

President's Address Nov 19, 2022

This will be my last President's address to all of you as I am required to transition off the Board due to term limits. It has been my honor and privilege working with this talented group of activists to ratify the ERA.

As all of you know, 2022 was the short year for the NCGA. There was no movement on any of the bills to ratify the ERA in NC. Frankly, we weren't expecting that. However, the ERA-NC Alliance did stay busy during the year with several projects and programs.

We kicked off 2022 with a press conference at the NCGA featuring (show slide) Sen Natalie Murdock, Rep Julie von Haefen, Danielle Williams of Winston-Strawn, the co-presidents, Audrey Muck and Ann Von Brock. The press conference announced the work that law firm Winston-Strawn was doing in examining all of the NC Laws, statues and regulations to determine if they'd be in compliance with the ERA. They reviewed 163 separate chapters totaling 47,000 pages of laws and 45,000 pages had gendered language. You'll hear more about that later from Winston-Strawn attorney, Danielle Williams. The work is nearly completed, and we hope to see the more egregious laws brought to the NCGA for review. We alerted Attorney General Josh Stein's office to this project and will work with them further.

One of our goals as an Alliance is to continue educating NC citizens on the ERA and the work we do. We had presentations to WomenNC, one of our lead organizations and to the NC Association of Women Attorneys who is now a lead organization with us. We value the work and input we receive from our Lead Orgs and we scheduled a meeting with them in May to update them on the status of the ERA and our mission as an Alliance going forward.

We had the opportunity of having Professor Rebecca DeWolf speak to a group of us on her book, "Gendered Citizenship" and the fight for the ERA in February. The program was well attended and if you missed it, you can watch on our YouTube channel.

We collaborated with groups across the country who are doing statutes reviews as well as attorneys like Michele Thorne who are leading the fight to urge the Biden Administration to publish the ERA since it has met the requirements of Article V of the US Constitution.

When the SCOTUS opinion dropped this summer, the Alliance got busy. ERA groups traditionally have not aligned themselves with abortion as we all believed that Roe v Wade was settled law and decided based on the idea of unnecessary intrusion into privacy in the 14th Amendment. Sadly, we all learned we were wrong and made ourselves available to the Women's March groups across NC (show slide) to let citizens know that Justice Alito could not have made the opinion he did if we'd had the ERA published. We were so convinced that we worked with Attorney Arlaine Rockey to file an amicus brief in the US Supreme Court Dobbs v Jackson Women's Health to state that Alito DID NOT take the ERA into consideration when he said the Constitution does not mention abortion or these types of rights. Sadly, the brief went nowhere.

And the Alliance made news with editorials, letters to the editor and interviews with the press. Jimmie Cochran Pratt had an interview with Southern Reckoning in August and presented to the UNCA Women and Gender Studies class. In October, Jimmie was featured on the Robert Hubbard National Podcast.

Of course, we continued working with the ERA Coalition and our Lead Org partners as many of us were involved in getting out the vote and supported programs like the Democratic Women of Buncombe County. And we'd be remiss if we didn't mention our own Roberta Madden who, once again, did a survey of all the candidates for both the NCGA and the US House & Senate on their support for the Equal Rights Amendment. Teri Walley, our VP of Public Relations, worked to have an ERA Certified (show slide) logo sent to each of the candidates who said YES, I support the ERA.

And now, let me address the challenges we still face getting the ERA published. Despite Pres Biden's claims 2 years after Virginia ratified, "We must recognize the clear will of the American people and definitively enshrine the principle of gender equality in the Constitution. It is long past time that we put all doubt to rest. I am calling on Congress to act immediately to pass a resolution recognizing ratification of the ERA." Although Biden has implied Congress is responsible for recognizing the Equal Rights Amendment, many politicians, lawyers and even scholars question why the Executive Branch has still not published it. Most recently, the DC Court of Appeals heard the oral arguments for *Illinois v. Ferriero*, but to this, Vorrasi Bates, executive Director of the feminist organization Shattering Glas says, "The Biden Administration is actually going into court and fighting against the Equal Rights Amendment, a right which would have saved *Roe v. Wade*."

So, what happened in the most recent court? The *Illinois v. Ferriero* case was filed in 2020 by the Attorney Generals of Virginia, Illinois, and Nevada to convince the National Archivist at the time, David Ferriero, to recognize the ERA as the 28th Amendment to the US Constitution. In March of 2021, however, the DC Circuit denied the plaintiffs' standing for a lack of 'legal harm' (defined as an 'injury that is specific to the states'). Then this September, the DOJ claimed that the plaintiffs' alleged injury is not personal to them nor concrete enough to be addressed in a judicial setting and asked for the DC Court of Appeals to uphold the dismissal. Sarah Harrington, the Deputy Assistant Attorney General of the Department of Justice, also argued that only a court, not Congress, can decide the legitimacy of the ERA's deadline*. To some activists, this response makes the administration's intentions suspect, since the administration publicly repeated that Congress is responsible for the ERA and yet presented a different opinion in court.

Illinois' Solicitor General Jane Notz and Assistant Attorney General Priyanka Gupta have argued that although the ERA is legally valid without publication, it will not command its intended effect without publication and certification, which would then enable all US citizens to benefit from the full legal right to equality and compel states to change current discriminatory laws. But Columbia Law School's ERA Project asserts it is unlikely that the states will be given standing, calling the argument a "very fine needle for the states to thread." And even if standing is found, the ERA's publication would not end the battle for its publication.

From the beginning, Illinois, Nevada, and Virginia have been supported by other states and organizations. In a press conference held after the D.C. Circuit Court of Appeals heard the oral arguments, Illinois's Attorney General, Kwame Raoul, declared: "Equality based on sex is not radical. Don't believe anyone who says it is too late for the ERA." Speakers included Congresswoman Carolyn B. Maloney, Eleanor Holmes Norton, along with Senator Audrey Gibson, Zakiya Thomas (President and CEO of the ERA Coalition), Ellie Smeal (President and Co-Founder of the Feminist Majority Foundation), Bear Atwood (Vice President of NOW), and a member of the US military. Many in attendance emphasized the ERA's urgency in the context of reproductive rights and protecting future generations, while the ERA

Coalition commented, “today’s oral arguments prove what we already know: the ERA is neither merely symbolic nor redundant. Otherwise, opponents wouldn’t be fighting so hard to make sure it isn’t recognized as the 28th Amendment to the U.S. Constitution.”

While the Archivist’s failure to publish the ERA is supported by organizations like the Eagle Forum and Concerned Women for America, at least thirteen amicus briefs have been filed in support of plaintiff states. Presenting a variety of concerns, all argue the ERA is a solution to gender inequality. One brief, written on behalf of 86 corporate companies with diverse commercial interests including Google, Apple, Pepsi Co, and American Express, described how sex equality would improve economic output, expand their customer bases, and remove the barriers women face to the labor market such as unequal access to education and housing, inadequate healthcare, sexual and intimate partner violence, and economic insecurity. They also asserted that it is more urgent now, given that women lost 11.3 million jobs in April 2020. Further, current legislation, such as the Pregnant Workers Fairness Act, can be repealed by Congress or deprioritized by the Executive Branch. They conclude that the Archivist’s actions undermine full economic participation, harming plaintiff states. Representing the interests of workers, the Los Angeles County Federation of Labor (affiliated with the national AFL-CIO) unanimously passed a resolution that called on Biden to certify and publish the ERA in August.

In addition to briefs, multiple parties have sent letters before and after the Dobbs decision to the Executive Branch, requesting Biden publish the ERA. In September, Shattering Glass crafted a letter to Biden from the American Medical Women’s Association (AMWA). Their main message was that the ERA is the most powerful tool for legalizing reproductive rights and without a constitutional base, comprehensive care, and even healthcare providers will continue to be threatened. The President of the American Constitution Society and former Senator Russ Feingold also sent a letter in September to Majority Leader Schumer, emphasizing the importance of bodily autonomy and the implications of the Dobbs decision not only on legal abortion, but also racial disparities in pregnancy-related deaths, economic independence, and the ability to marry regardless of sexual orientation or race. Feingold has been consistent in his position that the ERA must be enshrined and wrote to Chairwoman Maloney in March explaining that the amendment has met all constitutional requirements.

The DC Court of Appeals has not decided *Illinois v. Ferriero* yet, but a resolution to remove the deadline is currently stalled in the Senate. It’s future may rest on the results of the midterm elections, as the New York Times warns that Biden’s agenda might become limited if Republicans capture Congress. The results can therefore make a resolution more improbable and the ERA’s publication by the Executive Branch more necessary.

So, we are in a bit of limbo nationally. We still urge our members and the public to call and write President Biden to do his job and instruct the Archivist to publish the ERA!