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ERA Supporters Show Disregard for Law and Fairness — a Message for Constitutional Convention Advocates

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Disregarding the time limit placed upon it by the Congress that passed the so-called Equal Rights Amendment (ERA) and sent it to the states for ratification, ERA advocates have begun a push for ratification of the proposed amendment, which was rejected by the states years ago.

This lawless attitude — that it does not make any difference what Congress did in 1972 (or even in 1979, when Congress even gave ERA proponents three more years to get the amendment ratified) — is typical of progressives who routinely circumvent or ignore the clear wording of the Constitution when it suits them, and should also be a wake-up call for conservatives who are supporting a Constitutional Convention (or Convention of States as some choose to call it).

In 1972, Congress enacted the "Equal Rights Amendment" with the following text:

> Section 1: Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.
>
> Section 2: The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Despite passing the Congress with ease, and then securing ratification by several states in a short period of time, the proposed amendment ran into stiff opposition from Phyllis Schlafly's Eagle Forum, the constitutionalist John Birch Society, and several conservative groups and individuals. In many ways, this opposition generated the energy, along with opposition to the Supreme Court's *Roe v. Wade* decision the next year (which struck down states' laws restricting abortion as "unconstitutional"), that drove the conservative movement for the next several years.

ERA opponents initially argued back in the 1970s that its passage would lead to the drafting of women into combat roles, requiring businesses to allow men to use women's restrooms, and the like. Of course, ERA proponents — at the time — dismissed such fears as unfounded. Eagle Forum and the John Birch Society argued that the passage of the open-ended language of the ERA would be a massive transfer of governmental power from states to the federal judiciary, who would take the language and apply it to all types of cases far beyond what ERA proponents claimed that they were trying to accomplish.

These opponents of the ERA noted that the 14th Amendment, adopted chiefly to insure civil rights protections for former slaves and to make citizens of them, had been used to vastly expand federal

power at the expense of the states. A complete enumeration of how the 14th Amendment has been twisted to do this would require an article or two in and of itself, but among other things, the 14th Amendment has been used to argue that any person born on the soil of the U.S., legal or illegal, is a U.S. citizen, and to take prayer out of the public schools. Former President Barack Obama argued that the 14th Amendment, adopted in 1868, even required the legalization of same-sex marriage, and the Supreme Court brazenly agreed with him. It was the 14th Amendment that was cited, among other things, by the Supreme Court in 1973 for why abortion should be legal.

At the time, ERA opponents warned that adding the ERA to the Constitution would no doubt lead to even more judge-imposed social engineering, all by dubious "interpretation" of the Equal Rights Amendment.

Schlafly's Illinois was the first northern state to defeat the ERA. Many southern state legislatures killed the ratification effort in their states. Not only did the momentum to reach the required 38 states (three-fourths, as stipulated by the U.S. Constitution) stall, five states — Idaho, Kentucky, Nebraska, South Dakota, and Tennessee — voted to rescind their own ratification. By 1977, 35 of the needed 38 states had ratified (if one counted the five states that had rescinded their earlier ratification votes).

When Congress enacted the ERA in 1972, they stipulated that it had a seven-year period in which to get ratified. The thinking behind a time limit is that an unlimited time period to ratify would defeat the idea that constitutional amendments — being fundamental law — should only be added to the Constitution if there is a contemporaneous consensus in the country. When it became clear that the additional three (or eight, if you count the states that had rescinded their ratifications) state ratifications could not be obtained, Congress simply voted to extend the time limit until 1982. This flagrantly lawless act was roundly criticized at the time, but in the end, it made no difference, as the ERA effort died anyway, without any more additional ratifications.

Now, almost 40 years later, ERA proponents have launched a new drive to force the amendment into the Constitution, by ignoring even the extended time limit. Earlier this week, Virginia "ratified" the 1972 ERA, declaring itself to be the needed 38th state to achieve ratification, and sending their work on to the National Archives.

Upon direction from the Justice Department, however, the press office of the National Archives released a statement on Tuesday that "The Archivist will take no action to certify the adoption of the Equal Rights Amendment." The Office of Legal Counsel at the Department of Justice issued a memo a few weeks ago that the deadline for ratification has passed, and it is now too late for states to ratify the ERA. The only option left for ERA supporters is to get Congress to pass a new ERA, and begin the ratification process over again.

Of course, progressives are not inclined to respect law or precedent, and have opted to resort instead (no surprise here) to the federal courts. Joining with two other liberal attorneys general (Kwame Raoul of Illinois and Aaron Ford of Nevada), Virginia Attorney General Mark Herring announced what he called a "landmark civil rights lawsuit" to get a federal judge to order the National Archives to add the ERA to the Constitution.

The three liberal AG's will no doubt find a federal judge to go along with them, and it is probable that the case will eventually find its way into the Supreme Court.

This disregard for law and fairness by ERA proponents, in ignoring the fact that the time limit for its ratification expired years ago, should give conservative advocates for an Article V Constitutional

Convention (or Convention of States as some prefer to call it) pause. This ERA would certainly be considered at any such convention.

And those Convention of States advocates who soothingly reassure us that any proposal coming out of any such Article V Constitutional Convention would have to be ratified by three-fourths of the states, should note that the Left is willing to use any method — however dubious — to get their agenda passed. Once a proposal to, say, gut the Second Amendment emerged from such a convention, it could be before the states for 50 years, awaiting ratification, when finally some bunch of leftists in the future took up its cause again, using the same argument that they are using today with the ERA.

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Steve Byas is a university instructor in history and government, and author of History's Greatest Libels. *He may be contacted at byassteve@yahoo.com*