliminate the timeline, so that when the amendment is fully ratified it can go into effect immediately.

For questions about the League’s support of removing the ratification deadline of the Equal Rights Amendment, please contact Celina Stewart (cstewart@lwv.org) or Jessica Jones Capparell (jjones@lwv.org) via email or by phone at (202) 429-1965.

Sincerely,

A handwritten signature in cursive script that reads "Chris Carson". The ink is dark and the signature is fluid and legible.

Chris Carson
President
League of Women Voters of the United States

ⁱ Dillon v. Gloss; “Why Time Limits on Ratification of Constitutional Amendments Violate Article V” – Mason Kalfus

ⁱⁱ Jean Wittier Women’s Rights Law Reporter

ⁱⁱⁱ Dillon v. Gloss – pg 374

^{iv} Coleman v. Miller

^v “The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly Before the States” Held, Herndon, Stager

^{vi} “Buried Alive: The Reboot of the Equal Rights Amendment” Gerard N. Magliocca.

^{vii} “Buried Alive: The Reboot of the Equal Rights Amendment” Gerard N. Magliocca.