After Virginia ratified the ERA in January 2020, that represented the 38th state ratification as required by the Constitution Article V and the ERA became the 28th Amendment. However, this administration is trying to prohibit the ERA from becoming law. In fact, the executive branch of the government has no role whatsoever in amending the federal Constitution. However, the attorney general sent a memo to the National Archivist not to publish the ERA as the 28th amendment so the Archivist said he would not without a court opinion.

Two lawsuits were filed. One by Equal Means Equal in Massachusetts. Oral argument was heard in that case at the end of June and we await a decision. Both attorneys were women as was the judge.

Second, three Attorneys General from the last three states to ratify the ERA (NV, IL, VA) filed a lawsuit in Washington, D.C. to force the Archivist to publish the ERA. The government filed a motion to dismiss and the plaintiff's response was filed June 29, 2020. In addition, nine amicus briefs were filed thus far supporting the plaintiffs' case. ERA Task Force AZ along with AZ NOW and Mormons for ERA in AZ all signed the women's advocacy brief along with 51 other national, regional, and state organizations.

Below are the summaries of the arguments in each brief.

PLAINTIFF STATES' MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

The main point is that there is no role for the executive branch in amending of the Constitution according to the plain language of Article V in the Constitution. The states are sovereign and equal partners with Congress in the amendment process. The process gives roles only to the Congress to pass it with a two-thirds vote and then the states to pass it with a three-fourth vote. Once that is done, the amendment is in the Constitution. This attempt by the administrative branch to manufacture a role and an objection must be rejected.

The "deadline" that has been so bandied about does not invalidate the final three ratifications because the archivist cannot ignore the state ratifications, the archivist does not have the power to determine a ratification is not suitable as his role is simply ministerial, and there is no "deadline" in Article V that can be imposed.

"Over time, the Constitution has been amended to declare that certain practices once common are wrong and out of step with who we are as a people, including slavery, denying suffrage based on race and sex, and sending young people to die in battle before they could vote. Earlier this year, government-sponsored sex discrimination was added to that list when the Commonwealth of Virginia became the 38th and final State needed to ratify the Equal Rights Amendment."

To refuse the amendment "… would tell the women of America that, after 231 years, they must wait even longer for equal treatment under the Constitution. And it would nullify the Plaintiff States' sovereign prerogative to ratify amendments that make our Union more perfect." On this July 4th when this was written, we should be celebrating the work done over 200 years to make the country more perfect not trying to prohibit 50% of the citizens from equality.

The timeline was never part of the text of the ERA that the states ratified. Article V is clear that once a proposed amendment has been "ratified by the Legislatures of three fourths of the several States," it "*shall be* valid to all Intents and Purposes, as Part of th[e] Constitution…" In fact the 27th amendment was published 203 years after it was first introduced.

The archivist cannot prefer some states ratifications over others nor tell states when they must exercise their own constitutional prerogative to ratify. Rather when the archivist receives notification from the state that it has ratified, he must publish. In fact in 2012, he said just that in a letter to Senator Maloney. Apparently, the threats of this administration made him change his mind.

Article V itself does not mandate nor set a timeline and Congress cannot bind the sovereign states beyond the language of the Constitution. The Idaho litigation in 1980s much relied upon by our Arizona Senator Farnsworth who as a lawyer knew better was mooted by the U.S. Supreme Court and has no precedential status.

One issue with this brief is that the government argued that the plaintiffs should have filed under the Administrative Procedure Act (APA) and the plaintiffs said they would if so ruled. That is an insult to women. This is not a government regulation; it's a constitutional amendment. It was not proposed by the administration; it was proposed by Congress. This question should not be dealt with as an administrative procedure.

BRIEF AMICI CURIAE OF THE ERA COALITION AND ADVOCATES IN THE WOMEN'S MOVEMENT IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

This the brief that the ERA Task Force AZ signed on to along with the other two Arizona groups. The basic argument was that women were born into discrimination from the founding of the country with no rights. We have done remarkably well in spite of obstacles but we still face discrimination. The public supports the ERA by wide margins and there are active groups in every unratified state fighting for the ERA.

The basic legal argument is the plain language of Article V. It has no time limits but says when three-quarters of the states ratify, it's done. The people of the states ratify it after Congress sends it to them. It is not up the Congress to stand in the way with illogical time limits.

The brief outlined the fight for women's rights from Abigail Adams telling her husband to remember the ladies which he didn't to the first women's convention to voting to the ERA and to the fact that litigation has proven that the 14th Amendment does not adequately protect women.

The fact that the time limit was not in the amendment itself but in the resolution only and the fact that they changed it once shows that it is not a part of the amendment that the states pass. The fact that the House of Representatives passed another resolution in Feb. 2020, H.J.Res79, to eliminate the timeline shows that it is about a fundamental principle and changeable. The authors then outlined that with the ERA we would have more peace, stability, and prosperity. They then listed some of the existing problems such as violence against women, discrimination against women especially women of color and immigrants, and discrimination in employment,

pregnancy and the military, as well as economic disparity as issues that could be better addressed with an ERA.

BRIEF OF *AMICI CURIAE* CONSTITUTIONAL LAW PROFESSORS ERWIN CHEMERINSKY, NOAH FELDMAN, REVA SIEGEL, AND JULIE C. SUK, IN SUPPORT OF NEITHER PARTY

The brief of the academics was at odds with that of the state plaintiffs as it said it is a political question that cannot be reviewed by the court at all. They argue that only Congress not the court can determine whether the required number of states have ratified. They do agree with the state plaintiffs that the archivist and the executive branch have absolutely no role in the amendment process.

They make a separation of powers argument that an amendment is one of the few ways we can check the Supreme Court and its interpretation of the law. Since the Supreme Court has refused to interpret the 14th Amendment as giving women equal protection under the law, we have to fix that by passing the ERA to correct the erroneous behavior of the court. "It would be perverse to put the power to determine that back into the hands of the court – the very institution we are seeking to check and balance."

AMICUS BRIEF BY ORGANIZATIONS THAT ADVOCATED ERA RATIFICATION IN VIRGINIA, ILLINOIS, & NEVADA IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

This amicus is from the main organizations that fought for the ERA in the three states: AAUW, NOW, WPC, YWCA, Bar Associations of NV, IL, and VA. They argue their particular interest as the driving force behind it. They too rely on the plain language of Article V that gives the power only to states to ratify. There are no restrictions, conditions, or limitations. Nor is there any provision to rescind and past attempts to do so have failed.

BRIEF FOR THE STATES OF NEW YORK, COLORADO, CONNECTICUT, DELAWARE, HAWAI'I, MAINE, MARYLAND, MASSACHUSETTS, MINNESOTA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, WASHINGTON AND WISCONSIN, AND THE GOVERNOR OF KANSAS AND THE DISTRICT OF COLUMBIA AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS

These are states that have ratified the ERA and are arguing that their ratification must be given its proper weight. They argue that there is no authorization in Article V to mandate a seven-year time limit or any time limit. For a court to impose one, upsets the balance of powers written into the Constitution and is not what the states understood when ratifying the Constitution. Using a deadline has been inconsistent in many ways and prior attempts to rescind have been ineffective.

They argue that Congress cannot impose a deadline because that would diminish the state's power in the process as outlined in Article V. The state's power is to ratify or not. Once it has done so, it cannot then rescind and this has been the longstanding consensus when states refused to allow other states to ratify conditionally. The original Congress had attempted to put a time limit in Article V and failed. So we can't add one now. They had also tried to put in rescission

language and failed. So it's not there now. To pretend it is is to upset the balance between state and federal power, the balance between stability of the Constitution, and the need to change.

In total, then, twenty-three of the twenty-seven amendments now part of our Constitution, other than the ERA, were submitted to the States with joint resolutions that mirrored Article V and included no ratification deadline. Only four amendments – proposed over a period of only eleven years – were submitted with joint resolutions that contained such a deadline. And none of those deadlines was ever challenged in court. Not till 1960 did they put timelines outside the text.

THE UNITED STATES CONFERENCE OF MAYORS, EQUAL MEANS ERA (SC), 38 AGREE FOR GEORGIA, LARATIFYERA.

In addition to the Conference of Mayor, this amicus includes ERA organizations in three unratified states, all in the South. They argue that the ERA would provide a Constitutional basis for federal legislation guaranteeing claims against sex discrimination or gender-based violence be reviewed with strict scrutiny and therefore more likely to prevail.

They outline that current laws do not protect women from wage discrimination, do not protect pregnant women who can't get workplace accommodations or short-term disability, though men who are injured in a weekend sporting game do, and do not allow victims of discrimination and violence to hold the perpetrators accountable. They remind us that the vast majority of nations have such protection and the U.S. is the only industrialized country that does not even though we have often required other countries to have such provisions to give them aid. Even North Korea has such a provision!

Women's rights will be stronger, consistent, and permanent and enforcing that equality is a fundamental right. Women have lost cases because they did not have that constitutional "hook" e.g. the Violence Against Women Act and the *Morrison* case, the *Gonzales* case that was upheld against the United States at the Inter-American Commission on Human Rights, and the *Duke v. Walmart* class action that was tossed out would have been held to a higher standard. Other discrimination consists of relying on prior salary that was based on discrimination that then only perpetuates it and taxing menstrual products that are necessities while not taxing things like Mardi Gras beads. For those interested, the brief has 40 pages listing every nations equality provision.

BRIEF FOR EQUALITY NOW, THE WORLD POLICY ANALYSIS CENTER, THE LATIN AMERICAN AND CARIBBEAN COMMITTEE FOR THE DEFENSE OF WOMEN'S RIGHTS, THE EQUAL RIGHTS TRUST, THE EUROPEAN WOMEN'S LOBBY, FEMNET, THE ARAB WOMEN ORGANIZATION, INTERNATIONAL WOMEN'S RIGHTS ACTION WATCH ASIA PACIFIC AND THE SISTERHOOD IS GLOBAL INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS

This brief focuses primarily on the international aspect and the U.S. as outlier for not having a Constitutional provision prohibiting discrimination. The U.S. has ratified the ICCPR making it binding law that requires the country to take measures to prevent sexual and gender-based violence and discrimination. The U.S. has signed but not ratified CEDAW that also requires sex equality. International law prohibits the U.S. from acting contrary to CEDAW. Because of the

outside role of the U.S. in the international sphere, the failure of the U.S. harms the groups named in the amicus.

The failure to have women's equality in the constitution is a real injury that the patchwork of laws that exist cannot remedy. They rely on the *Morrison* case and the FGM cases where perpetrators just go to another state to illustrate the problem of not having a consistent principle. The *Gonzales* case illustrates the failure of protection for interpersonal violence. Eighty-five percent of U.N. member states have constitutions that explicitly guarantee equality for women and girls. "One study found that the probability of success for a litigant alleging discrimination is only 47% under intermediate scrutiny; under strict scrutiny the probability of prevailing improves to 73%."

Indeed, by failing to adopt the ERA, the United States violates a core provision of CEDAW: the Article 2 directive to pursue the elimination of discrimination by all means necessary including "undertak[ing]. . . [t]o embody the principle of the equality of men and women *in their national constitutions* or other appropriate legislation if not yet incorporated therein."[72]

BRIEF FOR GENERATION RATIFY AND OTHER GROUPS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS

This brief as stated focuses on young people – their role in passing the ERA, the benefits they will receive from the ERA, and the historical part young people have played in advancing women's rights. They also focused on diversity and the benefit to education, and economic equality. Given the length of time it has taken to pass the ERA, there are now grandmothers, mothers, and daughters marching together for ratification of the ERA. The other groups are: Platform, Generation Upwards, Pride in Running, the Homegirl Project, and Sending Her Essentials are youth-focused organizations dedicated to equality for all persons regardless of gender, gender identity, sexual orientation, race, and ethnicity.

From 1975 on the young have historically had higher rates of support for the ERA and this continues today. They decry the discrimination that still hounds girls as young as those in 7th grade today and 23% of college undergraduates. Such harassment along with stereotypes harms girls and stifles education. A simple thing such as accessing menstrual hygiene products can interfere with a girl's education. The ERA will stop the regression in women's rights and give more robust protection that embodies American values.

BRIEF OF BUSINESS AND CORPORATE ENTITIES AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF STATES

Ninety-three companies from large to small across the country filed a brief supporting the ERA in support of gender equality because they value diversity and inclusion in their business. The facts show that diversity improves performances and gives companies a better bottom line. Any business that wants to operate in a global economy and multicultural society needs to get on board.

In spite of efforts, gender inequality exists. The coronavirus has exposed the inequalities even more as women in the service sector lose jobs, women in the health care sector become essential workers, and child care becomes paramount. Consistency in enforcing laws impacting women

would benefit women workers, improve economic output, and give certainty to principles of equality.

Facilitating women in the workforce will increase economic output and enhance the competitive edge of U.S. businesses globally. Women make or influence nearly 80% of purchases in the U.S. so you need women's minds at the table. Millennials consider diversity, equality and inclusion as a factor in whether to accept a position.

The businesses outline the same legal problems that exist today without the ERA that were discussed in the earlier briefs but add the *Geduldig v. Aiello* case in which the judges seem to have forgotten a vital part of their biology class that only women have babies. Violence against women alone costs the economy more than $8.3 billion a year. Among high income countries, U.S. women have the highest rate of chronic illness and maternal mortality, forgo health care because of the cost, and are the most likely to live in extreme poverty. Existing laws fall short and we need a clear judicial standard and enforcement of the federal legal principle of sex equality.

A multipage list of businesses follows and ranges from Apple to Estee Lauder to Gildead Sciences, Goldman Sachs, Google, Levi, Microsoft, Morgan Stanley, Pepsico, Pfizer, Spotify, Twitter, Uber, Lyft, U.S. Soccer Federation, and NFL. Who knew? Perhaps we need to tell Megan Rapinoe about the Soccer Federation.

AMICUS BRIEF OF MICHIGAN SUPPORTING PLAINTIFF STATES IN REQUESTING A DECLARATION THAT THE EQUAL RIGHTS AMENDMENT HAS BECOME THE 28TH AMENDMENT TO THE U.S. CONSTITUTION

The brief focuses on the life and work of Margaret Griffiths the Congresswoman from Michigan who got the ERA passed out of Congress to the states. Griffiths said: "This movement [for equality] is like a tidal wave. And when it's passed, men and women both are going to turn into human beings." *Martha Griffith*

She might have been overly optimistic. She also fixed other problems of equality. She discovered that when a woman covered by Social Security died, her dependent children were not eligible for benefits, but a man's dependents were. She also discovered that women had to pay taxes on money left by their husbands, but no man had to pay taxes on what his wife left. And she found that, if a man divorced his wife after 20 or 30 years of marriage, the wife was not entitled to any Social Security payments. She changed all those laws. She also ensured a minimum wage for domestic workers and worked to eliminate pervasive sexism in credit institutions and high education. She supported men too by introducing a bill to permit fathers in the delivery room during the birth of their children.

For young women these ideas seem archaic, from some other country or some other time – but some of us can actually remember when they were law – not that long ago. When my sister got a divorce, though she made more money than her ex-husband, she could not get a credit card without his name on it – they were divorced! – or she had to put our father's name on it – though she was 31-years-old.

The authors say, “It is remarkable that this straightforward and important proposition has been the source of so much delay and controversy. It is time to put culture wars aside and collectively focus on the essence of that sentence. … Equality in law is one of the hallmark promises of America. That is why the ERA must be enshrined in our Constitution. It is fundamental. And it belongs in our fundamental law.”

They point out that worldwide every Constitution since WWII had had sex equality often mandated by the U.S. Though we have a variety of laws for sex equality here and there, this piecemeal approach is inadequate to protect the fundamental value at stake with sex equality. The brief was signed by three women lawyers.

Whether the court has oral argument is up to the court. After that, or without it, the court will then issue a written decision. The loser will probably appeal it.

BRIEF OF AMICUS CURIAE MONTANA GOVERNOR STEVE BULLOCK

Montana ratified the ERA 46 years ago. Montanans ratified the ERA with a good-faith expectation that when a total of three-fourths of U.S. States also ratified, the people of Montana would benefit from the bargain struck by their own ratification: federal, nationwide adoption of the ERA in the United States Constitution.

Though the constitutionally required number of states have ratified, Defendant Archivist of the United States would improperly exercise his discretion to elevate a *statutory* deadline over *constitutional* lawmaking by the people, including Montanans.

Montana’s history of supporting and celebrating equality includes, among other things, electing the first woman to Congress in 1916 – four years before women across the country were permitted to vote – and including in its pre-ERA state constitution a prohibition against sex discrimination. Montana and its citizens have a vested interest in ensuring that Montanans be protected from sex discrimination whether at home or visiting throughout the country. The brief outlined Montana’s history of firsts and that they have had an ERA for 50 years.

An executive official’s refusal to publish and certify an amendment lawfully ratified is an affront to all citizens, and especially those who travel among the States, who engage in interstate commerce, who seek remedies for sex discrimination in federal court and under federal law, and who participate in federal contracts, among other pursuits and activities.

Defendant argues that the Court should defer to Congress and executive branch staff members of the Office of Legal Counsel (“OLC”) in *interpreting* the meaning of Article V of the Constitution. But constitutional interpretation is not the proper role of either the executive or the legislative branches. The opponents ask to reject the amendment because the timeline is valid. But the question is whether it is valid.

The archivist has no discretion on this and must publish. He himself said this in 2012. This DOJ opinion is in conflict with the last DOJ opinion on the timeline. Courts owe no deference to executive agencies on constitutional questions especially where, as here, the executive has no role in the decision making.

If you didn't know this before, you do now – elections have consequences. The DOJ under President Hilary Clinton would not have told the archivist the ERA was illegal and it would be in the Constitution right now. One of the jobs of the new president is to withdraw the objection immediately so the archivist can publish. Be sure to vote all up and down the ballot in November.

BRIEF *AMICUS CURIAE* OF VOTEERA.ORG AND LEANNE LITTRELL DILORENZO IN SUPPORT OF PLAINTIFF STATES

The archivist published Nevada's ratification in 2017; he published Illinois' ratification in 2018; and he listed Virginia as ratified. So what stopped him from publishing? Only bullying from the White House could have done that.

This amicus argues that the text alone of Article V, not *dicta* from an almost 100-year old decision, is central to the outcome of this case. In discussions, the framers said that "when" means "whenever."

According to a Supreme Court case decided this session, "When the express terms of a statute give us one answer and the extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit." *Bostock v. Clayton Cnty.*, 2020 U.S. LEXIS 3252, at *10 (U.S. June 15, 2020). Therefore since Article V says when three-fourths of the states ratify, it's done; that means it's done.

The absence of any language about a timeline in the text means there is not one. The framers put many other timelines in so if they had wanted one in Article V, they would have put one

OPPOSITION BRIEFS

DEFENDANT'S MOTION TO DISMISS

The first argument is that the plaintiffs (the three recently ratified states) have no standing (right to bring a lawsuit at all) because they have not alleged a concrete injury that is linked to the archivist's actions. That is the injuries done to women over the last 244 years by the lack of equality under the law count for nothing. According to the DOJ, there is no hardship in denying the ERA.

They also argue that the issue of recession is not ripe or ready for review because the archivist has not said he is not going to count those states attempting to rescind in spite of the fact that three of those states have asked to join in the lawsuit.

They argue that it's a political question that the court cannot rule on. And they argue that the plaintiffs don't meet the procedural requirements for mandamus (ordering a person to do something) because the archivist has no clear duty to act, the plaintiffs have other remedies, and the plaintiffs aren't like to win so they haven't stated a claim and it all should be dismissed.

The main argument is timeline. First, they argue that the passage has to be close to the time the amendment was sent to the states – conveniently ignoring that the 27th amendment was passed 203 years after it was sent to the states.

They also argue that the court cannot second guess Congress on the 7-year timeline so that means it's a political question for Congress and not for the court. They admit that only since

1924 (not historical according to the recent U.S. Supreme Court case in *Espinoza v. Mt*) did Congress start putting on 7-year timelines and since 1960 they have all been in the preamble not the text. But they claim that it makes no difference – which any attorney will tell you is wrong – because the preamble is not part of the law. And they drag out that dead cat of the Idaho *(Freeman*) case which was mooted by the U.S. Supreme Court so cannot be a precedent.

They admit that the language of the archivist job is ministerial not policy making:

> Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States. 1 U.S.C. § 106b. "Section 106b and its antecedents have long been understood as imposing a ministerial, 'record-keeping' duty upon the executive branch."

They further admit that, "The Archivist may not refuse to certify a valid amendment." But they claim that the archivist is entitled to ask whether the notice he received is "official." However, previous cases have said that if he received a document from the state that was signed by the proper officials, it's official and cannot be challenged by him or anyone else.

The Department of Justice also questions the state's right to bring a claim on behalf the will of the people because "the people" could not sue. However, as the plaintiffs argue, they are equal partners in the Constitutional amendment process per the language in Article V and they have the right to uphold their own sovereignty.

They claim that the plaintiffs cannot meet the requirements of mandamus. They also claim that the 7-year deadline is one of the "modes" that Article V gives for passing an amendment. They could hardly be more wrong. The two "modes' or methods are 1) Congress pass by two-thirds and send to states to pass by three-fourths; or 2) call a constitutional convention and pass it there. Nothing in Article V says Congress can put up other obstacles to passing an amendment. The timeline cannot be part of any "mode."

They claim that Article V does not state that an amendment once proposed is open to ratification for all time, conveniently ignoring that the 27th Amendment took 203 years.

They claim that the Supreme Court's declaration of the Idaho case as moot means that the Supreme Court adopted the view of the lower court that the timeline had expired. Again any first-year law student will tell you that declaring a case moot is not adopting the reasoning or finding of that case and when the Supreme Court wants something to be said, says it – it doesn't leave it unsaid to be misinterpreted.

INTERVENORS' MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

These intervenors are the five Republican male attorneys general who filed a law suit in Alabama that was dismissed, intervened in the law suit in Massachusetts, and have now intervened in this law suit. Their argument mirrors those already presented. The timeline has passed. Interesting

they argue that the congressional intent in 1972 was to not let the ERA "wander about for 50 years." They interpreted that to say the seven years was a drop-dead date. I would interpret it completely differently. The ERA had in fact wandered about for 49 years in Congress from the time it was first introduced in 1923 until it was passed out in 1972. So their statement was to the states – get it done – and don't let it wait another 50 years. Unfortunately, that is precisely what the states did.

They argued the ERA should not be published because a constitutionally reasonable time for ratification had expired. They, like other opponents, quoted Ginsberg a lot to try and get her to either vote against previous words or her lifelong quest for the ERA when it reaches the Supreme Court. They also conveniently forgot to mention the 27th amendment that took 203 years to pass and when they did get to it, said it wasn't relevant because no one had sued about it. That's not how jurisprudence works!

They claim we are a different people than we were in 1980 – maybe so – and still over 90% of Americans support it. So mansplain that!

Then of course since three of them have rescinded, they claim that the five rescissions count and so there is only 33 not 38 states. Every previous case has said recessions are not allowed but they rely on the *Freeman* case that was mooted and can form no precedent. They do argue that the DOJ is wrong that this is a political question because they believe it should be dismissed out right.

CONSENT MOTION OF EAGLE FORUM, EAGLE FORUM FOUNDATION, PUBLIC ADVOCATE OF THE UNITED STATES, CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND, CALIFORNIA CONSTITUTIONAL RIGHTS FOUNDATION, U.S. CONSTITUTIONAL RIGHTS LEGAL DEFENSE FUND, CLARE BOOTHE LUCE CENTER FOR CONSERVATIVE WOMEN, POLICY ANALYSIS CENTER, RESTORING LIBERTY ACTION COMMITTEE, VIRGINIA DELEGATE DAVID LAROCK, AND FORMER VIRGINIA DELEGATE ROBERT G. MARSHALL FOR LEAVE TO FILE BRIEF AMICUS CURIAE IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

This group has dragged up all the old arguments from 50 years ago that have been long put to bed. They claim that an amendment has to be ratified in a contemporaneous fashion again forgetting the 27th amendment that took 203 years. But that is different they claim – because the 27th amendment is very narrow and the ERA is very broad. That distinction has never been a reason to interrogate an amendment before!

They claim the plaintiffs are lying – when it's them doing the lying. This is a classic case of projection – blaming the other person for what you are doing, a common political practice these days.

They claim that the actual Text of Article V is being disregarded – when it's them doing the disregarding. They admit that the Article states two ways/methods/modes of amending the Constitution: (i) proposal by Congress and (ii) ratification by state legislatures. Nowhere does it say that additional obstacles can be put there by the Congress.

They look at the text and read something that is not there – a timeline. Then after claiming the text of Article V was violated, they then pivoted to focus on the preamble not the text of the Article at all.

The litany of horrors put forth by the groups included women being drafted and being in combat, abolishing all laws regulating or prohibiting abortion; undermining the proposition that marriage was only between a man and a woman; eliminating tax exemptions for churches with male-only clergy; ending single-sex schools and sports teams; establishing unisex prison cells, hospital, and nursing home rooms and school dormitories; invalidating workplace laws to protect women. Everyone of these shibboleths is either already overturned by law or time or shown to be a complete fabrication. The conservative Republican majority Supreme Court recently ruled in *Bostock v. Clayton Co. (Supreme Court No. 17-1618) and R.G. & G.R. Harris Funeral Homes v. EEOC* that "sex" under Title VII covers LGBT people.

They also claim that every law would have to be examined. That pretty much has been done by the women's commission established at the federal level and in nearly every state in the 1980s. They also complain that federal judges would be given too much power because they would have to decide on violations of the Constitution. Well yes, that is the way our Constitution set it up. Federal courts do have the final say so on violations of the federal Constitution. So if equality under the law is a founding principle of the U.S., then it should be in the Constitution and decided by federal judges. Since #45 has now stacked the federal courts with 200 judges, they should not be worried about this.

Otherwise their arguments mirror those of the DOJ but for one. They claim that the plaintiffs are lying when they say that the founding documents did not include women because – you know – the Bible tells me so. According to their reading of Genesis and a book about Genesis when God said "man" he meant "man and woman." This would be a novel reading of the Bible to just about anyone.

If the Constitution included women, then why did the Supreme Court say that women could not vote, could not go to certain schools, could not be licensed to be lawyers, could not run for office, could not divorce, could not keep their earnings, could not keep their children and on and on? Why did women have to pass the 19th amendment to vote? Why did Scalia say that the 14th amendment and indeed the Constitution does not cover women? Citing the Bible to interpret the Constitution is truly perverse in a Constitution that says there shall be no establishment of religion!

The attorneys end their screed with, "We urge this court to resist the siren song being sung by Plaintiffs, for it may be deceptively alluring, but would shipwreck our constitutional republic." The Merriam Webster definition of "siren song" is an alluring utterance or appeal especially one that is deductive or deceptive. By the reference to "shipwreck" the authors clearly are referring to the myth of "mermaids" luring sailors to their death. A mermaid is an aquatic creature with the head and upper body of a female human and the tail of a fish. Thus they ended their argument by using stereotypes to paint women as only half human lying seductresses who lead men to their deaths. Could their message be any clearer? As lawyers, they should be ashamed.

Two more opposition amicus briefs have been filed.

BRIEF OF AMICUS CURIAE INDEPENDENT WOMEN'S LAW CENTER SUPPORTING INTERVENORS' MOTION FOR SUMMARY JUDGMENT

Their argument defeats itself. It says that generations of young voters have not been able to weigh in so all the states should vote again. At the same time, they say that the three newest ratifications in 2017, 2018 and 2020 should not count – but those generations obviously did weigh in on those votes and ratified it. Plus the Millennials and Gen X groups support the ERA at a higher rate than the older demographic.

They also claim that the 14th Amendment "equal protection" clause already protects women which even their good friend Scalia said no. They also point to statutes that offer protection for women but then mention VAWA – which was not renewed – and that is exactly the point – statutes can be changed or repealed at any time.

They then go on to say that women are running and opening lots of new small businesses. Well yes because of discrimination in the economic world. And they claim that women are succeeding in athletics – and that's why the women's soccer team had to sue for equal pay? They say women are doing better than boys in school – so why do we still have a gender pay gap? They applaud that today women are 25% of the political scene – but we represent 50% of the population.

They mention the timeline but not that it was 202 years for the 27th Amendment to be ratified. But the real issue was that women might have to serve in the military and they might be mixed up in the bathrooms. These are the same old tied arguments made in the 1970s. As each argument falls down, they have fewer and fewer left to rely on. As lawyers, they should have been ashamed to put in a brief so easily disputed without even an attempt at a good argument.

BRIEF OF CONCERNED WOMEN FOR AMERICA AND SUSAN B. ANTHONY LIST AS AMICI CURIAE IN SUPPORT OF DEFENDANT-INTERVENORS STATES (so sorry Susan)

Written by Alliance Defending Freedom, the giant religious juggernaut law firm that leaves no doubt that religion is behind many of these objections since women need to stay in their place – subservient to men.

They trot out no new arguments at all. They say the timeline is over and the court said so in the Idaho case that they declared moot. As a lawyer, it should be embarrassing to submit such a meaningless statement.