

**THE EQUAL RIGHTS AMENDMENT:
ACHIEVING CONSTITUTIONAL
EQUALITY FOR ALL**

HEARING
BEFORE THE
COMMITTEE ON
OVERSIGHT AND REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS
FIRST SESSION

OCTOBER 21, 2021

Serial No. 117-48

Printed for the use of the Committee on Oversight and Reform



Available on: *govinfo.gov*,
oversight.house.gov or
docs.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

WASHINGTON : 2021

46-024 PDF

COMMITTEE ON OVERSIGHT AND REFORM

CAROLYN B. MALONEY, New York, *Chairwoman*

ELEANOR HOLMES NORTON, District of Columbia	JAMES COMER, Kentucky, <i>Ranking Minority Member</i>
STEPHEN F. LYNCH, Massachusetts	JIM JORDAN, Ohio
JIM COOPER, Tennessee	PAUL A. GOSAR, Arizona
GERALD E. CONNOLLY, Virginia	VIRGINIA FOXX, North Carolina
RAJA KRISHNAMOORTHY, Illinois	JODY B. HICE, Georgia
JAMIE RASKIN, Maryland	GLENN GROTHMAN, Wisconsin
RO KHANNA, California	MICHAEL CLOUD, Texas
KWEISI MFUME, Maryland	BOB GIBBS, Ohio
ALEXANDRIA OCASIO-CORTEZ, New York	CLAY HIGGINS, Louisiana
RASHIDA TLAIB, Michigan	RALPH NORMAN, South Carolina
KATIE PORTER, California	PETE SESSIONS, Texas
CORI BUSH, Missouri	FRED KELLER, Pennsylvania
DANNY K. DAVIS, Illinois	ANDY BIGGS, Arizona
DEBBIE WASSERMAN SCHULTZ, Florida	ANDREW CLYDE, Georgia
PETER WELCH, Vermont	NANCY MACE, South Carolina
HENRY C. "HANK" JOHNSON, JR., Georgia	SCOTT FRANKLIN, Florida
JOHN P. SARBANES, Maryland	JAKE LATURNER, Kansas
JACKIE SPEIER, California	PAT FALLON, Texas
ROBIN L. KELLY, Illinois	YVETTE HERRELL, New Mexico
BRENDA L. LAWRENCE, Michigan	BYRON DONALDS, Florida
MARK DESAULNIER, California	
JIMMY GOMEZ, California	
AYANNA PRESSLEY, Massachusetts	
MIKE QUIGLEY, Illinois	

RUSS ANELLO, *Staff Director*

KATE KELLY, *Counsel*

ELISA LANIER, *Chief Clerk and Director of Operations*

CONTACT NUMBER: 202-225-5051

MARK MARIN, *Minority Staff Director*

C O N T E N T S

Hearing held on October 21, 2021	Page 1
WITNESSES	
The Honorable Jennifer McClellan, Virginia State Senator Oral Statement	7
Ms. Alyssa, Milano, Actor, ERA Advocate Oral Statement	8
Ms. Carol Jenkins, President, ERA Coalition Oral Statement	10
Ms. Inez Feltscher Stepman (Minority Witness), Senior Policy Analyst, Independent Women's Forum Oral Statement	12
Ms. Eleanor Smeal, President, Feminist Majority Oral Statement	14
Ms. Bamby Salcedo, President TransLatin@ Coalition, Board Member, ERA Coalition Oral Statement	16
Ms. Victoria Nourse, Professor of Law, Georgetown University Law Center Oral Statement	18
<i>Opening statements and the prepared statements for the witnesses are available in the U.S. House of Representatives Repository at: docs.house.gov.</i>	

INDEX OF DOCUMENTS

The documents entered into the record during this hearing, and Questions for the Record (QFR's) for this hearing are listed below.

- * Examples of sex discrimination; submitted by Chairwoman Maloney.
- * Comments by Justice Ginsberg regarding 1982 deadline; submitted by Rep. Comer.
- * Letter by Students of Life; submitted by Rep. Keller.
- * Survey of female support for ERA; submitted by Rep. Wasserman Schultz.
- * QFRs: to Ms. Amby Salcedo; submitted by Chairwoman Maloney.

The documents listed below are available at: docs.house.gov.

**THE EQUAL RIGHTS AMENDMENT:
ACHIEVING CONSTITUTIONAL
EQUALITY FOR ALL**

Thursday, October 21, 2021

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND REFORM,
Washington, D.C.

The committee met, pursuant to notice, at 10:07 a.m., in room 2154, Rayburn House Office Building, and via Zoom. Hon. Carolyn Maloney [chairwoman of the committee] presiding.

Present: Representatives Maloney, Norton, Lynch, Connolly, Krishnamoorthi, Raskin, Khanna, Porter, Bush, Wasserman Schultz, Welch, Johnson, Sarbanes, Speier, Kelly, Lawrence, DeSaulnier, Gomez, Pressley, Comer, Grothman, Cloud, Gibbs, Higgins, Norman, Keller, Clyde, Franklin, Fallon, and Herrell.

Also present: Representative Spanberger.

Chairwoman MALONEY. [Presiding.] The committee will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time.

I now recognize myself for an opening statement.

Welcome to everyone. As the first woman to chair the Committee on Oversight, I am particularly proud to convene this hearing on what I believe is one of the most important things we can do to ensure equality for women in our country: finally putting women and the Equal Rights Amendment in the Constitution. Discrimination against women is a persistent problem, yet our country's fundamental document does not guarantee equality. That is why I have introduced the ERA 13 times during my career in Congress and why I am so committed to seeing this amendment adopted as part of our Constitution now.

The Equal Rights Amendment was written more than 100 years ago by the legendary suffragist Alice Paul, who I am proud to say was a relative of my late husband, Cliff Maloney. After decades of effort, the ERA finally passed the House in October 1971, 50 years ago this month, in a strong bipartisan vote. It passed the Senate overwhelmingly the following year. The preamble to the amendment included a seven-year time limit, and, in 1979, Congress voted to extend the limit by another three years. By 1982, the ERA had been ratified by 35 of the necessary 38 states, then momentum behind the amendment stalled. But that all changed in 2017 when the women's marches and the Me Too movement reminded us all that we are still a very long way from equality.

In 2017, Nevada voted to ratify, Illinois followed in 2018, and Virginia in 2020. Thirty-eight state legislatures have voted to ratify the ERA, meeting the constitutional requirement, but the ERA still does not appear in the Constitution, and this has to change. Federal law directs the archivist of the U.S. to certify and publish amendments that have met the requirements laid out in Article V of the Constitution. This is purely a ministerial duty, which should be done automatically. But under President Trump, the Department of Justice issued an opinion advising the archivist not to certify the ERA. Today I am releasing a letter from preeminent legal scholars stating that this Trump-era legal opinion is legally erroneous and should be withdrawn. These scholars also make clear that the time limit in the preamble to the ERA is not an obstacle to ratifying the amendment. This time limit was not included in the amendment itself, and there is no time limit on equality.

I strongly agree with the scholars' assessment that the time limit is likely non-binding and that Congress clearly has the authority to extend or eliminate time limits if necessary. So today I call on President Biden, who is a true champion of women, to withdraw this flawed legal opinion and allow the archivist to certify the ERA without delay. I also strongly support the legislation led by my colleague and friend, Congresswoman Speier, that the House passed to eliminate the time limit from the ERA. This would remove even the shadow of a doubt about the ERA's validity. I urge the Senate to take up this bill without further delay.

After 100 years, women cannot wait any longer for full constitutional equality. The ERA is not merely a symbol. It will make a real difference in the lives of women and people who face discrimination, sexual violence, and unequal pay. The pay gap between men and women has persisted for decades with the average woman being paid 80 cents for every dollar paid to men. For women of color, the gap is even wider. In order to make the same income as a man earned last year, a Latina woman in this country has to work an extra 10 months until today, October 21. That is shameful, and it shows that the current legal standards are not adequate.

In 1994, Congress passed the historic Violence Against Women Act, authored by then-Senator Joe Biden, which included a right for victims of sexual violence to sue their attackers. But when a young woman named Christy Brzonkala tried to sue her rapist where there was no dispute—it was a gang rape; one even confessed—the Supreme Court struck down that part of the law as unconstitutional. More recently, a Federal court in Michigan overturned a law banning female genital mutilation, which is an internationally recognized human rights violation. The judge found it was unconstitutional to ban female genital mutilation. What a disgrace for this to happen in the United States. With the ERA, Americans who go to court to challenge discrimination will have a fighting chance.

Today equal rights can be too easily rolled back depending on the ideological leanings of Supreme Court justices, but constitutional amendments are permanent. We can't always control who is on the bench, but we can change the document they are tasked with interpreting so that it better reflects the equality that all Americans de-

serve. This committee will continue to work to put the ERA in the Constitution.

I am very pleased now to recognize Congresswoman Jackie Speier, the sponsor of H.R. Res. 17 and ERA champion, for a brief opening statement.

Ms. SPEIER. Thank you, Chairwoman Maloney, for holding the first full committee hearing on the Equal Rights Amendment in over 40 years. I know that when the ERA is finally added to our Constitution, it will be in no small part thanks to your steadfast commitment and leadership and the hard work of so many the heroes who are here to testify today.

We are here today to acknowledge a sad truth. Our country's founding was based exclusively on excluding women in the Constitution. It was intentional. We were deprived of basic rights to vote, prevented from being hired for most jobs, and from owning property. To this day we are paid less for our work, violated with impunity, and discriminated against simply for being who we are. The ERA was first introduced in Congress in 1923. That is 98 years ago. Yes, we are here today because nearly a century later, the Constitution still does not guarantee gender equality. We are here today because of 193 United Nation countries, 165 of them have an equal rights amendment, but the United States does not. Countries that have looked to us to model their constitutions have recognized the equality of women and men, yet we fail to do the same.

We are here today because, despite the tremendous progress women have made, we are still deeply unequal in society. In subtle and not so subtle ways, women are subject to discrimination, a reality denied by many of my colleagues across the aisle who insist we don't need the ERA because women are already equal. Well, to them I ask, what do you say to Christy Brzonkala, who was raped by two football players at Virginia Tech, and the Court that said that, in fact, Congress didn't have the power to pass that part of VAWA? That is why Section 2 of the ERA is so important. Or how about Tracy Rexroat, whose starting salary at the Arizona Department of Education was \$17,000 lower than her male counterpart? They had equal experience, equal education, but she was paid \$17,000 less because of her salary history. A Federal district court ruled that unequal starting salaries don't violate the Equal Pay Amendment because salary history is an acceptable business reason for unequal pay.

Or Jessica Lenahan, whose estranged husband kidnapped and murdered their three young daughters after police refused to enforce a restraining order. The Supreme Court ruled that Lenahan had no constitutionally protected right to enforcement of her restraining order. Or how about Peggy Young, who was put on unpaid leave without health insurance by UPS when she got pregnant? The Supreme Court set such a stringent standard that in two-thirds of the cases after Young, courts have ruled against pregnant workers seeking reasonable accommodation. If we certify the ERA, these cases would have very different outcomes.

The ERA will create stronger legal recourse against sex discrimination, empower Congress to better enforce and enact laws protecting women, and confirm the rightful place of gender equality in

the Constitution, not subject to the whims Congress or the White House. It will also ensure that the Supreme Court uses the most demanding standard of review in sex discrimination cases the way it already does for race discrimination. And despite the partisan rhetoric, I believe in my heart that most of my Republican colleagues know that this is not only the recognition of our inalienable rights, but that it is the right thing to do. That is why the Department of Justice must rescind the Trump Administration's legally flawed and non-binding legal memo on the ERA, and the archivist must immediately certify the ERA as the 28th amendment because 38 states have already ratified the amendment as the Constitution requires. I am also proud to champion H.J. Res. 17, which passed the House earlier this year with bipartisan support, to remove any shadow of doubt that the ERA is, in fact, our 28th amendment, and I urge the Senate to act swiftly.

I know that all of us will keep fighting until we achieve the promise of equal justice under law. Mark my words: we will get this done. We must get this done. Our daughters and granddaughters demand it. And with that, I yield back.

Chairwoman MALONEY. I will now recognize the co-chair of the Women's Caucus, a true leader on women's equality, Congresswoman Brenda Lawrence, for her opening statement.

Mrs. LAWRENCE. Thank you so much, Chairwoman Maloney, for your leadership, relentless leadership, in working to advance the rights and freedoms of women and girls both in the United States and abroad.

The urgent need for the Equal Rights Amendment is very clear. If I can quote my colleague, who stated—Jim Clyburn—that “America is only great when its greatness is shared equally for everyone in America.” Since our country's founding, women have been intentionally left out of the Constitution. We have been treated as second-class citizens at one time in our history and had to abide by laws that gave us no voice or representation. And for those who still question the need for the ERA, take a look at the gender wage gap. Take a look at pregnancy discrimination. Take a look at the loss of reproductive freedoms.

As the co-chair of the Women's Caucus, I introduced a resolution that will require our Declaration of Independence to state that all men and women are created equal. At minimum, can we as a country state that we are equal? We need the ERA so that women can achieve our full potential. We need the ERA to ensure that the rights of women and girls will not be rolled back by the political whims of the day, but, instead, will be preserved as the basic rights guaranteed by the United States Constitution. In the words of Abigail Adams, “Remember the ladies.” It would be wise, Mr. President, and to our government to remember the ladies, the ladies who have stood up and fought, who never stepped down when it came to serving our country and taking care of the least of us.

I join today with such pride with all the women who are here today, the witnesses, and I look forward to hearing from you who are in the fight. And I thank you, and I yield back.

Chairwoman MALONEY. The gentlelady yields back, and I now recognize the distinguished ranking member, my good friend, Mr. Comer, for his opening statement, and ask him to please under-

stand, on a personal level, I ran for Congress to ratify the Equal Rights Amendment. That was my goal, and this is the first hearing in a full committee that I have been able to achieve that. So if I spoke a little too long or took the liberty of recognizing two incredible women leaders who have been fighting just as hard as I have for this hearing and for the Equal Rights Amendment, and I certainly grant as much time as the gentleman would like. And if you have two other members that would like to speak, we certainly will recognize your right to do so, and I appreciate your cooperation on postal and on this. Thank you.

Mr. COMER. Thank you, Chairwoman Maloney, and congratulations on holding this hearing. Hopefully we will have some hearings that our side has been advocating for.

But the message that I want to deliver today is all Americans, men and women, should be treated equally under the law regardless of their race, religion, or sex. Fortunately, all citizens of the United States are already guaranteed due process under the Fifth and Fourteenth Amendments to the United States Constitution and guaranteed equal protection under the Fourteenth Amendment. Federal laws, such as the Civil Rights Act of 1964, Title VII, the Equal Pay Act, and Title IX of the Education Amendments of 1972 already prohibit discrimination on the basis of sex in compensation, public accommodations, and federally funded programs. Despite what Democrats are telling us today, the 1970's, ERA—Equal Rights Amendment—is simply unnecessary and would be redundant of protections that already exist.

In fact one of our witnesses today, Inez Stepman, will testify about the many potential adverse effects that the Equal Rights Amendment would have on this country, particularly on women. By taking away flexibility in our current legal regime that protects women's privacy, safety, and the ability to protect against harassment, the Equal Rights Amendment would usher in an era of judge-created rules that could negatively impact women. The Equal Rights Amendment could jeopardize programs, such as women's shelters and the WIC Program. It could force the elimination of sex-segregated public facilities, such as women's prisons and public school restrooms. It could also prevent female athletes from being able to fairly compete in sports, not to mention the fact that the Equal Rights Amendment was introduced 49 years ago and the deadline to ratify it expired four decades ago. Several states even rescinded their ratifications.

Whatever your views on the expired Equal Rights Amendment, equality under the law for men and women is already guaranteed by the Constitution and by statute, and rightfully so, yet we are here talking about a long-expired proposed amendment. The Oversight Committee should be conducting oversight hearings on the Biden Administration or examining legislation actually within our jurisdiction. We should be holding hearings on how the Democrats' COVID-19 shutdown policies disproportionately impacted women and how women are being left out of the already slow economic recovery. We should be holding hearings with Biden Administration officials to find out what they are doing to solve the crises affecting Americans today.

This country is facing crisis after crisis, but it is clear that our current political leadership is unable to meet these challenges head on, even denying they exist in some instances. Whether it is the disastrous withdrawal from Afghanistan, the crisis on our border, rising inflation, or growing supply chain issues, our committee should not remain on the sidelines. I urge the Chairwoman to please act on the approximately 20 Republican requests for hearings or investigations we have communicated this Congress. We should be doing our jobs to ensure that our government works for all the American people. Thank you, Madam Chairwoman, and I yield back.

Chairwoman MALONEY. The gentleman yields back, and I would like to yield to my good friend, Mr. Connolly, to introduce our first witness, and also I would like to now waive onto the committee Abigail Spanberger from the great state of Virginia, the last one to ratify the Equal Rights Amendment. Thank you for joining us.

Mr. Connolly, you are now recognized to introduce your constituent.

Mr. CONNOLLY. Thank you so much, Madam Chairwoman, and thank you so much for having this hearing because I think it is time. Virginia has acted. I am glad to be joined by my colleague, Congresswoman Abigail Spanberger, in welcoming a distinguished member of the State Senate of the Commonwealth of Virginia, Jennifer McClellan. Senator McClellan has served the Commonwealth of Virginia for more than 15 years as a member of the House of Delegates and now in the State Senate. She has been a tireless champion for women's rights throughout the Commonwealth of Virginia, a fighter for progress, equity, and justice.

Most recently, Senator McClellan introduced S.J. 1, Virginia's Equal Rights Amendment ratification. After its passage in 2020, Virginia became the 38th and qualifying state to ratify the amendment to help our country take a major step to join more than 100 nations that recognize equality based on sex and gender in their respective constitutions. We would not have passed the 28th amendment if we did not feel that we were finally solidifying the full ratification of the Equal Rights Amendment by the action taken by Senator McClellan and her colleagues in the General Assembly of Virginia. We are proud of that accomplishment, and we are delighted to have Senator McClellan here, and I know she is going to describe later the process and thinking that went behind that action.

Welcome, Senator McClellan. Thank you again for having this hearing, Madam Chairwoman, and thank you for allowing Congresswoman Spanberger and myself to welcome a distinguished Virginian testifying today. I yield back.

Chairwoman MALONEY. Thank you. And after Senator McClellan, we will hear from Alyssa Milano, who is an actress, a writer, and an ERA advocate. Next we will hear from Carol Jenkins, who is the president of the ERA Coalition. We will then hear from Inez Stepman, who is a senior policy analyst at the Independent Women's Forum, and then we will hear from Ellie Smeal, who is the founder and president of the Feminist Majority and publisher of the Ms. Magazine. Next, we will hear from Bamby Salcedo, who is the president of the TransLatin@ Coalition and is a board member

of the ERA Coalition. Last but not least, we will hear from Victoria Nourse, who is a professor of law at Georgetown University Law Center.

The witnesses will be unmuted so that we may swear them in. Please raise your right hand.

Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

[A chorus of ayes.]

Chairwoman MALONEY. Let the record show that the witnesses answered in the affirmative. Thank you.

And without objection, your written statements will be made part of the record.

With that, Senator McClellan from Virginia, you are now recognized for your testimony.

**STATEMENT OF THE HONORABLE JENNIFER MCCLELLAN,
VIRGINIA STATE SENATOR**

Ms. MCCLELLAN. Thank you, Madam Chair, Representatives Connolly and Spanberger, and members of the committee. I am very honored to be here today. I am Virginia State Senator Jennifer McClellan. I'm here as a daughter, granddaughter, and great granddaughter of educators, domestic workers, community leaders, and civil rights activists who struggled for equality in the segregated South. I'm here as a mother who does not want to leave the fight for equality to my children, Jackson and Samantha. I am here as a legislator who helped lead Virginia to become the 38th and final state necessary to ratify the Equal Rights Amendment last year.

The history of my family and my Commonwealth is one of facing inequities and working to create a better future for the next generation. A hundred and 20 years ago, my great grandfather, born on a plantation four years after emancipation, had to pass a literacy test and find three white men to vouch for him to be able to register to vote, but my great grandmother couldn't. My grandfather and my father had to pay poll taxes. My mother comes from generations of domestic workers who served vital roles in our society and were often overlooked or treated unfairly and paid very little. And while my father could vote at the age of 22, my mother could not vote until well into her 30's after passage of the Voting Rights Act of 1965.

I carried these legacies with me into the Virginia House of Delegates in 2006 at a time when there were only 16 women in that chamber. I felt that imbalance when I became the first delegate to give birth while in office and was asked if I would have to resign or retire as a result, while a male colleague, who became a father two months later, was not. For my family, my Commonwealth, and my country, it has been a long march toward equality, and it is a march that has included women of color from the beginning, even when we have often been the last to benefit from our work.

Black women, including the founders of my sorority, Delta Sigma Theta, Incorporated, in their first public act in 1913, marched for the right to vote in this very city, even when told to march in the back. Black women marched for civil rights in 1965 from here to

the Lincoln Memorial, even though not given a speaking role, and women of color have led the way for the passage of the ERA, including Representatives Shirley Chisholm and Patsy Takemoto Mink 50 years ago when the House passed the ERA. Virginia's ratification was led by multigenerational black women, Senator Mamie Locke and myself in the Senate and former Delegate Jennifer Carroll Foy in the House. Nevada's ratification was led by Senator Pat Spearman. Other women of color pushing their states to ratify the ERA include Arkansas Senator Joyce Elliott, Florida Senator Audrey Gibson, North Carolina Representative Carla Cunningham, South Carolina Representative Gilda Cobb-Hunter, and Utah Representative Karen Kwan, just to name a few.

I was proud to lead Virginia to become the 38th state to ratify the ERA last year. And given our history, it is poetic justice that it was Virginia to put the ERA over the top. In 1619, the men of Jamestown understood that for Virginia to be a permanent settlement, they needed women, so they actively recruited women to "make wives to the inhabitants." And in May of 1620, the first 90 women arrived in response to that call, and their rights were surrendered to their husbands. They could not vote. They could not hold public office. They could not own or control property. African women and men who arrived on these shores in 1619 were considered property and had even fewer, if any, rights. And as you heard, in 1776 when Abigail Adams wrote to her husband as he went to the Continental Congress, she implored him and his fellow delegates to "Remember the ladies and be more generous and favorable to them than your ancestors." They didn't.

Over the past 245 years, we have made progress slowly, but true equality under the law for women, and especially women of color, has been elusive. With the ratifications of the Equal Rights Amendment by Nevada, Illinois, and Virginia, the states have now done our part. It is now time for the national archivist to do his and certify the ratifications of these three states and publish the amendment. To the extent congressional action is needed, I ask you to take it immediately.

It is time—it is past time—for the U.S. Constitution to join over 100 constitutions across the world in having gender equality in the Constitution, including every constitution adopted since World War II. It is time for me to stop fighting the same fights that my mother, my grandmother, and my great-grandmother had to fight. It is time for me to tell my children, Jackson and Samantha, that the United States Constitution guarantees them both equality under the law. And I thank you for this opportunity to speak today.

Chairwoman MALONEY. Thank you for your testimony.

Ms. Milano, you are now recognized for your testimony.

STATEMENT OF ALYSSA MILANO, ACTOR AND ERA ADVOCATE

Ms. MILANO. Madam Chair, distinguished members of the committee, thank you for holding this hearing and for inviting me to share some thoughts with you today. While I will speak briefly about the importance of the ERA, this hearing is not a debate on that amendment. That debate is over. We won. The states have directed Congress to amend the Constitution, and now it is the duty of Congress and the Administration to get out of the way and re-

move the arbitrary, unnecessary, and shameful deadline that was cynically imposed nearly half a century ago as a poison pill.

Since the earliest days of our Nation, women have been fighting—not waiting, but fighting—for inclusion in our founding document. From the Seneca Falls suffragists to Alice Paul, from Shirley Chisholm and Gloria Steinem to the inspiring generation of young women and queer activists and allies of the New Millennium, we have pleaded for centuries for a simple and powerful thing: equality under the law. I want my daughter, Bella, to grow up knowing she has the same rights as every man in this country, and I want my son, Milo, and every boy in America, to know that too. They deserve a government that cannot treat them differently because of gender.

If there is one word which defines the American identity, it is “freedom.” We call our President the leader of the free world. When we present ourselves to other nations advocating across the globe for democracy and human rights, it is freedom which drives that discussion. There are even members of this very committee who belong to something called the Freedom Caucus. But how can we be a free people when our governing document does not prohibit discrimination against more than half of the population? The answer, of course, is that we cannot.

The lack of constitutional protections for anyone who is not a cisgender man is a blemish on the very idea of Americanism.

Chairwoman MALONEY. Alyssa, we are having a technical problem.

Ms. MILANO. Oh.

Chairwoman MALONEY. And we need to correct it with the Zoom.

Ms. MILANO. OK.

Chairwoman MALONEY. We are going to recess just for a moment to try to correct it.

Ms. MILANO. OK.

Chairwoman MALONEY. Because——

Ms. MILANO. The ghost of Alice Paul.

[Laughter.]

Chairwoman MALONEY. OK.

[Recess.]

Chairwoman MALONEY. Can you hear me now? Yes, they can hear us now.

OK. Great. So we are now back in order, and, Ms. Milano, if you would please continue. And my apologies for this disruption.

Ms. MILANO. Thank you, Madam Chairperson. How can we be a free people when our governing document does not prohibit discrimination against more than half of our population? The answer is, of course, we cannot. The lack of constitutional protections for anyone who is not a cisgender man is a blemish on the very idea of Americanism. As long as the Constitution allows gender-based discrimination, the United States can never achieve the greatness to which it aspires.

Eighty-five percent of U.N. member states have constitutions which explicitly guarantee equality for women and girls. Madam Chair, if you lived in Latvia or Iceland, you would be assured of having the same rights as the men on this committee. Here in the United States of America, you are not. Today a white man on this

committee will probably ask me which rights American women do not have that American men do. Allow me to preempt that question. There are many current gender-driven injustices in our country, but the Constitution is not simply about the present. The Constitution is about what we bring far into the future. It exists to protect us from the what ifs.

The ERA will outlive every one of us. It is a permanent protection of our most basic rights. Your obligation to the people of our Nation, not just today, but in the centuries to come, requires you to take action. The framers failed us when they did not include women in the Constitution. Congress failed us when it added the deadline for ratification of the ERA. You, the members of this committee, have the opportunity and the obligation to fix the Constitution and stop it from failing us. Will you take it? Will you answer the call of history and the promise of the future, or will you continue to allow the enemies of equality to continue to prevent America from being a truly free Nation? These are your only options.

Thank you for your time.

Chairwoman MALONEY. Thank you. Ms. Jenkins, you are now recognized for your testimony.

STATEMENT OF CAROL JENKINS, PRESIDENT, ERA COALITION

Ms. JENKINS. Thank you so much, Chairwoman Maloney, for the invitation to speak here today, and to Ranking Member James Comer as well, and for the entire committee for holding a hearing on this important issue.

It is well past time to lift the time limit. It is well past time to talk about the Equal Rights Amendment, and the first full committee hearing since the 1970's is absolutely long overdue. This is an important step for sex equality and for democracy, and we are grateful to be here. And I especially am grateful to be in this room named for one of my heroes, Elijah Cummings. And I always loved one of his admonishments to us that, "We can do better than this," and this is what I feel about America and its girls and women. We can do better than this. I am glad to be here with my board members, Alyssa Milano and Bamby Salcedo, who are leading this effort in this country for equality. My name is Carol Jenkins, and I am grateful to be serving as the president and CEO of the ERA Coalition and its sister organization, the Fund for Women's Equality.

I have been fighting for what I call simple and pure equality, which is the concept of the Equal Rights Amendment, for almost my entire life. This, what I call an agitation for democracy and equality, runs through my veins. I was born in one of the poorest counties in America, both then when I was born some time ago and still today one of the poorest schools. It's called Lowndes County, Alabama. It was farm country just outside of the capital city of Montgomery. They used to call it Bloody Lowndes where they lynched people for wanting to vote and much, much less. My cousin sat in at segregated lunch counters and got arrested and brutally beaten for the right to a cup of coffee. My successful businessman uncle bailed Martin Luther King, Jr. out of the Birmingham jail as he sat there writing his famous letter that helped change our lives. Our family farm, that Lowndes County farm, was the third stop-over in the historic march from Selma to Montgomery.

I spent nearly a quarter of a century as a reporter documenting the failure of our democracy and its incremental improvement, and in South Africa where I covered one of the most spectacular victories of persistence, Nelson Mandela emerging from prison alive and eager. And this was after 27 years of imprisonment, breaking the back of apartheid and releasing millions of black-skinned people from a hellish state-sanctioned way of life. This fight for the ERA has lasted a century. The women and men who have waged this war against discrimination are every bit as determined as MLK and Nelson Mandela, and the rights we are fighting for our equally important.

Fifty years ago in 1970, our board member, Gloria Steinem, spoke right here in Congress in a hearing on the Equal Rights Amendment before the Senate and talked about the perpetual falsehood, one we still hear today. She said, “Another myth is that women are already treated equally in this society. I am sure there has been ample testimony to prove that equal pay for equal work, equal chance for advancement, and equal training or encouragement is obscenely scarce in every field.” She said that 50 years ago. It’s still true today. And despite stating the case for the ERA in Congress 50 years ago, Gloria Steinem, Ellie Smeal—glad to be sitting next to another one of our leaders—and many others are still fighting for these same rights in 2021.

And women of color, and black women in particular, have always been at the forefront of this movement. Shirley Chisholm gave a fiery testimony right here on the House floor in support of the Equal Rights Amendment. Her support for the amendment, too, led the way for passage of the ERA in the House of Representatives the following year, 50 years ago. And it was a queer black episcopal priest lawyer and author named Pauli Murray who was the architect of the litigation strategy used by Ruth Bader Ginsburg while arguing in support of a Fourteenth Amendment to the Constitution. This led to Pauli being recognized as one of the mothers of the modern sex equality movement, and her arguments for equality for women included the intersectional take on her own identity as well, calling the meeting of racism and sexism “Jane Crow.” Pauli spoke about these overlapping identities in her powerful and persuasive testimony on the ERA.

Black women have also led the ratification efforts of the last three states needed to reach the 38-state threshold required by the Constitution for all amendments. This revived the current fight for the Equal Rights Amendment across states and in Congress. State Senator Pat Spearman, another queer black woman, led the successful charge for ratification in Nevada in 2017. The next to last state to ratify, Illinois, saw Black lawmakers, including State Senator Kimberly Lightford, then-State Representative Litesa Wallace, and then-State Representative Juliana Stratton lead the fight in 2018. And of course, as we have heard, in January 2020 in Virginia, a multigenerational group of black women lawmakers led the ratification of the ERA, including State Senator Jennifer McClellan, who so eloquently and wonderfully led that fight, State Senator Mamie Locke, then-State Delegate Jennifer Carroll Foy. Other key lawmakers in Virginia during ratification were Delegate Hala

Ayala, an Afro-Latina woman, and Delegate Danica Roem, the first out transgender woman to serve in a state legislature.

This movement continues to move forward with black women in places of leadership throughout the advocacy space as well. Many of the organizations that are part of the ERA coalition are, in fact, now led by black women, including Supermajority, NOW, the League of Women Voters, and others, and the Coalition itself is presided over by black women. I lead and we have two board chairs, Kimberly Peeler-Allen and S. Mona Sinha. We are actually a tremendously broad coalition of movements, nearly 200 organizations representing women's rights, civil and voting rights, LGBTQ and trans rights, disability rights, faith groups, and workers' rights, including unions representing airline workers, 80,000 miners, and 350,000 teachers. We are all united in this effort to eliminate discrimination based on sex.

The ERA Coalition began providing a collective place for ERA action in 2014, and in these eight years we have gathered these nearly 200 organizations as equality partners. We have worked in the states. We were present in the gallery when Virginia became the 38th and final state needed for ratification. We were in Congress with Congresswoman Maloney to mount a shadow ERA hearing in Congress to demonstrate why the time limit needed to be removed. Congressman Jerry Nadler told us that day that if he became chair of Judiciary, he would give us a real hearing, and he delivered on his promise in 2020. And we were there with Speaker Pelosi and Congressman Speier.

Mr. COMER. Madam Chair?

Ms. JENKINS [continuing]. When the House passed the time limit bill, and I will state that—

Chairwoman MALONEY. Your time is long past, and that was a subcommittee hearing that we had then. But your time has expired, as the gentleman points out, so can you wrap up and we will—

Ms. JENKINS. Certainly. I will just say that as the grandmother of two biracial children who have two mothers, I want this country to reflect their lives. I don't want them to be ashamed of who they are. I want their ability to be recognized in the Constitution of the United States to be true equality, and I believe the only way that can happen is by enacting the ERA. Thank you.

Chairwoman MALONEY. Thank you. Ms. Stepman, you are now recognized for your testimony.

STATEMENT OF INEZ FELTSCHER STEPMAN, SENIOR POLICY ANALYST, INDEPENDENT WOMEN'S FORUM

Ms. STEPMAN. Chairwoman Maloney, Ranking Member Comer, distinguished members of the Committee on Oversight and Reform, I am honored to testify today against the proposed Equal Rights Amendment to the United States Constitution. I currently serve as a senior policy analyst with Independent Women's Voice and the Independent Women's Law Center.

Today in the United States, men and women are equal under the law, but, crucially, not interchangeable. We do not require that the law treat men and women exactly the same in all circumstances, even when they are incarcerated, in the sports arena, on the front

lines of combat, because we understand that in some limited situations, physical and biological differences matter deeply. In those situations, the law is permitted to recognize the very real differences between males and females. In hundreds of everyday instances, that recognition allows women and girls to take advantage of opportunities, compete, and even feel safe.

The recognition of biological sex has been a necessary prerequisite for the freedom, prosperity, and success American women have enjoyed these past several decades. These laws have created opportunities for women, maintained our privacy, and even protected our safety in situations where those differences become relevant and come with serious consequences. State, Federal, and constitutional law all protect basic sex equality in 2021. Our Nation's law books are replete with prohibitions on sex discrimination in education, athletics, housing, employment, including prohibitions on sexual harassment and unequal pay. To the extent that discrimination against women in these areas still exists, it is already illegal, and the ERA will add nothing to the protections that women already enjoy.

The ERA, if written into our highest law in an illegitimate amendment process, will not advance the position of women and girls in our society, but will instead undermine the successes we have already attained and even place us in harm's way. For example, incarcerated women have until recently been able to rely on being housed in a prison only with other women on the common-sense assumption that it is dangerous to house female inmates with male ones in close quarters, and that co-ed prisons make women vulnerable to physical and sexual assault. But under our current legal protections, the government is not allowed to, and should not be allowed to, discriminate on the basis of race the way that it does by separating men and women's prisons. In *Johnson v. California*, the Supreme Court held that preventing violence in prisons does not rise to the level of government interest required by the Constitution. If the same strict scrutiny standard were applied to single-sex prisons under the Equal Rights Amendment, a conservative interpretation of its legal impact, by the way, women would quickly find themselves at the mercy of male prisoners.

These consequences are already happening in states that are allowing male-bodied inmates who identify as female to transfer to the women's prisons, and that policy has already resulted in sexual assaults on female inmates. But the ERA could potentially make the problem far worse by extending that invitation, not just to a small percentage of people who are born one sex and identify as another, but to all male prisoners regardless of identification. After all, "discriminating" against men by keeping them out of women's prisons is a discrimination on the basis of sex, exactly the kind of policy a plain language reading of the ERA is intended to prevent.

The same rationale could apply to any context in which the government separates or distinguishes between men and women, for example, when selecting a same-sex TSA agent to administer a pat down at the airport. Similarly, public schools, whether on the K-12 or university level, would not be able to maintain separate bathrooms, locker rooms, or sports teams for boys and girls. Universities would not be able to maintain separate dorms for male and

female students, and campus-connected sororities and fraternities would potentially become, overnight, constitutional violations. A boy whose 100-meter dash time qualifies him for the girl's team but not for the boy's team is kept off the former only by a "discrimination" on the basis of sex.

Again, we are dealing with the ramifications of accommodating individuals whose gender identity does not match their born sex in all of these contexts already. But the ERA would throw the doors wide open to all males in these settings and more. Recognition of biological reality is not bigotry or discrimination. When we treat men and women as though there are no differences in size, strength, or otherwise between them, we create more female victims. Equality between men and women doesn't mean treating us exactly the same. Treating males and females exactly the same regardless of biology, privacy, or circumstance, hurts women and girls.

In 2021, the ERA has no upside. The language might sound nice, but it will not improve women's lives. To the contrary, by prohibiting public policy from ever taking into account biology and common sense, and by short circuiting debate through an illegally rushed process, the ERA would deny the 62 percent of the electorate who weren't of age or born when we last considered the consequences of the ERA a chance to weigh in on the question of whether women and men should be treated identically in all circumstances. And by the way, the majority of that electorate is women.

The ERA would harm women and girls, and I urge you to vote against its much-belated resuscitation.

Chairwoman MALONEY. Thank you. Ms. Smeal, you are now recognized for your testimony.

[No response.]

Ms. SMEAL. Thank you. I'm Eleanor Smeal, president of—

Chairwoman MALONEY. Excuse me. You don't have your microphone on and we can't hear you. It is the red button front of you. Great.

**STATEMENT OF ELEANOR SMEAL, FOUNDER AND PRESIDENT,
FEMINIST MAJORITY FOUNDATION**

Ms. SMEAL. Thank you very much, and thank you, Chairwoman Maloney, for your years, and your persistence, and your leadership, and your dedication to the ratification of the Equal Rights Amendment and to place it in the Constitution. Your leadership has been marvelous for all in this country, and I am so happy about being here today. I am honored to work with you and this committee in asking for the ERA to be certified in the Constitution.

I started, but you already said it, and I am going to say it again. The Equal Rights Amendment is 52 words. It is simple. It's "Equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex." The second clause is short: "Congress shall have the power to enforce by appropriate legislation the provisions of this article." And finally, the last section, one sentence: "This amendment shall take effect two years after the date of ratification."

I have worked for the passage of the Equal Rights Amendment for over 50 years. The arguments that you have just heard, I have had to listen to for over 50 years. I know what side I've been on because while we have been fighting for gender equality to be placed in the Constitution, we have also been fighting day in and day out to empower women and girls and to win gender equality for all. Feminist Majority and the Feminist Majority Foundation are both dedicated to this principle, and we've worked on all kinds of programs. But let me just go a little bit into my history on the Equal Rights Amendment and you will see why I feel so deeply about this.

I began my work as a young activist in the Pittsburgh, Pennsylvania chapter of the National Organization for Women. I was really lucky that chapter had the national president, Wilma Scott Heide, and the national coordinator—this is now 1970—of the task force to pass the Equal Rights Amendment, Jean Witter. And why do I say their names, and I'm going to try pepper more names in. Because thousands and thousands of people have fought for this amendment, and, while they were fighting for it, for equality in many other ways. Our chapter got rid of help wanted ads, men and female. We sued the Pittsburgh press at that time, but we only won by a 5 to 4 decision, even though it was blatant, *prima facie* discrimination: only 20 different jobs advertised for women and several hundred for the men.

Now, in fighting, we also passed the Pennsylvania Equal Rights Amendment, which was one of the strongest state ones. We fought in state after state and we now have in over two dozen states. At the same time we did that, just a small group of women broke up the hearing for the 18-year-old vote so there would finally be a hearing in the Senate on the Equal Rights Amendment. The reason it's taken so long, these 100 years, is we lost about 50 of them and, I mean, 50 of them, very bright wonderful leaders.

How did we lose it? They boxed it up in committee. They wouldn't allow a vote. In fact, to get the first vote and the vote to ratify in the House took 50 years because it was boxed up in the Judiciary Committee and they wouldn't allow a vote. And why wouldn't they allow a vote? This has been so popular, they knew it would pass overwhelmingly when, in fact, it would be placed on the floor. And when it was, after a discharge petition by Martha Griffiths, and I had the pleasure to work with her at the very beginning of my own career, it was passed 354 to 24 people, overwhelmingly, I would say, bipartisan.

To get it going in the Senate, we disrupted the hearings of the 18-year-old vote and got a promise from Birch Bayh, the major sponsor in the Senate, that he would finally hold hearings on it. And so, in 1972, we won 84 to 8. These are not close votes because why? We were way ahead in the polls. People wanted equality for women. But we had to keep fighting, and at first it went really, really fast, but it got bottled up again in delays, delays, delays. For example, we are all grateful for the 38th state of Virginia ratifying, but we should say what happened in Virginia. It was bottled up in the Privileges and Elections Committee of the House for about 50 years, and when it comes out, we passed it, but it didn't come out until the year 2020. Bottled up.

Now, what happened in between? I hear all the time about Title VII, Title IX. We worked to put those things on the books. Feminists worked. One of the things they keep on saying, you have all these guarantees, but what they don't say is that along the way, and we had a hard time on this at first—we now don't have that hard time—but is that others tried to defeat and undermine Title VII and Title IX. In fact, Title IX, by the Reagan Administration, was gutted by the Grove City case. I don't have the time to go into that whole case, but we had to work to restore it and pass an amendment to restore it. The thing with Title VII, the Roberts Court gutted—

Mr. COMER. Madam Chair?

Chairwoman MALONEY. The gentleman is pointing out that your time has expired.

Ms. SMEAL. OK.

Chairwoman MALONEY. And you have pointed out very important reasons why we need it because it can be rolled back and overturned.

Ms. SMEAL. Rolled back.

Chairwoman MALONEY. So thank you for that, but all your testimony will be in the record.

Chairwoman MALONEY. I now recognize Ms. Salcedo. You are recognized for your testimony.

STATEMENT OF BAMBY SALCEDO, PRESIDENT, TRANSLATIN@ COALITION, AND BOARD MEMBER, ERA COALITION

Ms. SALCEDO. Thank you, Madam Chair.

[Speaking foreign language.] Greetings, everyone. I know it was hard for some of you to understand what I just said, but it is customary for me that before I speak, I acknowledge my Creator for allowing me to breathe one more day. I also honor the land where we're standing today, and I ask permission from the Natcotchtank and the Piscataway peoples to allow me to speak in their land today.

I'm humbly grateful to be in your presence today. Thank you, Chairwoman Maloney and members of this committee, for allowing me to share my experience, strength, and hope with you today. My name is Bamby Salcedo, and I'm a very privileged trans Latina woman who has the honor to be the president and the CEO of the TransLatin@ Coalition, a national advocacy organization based in Los Angeles that also provides social support and lifesaving services to trans, gender non-conforming, and intersex people. I also serve as a board member of the ERA Coalition.

My experience is that of a person who has had the opportunity to survive many horrific experiences simply for being who I am: a trans woman who is Latina, an immigrant, someone who has overcome constant discrimination, multiple sexual assaults, homelessness, drug addiction including overdoses, and left for death in alleys. I spent over 14 years of my life incarcerated. I have been chased out of neighborhoods and beaten. I had to do sex work as a means to survive. I have had guns pointed into my head. I committed multiple suicide attempts.

I experienced all of this because I was pushed by our society because there were no laws or protections against discrimination to

protect people like myself. I can honestly say that I have survived things that you probably are not able to imagine. But what is most unfortunate is that the same issues that I have endured and overcome, many members of my community are experiencing today all across the country, even in California which is the state that has the most inclusive legislation to protect trans people.

2021 will be a record number of murders in the trans community. I have seen many of my friends die. I have organized more funerals than celebrations in my community. All of this because we have no national legislation that will serve as a protection for all people. I know that you are probably going to say what about the Equality Act. The truth is that the Equality Act does not look at all of the intersections across my life and will not provide constitutional equality. For example, I am glad my friend Monica Ramirez started Latina Equal Pay Day, which we're acknowledging with sadness today. As a trans Latina woman, the pay gap is enormous. The discrimination that we experience while trying to get employment in the workplace is rampant. The Equality Act will not support other trans women and me obtaining employment and being compensated and valued equally for our work. The Equal Rights Amendment will help ensure no discrimination against all peoples—poor, indigenous, black, trans women. All peoples.

My strength is that I get to share with you who I am and what I have overcome, and how people have uplifted me and supported me to heal my wounds, which, unfortunately, our government has failed to do. My strength is that I speak to you with my truth because my truth is my power. My hope is that you understand the opportunity that we have in this moment in time, that you understand that the Equal Rights Amendment is what our Nation needs right now to heal the intergenerational wounds generated against the most marginalized. I hope you open your hearts and your minds, and you do the humane thing to ensure that all peoples, not only those who are like me, have the rights that we deserve, that we get to be acknowledged as the human beings that we are, that we are given some dignity, and that we honor the work of many people who have tried for more than five decades to ratify the Equal Rights Amendment. We have an excellent opportunity to support all peoples and not just some. While I support the Equality Act and its passage, the ratification of the Equal Rights Amendment nationally needs to happen. I hope that I get to see the passage of the Equal Rights Amendment in my lifetime.

Every day I am afraid that I can be killed simply because I am a trans woman. I ask that you see that there is no other time like what we have today, that we do not continue to see divisions nor continue to feel messages that say some people are more deserving than others, but that we see people in this country need to be protected in value, and that you use your power to ensure the affirmation of the Equal Rights Amendment. There is no time like the present, and the time to act favorably about the Equal Rights Amendment is now. Please be on the right side of history. Only you can do that for yourself, and many people depend on you to what is humane.

I am sure that generations to come will see then who are the people who understood what human and civil rights are, who used

their power for the betterment of all peoples. Today is a historic day, and I want for you to ask yourselves, do I want to be on the right side of history. I hope your conscience says yes. I invite you to imagine a new world, a world of constitutional equality and freedom for all.

Thank you so much for the opportunity to be in your presence today.

Chairwoman MALONEY. Thank you. And, Professor Nourse, you are now recognized for your testimony.

**STATEMENT OF VICTORIA NOURSE, PROFESSOR OF LAW,
GEORGETOWN UNIVERSITY LAW CENTER**

Ms. NOURSE. Thank you, Chairwoman Maloney and Ranking Member Comer. It is a delight to be here with these wonderful women and thank you for your leadership. My name is Victoria Nourse. I'm the Ralph Whitworth Professor of Law at Georgetown and teach about constitutional and statutory interpretation.

I ask first-year constitutional law students to read the Constitution's text. It is a beautiful text of 4,000 words. But then I ask them what is absent from the text, and I say, well, does it say anything about sex discrimination and work? Could you be fired because you are a woman, or a man for that matter, and they look very hard in the text, and they are disappointed to find nothing. Now, I understand there have been people here talking about rights being protected. They're talking about statutes. Those statutes can be taken away by Congress and they can be declared unconstitutional by the Supreme Court.

Justice Scalia was quite candid about the text of the Constitution. He was a great friend of Georgetown, and he would come to the law school and talk about the text of the Constitution and the Fourteenth Amendment. Now, he was very candid when he gave an interview and he explained that the words "equal protection"—the Fourteenth Amendment has been mentioned today—do not cover women. This is what he said: "Certainly the Constitution does not require discrimination on the basis of sex. The only issue is whether it prohibits it. Nobody ever thought that that is what it meant." He's referring to the Fourteenth Amendment. "Nobody ever voted for that. If the current society wants to outlaw discrimination by sex, hey, we have things called legislators and they enact things called laws." Justice Scalia told women to look to Congress, not the Constitution, for their rights.

Recently I watched the brave testimony of gymnasts Simone Biles, Aly Raisman, Maggie Nichols, and others who testified about their sexual assault and why the Federal Government had done so little, how the law had failed them, how they were disbelieved and ignored. It was something of a *deja vu* for me. Thirty years earlier in the year 1990, I was a very young baby lawyer sitting behind a man named Joe Biden on the Senate Judiciary Committee, and I listened to emotional testimony like that of Bamby today about how the legal system had treated them as second-class citizens. It has been 30 years since that testimony, and yet those brave Olympians were saying the law still did not protect them, that the FBI had turned a blind eye, and I knew the deep reason for this. Why? It resides in the Constitution and let me explain that.

In 1994, Congress passed a bipartisan bill that might have helped many sexually assaulted and harassed women of color and sexual orientation, and that would've included the Olympians, the survivors of Weinstein, and others. The original Biden Violence Against Women Act included a civil rights remedy so you go to civil court. If the criminal justice system doesn't work, go to civil court. Women did not need to go to the FBI. If the criminal justice system treated them poorly, they had justice in their own hands, and it worked for six years. But then in 2000, guess what happened? The Supreme Court struck it down. So a future supreme court, as Ms. Milano said, you don't need to be a constitutional law professor to realize that the Supreme Court can strike down a law passed by Congress.

In *Morrison*, the Court said not under the equal protection clause of the Fourteenth Amendment nor under the commerce clause did Congress have the power to enact a civil rights remedy to protect against sexual violence and harassment. Now, I urge Congress to rethink this. I know that President Biden supports this remedy, but the moral of my story is much broader. It's about the Constitution. We now have a Court of nine unelected men and women, six of whom idealize Justice Scalia. The six justices who have publicly aligned themselves with him have a judicial philosophy, and I have debated Justice Barrett before when she was a law professor. She's a lovely woman, but she has a judicial philosophy that she thinks insulates her from bias, and that judicial philosophy is known as textualism or originalism. I write about this. I study it. What that means is if it is not in the Constitution, it doesn't exist. This is a new theory. No one ever told me in law school about it. So even if there are precedents on the books that were mentioned by one of the witnesses and by Mr. Comer about the Fourteenth Amendment, there is no guarantee that this Court will not overturn them.

So ladies, and to my daughter and to my son, be afraid. Other than the Nineteenth Amendment which gave women the right to vote, women are not recognized in the Constitution's text. Without the Equal Rights Amendment as a constitutional insurance policy, all of the things that women take for granted could simply go away with a vote of five men on the Supreme Court. Unequal protection is not a fantasy. It is a reality every day for women who are harassed or sexually assaulted, the victims of domestic violence. Harassment with impunity structurally protects racial and age discrimination as well. It is no wonder that interest in the ERA has mushroomed in the Me Too/Time's Up era. Young women know—
Voice. Madam Chairwoman?

Ms. NOURSE. Let me just say one final word about this amendment. The time limit was in the preface to the amendment, not in the text. So, when the 38th state ratified, it was ratified. If necessary, Congress has the power to extend the deadline, but that is only if necessary, and the OLC opinion, in my view, has no legal validity and it is not law. Thank you.

Chairwoman MALONEY. Thank you for your testimony.

I now recognize myself for five minutes for questions.

The effort to adopt the ERA is more than 100 years in the making. The century of work for constitutional equality shows how important it is to women and how tenacious we are in working for

it. On October 12, 1971—50 years ago—the ERA passed the House. It was widely popular on both sides of the aisle. And even in today's extreme polarization, the ERA is still incredibly popular with the American people, both Democrats and Republicans. Professor, we know it has been ratified by the requisite number of states, and I believe it already should be part of the Constitution. Professor Nourse, as a constitutional legal scholar, is there a constitutional role for the executive branch in the amending process?

Ms. NOURSE. No, and the Supreme Court has so held.

Chairwoman MALONEY. And, Professor, the Trump Administration issued a legal opinion claiming that the ERA cannot be certified and that the time limit cannot be extended or removed even by Congress. Is this memo binding legal precedent?

Ms. NOURSE. No, it is not binding legal precedent. I actually believe that no President, whether Republican or Democrat, has legal authority to issue a binding constitutional opinion on Congress' authority because Article V only mentions Congress. The President has no role.

Chairwoman MALONEY. And do you agree with the memo's assertion that the time limit cannot be extended or removed?

Ms. NOURSE. I disagree with that. The text of Article V says Congress. This is in Congress' authority, and there are precedents as well that that memo is inconsistent with respect to extending the deadline.

Chairwoman MALONEY. And thank you. I agree with you that the Trump opinion blocking the ERA is legally erroneous and should be withdrawn. Ms. Smeal, you have been at the forefront of this fight from the beginning. Why is the ERA still necessary? After all of the progress that you have fought for and that we have been able to achieve, do we still need it today?

Ms. SMEAL. Yes, we still—

Chairwoman MALONEY. Can you turn on your mic because it is not on.

Ms. SMEAL. Yes, we need it. What I was trying to say is that statutes can be easily changed, and they have been. Title VII and Title IX have been changed. None of them are complete, and we cannot rely on the Fourteenth Amendment or the Interstate Commerce Clause. The Violence Against Women Act had a section in it which said that the victim or the survivor could take a Federal action, a civil action, to get damages in Federal court if no one would defend her or if it was inadequate at the state level. That was declared unconstitutional. The ERA would give a survivor of sexual violence a chance in the Federal courts.

And it was very clear that this gives the power to Congress to enforce it through appropriate legislation. Without it, Congress doesn't have the power. Everything is always a little bit here, a little bit there. For example, the Affordable Care Act prohibits sex discrimination in pricing and benefits. Before it passed, the typical health insurance plan for a woman did not cover maternity. In the typical plan, a woman was paying between 150 percent and 200 percent more for similar coverage, but no maternity coverage. This was outlawed by the Affordable Care Act, but you know that they are trying to reverse it, reverse it, reverse it. I could tell you other insurances regulated at the state level, but a state can't discrimi-

nate either. Life insurance, annuities, auto insurance all have sex discrimination tied into it costing the average woman, you know, totally billions and billions of dollars.

Chairwoman MALONEY. All of this is so important. Please place it in writing for the record.

Chairwoman MALONEY. I only have a few seconds left, and I wanted to ask our friend from Virginia, Senator McClellan, you were so active in getting it passed. What did it take to get it ratified in Virginia, and did the ratification effort have bipartisan support? Can you share that with us?

Ms. MCCLELLAN. Thank you, Madam Chair. It took persistence and it had bipartisan support from the beginning. The resolution passed the Senate many times, sometimes carried by a Democrat, sometimes carried by a Republican, and was always bottled up in the Subcommittee of the House Privileges and Elections Committee, never making it to the floor. When the majority changed and the leadership changed and it was allowed a vote in the committee and on the floor, it got bipartisan support in both chambers.

Chairwoman MALONEY. Thank you. It is clear that the ERA is not only relevant, but it is necessary, and I urge the archivist to formally certify and publish the ERA as the 28th amendment to the Constitution. I want to thank all of you. My time has expired.

And I would now like to recognize the gentleman from Ohio. Mr. Gibbs is now recognized for five minutes.

Mr. GIBBS. Thank you, Madam Chair. First of all, I would like to associate myself with the remarks made by the ranking member in his opening remarks, Ranking Member Comer, about the reason for this hearing, and also, I believe the Fifth and Fourteenth Amendments guarantee equal protection under the Constitution. And I would also like to associate myself with his remarks. You know, we are facing multiple crises, emergencies caused by the Biden Administration's policies, inept policies, and they really require the attention of the Oversight and Reform Committee and where I think we actually do have jurisdiction. And, you know, our families are being beat up right now with inflation and higher costs of living and their concerns, and we are not having any hearings on those crises, and we really should, Madam Chair.

I want to take a little bit of a different angle here. We talk so much about how far we have come in this country in the 100 years of women's rights and equality, and I don't think there is a person that would disagree, certainly not in Congress, that it is very bipartisan that we all think that women should have equal rights. They should have the same pay for doing similar type work. They should be able to vote. Those aren't debatable. We all believe that in our hearts. The concern I have, even the late Justice Ruth Bader Ginsburg talked about, you know, we really need to start over in the process because it has been so long. So many things have changed. And I have a concern that, we talked about it is not in the Constitution, but there are lots of laws out there protecting it, like Title IX, you know, equal pay, you know. There are a lot of things out there to protect women, and there is a debate, or a concern, I should say, but there hasn't really been a debate because, like Madam Chair said, you said that the archivist ought to just enact it now because all these states have ratified it, even though we

have five states, maybe four states, that rescinded that before the deadline. That was actually during the process, you know, nearly 40 or so years ago.

So I think that, you know, we do need to have debate to make sure that we don't do something that is going to harm women's rights with all the progress we have made in this last 100 years. Let's face it. Even since this was proposed back in the 70's, and, of course, it was originally written, as you said, almost 100 years ago, a lot of things have changed and we have come a long way, and we don't want, you know, to have unintended consequences. So I would ask Ms. Stepman, is it not true that the U.S. Constitution already guarantees equal protection under the law for universal suffrage for women, correct? Just kind of "yes" or "no," Ms. Stepman.

Ms. STEPMAN. That is correct.

Mr. GIBBS. OK. Also, the Civil Rights Act of 1964 and the Equal Pay Act of 1963. It is already illegal under these Federal laws to discriminate against women. Is that correct?

Ms. STEPMAN. That is correct, and it is illegal in the states as well.

Mr. GIBBS. OK. Is it also correct that, or true, I should say, or correct that prior to the 1979 deadline, Idaho, Kentucky, Nebraska, Tennessee, and South Dakota rescinded their earlier past ratification?

Ms. STEPMAN. Yes, except I think South Dakota just had a sunset clause on theirs.

Mr. GIBBS. OK.

Ms. STEPMAN. One of them. I can't remember which one honestly. I am a little under pressure here.

Mr. GIBBS. That is fine.

Ms. STEPMAN. But one of those states had a sunset.

Mr. GIBBS. Well, the other side of the aisle keeps talking about the, I guess, three states ratified it recently, and now the archivist ought to just enact it into the Constitution. And how about the states that decided maybe there were issues, they made a mistake, and they rescinded it? Like I said, some of those states actually did it before the deadline, so it seems like, to me, that would be an open and shut case that it hasn't been ratified by the required amount of states.

Also in your written testimony, or in your written testimony, I should say, Ms. Stepman. In your previous writings, you talked about the Equal Rights Amendment could take away flexibility that protects a woman's privacy, safety, and ability to protect against harassment. Can you describe some of the flexibilities that currently exist that would be jeopardized by the Equal Rights Amendment, especially if decisions and interpretation were left to the courts?

Ms. STEPMAN. Absolutely. So the ERA could have a lot of consequences for women and girls because this current regime, even though we do have equal protection under the Fourteenth Amendment and all of the civil rights law that you listed, Congressman, unfortunately the ERA would make it inflexible, right? So what we have right now is a regime that protects women's equality with men, but still allows in limited, very limited situations, those situa-

tions in which our biological differences are actually relevant, that there is flexibility in the law to recognize that. For example, as I mentioned, in prisons, when we separate boys and girls in locker rooms and public schools, right, when we have TSA pat downs from a member of the same sex. These are all ways in which the law has flexibility right now to recognize that in some situations it makes sense to distinguish between men and women because we are biologically different and ignoring that fact does not help women and girls.

Mr. GIBBS. I totally agree, and my time is up. I would just say, Madam Chair, that we ought to really take the advice of late Justice Ruth Bader Ginsburg that we ought to restart the process over and have a debate, and make sure we do the right thing and don't err by unintended consequences. I yield back, Madam Chair.

Chairwoman MALONEY. The gentleman yields back, and I would like to briefly address the issue of rescissions that he brought up. For historical comparison, two states attempted to rescind their ratification of the Fourteenth Amendment, but they were rejected by Congress and the Fourteenth Amendment was certified and published. It is also important to note that the validity of rescissions has never been affirmed by the Supreme Court.

I now recognize the gentleman from Massachusetts, Mr. Lynch. You are now recognized, Mr. Lynch.

Mr. LYNCH. Thank you, Madam Chair. I want to thank you also for holding this hearing and for assembling such a distinguished group of witnesses, and I am thankful for their testimony. I would like to use some of my time to explore how certifying the ERA would actually help the United States meet its international obligations.

As most of us know, in 1980, President Carter signed the International Convention on the Elimination of all Forms of Discrimination Against Women. However, as we all know, the United States did not ratify that convention, and as well, in 1992, the United States did ratify the International Covenant on Civil and Political Rights, which, in part, does require the United States to take steps to prevent sex discrimination and gender-based violence, but we seemingly remain in noncompliance. So, I know that Professor Nourse, and Ms. Jenkins, and Ms. Smeal have been working on this issue for a long time, but how would the passage of the Equal Rights Amendment help the United States meet its international obligations? Ms. Nourse, maybe you could take a first crack at this. Thank you.

Ms. NOURSE. Thank you for making that point. I think it is very important to meet those international obligations. We are not in compliance with a variety of international treaties. You know, one of the things that I find surprising is that so many democracies in the world, as mentioned by other witnesses, have an ERA and we don't. We purport to be the greatest democracy in the world. They have not, you know, had such a great difficulty with it, so I think that it would be very important for international obligations. And I will just mention that I think that the premise that this would hurt women is incorrect because the premise depends upon an assumption about how a Supreme Court might interpret the law,

which is incorrect. And I could talk about that if anyone would like to hear me on it.

Mr. LYNCH. Thank you. Ms. Jenkins, I know you have been working on this for a long time and you have been fighting for women's rights globally. Again, our international obligations and, I would say, our moral authority around the world, how would that be affected if we fail to adopt the ERA?

Ms. JENKINS. Well, we already are held in very low esteem around the world, I would say, because of our failure to have Equal Rights Amendment, our failure to join CEDAW, our failure to participate in equality. I think that we have reached that point where we no longer can stand in the bully pulpit and tell other countries what to do about equality when we have performed so poorly ourselves. And, you know, I think that, you know, this century-long fight, you know, is just demonstrative. You know, many people ask us, and I am an activist, not a lawyer, but I am saying many people ask us why does America hate its women. Why does it not want to give them equality? Why do they have to beg? Why do they have to take to the streets again and perpetually to ask for this non-discrimination, for the ability to be a first-class citizen and not perpetually left out? I think, you know, if you say that, well, this statute is working and that one is working, and I say tell me, you know, why are most of the impoverished of our country poor women, you know. Why are they women? Why are families, you know, headed by women, you know, trying to figure out how to feed their children? You know, 1 in 3, you know, children in this country are food insecure.

So, I think that if we go, again, back to, you know, as I like to say, that if you are looking for the root of sexism and misogyny, you will find it in our Constitution because it was intended for a certain class of people who don't represent the people who are on this panel and in this room today. So, I think that we really, as a country need to rehabilitate ourselves. We fixed the Constitution 27 times, you know, so we know that it wasn't perfect. It needs to be fixed one more time so that, you know, women are not second-class citizens, and it is a shameful exhibit, you know, of ourselves around the world. And I thank you for the question.

Mr. LYNCH. Thank you, Madam Chair. I see my time has expired, and I yield back.

Chairwoman MALONEY. The gentleman yields back. The gentleman from Wisconsin, Mr. Grothman, is recognized.

Mr. GROTHMAN. Thanks for calling on me. I will ask Ms. Feltscher-Stepman a couple questions.

Ms. STEPMAN. You can use "Stepman."

Mr. GROTHMAN. First of all, I am looking here at a study mentioned by Heritage Foundation. They claim that unmarried childless women under 30 who live in cities earn more than their male counterparts, their peer group. Do you believe that is true and could you comment as to why you think that is true?

Ms. STEPMAN. Yes, I do believe that is true, and that is because the wage gap that keeps getting mentioned during this hearing is due overwhelmingly to different aggregate choices that men and women make in their careers with regard to hours worked, with regard to which college majors they choose, and many, many other

factors. In fact, the Obama Department of Labor, so the Department of Labor under the Obama Administration, put out a meta study that looked at a bunch of different analyses and studies of the so-called pay gap, and found that overwhelmingly that gap is explained by women's choices in terms of what fields they want to go to and how they balance family and career. So it makes perfect sense that young women who do not have children, who are unmarried, who are working in a similar way as young men do, would end up closing that gap and, in some cases, even exceeding it because women actually get the majority of college and higher degrees at this point. So that is not surprising.

Mr. GROTHMAN. OK. Looking at some other statistics here, it says here that 93 percent of the workplace fatalities are to men. Do you believe that statistic, and do you want to comment on it?

Ms. STEPMAN. Sure. That is likely because men choose more dangerous employment than do women. And, in fact, another one of the points that was brought up earlier today by one of my fellow witnesses was with regard, for example, to health insurance costing more for women before the Affordable Care Act. Well, car insurance costs more for men because men have more car accidents. These are not instances of sex discrimination or bigotry. These are instances in which men and women behave as large groups, and there are always individual exceptions, but as large groups and in the aggregate behave differently and choose different life paths, different careers. I don't find this to be a negative thing. I think it is a positive thing that we live in a country that is free and prosperous where women and men can choose their own paths, even if they happen, on aggregate, to be different from one another.

Mr. GROTHMAN. I wasn't going to ask this question, but something Ms. Jenkins said caused me to look at it, and I would like you to comment on this. It says here that 70 percent of the homeless in our society are men. Do you want to comment on that?

Ms. STEPMAN. It is just yet another example that, on aggregate, we should expect that men and women will take different life paths, both in a positive and negative way, because there are many real biological differences between men and women. That doesn't mean that we are not fundamentally equal, that we shouldn't be equal under the law. But we do have to have a law that is flexible enough to recognize when those are instances of actual invidious discrimination where somebody is preventing a woman from doing something simply because she is a woman, or it is one of those situations in which men and women differ and those differences are actually relevant to the situation in question.

Mr. GROTHMAN. This is, again, something, I can't vouch for it, but Uber, you know, hires people. They have some men and some women driving. Apparently there is a study, and there is apparently a pay gap which the men who work for Uber are making more than the women. Do you want to comment on that? Could that possibly be true, and are there any conclusions you draw from it?

Ms. STEPMAN. Sure. Uber pays by an algorithm, so there is no possibility for any kind of intentional discrimination between men and women, male and female Uber drivers. In fact, that seven-percent pay gap that they found among their drivers differing by sex

was the result of, frankly, women driving a little bit slower on average and a couple of other factors than do men, right? So, again, we are seeing that these gaps emerge. And I would point out that a lot of these countries that are being brought up, like Iceland or Sweden who have ERAs, the wage gap exists there, too, because these gaps do naturally arise when men and women make different decisions.

And I don't know why the male standard of what decisions they make in their career is the standard that female success is pegged to. I think women having the freedom and opportunity to make their own choices is actually what we are after by true equality here. And I think the ERA would actually interfere or destroy that kind of true equality that women and men do have in this country.

Mr. GROTHMAN. OK. Thank you.

Chairwoman MALONEY. Thank you. The gentleman from Virginia, Mr. Connolly, is recognized. Mr. Connolly? Thank you.

Mr. CONNOLLY. Thank you, Madam Chairwoman. Professor Nourse, Article V of the Constitution reads, and I quote, "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the Constitution, which shall be valid, to all intents and purposes, as part of the Constitution when ratified by the legislatures of three-fourths of the several states." Is that correct?

Ms. NOURSE. That is correct and thank you for reading the text.

Mr. CONNOLLY. Thank you. Yes, the text always helps. Is that text in any way modified or refined by any other language?

Ms. NOURSE. No.

Mr. CONNOLLY. No. Has the ERA, in fact, met that standard? Have we, in fact, seen the amendment approved by two-thirds of both the House of Representatives and the Senate?

Ms. NOURSE. Yes.

Mr. CONNOLLY. And has the ERA been ratified by the legislatures of three-fourths of the states?

Ms. NOURSE. Yes.

Mr. CONNOLLY. Virginia being the 38th. Is that correct, Senator McClellan?

Ms. NOURSE. Thank you, Virginia.

Ms. MCCLELLAN. That is correct.

Mr. CONNOLLY. You can confirm that.

Ms. MCCLELLAN. That is correct.

Mr. CONNOLLY. So have we not met the standard of the Constitution?

Ms. NOURSE. We have met the standard of the Constitution.

Mr. CONNOLLY. Well, why wouldn't it be subject to the same criteria as the preceding 27 amendments to the Constitution?

Ms. NOURSE. It should. You know, it took 203 years to get the congressional pay amendment, so I think the only argument here is about delay, and timing is not written into the text of the Constitution.

Mr. CONNOLLY. So we had statutory language putting a time limit in the preamble to the language of the amendment itself. Is that correct?

Ms. NOURSE. That is correct. It is in the preamble.

Mr. CONNOLLY. And what is your opinion about the legal binding nature of such statutory limitation?

Ms. NOURSE. I think Congress has plenary power to read that as it wishes, so that it appears to me to be prefatory or advisory language. That is not what the states ratified. If we look at the amendment itself, there is prefatory language, and then it says "Article," and there is Section 1, 2, and 3. That is what the states ratified, not the deadline.

Mr. CONNOLLY. So we have a real live example in front of us: Virginia, my home state. Senator McClellan, can you enlighten us when you and your colleagues looked at the ERA, given what Professor Nourse just said, how did your colleagues look at the prefatory language in the statute versus the actual text of the amendment in front of you, and why did you decide you could proceed?

Ms. MCCLELLAN. We looked at the prefatory language as not the amendment itself, and nothing in the Constitution discusses timeframes or time limits, or even if they would be valid. And so we looked at the text of the Constitution, and what it told us to do was ratify the amendment. That is what we did.

Mr. CONNOLLY. And it isn't that you ignored the language. You took it into account, but you made a decision it wasn't controlling.

Ms. MCCLELLAN. That is right.

Mr. CONNOLLY. And, therefore, there was no impediment from your point of view. I don't mean to put words in your mouth. I am asking. There was no impediment to your actually acting in ratifying the amendment.

Ms. MCCLELLAN. That is right. The states are told by Article V to ratify. There is nothing in the amendment process and the Constitution about deadlines or rescissions, and we did what we were authorized to do under the Constitution.

Mr. CONNOLLY. And did you in ratifying it assume that by becoming the 38th state, you, in fact, had enshrined this amendment into the Constitution?

Ms. MCCLELLAN. We did.

Mr. CONNOLLY. Thank you very much for that testimony. I just want to say, Madam Chairwoman, that the ranking member mentioned rescission, and I think that is a bugaboo that needs to be punctured, if I am not mixing my metaphors. When we go down that road, we go down the road of, you know, let's rescind the Thirteenth Amendment ending slavery in America. Let's, in fact, rescind the 10 amendments to the Constitution of the United States that were adopted or promulgated by the first Congress with the aid and attention of a great Virginian, James Madison, because, I don't know, we have changed our minds. Where does that end?

And, you know, just like secession, rescission is not a provision provided for in the Constitution of the United States. In the case of secession, we fought a bloody, terrible Civil War to make that point. Hopefully we don't have to do the same about rescission. I contend, based on this testimony, that the ERA is now an amendment to the Constitution, duly ratified by the 38th state, the Commonwealth of Virginia. I yield back.

Chairwoman MALONEY. The gentleman yields back.

The gentleman yields from Louisiana, Mr. Higgins, is now recognized. Mr. Higgins.

Mr. HIGGINS. Thank you, Madam Chair, and I respect your endeavor through the years in support of the ERA, and I respect my colleague, Mr. Connolly's, position. Let me attempt to interject a reasonable proposal that perhaps could be embraced by both sides of the aisle. Let's begin with the Civil Rights Act of 1964, which banned employment discrimination on the basis of race, color, religion, sex, and national origin. Section 1 of the Fourteenth Amendment, 1868, states, "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." The text of the Equal Rights Amendment, Section 1, a significant section, states, "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex."

Now, you will see a repetitive theme here. It is the endeavor of our country, as we move forward with our journey as a Nation, to embrace the rights and protections of every American citizen, indeed of every child of God, that lives upon American soil, and we support that. In 1972 and in 1976, with slight variance, 80 million Americans voted in the Presidential elections. The average age of voters at the time was 44 years old. The 1976 Presidential election, the era of the ERA, that was 45 years ago. The average age of voters was 44. That means 1976 voters would be 89 right now. The average life expectancy in America was 79.

It is the reality, to my colleagues on both sides of the aisle, that the Americans that had an opportunity to vote in the sovereign states, and we are a representative republic of 50 sovereign states, those Americans that had the opportunity to vote for ratification of the ERA have mostly passed on to their final reward. Now, may I submit to you that, reflective of, you know, my own perspective, I am the seventh of eight children. I have six sisters. I have three daughters, two living, and I have an amazing wife, and let me just say that I support the Equal Rights Amendment. I don't have a problem with it. It is a bit repetitive to existing law, but OK, you know, the women of our country deserve this message of respect and for it to be permanently etched in our founding document.

My father told me long ago when I was just a young lad, he said, son, the wisest words ever assembled are "yes" and "ma'am." You save a lot of trouble during the course of your life if you say "yes, ma'am." So I say to the ladies present and to our good chairwoman, yes, ma'am, move forward by all means with the Equal Rights Amendment. But from the words of Ruth Bader Ginsburg, let me encourage you to consider her words in 2020: "I would like to see a new beginning," Ginsburg told an audience at Georgetown University Law Center. "I would like to see it start over regarding the ERA." In 2019, she said, "I hope someday it will be put back on the political hopper, starting over again, collecting the necessary number of states to ratify it." That was in 2019.

May I submit to you, do it right. Say "yes, ma'am" to this generation of women from sea to shining sea. Give them an opportunity

to vote, to ratify the ERA. May I submit that if the ERA was resubmitted to Congress, it would pass by a wide bipartisan margin. And if presented to the states for ratification, I propose that all 50 states would ratify the ERA, and it would be done now with voters that live now. Do it right. You want to pass the ERA? By all means, move forward. I will support it. If my daughters support it, my wife supports it, and my sisters support it, then who am I to stand in the way? I would support it, but do it right.

Madam Chair, I yield.

Chairwoman MALONEY. The gentleman yields back. The gentleman from Maryland, Mr. Raskin, is now recognized. Mr. Raskin.

Mr. RASKIN. Madam Chair, thank you very much. I am delighted to hear my friend from Louisiana speak in strong favor of the Equal Rights Amendment, which I think probably is a good harbinger for our amending the Constitution this century. So just a question of exactly when and exactly how, in response to requests for guidance on January 6 last year, the DOJ Office of Legal Counsel—OLC—issued an opinion in response to a request from the National Archives and Records Administration on the ERA. And this OLC opinion concluded the archivist could not publish the ERA because the time limit had passed, and the archivist has stated that this OLC opinion prevents him from certifying and publishing the ERA.

So, Professor Nourse, I want to ask you about the validity of this 2020 OLC opinion from the last Administration and the role of the executive branch in the constitutional amending process. First of all, as a general matter, are OLC opinions binding precedent like a decision of a Federal district court or the U.S. Supreme Court?

Ms. NOURSE. No, they are not binding.

Mr. RASKIN. And are there situations in which OLC opinions are actually withdrawn, or modified, or reversed? And if so, what are the circumstances under which a prior OLC opinion might be changed or withdrawn?

Ms. NOURSE. Well, yes. There is a very famous instance where an OLC opinion appeared to endorse torture, and a subsequent Administration withdrew it. In this case, the OLC opinion actually contradicts prior OLC opinions. The Trump opinion contradicts some prior opinions from earlier.

Mr. RASKIN. I got you. So there is nothing unusual at all about changing or reversing a flawed OLC opinion when one Administration looks back and finds legally unsound reasoning underlying a prior one, especially when the prior one itself was a reversal of a prior opinion that came to that Administration.

Ms. NOURSE. That is correct.

Mr. RASKIN. So let's come back to the substance then, Professor Nourse. In your opinion, is the 2020 OLC opinion legally sound?

Ms. NOURSE. No, and why not? Because it is inconsistent with the Supreme Court's decision in *Coleman v. Miller*. It purports to bind Congress to the deadline in a way that is inconsistent with the Supreme Court's opinion, suggesting that this is a political question that the Court cannot opine on, and that is my position.

Mr. RASKIN. All right.

Ms. NOURSE. I don't think that the Court would take this.

Mr. RASKIN. Well, if it is inconsistent with prior Supreme Court precedent, is it inconsistent or consistent with President Biden's statements on the ERA?

Ms. NOURSE. It is inconsistent with President Biden's statements on the ERA. He has endorsed the ERA. He supports the proposition of sex equality. I have worked with him since 1990 on this. I know that is correct. I am sure that the Justice Department knows about this. They can, in fact, withdraw this opinion consistent with his policy.

Mr. RASKIN. So it seems to me that the OLC should rescind the prior Administration's opinion, which is what is blocking certification of the ERA today. Can you also clarify the OLC's authority in the case of the ERA? Article V of our Constitution gives power to which branches of government over the constitutional amending process?

Ms. NOURSE. Well, thank you for that because the OLC, in this case, really has no authority because the President is not part of the amendment process. We heard from Mr. Connolly that Article V starts with Congress. It is about Congress' authority.

Mr. RASKIN. Yes. So not only is it not a controlling legal authority in the sense of a Court precedent. It is not even really persuasive authority because it is just one person in the last Administration in a different branch of government opining as to what the Congress of the United States should do, right?

Ms. NOURSE. That is correct. I run the Center on congressional Studies, and I am delighted to hear that Congress might be asserting its authority aggressively here. I don't believe that the OLC has authority to determine Congress' rules or proceedings under Article I, Section V, or any other provision of the Constitution.

Mr. RASKIN. Yes. By the way, do you agree with the dogma that we have three co-equal branches of government? I mean, "co-equal," first of all, is not even a word. It is like "extremely unique" or something like that. But the President's role is to take care that the laws are faithfully executed. The laws are passed by the Article I branch, the primary and predominant branch of government. As Madison put it, we are the lawmaking branch. We have the power over the amending process just like we have the power to regulate domestic and interstate commerce. And, of course, the Court's role is just to adjudicate over the interpretation of statutes in the Constitution. But would you agree that Congress is really who is driving the train in America?

Ms. NOURSE. Absolutely. Hallelujah. Article I is Article I for a reason. We have forgotten this because we think that the Supreme Court is supreme, and, in fact, it was Article III for a reason. The Court arrogated to itself non-textual authority to reject laws. We are used to that now, and we believe we are a better country for it.

Mr. RASKIN. Well, and some people think the judiciary is supreme, and some people think that the President is a king, and so we have to combat both of those dogmas and ideologies. I thank you for your indulgence. Madam Chair, I yield back to you.

Chairwoman MALONEY. The gentleman yields back. The gentleman from South Carolina, Mr. Norman, you are now recognized.

Mr. NORMAN. Thank you, Madam Chairman. Let me just emphasize what Ranking Member Comer mentioned, that, you know, we have had 20 requests to have hearings on things that are really a train wreck in this country. Look at our immigration where people are coming across this border. Women are getting raped. Children are getting raped. The drugs coming across. We are experiencing inflation where everyone is paying 42 percent higher in gas prices that is so unfair, particularly for those on fixed incomes. We have an Administration that is tone deaf to generals who have criticized the current Administration in rank and conspired with foreign countries. We have asked for hearings on things like this because last nine months have been an absolute train wreck. But be that as it may, we will continue to ask for hearings that we think are current.

I thank each one of our witnesses. You know, I listened—we have seven—six of the seven. Let me just describe what I have listened to, and I am not going by my script. This is the description that six of the seven have described the country that we live in now. We live in a country where it is equal opportunity for women as well as equal pay. We live in a country where there is no gender equality. We live in a country that is deeply flawed. I guess the question was asked why does America hate women. We live in a country where gender-driven injustices exist. We live in a country that Congress has failed us. We live in a country that, one of the witness says, “I am afraid of being killed.”

You know, you wonder why people from 152 countries are trying to get into America and they are not leaving. I wonder what your testimony would be on the women that are being raped that are coming into this country. I wonder what your testimony would be with the Uyghurs in China who wanted freedom and are now incarcerated. I wonder what your testimony would be with the Kate Steinles that are getting gunned down by illegals. And I wonder what your testimony would be over the 22 cities that have been destroyed and the businesses that have been destroyed.

But this one particularly stood out, Ms. Milano, and thank you for bringing up the Freedom Caucus. I am a proud member because we promote freedom. But let me quote what you said: “Discrimination exists in half of the population of America.” Can you name me three things good about this country?

Ms. MILANO. Of course I can, but before I do that, I would like to address a couple of issues, one of which you mentioned rape. I have been sexually abused. I would like the same constitutional equality as my abuser. Second of all, everyone—

Mr. NORMAN. My time is running out. I need three things good about America that none of the six mentioned. Just three things that are good about this country.

Ms. MILANO. Freedom of speech.

Mr. NORMAN. That is a good thing?

Ms. MILANO. Freedom of choice. Yes.

Mr. NORMAN. To kill a child.

Ms. MILANO. I believe that abortion is healthcare.

Mr. NORMAN. Really?

Ms. MILANO. I do.

Mr. NORMAN. Should double homicide be eliminated from the books if—

Ms. MILANO. I would also like—

Mr. NORMAN. Hold on. Let me just ask a question, Ms. Milano.

Ms. MILANO. OK.

Mr. NORMAN. I listened to you. If a woman and a child are murdered today and the child dies, it is double homicide. Should that go off the books?

Ms. MILANO. The Fourteenth Amendment creates a constitutional right to abortion. Do you want to repeal the Fourteenth Amendment? I do not.

Mr. NORMAN. Which positives? You named freedom of speech. What are your other two?

Ms. MILANO. Freedom of speech. Freedom of choice.

Mr. NORMAN. Freedom of choice.

Ms. MILANO. Opportunity for people that come to this country—

Mr. NORMAN. Thank you for at least.

Ms. MILANO [continuing]. As immigrants. Migration is a real thing, and because of the government's inaction on climate change, it will continue to happen more.

Mr. NORMAN. OK. So those are three good things. And then if this is passed, "sex" could be interpreted. You mentioned you were raped. Sex would be interpreted by the courts to mean a person's sexual orientation or gender identity, implicating faith-based nonprofits, women and children's privacy and safety, and women's sports rights. Is this something you agree with? Does this make our children safer by being identified as a man or a woman and going to a woman's bathroom?

Ms. MILANO. So if—

Mr. NORMAN. "Yes" or "no." My time is up.

Ms. MILANO. If a state has a compelling interest—

Mr. NORMAN. "Yes" or "no."

Ms. MILANO [continuing]. In maintaining a specific sex-based distinction, for example, limiting a battered women's shelter to women—

Mr. NORMAN. You are not answering my question, ma'am.

Ms. MILANO [continuing]. To protect them from continued trauma, the ERA will not affect it.

Mr. NORMAN. Madam Chair. My time is up. Thank you.

Chairwoman MALONEY. The gentleman's time has expired, and he yields back. But I want to briefly address his claim that this committee is not doing enough bread-and-butter oversight. The truth is that this committee is actively engaged in oversight over waste, fraud, and abuse, especially in the Subcommittee on COVID-19 on the contracts that they have let and on the whole operation and looking at all of that. And just this week, we sent a bipartisan letter to the IG of the National Archives and Records Administration asking for a review of the unacceptable backlog of veterans' records at the National Personnel Records Center. And earlier this month, we had a hearing on FEMA and overseeing the Administration's response to Hurricane Ida. And in the last two months, we have conducted a number of multiple member briefings on Afghanistan, a bipartisan briefing, classified, with the Adminis-

tration, and we have one set up coming up shortly, and a bipartisan letter to the FBI on the handling of ransomware attacks, and the oversight of the treatment of Haitian asylum seekers. And these are just some of the areas that we have worked on.

Just last week, we had an oversight of the Postal Office and Postal Service, and we are coming up with a historic hearing, I believe, oversight of what will be the first time that CEOs of all the major fossil fuel companies—Exxon, Chevron, BP, and others—

Mr. NORMAN. Madam Chairwoman?

Chairwoman MALONEY.—will be here before our committee. So at this point—

Mr. NORMAN. Can I ask—

Chairwoman MALONEY.—may we get back to the item that we are—

Mr. COMER. Point of order, Madam Chair. Point of order.

Chairwoman MALONEY. We are getting back to—

Mr. COMER. Point of order.

Chairwoman MALONEY.—recognizing the gentlelady—

Mr. COMER. Point of order, Madam Chair.

Chairwoman MALONEY. Explain your point of order.

Mr. NORMAN. Since you mentioned me by name, can I have a point of order and ask a question of you?

Chairwoman MALONEY. Sure.

Mr. NORMAN. You have named some hearings, but none of which addressed any of the 20 letters that he mentioned. Will you agree now to let us hold at least one or two hearings on specifics that Chairman Comer has asked for?

Chairwoman MALONEY. We will take it under consideration.

Mr. NORMAN. That means “no.”

Chairwoman MALONEY. And, Mr. Comer, you wish to be recognized?

Mr. COMER. Madam Chair, I just wanted to fact check that about the level of oversight this hearing has provided over the past nine months. The Lugar Center gave the Oversight Committee and “F” grade on oversight. So we have a lot of crises in America right now, and I believe we could be doing more in this committee to provide oversight to the American people for exactly what created these crises—

Chairwoman MALONEY. Thank you.

Mr. COMER [continuing]. And how they can be solved.

Chairwoman MALONEY. OK. Thank you. Ms. Bush, you are now recognized for five minutes.

Ms. BUSH. Thank you. And let me first start by saying, Ms. Milano, I apologize that you had to endure such a cruel, callous, and sexist question line presented by my colleague.

St. Louis and I thank you, Madam Chair, for convening this hearing. Equal rights for everyone are still not codified in this country, and it shows. Ratifying the ERA after over a century of struggle will help advance social, economic, and racial justice. It will improve the lived experiences for black women who are disproportionately affected by inequality and inequity in this country. It is not surprising that the slaveholders—all white men—who wrote the Constitution did not write in equal rights across genders, and it is not surprising that their disregard for gender equity has

disproportionately harmed black women, brown women, indigenous women, and trans women.

In my district and in districts across the country, black women are subjected to harmful policies that make us more likely to be evicted, be underpaid, die during childbirth, lack access to abortion, and be victims of domestic violence, sexual assault, and police brutality. Notice I said “and,” “and,” “and,” and “and.” In 2020, four black women and girls were murdered per day in our country. Racial inequality is a crisis in this country, and it is crucial we recognize and acknowledge the impact that ERA would have on our community.

Ms. JENKINS, passing the ERA is a racial justice issue. How would it help women of color, specifically black women, if the ERA were ratified?

Ms. JENKINS. Thank you so much for your question, and for your experience, and for your bravery, and your support of the Equal Rights Amendment. I think what we saw during the pandemic was something that most of us thought was true, but some of us didn’t want to face and some of us still don’t want to face, and that is the extraordinary gap in access to absolutely everything this country says that it gives to its citizens. And we found out who the essential workers were, and we found out what the essential workers were, and we found out that most of the essential workers were black women, women of color, underpaid, raising families, trying to feed their children, trying to give them shelter, and extraordinarily more and more difficult to do so. In some cases, we see that this discrepancy in the work force is that women have not been able to go back to work because they are taking care of their children. And in some cases, black women, women of color, have to go back even though they have children because there is no way, you know, to take care of the food and the shelter.

Ms. BUSH. Right.

Ms. JENKINS. So we have this crisis in this country. You know, one of the things I wake up in the morning and I hear this: 250,000 women went missing last year. A hundred thousand of those were women of color or trans women. Is anybody looking for them? And the answer that we are afraid of is that, no, they are not because women are not valued and because women of color and black women are not valued. The Equal Rights Amendment is what we need to finally establish, you know, that we are all full citizens of this country.

Ms. BUSH. Right.

Ms. JENKINS. And that we all deserve the rights and the protections and the recourse.

Ms. BUSH. Yes.

Ms. JENKINS. And so this is what we believe will do it.

Ms. BUSH. Thank you.

Ms. JENKINS. The Constitution is the problem. The Constitution has to be fixed. Nothing else will do it.

Ms. BUSH. Thank you. Thank you. Thank you. Thank you for your comment, your response. It is also not surprising that women of color and clear women of color are leading the fight for gender equity. Today black and indigenous women face higher rates of domestic violence than any other groups. We see achieving gender

equality, which you just talked to, we see achieving gender equality as a fundamental piece of achieving justice and ensuring our very survival at a moment when LGBTQ+ community women, the black community, are under attack like never before. We must advocate for policies that protect our rights and our dignity with the force of law.

Ms. Salcedo, I was struck by your written testimony that without the ERA, the Equality Act may lack the constitutional standing to effectively protect trans women and trans women of color. So why do we need ERA in addition to, like, laws like the Equality Act to protect trans women of color in our communities?

Ms. SALCEDO. Thank you so much. The ERA is very clear. I mean, we need constitutional protection for all peoples, and, you know, the Equality Act, unfortunately, does not do that. The Constitution will do that when the ERA, it is there.

Ms. BUSH. Thank you, and I yield back.

Ms. SALCEDO. Thank you.

Chairwoman MALONEY. The gentlelady yields back.

And the gentleman from Pennsylvania, Mr. Keller, is recognized for five minutes. Mr. Keller.

Mr. KELLER. Thank you, Madam Chair, and I would like to thank all of our witnesses for taking time to be here today.

First and foremost, let me state that every American deserves to be treated equally. Putting aside the arguments for or against the Equal Rights Amendment, or the ERA, the ratification deadline for this measure ended over four decades ago. It seems like we are back in 1979 under the Carter Administration when the ratification deadline for the ERA passed the first time. We were dealing with the same rising gas prices, rising energy prices, rising inflation, and even Americans were being held hostage. If this is the Democrats' version of progress, Americans have clearly stated they want none of it.

The ERA failed to be ratified in 1979 and then again in 1982 when Congress tried again and failed to extend the ratification period. Americans know the ERA is as unnecessary today as it was 40 years ago. Our citizens are protected under the umbrella of existing laws that shield them from sex discrimination or any kind of discrimination, including the Fourteenth Amendment, the Nineteenth Amendment, the Equal Pay Act of 1963, and the Civil Rights of 1964. These provisions already make it illegal for employers to discriminate based on sex. In January 2020, more women held positions than men in the paid work force. However, 55 percent of all jobs lost during the pandemic had been occupied by women. So I have a question, Ms. Stepman. Why are women-held positions disproportionately affected by COVID-19?

Ms. STEPMAN. I think that is a question you should take up with Randi Weingarten, who is the head of the National Teachers Association. Look, we have heard a lot about European countries in this hearing generally, usually comparing America dis-favorably to them. But in most European countries, schools reopened in person just after a matter of weeks, you know, 6, 8, 12 weeks, meaning they opened in summer or fall of 2020. American schools in many states remain closed to in-person learners for far longer, to the extent that even just a couple months ago, many families were deal-

ing with the reality of school closures and having to, what Mary Katherine Hamm, as she delightfully puts it, Zoom butler their children at school. So I suspect that this is one of the reasons that women disproportionately had to leave the work force during the pandemic, because as much as many try to fight against it, women still choose to take more of the childcare responsibilities and family responsibilities in the home. And so disproportionately, they decided to leave the work force when their children couldn't attend school. So, again, I suggest you take that up with Randi Weingarten.

Mr. KELLER. Thank you. Thank you for that answer. Looking at Pew's recent survey of American fathers and mothers, it states that 82 percent of fathers report that they prefer to work full time, while only 51 percent of mothers say the same. What might this tell us about the choices and preferences made by men and women? Any thoughts on that?

Ms. STEPMAN. Sure. Men and women, on aggregate, have different choices and preferences. This is not discrimination. I reject the idea that because a disparity exists, automatically that means that there is a discrimination at play here. Unfortunately, the ERA, I think, could potentially lead to us taking some of these disparities as discrimination, which would mean that the ERA would be set against the choices of actual American women about how they want to balance their lives, their careers, and their families. That is not progress for women, in my book.

Mr. KELLER. OK. Thank you. And, Ms. Stepman, how can lawmakers help support women entering the work force or staying at home with their children, or a combination of the two?

Ms. STEPMAN. Well, I mean, I am sure that is a much larger subject than I can touch in a few seconds. But for starters, just to return to the issue of schools for a moment, it would provide them with better education for their children and educational options for their children. States that provide school choice, for example. In those states, during the pandemic, families were allowed to use those programs to then take their kids to the overwhelming majority of private schools that opened last fall for in-person instruction. But in states where those programs didn't exist, those opportunities didn't exist. And, again, as we opened this questioning, those burdens fell disproportionately on mothers, on women.

Mr. KELLER. Thank you. And, Madam Chair, I do have a letter here from Students for Life that I would like to submit as part of the record.

Chairwoman MALONEY. Without objection.

Mr. KELLER. Thank you, and I yield back.

Chairwoman MALONEY. The gentleman yields back.

The gentlelady from Florida, Ms. Wasserman Schultz, is now recognized.

Ms. WASSERMAN SCHULTZ. Thank you, Madam Chair, and thank you so much for holding this incredibly important hearing. I will just note that I feel quite certain that if white men in this country faced the discrimination and inequality that women across the country of all genders and races faced, that you would see aggressive advocacy on the other side of the aisle in support of the Equal Rights Amendment for men. And choice of whether and where and

when you work is just that. If you did a survey and if you look at surveys, when women are asked if they think that the Equal Rights Amendment should pass, they overwhelmingly support it. I think that is important to note for the record.

And constitutional amendments, Madam Chair, have always served as a signpost for where society needs to go, and the ERA is no different. Beyond clarifying our values, the ERA will have a concrete impact on the most marginalized. There are two major ways that the ERA will impact the legal status of women and all marginalized genders: through litigation and legislation. And first, I want to turn to litigation. Since 2016, there has been a steady rise in the number of Federal pregnancy discrimination lawsuits, and the pandemic has only accelerated this disturbing trend. As a mother of three children, I was fortunate that I didn't face this kind of workplace discrimination, but I know that compounding layers of economic factors, racism in the workplace, and inaccessibility of paid family and medical leave make many pregnant women vulnerable to this unlawful treatment.

Ms. Smeal, it is good to see you and a hearty "Go Gators," I would say that since we share an alma mater. But is it correct that the ERA could improve litigation outcomes for sex or pregnancy discrimination cases?

Ms. Smeal. Absolutely. There is a Pregnancy Discrimination Act, but it isn't as comprehensive as the Equal Rights Amendment would be. And as we know, there is a lot of pregnancy discrimination in employment.

Ms. Wasserman Schultz. And certainly increasing. Thank you. And I want to drill down and explore how the ERA could affect a specific legal claim in my home state of Florida. On the first day of Pride Month, the Governor of Florida signed a horrendous law banning trans girls from playing on sports teams with other girls. Ms. Salcedo, as a trans woman and advocate for the trans community through your organization, can you explain the impact of this legislation on trans youth?

Ms. Salcedo. Thank you so much. I think, you know, this type of legislation obviously denies the opportunities for young people to participate and to just have the ability to engage in sports and in the things that people need to participate, particularly young people. It definitely devalues their existence. So this type of legislation has continued to really denigrate our community, and it is very damaging.

Ms. Wasserman Schultz. Thank you. Professor Nourse, how might the ERA influence outcomes when judges review laws like this transphobic sports ban given the decision in *Bostock v. Clayton County*?

Ms. Nourse. Thank you for asking me that. The Supreme Court decided a case called *Bostock* recently, in which the question was whether Title VII covered transgender and sexual orientation discrimination, and the Court said, as a matter of statutory interpretation, that they were covered in *Bostock*. But that is a statute. It is not the Constitution. And so the Court has recognized the word "sex" for statutory interpretation includes these categories, but it is not clear that that would actually operate in the same way constitutionally. The Court has not actually addressed that. So as far

as a state law that discriminated against transgender folks, the Equal Rights Amendment would allow challenges to that law based on the interpretation of the word “sex” in an opinion by Justice Gorsuch for a majority of this Court.

Ms. WASSERMAN SCHULTZ. And we cannot afford to let Florida put the transgender community in danger for 1 second longer. It is clear that without the added protections of the ERA, we can't be certain that transphobic laws like this will be repealed by our court system. I want to just get a question in with Senator McClellan because, in addition to litigation, the ERA will enable legislatures to enact, and governments to enforce, more robust laws that protect women and other vulnerable groups. So, Senator, how would an equality provision in the Constitution give legislators like yourself a new constitutional hook for legislation that protects women and other vulnerable groups?

Ms. MCCLELLAN. Thank you for that question because it gives me an opportunity to address what we have heard over and over about choices that women make that impact the wages that they receive and also whether they stay in the work force. When you are not allowed sufficient time to recover from childbirth, or when the father is not allowed sufficient paternity leave to care for a child or to stay home to take care of a child when school is closed, or when you don't have childcare, then the ERA gives extra protections to allow state legislatures or Congress to address those through paid family medical leave laws, pregnancy discrimination laws, or similar laws that give women who become mothers actual choices, and not choices that are limited by their employer, or a state, or a policymaker's view of them as the primary caregiver in a family, even if in that family they choose that it be the father's role.

Ms. WASSERMAN SCHULTZ. Madam Chair, I think we have made clear why we need a constitutional protection for equality established for women, and I appreciate your decades of support and leadership on this issue. I yield back the balance of my time.

Chairwoman MALONEY. The gentlelady yields back. The gentleman from Georgia, Mr. Clyde, is now recognized. Mr. Clyde.

Mr. CLYDE. Thank you, Madam Chair. It is becoming increasingly common for this committee to hold sham hearings on legislation that has already passed the House. We did it three weeks ago with the abortion-on-demand-until-birth act, and we are doing it again today. I wonder why this is. Oh, that is right. It is because holding these sham hearings is nothing more than an unapologetic ploy to give the media something to talk about other than the Democratic Party's policy failures and lack of action when it comes to agreeing on how to govern in the best interest of the people. We are facing an inflation crisis, and President Biden and his allies in Congress are carelessly adding fuel to the inflationary fire by advancing their \$1.2 trillion—only 99 percent infrastructure—bill and \$4.3-trillion-big-government-socialist spending package. Hearings such as the one we are holding right now on ERA are neither productive, nor are they applicable to the current issues facing our country. Simply put, they hold as much weight as wearing a politically tailored outfit to a star-studded affair.

Over the past year, the so-called Equal Rights Amendment has become both a ridiculous fashion statement and a battle cry for many who fail to recognize the progress the United States has made since the 1970's, but this does not change the fact that the ERA is no longer necessary or applicable. The truth that many of my colleagues have ignored is that men and women are already considered equals under the Constitution. In fact, in many states, women are rightfully offered extra protections, such as sex-segregated hospital rooms, prisons, and shelters, protections the ERA would jeopardize.

My first question is for Ms. Stepman. Thank you for being here today, ma'am. I appreciate your testimony.

Ms. STEPMAN. I am honored to be here. Thank you.

Mr. CLYDE. Would you please share briefly with us how the ERA would affect women's safety and privacy through elimination of sex-segregated facilities?

Ms. STEPMAN. Sure. I would be happy to do that. I have already mentioned the effect on women's prisons—

Mr. CLYDE. Right.

Ms. STEPMAN [continuing]. Where men and women potentially would have to be integrated within prisons and even prison cells when those cells include more than one person. There are many other consequences, though, if we require the law to be completely blind to the fact that sex differences exist. I also mentioned pat downs in the airport, bathrooms, locker rooms, any kind of facility. Any kind of public school, whether that is on the university level or the K-12 level, has separated for boys and girls any sports teams connected to those public schools, which we were already having this conversation. But men jump 25 percent higher, throw 25 percent further, run 11 percent faster, accelerate 20 percent faster. They punch 30 to 162 percent harder, and they are overall 30 percent stronger than females who are pretty much the same size. So this is two similarly sized females.

You know, the ERA in Massachusetts, the state-level ERA, has already made a ruling the boys must be admitted to girls' teams. And, again, we are no longer just talking about a small percentage of people who are born one sex and identify as another and who may undergo various kinds of treatments to suppress some of the effects of testosterone. Now we are just talking about regular boys, males, who would then be admitted to compete against women. These are opportunities that women and girls, you know, cherish and that we have won over time. And I really think that we are downplaying how many times in our everyday lives as women we rely on the law to allow us, for example, for privacy or safety reasons, to separate ourselves from men temporarily.

Mr. CLYDE. Absolutely, and I would never want to take that away from women. That would be unjust to do that. As a followup, how would this legislation affect life-affirming healthcare facilities and physicians with religious objections to abortions? Would it have an effect there?

Ms. STEPMAN. So the ERA's effects on abortion law, there has been quite a debate. There are some proponents who say it does not affect abortion law at all. That hasn't been true in the states. Both New Mexico and Connecticut with state-level ERAs have re-

quired under those ERAs that taxpayer funding be applied to abortion. And I am not specifically familiar with any cases on position conscience rights, but generally, the ERA could provide an alternative basis to continue having a right to abortion in the Constitution. And, in fact, most pro-choice groups acknowledge that. For example, NARAL has acknowledged that on their website and has cheered the ERA for that reason.

Mr. CLYDE. OK. Thank you. So not only would passage of ERA impose dangerous policies that would strip women of necessary protections and force taxpayer funding of abortion. It would also circumvent the legitimate constitutional amendment process. Differences of opinion and policy aside, the 1972 Equal Rights Amendment deadline expired nearly four decades ago. Legislators are attempting to resurrect a dead amendment. Even the late liberal icon, Justice Ruth Bader Ginsburg, noted that the only way the ERA can be added to the Constitution would be to introduce it anew. Even having been a supporter of ERA, Ginsburg recognized there was no path by which you can move forward while simultaneously ignoring the fact that the ratification deadline passed more than four decades ago. Even if supporters of this amendment sincerely believe it was still necessary, I imagine they would be willing to follow the guidelines prescribed in the U.S. Constitution, but they are not. Instead, Democrats are choosing to shoehorn through Congress a constitutionally questionable measure.

To that end, Madam Chair, I once again implore you to use this committee's limited time and resources to gather expert knowledge on issues that are both current and within the committee's jurisdiction. To do anything else is a shameful waste of our constituents' tax dollars—

Chairwoman MALONEY. The gentleman's time has expired.

Mr. CLYDE [continuing]. And only allows for more White House policy failures without proper committee oversight. And with that, I yield back, Madam.

Chairwoman MALONEY. The gentleman yields back.

The gentlewoman from California, Jackie Speier, is recognized for five minutes.

Ms. SPEIER. Thank you, Madam Chair. I would also like to remind Mr. Clyde that it was Antonin Scalia who said when he was asked does the Constitution require discrimination based on sex, he said no. But he then further said, "The Constitution does not prohibit discrimination based on sex," and he implored the legislature to take action to provide that kind of protection and anti-discrimination language in the Constitution. Again, we are one of a handful of countries in the advanced world that do not have this protection for women.

I want to thank all the panelists again for their advocacy and their great work. This week marks the fourth-year anniversary of the Me Too movement in addition to being the month in which we observe the tragedy of domestic violence in our country. In 2017, our witness, Alyssa Milano tweeted, and I quote, "If all the women who have been sexually harassed or assaulted wrote 'Me Too' as a status, we might give people a sense of the magnitude of the problem." Since then, the phrase, originally founded in 2006 by activist Tarana Burke, has been shared millions of times all over the world

where Me Too survivors declared “Time’s Up,” for perpetrators who abuse with impunity. We had members here in Congress who engaged in sexual harassment and who are now being held accountable, and new laws are on the book.

All of these people have demanded safety in their workplaces, schools, homes, and in the military, yet four years later, we still face an epidemic of violence against women. Every two minutes, another American is sexually assaulted, and more than three women are murdered by their partners in the United States every day. Constitutional scholars, such as Dean Chemerinsky, believe that the Equal Rights Amendment will have some of its greatest impact on violence against women.

Ms. Nourse, can you elaborate on how the Equal Rights Amendment will strengthen the rights of survivors by providing a constitutional anchor for gender equality, and what are some of the examples of the ways the courts have not respected the rights of victims?

Ms. NOURSE. Thank you very much for that question. In *United States v. Morrison* in 2000, the Supreme Court struck down Congress’ bipartisan attempt to give rights to sexual assault survivors and domestic violence survivors to sue the perpetrators of that abuse. Why? Because the law is unequal. State laws remain unequal. And so what they have done is the Court has said, no, this is unconstitutional. So what the Equal Rights Amendment would do is provide a way for Congress to re-enact laws like this and provide a firm constitutional basis for it. Right now if *Morrison* is the law, Congress has no power. Under the Fourteenth Amendment, this was an explicit Fourteenth Amendment holding and an explicit Commerce Clause holding.

What happens is that under Title VII, under a number of statutes, your rights end with commerce, OK? So if you are out of the workplace, if you are a gymnast, if you work in the gig economy, Title VII is a very limited remedy. And the problem is that the Court has said that your rights are fine in employment, but once you get outside of employment, I mean, sexual harassment occurs in all sorts of places in our society and sexual assault does as well. Look at the members of the military. All they want to do is serve their country. They can’t sue anyone for what happened. They get very little protection from the military. We have been trying to do with that for decades.

Ms. SPEIER. That is right.

Ms. NOURSE. So this would allow much greater protection for women because Congress could then enact laws. The Supreme Court says you have no power to. You don’t have to believe what Justice Scalia said or what Justice Ginsburg said about the Equal Rights Amendment. All you have to do is look at *United States v. Morrison*. That is one case. In Jessica Lenahan’s case, they said, well, you know, a domestic violence protective order says, oh, you must arrest. Well, Justice Scalia in another opinion said, oh, that doesn’t really mean you have to arrest. There is always discretion not to arrest, so you have no rights with respect to that.

There is impunity by state officials. When I did research in my practicum, I found out that a third of the cases brought under the original VAWA civil rights remedy were state police officers, prison

guards, other officials who actually committed sexual assault or harassment of individuals under their care protection. That should be a violation of the Fourteenth Amendment, but why can't you sue them? Qualified immunity, so there is no recourse. ERA would fix that.

Ms. SPEIER. Thank you very much, Ms. Nourse, and thank you for your legal scholarship as well. My time has expired, and I yield back.

Ms. WASSERMAN SCHULTZ. [Presiding.] Thank you. The gentlelady yields back.

Mr. Comer, you are recognized for five minutes.

Mr. COMER. Thank you, Madam Chair. There have been recent references to Ruth Bader Ginsburg's comments. Madam Chair, I ask for unanimous consent to add to the record Justice Ginsburg's comments suggesting that she believes the 1982 deadline should be considered binding, and that she would "like to see a new beginning for ERA ratification."

Ms. WASSERMAN SCHULTZ. Without objection.

Chairwoman MALONEY. [Presiding.] Without objection.

Mr. COMER. Thank you. And I, again, want to thank the witnesses for all being here today. Ms. Stepman, would you like to elaborate on the rescissions of the ERA by the states in the past?

Ms. STEPMAN. I would. Thank you. So overwhelmingly, the theory that ERA proponents are advancing, the three-state solution, this modern ratification, I do think contradicts the spirit of Article V at the most basic level, right? The reason that we have all of these very difficult procedures—three-fourths of the states, two-thirds of both houses of Congress—is to ensure the overwhelming popularity of whatever we are adding to the highest law of the land. And the theory they are advancing will have no time limits and no rescission. And, in fact, you mentioned Justice Ginsburg. In those same remarks and in some remarks in 2019, she pointed out the unfairness of that. If you are going to extend the timeline for ratification indefinitely, then it is completely unfair not to allow states to change their minds before the amendment is ultimately passed, ratified, and inscribed in the Constitution.

But fundamentally, we haven't really had a conversation about all the consequences that we are talking about today with the ERA because we have had this short-circuited three-state ratification procedure. As I mentioned in my initial testimony, 62 percent of our electorate was either not of age to vote or not even born—for example, myself—not even born the last time we had this conversation about the consequences. And indeed, that bipartisan sort of consensus about the ERA and its consequences dissolved exactly because we had a vociferous public debate in which lots of different states and all of our electorate were able to weigh in on those consequences. And American women, who make up the majority of voters, were able to weigh in on whether or not they want to be treated exactly like men in every single circumstance. Unfortunately, we haven't had the opportunity to have that kind of debate because most of America still thinks this died in the 70's.

Mr. COMER. Would you agree, Ms. Stepman, before the COVID-19 pandemic, that women were doing pretty well in the United

States by several metrics, including low unemployment, wealth, and political power?

Ms. STEPMAN. That is correct. Before the pandemic, women not only owned the majority of wealth. We get the majority of both undergraduate and graduate degrees. We had the lowest unemployment rate since we started recording female unemployment all the way back in the 1950's in 2019. So to present women as though they are second-class citizens in the United States, I just truly and deeply disagree with that presentation. You know, I am not a second-class citizen because UVA can have a sorority on campus. That does not, to me, rise to the level of second-class citizenship or discrimination. What we are talking about is the law recognizing a small number of instances in which those differences really do matter. And I think that recognizing those differences is very, very important to the freedoms and opportunities and safety that American women rely on.

Mr. COMER. And I agree with that, and that goes along with my point. We, the Republicans on this side of the aisle, we have been very critical of the Democrat shutdowns during COVID, and all the metrics and data that I have looked at show that they adversely affected women more than men. Can you describe how the Democrat-led COVID-19 pandemic shutdowns of businesses and schools have harmed women?

Ms. STEPMAN. Absolutely. As I mentioned before, I think the single biggest factor in that disparity is likely the fact that schools remain closed long, long after we knew. We have one big positive thing, right, in this pandemic, this horrible pandemic which I think is the worst in 100 years. One blessing that we have had is that it largely spares young children. And indeed, other countries have recognized that, which is why most European countries went back to school in May 2020. So I think that has been the single biggest factor in holding women back during this pandemic has been the lack and availability of open, in-person public schooling.

Mr. COMER. I agree completely. Thank you, and, Madam Chair, I yield back.

Chairwoman MALONEY. The gentleman yields back.

The gentlelady, Ms. Pressley, is now recognized for five minutes. Thank you.

Ms. PRESSLEY. Thank you, Chairwoman Maloney, for today's hearing on the need to ratify the Equal Rights Amendment. Many would have us believe that the ERA has always been a battle led and fought by white women, that it has always been a white woman's battle for white women's gain, but as is so often the case, this is a false narrative. We have seen this throughout history, an effort to erase the women of color who have served as trailblazers, table shakers, and justice seekers in the fight for gender equality. So allow me to bring my ancestors into this room.

More than 70 years ago, black suffragist, civil rights activist, and first president of the National Association of Colored Women, Mary Church Terrell, testified before this House in support of the ERA. In 1970, Pauli Murray, a revolutionary black queer lawyer and scholar, testified before the Senate Judiciary and reminded legislators that black women had the most to gain by passing the ERA. She famously said, "I suggest that what the opponents of the

amendment fear is not equal rights, but equal power and responsibility.” Now, Senator McClellan, you also mentioned that women of color have the most to gain by achieving constitutional equality. Can you give us some specific examples of what you mean?

Ms. MCCLELLAN. Yes, and thank you because, again, it gives me an opportunity to address some misconceptions about why women, and particularly women of color, have been disproportionately impacted by the pandemic. Women of color tend to be dominating professions that are essential workers because for many years those were the only opportunities available to those women, and there are generational impacts because of that. Those women did not, in many cases, have access to health insurance. They did not have access to childcare. They did not have the same economic opportunities as their male or white counterparts, and many of them, when they got pregnant, were in jobs where they had to make a choice between immediately returning back to work because they were not given sufficient time off to recover or bond with their child. And in many cases, if their husband was in the picture, they were not granted enough time off to be the primary caregiver. So these are all generational results that go back to slavery and Jim Crow that have not been eliminated with a magic wand just because Jim Crow laws ended. And the ERA will allow Congress and states to pass laws to redress some of that.

Ms. PRESSLEY. Thank you. And certainly we have seen those inequities exacerbated during the pandemic since, again, many of those essential and low-wage jobs are dominated by women of color, frontline jobs, who put themselves at risk and could not Zoom into work. I want to turn to a particular right that has been the center of a lot of discussion in Congress, and the Supreme Court, and many states throughout the country, and that is the right to safe and legal abortion care. Across United States, pregnant people of color experience systemic health inequities as a result of centuries of policy violence, including barriers to health insurance, greater stigma, and heightened stress caused by racism. This is certainly true in my district, the Massachusetts 7th, and for many others around the Nation. Senator McClellan, can you explain the role abortion care plays in advancing health and economic equity for historically marginalized communities and how you have seen that play out for your constituents in Virginia specifically?

Ms. MCCLELLAN. Yes. The Supreme Court has long recognized that reproductive freedom is central to one’s equality. As the Court ruled in *Planned Parenthood v. Casey*, the ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives. Abortion is healthcare, and the ERA is about gender equality in access to healthcare, and the workplace, and in school, and every aspect of Federal and state law and policy. And, in particular, black women have been disproportionately discriminated on the basis of pregnancy, and the ERA would also help with that. And as we have seen states begin to threaten access to abortion, the ERA can help.

Ms. PRESSLEY. That is right. It can help protect our right to bodily autonomy and to advance reproductive freedom, especially for the most vulnerable and marginalized. Professor Nourse, at a moment when abortion bans, like Texas’ S.B. 8, are threatening preg-

nant people's right to healthcare, why are the constitutional protections of the ERA particularly important?

Ms. NOURSE. They are particularly—

Chairwoman MALONEY. The gentlelady's time has expired, but you may answer the question.

Ms. NOURSE. They are particularly important because the current Court has shown itself to be rather sympathetic to the point that the right to privacy is not in the Constitution. And, therefore, without actual text, without the text of the ERA, it may well be that the Court reverses *Roe v. Wade*.

Ms. PRESSLEY. Thank you.

Chairwoman MALONEY. The gentlelady yields back. The gentleman from New Mexico, Ms. Herrell, is recognized.

Ms. HERRELL. Thank you, Madam Chair. Thank you, witnesses. I wanted to followup with Ms. McClellan on the healthcare piece on that last question. So how would the Equal Rights Amendment affect longstanding bipartisan restrictions on Federal funding for abortion, such as the Hyde Amendment?

Ms. MCCLELLAN. Abortion is healthcare, and the ERA is about whether any laws related to healthcare, or the workplace, or anything else would unduly discriminate on the basis of sex, period.

Ms. HERRELL. Right. My point that I want to make is I know we have heard about marginalized vulnerability, but I also think that we have a responsibility to protect those who are the most vulnerable, which are those babies in the womb. And I think when we start talking about abortion, late-term abortion, I think that we are moving away from really our moral compass and what our responsibilities are, and then we start ignoring who the true vulnerable are. But thank you for that.

I want to ask Ms. Stepman a question. To me, it feels like we have a solution in search of a problem. How would passing such a bill hamper especially young women trying to go into college? How would this hamper their opportunities when you look around at college applications and now looking at transgender athletes, et cetera? Would there be a problem with that, in your opinion?

Ms. STEPMAN. Yes. I actually think the ERA creates a much bigger problem than the accommodations for transgender athletes, as disruptive as those have been to the opportunities for women and girls. For example, Chelsea Mitchell in Canton High School of Connecticut, she has lost four state championships, all New England awards, and other honors to a male-bodied athlete. But Chelsea wrote in *USA Today* that it is a devastating experience. It tells me that I am not good enough, that my body isn't good enough, and that no matter how hard I work, I am unlikely to succeed because I am a woman.

The ERA would even have a broader effect, right, because, again, all of this societal debate that we are having about how to accommodate, for example, transgender athletes, is ultimately about a very small percentage of the population. The ERA places a ban on "discriminations" on the basis of sex of all types, so it is not just a male-bodied athlete who identifies as female that girls will be competing against, but a male-bodied athlete who identifies as a boy. So when that girl that you mentioned goes off to college, perhaps she comes from a small high school where she has been com-

peting on the track team and she gets a scholarship to a public university to continue running track. The boy who missed the cutoff for the boys' team with his 100-meter dash can edge her out just on the basis of that score, because the only reason that that boy is kept off of that team is because he is a boy. That is a discrimination on the basis of sex and is forbidden by the plain language of the ERA.

Ms. HERRELL. Right. So, in my opinion, I think what we are doing is now we are weaponizing. Now we are using the same gender protection against those who would already be protected under this. I mean, if we are going to now see discrimination because of a gender situation or if we are going to be awarding those that are biologically men or boys over those that are women, then I think what we are doing is we are really essentially trading places. And I fear that what will be able to do or what we will see happen is we will use the courts then anytime we think that there is something running afoul, that we will actually squelch the voices or silence those who then, I think, would be hurt by this.

And I just want to followup that same question to Ms. Salcedo. I mean, would you find that there is discrimination if someone is born a boy or a girl and then being treated differently in a transgender environment? Isn't that discrimination against a young lady who is trying to get a college degree by utilizing her athletic ability to get a scholarship and can't get in because the scholarship has been awarded to somebody who is obviously going to be faster or stronger in a certain athletic event? Does that make sense to you? Aren't we just reversing the discrimination, if you will?

Ms. SALCEDO. What I can tell you is really about my own personal experience, and I also want to say that it is really unfortunate that we use examples that are not necessarily real, right? The lives of young trans and gender non-conforming people are real lives, and when we use rhetoric that diminishes them, basically we are telling them that we are not valuing them.

Ms. HERRELL. I don't think that is true, though. And I apologize if it sounded that way because I think every human life has value, and I don't think it is rhetoric to say that. I don't think it is right to say it is rhetoric because it is certainly not rhetoric. I mean, I have read in the papers where men identifying as women have gone into, say, wrestling matches and actually injured, in fact, cracked the skull of a woman because of the strength differential. So it is all rhetoric because I think everybody has value regardless of what their gender is and regardless of what they identify as. And I am sorry. If you want to continue, we are just about out of time.

Ms. SALCEDO. Do you want me to answer what you just—

Ms. HERRELL. Sure.

Ms. SALCEDO. So, you know, I think that, you know, when I say "rhetoric," really there is no research that proves that young people are different, right, because young people, you know, their bodies don't stop developing until they are 25. And so when we use lies that, you know, young people, and children specifically, are different, they are not necessarily different.

Ms. HERRELL. Right.

Ms. SALCEDO. They are both the same.

Ms. HERRELL. Right. Thank you for that, and really, thank you all for being here today. And Madam Chair, my time has expired.

Chairwoman MALONEY. The gentlelady yields back. The gentlewoman from the District of Columbia, Ms. Norton, you are now recognized for five minutes.

Ms. NORTON. Thank you, Madam Chair, for this important hearing. Fifty years ago this very month, the House of Representatives passed the Equal Rights Amendment with overwhelming bipartisan support. As a former chair of the Equal Employment Opportunity Commission, I can tell you that even though the momentum behind the ERA waned after the first major push passed, the need for it never has. If the Constitution is silent on women's rights, other than the right to vote, and it took us some time to get that right, we find ourselves fighting the same fights for equality over and over again, fighting hard just not to lose the rights we already have.

Professor Nourse, let me begin with you. How does the ERA help make sure that gender equality is not dependent upon the political leanings of the Supreme Court justices, and how would it affect the standard by which gender discrimination cases are considered by the Supreme Court?

Ms. NOURSE. Well, thank you, and I say hello to a former member of the faculty of Georgetown Law. Thank you for that question. I believe the Equal Rights Amendment would, in fact, support a stronger standard of review with respect to legislation that has passed which denies equality, as well as allow more legislation by Congress which supports equality. But I want to clarify this because we have had a lot of conversation here about sex differences being banned. No sororities, sports teams, you know. That is not what this is about.

The amendment does not require enforced equality in a sort of precise way. It doesn't ban same-sex schools. That requires you to think that strict scrutiny, which is a legal term associated with the highest of rights which is likely to be invoked under the amendment, is actually fatal in fact, and that is not good law. We have shown in the race discrimination and affirmative action cases, as you know, Ms. Norton, that strict scrutiny is not necessarily fatal to legislation. So if there were a compelling reason for a particular kind of sex difference, that could still be sustained under the Equal Rights Amendment, in my opinion.

Ms. NORTON. That is a very important answer to get, and I certainly appreciate it. Ms. Smeal, gender discrimination has persisted over the last 50 years. The harms from discrimination have long-term effects on individuals, and entrenched inequality has consequences for the Nation as well. Ms. Smeal, you were around for the first go-round of the ERA fight in Congress. Many people attribute the failure to ratify then to prominent women who fought against it. What do you think was the real reason the ERA wasn't ratified then, who was behind the opposition, and what motivated them to oppose equality for women?

Ms. SMEAL. Thank you for that question.

Chairwoman MALONEY. Mic, please.

Ms. SMEAL. Thank you. Women were blamed. Schlafly was given credit, but the reality is we had every major woman's organization on our side. In one demonstration alone, 400,000 telegrams were sent in to urge passing of the extension. We did so many events. They would have a few hundred people. We would have a few thousand, and the press would try to balance it out. Who was really behind it? The Chambers of Commerce, the National Association of Manufacturers, and the insurance companies were big lobbyists against us. Insurance—

Ms. NORTON. Why were they against it?

Ms. SMEAL. Well, the insurance companies even put an ad out saying—Aetna did—“Our Case for Sex Discrimination.” At that time, health insurance, auto insurance, annuities, pension plans—I could go on—all discriminated on the basis of sex. And if you look at it overall, we had a whole NOW project on insurance discrimination just in auto insurance alone. Although some argue that men paid more, if you had it based on miles driven, women were paying far more. If you looked at health insurance, it was very discriminatory. As I said before, it frequently did not cover pregnancy and usually charged women between 150 and 200 percent more for the same coverage. If you looked at pension plans, women were charged more because supposedly they live longer, but we could show that that difference wasn't as much as people had in their mind. In other words, they were taken advantage of in there, too.

I could go on, but basically that was always kept as a woman's fight, like it was a catfight when there was a lot of vested interest in keeping women in a certain position. We talk about essential workers all the time, but they were forced to work at minimum wage because, in fact, there weren't that many opportunities for women. There was mass discrimination against them. And I also felt that we had terrible problems from some universities. The University of Florida, I will just give you an example. I was an alumni. My master's degree is from there. It was a very progressive part of the state, but the senator from there was always against it. And why was he against it? Because he thought the Gators would lose money because, obviously, in most universities, a disproportionate amount of money is put on male sports versus female sports. So there is all—

Chairwoman MALONEY. The gentlelady's time has expired and wrap up.

Ms. SMEAL. Thank you.

Chairwoman MALONEY. OK. We now recognize the gentleman from Georgia. Mr. Johnson, you are now recognized for five minutes.

Mr. JOHNSON. Thank you, Madam Chair, and thank you for your work, your tireless effort in promoting and bringing about the opportunity for this Equal Rights Amendment to become law. And also thank you, my dear colleague, Eleanor Holmes Norton, for all that you have done in that regard, and I want to thank the witnesses for their testimony today.

When the U.S. Constitution was drafted to protect the rights of “we the people,” at that time “people” meant white men, and it did not mean women at all. One hundred and forty years later and with the passage of the Nineteenth Amendment, women gained the

right to vote. However, this essential milestone has proven insufficient to bring equal opportunity to women across America. To this day, despite making up more than half of our population, women still earn less of what men earn for the same job, and this disparity is even worse for women of color. It is past time to ratify the Equal Rights Amendment, which would guarantee equal rights for women under the Constitution, and I am a proud supporter and co-sponsor of H.J. Res. 17, which will remove the arbitrary deadline of 1972 for ratification of the Equal Rights Amendment. Now that 38 states have passed the amendment, all that remains is for Congress to approve this bipartisan legislation.

Ms. Milano, The Guardian reports that the wage gap between actors and actresses in the film industry is significantly greater than most other industries. Men make about \$1.1 million more per film than their similarly experienced female co-stars. What kind of sense can you make of that gross pay disparity that exists within the film industry, and what does it say about equal rights for men and women in your industry?

Ms. MILANO. Thank you, Congressman, for your question. For every dollar a man makes, the average woman makes 82 cents, with black women earning 62 cents to the dollar, Native women earning 57 cents, and Latinas earning 54 cents to the dollar. This is not different in my industry. And I would also like to add that we have heard a lot from our Republican friends about our economy and about women getting back to work. Women do not have the choices to be equal parts in our economy, and it has been researched that if we were equal partners in our economy, it would boost our economy \$4.3 trillion over the next 10 years as per the ERA Coalition's research.

So what are we hoping for? In my industry, but mostly for the most vulnerable women, we are looking for equal pay for equal work, prevention of discrimination in hiring, firing, promotion, and benefits, protecting women from pregnancy discrimination, and it would provide a constitutional basis for claims of gender violence. The modern woman needs the ERA to provide protections against the rolling back of the advances in women's rights that have already been achieved. And when we talk about women having choices, I just want to say that most of the time we are not given choices. There are certain jobs that we can do as women or we are allowed to do as women, most in hospitality, or domestic work, or frontline workers. So I really resent the notion that women are making different choices. We have different opportunities, and part of that is because of having no constitutional equality.

We are just looking for equal protections, equal opportunity, equal rights. And if we are treated as anything less than human, we also ask for equal recourse. Thank you.

Mr. JOHNSON. Thank you. Ms. Nourse, the seven-year ratification period is not a constitutional requirement for the passage of the Equal Rights Amendment. Would you agree?

Ms. NOURSE. That is correct.

Mr. JOHNSON. And so why are we hanging our hats on that? Why is it that that folks are using that arbitrary ratification deadline as a means to deny formal adoption of the Equal Rights Amendment?

Chairwoman MALONEY. The gentleman's time has expired, but you may answer the question.

Ms. NOURSE. I believe that the fight against the ERA has always been about distraction. So when it was first fought in the 20's, it was about labor. Then it was about gay rights. We got to find something. No one is really against equality for women. Ninety-four percent of people approve of it. So people get distracted by things that are not important to the legal questions here. Congress has the authority to extend the deadline if necessary.

Mr. JOHNSON. Thank you, and I yield back.

Chairwoman MALONEY. Thank you. The gentleman from Vermont, Mr. Welch, is recognized for five minutes.

Mr. WELCH. Thank you very much. You know, I really appreciate the testimony of all the witnesses and much has been said, and I can't, even with my questions, add too much. But I will just ask if any of the witnesses—I think this will be almost probably the final words—Professor Nourse, is there anything that we have left out, anything that you can say to folks who are resistant to the passage of the Equal Rights Amendment that you would like to say?

Ms. NOURSE. Well, thank you for that. I will just repeat what I said. Don't get distracted by slippery slope arguments. "Oh, really bad things are going to happen." I mean, they have been saying that about the Equal Rights Amendment for a very, very long time, maybe 100 years. These are speculation. So I would hope we would fix our focus on what we do know, and what we do know is that the Supreme Court has not allowed Congress to enact legislation to protect pregnancy discrimination. We have legislation, but they have not said the pregnancy discrimination is actually constitutionally barred. They have not allowed Congress to pass legislation with respect to gender violence. And it is an important constitutional insurance policy given the current Court, which will, in fact, in my view, because of its jurisprudential philosophy, turn many protections that women have, I would they think they would restrict them in ways that most people would not appreciate.

Mr. WELCH. They are really at risk. I agree with that. Thanks. And, Ms. Jenkins, can you speak to the way, you know, this current patchwork of state and Federal laws fails to protect women's rights and guarantee equality under the law?

Ms. JENKINS. As has been said by my sister panelists as well, what the Equal Rights Amendment will do and what we desperately need is fundamental constitutional underpinning of the rights of women and girls. Listening recently to the discussion about the Violence Against Women Act, and the opposition to that, and the delay in the reauthorization of it, we cannot by piecemeal give fundamental equality. It doesn't work. Every session gives us another chance to detract from full citizenship and from full life-saving rights. So we really, I think, in this country need to come to grips with the fact that that the Constitution does not fully support girls and women. We need to do that. Let's get the Equal Rights Amendment.

Some people have said, you know, well, it is just a symbol, you know. I say, yes, like, you know, the flag. All right. Give it to us. We need that symbol as well as the legal rights that go with it. We

need young girls to feel that they belong here. We need women to not be engaged in this constant quest for equality and for rights. At a recent rally in the streets, you know, it was a big crowd, and I said, I am so glad to see you all here, but let's not keep doing this. It has, of course, passed, the Equal Rights Amendment, but let's get two things that we need: the DOJ memo lifted, and, in the Senate, the time limit removed. Let's do those two things and move on.

You know, a full century is enough time to have women in a begging position. We are tired of that. We want our rights, and now is the time to do it. It is the best time that we have to do this now. Thank you for the question.

Mr. WELCH. Well, thank you very much for your advocacy and your eloquence. I can't add any more to that, Madam Chair, so I yield back, and I thank our panelists for their wonderful presentations.

Chairwoman MALONEY. Thank you. The gentleman yields back.

The gentleman from Maryland, Mr. Sarbanes, is recognized.

Mr. SARBANES. Thanks very much, Madam Chair. I, too, don't expect to speak for the entire five minutes. I mostly wanted to thank the panelists that you have assembled today for their very compelling testimony on behalf of the Equal Rights Amendment. I want to thank you, Madam Chair, for your tireless, unending efforts to make progress on this. And we have had some real success in the House of Representatives recently because of your efforts, because of the leadership of Congresswoman Speier and so many others of our colleagues. So I just want to be another person on the committee and among your colleagues to put that recognition and gratitude on the record.

We know that this is bipartisan. It has been bipartisan from the beginning, the effort to get the Equal Rights Amendment passed. Any time there is a robust effort to lift it up, you see that bipartisan commitment. And we know as well that, you know, the other side, the opponents to this will sort of say, well, why do we need this. There is no real imperative here. Our society has moved to a place where this is just sort of a window dressing exercise. But we know from the testimony today that there are real and critical legal protections that come when we finally get the Equal Rights Amendment certified, and those provide protections to people in our country who can benefit tremendously from them. So that is very real.

But one of the panelists a moment ago talked about the symbolism here, and as much as it will be a powerful symbol if we can ultimately and hopefully soon certify the Equal Rights Amendment of what America stands for in our principles, our not being able to get it done is also a powerful symbol. It says that there is still something that resides in the body politic, in the kind of fabric of our Nation, that keeps us from being able to make this important statement about who we are. So the failure to do this, the inability to do this, the not doing it is also symbolic in a negative way. And I think we want to overcome that, send a very powerful, positive message about America's commitment and principles, and also as well put in place, and facilitate, and fortify key legal protections that can flow from this.

So again, thank you for your leadership, Madam Chair. Count me as——

Chairwoman MALONEY. I am going to ask my colleague, before you yield back——

Mr. SARBANES. And I yield back.

Chairwoman MALONEY. Please, please don't yield back because I want you to yield some of your time to Ms. Milano, who has some things she wants to say.

Mr. SARBANES. OK. Let me do that.

Chairwoman MALONEY. OK.

Mr. SARBANES. Ms. Milano, please, I would love to hear your thoughts.

Ms. MILANO. Thank you. So we have heard a lot today about women not needing the ERA because of the Fourteenth Amendment, but I want everyone to note that that came five amendments before the Nineteenth Amendment, which is our ability to vote. So clearly the Fourteenth Amendment does not provide equal protection or women would have, you know, been allowed to vote after the Fourteenth Amendment was passed. Also I want to say we have also heard a lot today about just starting over. Let's start this process over. How long do we need to wait for women, trans women, non-binary people to be included in our founding document? Thank you very much.

Chairwoman MALONEY. Thank you so much. And before——

Mr. SARBANES. Thank you very much, Ms. Milano. The time is now, absolutely. Let's get this done. Chairman Maloney, thank you for all your terrific work and for convening this hearing today.

Chairwoman MALONEY. Well, thank you, and I am so appreciative to all the like-minded men that are trying to help us with this ratification. Thank you.

Before we close, I want to offer Ranking Member Comer an opportunity to offer any closing remarks he may have. You are now recognized.

Mr. COMER. Well, Madam Chair, and, again, I want to thank the witnesses for being here. And, Ms. Milano, I am a fan of your movies. I appreciate you being here. We all support equal rights, and we are very fortunate to have the Constitution that we have which guarantees equal rights. And I know that we have talked a lot on our side about unintended consequences of the Equal Rights Amendment, and it is important when we have political debate, that we debate the pros and the cons of legislation because a lot of times what happens is, especially with my friends on the Democrat side, they get caught up in the political correctness moment and they don't anticipate unintended consequences. For example, you can talk about climate change and the need to address climate change, and you can pass legislation and have policies and mandates, like the Biden Administration has done, that has the unintended consequence of gas prices going up more than 100 percent in less than 10 months. You can print money by the Treasury to help provide guaranteed income and extended unemployment and things like that, but the unintended consequence is inflation, which is a tax increase on everyone.

You can declare a border wall is politically incorrect. The unintended consequence of that is, of course, open borders. When you

have open borders, obviously the unintended consequence of that is you have an increase in drug smuggling and human trafficking. You can defund the police as a reaction to a bad cop or several bad policemen, which is a micro-minority of the true actions of our overwhelmingly tremendous male and female police force. But when defund the police, you have the unintended consequence of increased crime. Again, you can pay people not to work and you can do things like mandate vaccines, but the unintended consequence of that is labor shortages and, of course, supply chain disruptions.

So we are blessed to live in the United States, the greatest country in the world. I know that several people referenced other countries that may have more preferred language in their Constitution about equal rights. I didn't hear anyone say anything about Afghanistan, which this Administration just turned over a lot of our military weaponry and our very nice Air Force base to. So we have come a long way in the United States. We have more work to do, but I appreciate the opportunity to be able to have a conversation about this issue. And, Madam Chair, I yield back the balance of my time and look forward to having more hearings on Government Oversight and Reform. Thank you.

Chairwoman MALONEY. Well, thank you. The gentleman yields back, and I would like to really thank all of our witnesses today for sharing their expertise and their experience. And I appreciate that we managed to come to some bipartisan consensus that all men and women should be equally treated in this country. A number of our friends on the other side of the aisle made that statement, and the ERA is the way to achieve that. Legislative measures alone are not enough and are too easily rolled back. From my own experience, I have spent more time fighting to hold onto what we have than moving forward. And if we could have those guarantees, then the efforts of men and women that care about equality of treatment could be spent in other ways.

I was just thinking that we have 50 years after the passage of the Equal Rights Amendment, and we heard from many of our panelists today that it is more important today than ever. And I couldn't help but think how would our country be different if we had, in fact, ratified the Equal Rights Amendment in 1972. Victims of sexual violence would have the right to sue under the Constitution, and possibly the amount of sexual violence and assaults would have fallen in our country so that Alyssa Milano would not have had to start the Me Too movement that she started and worked with Tarana and others so brilliantly. Ms. Salcedo, who talked so movingly about your own personal journey. I think it is very difficult for people to share troubling times like that, but certainly people from marginalized genders would certainly likely be covered by the ERA and would have more protections.

And certainly the assault that we have now in Texas is almost unbelievable to me. They have already rolled back under their draconian law the right to abortion, really. Most women don't even know if they are pregnant at six weeks, and I think it would have empowered women enough not to have had that happen and is happening right now. And, Carol, you spoke so beautifully about

wanting to empower women, but particularly women of color, and certainly this would have given them more protections.

We know that economists tell us that the No. 1 area of poverty in America is older women because of the unfair treatment in their pay translates into lower pensions, lower social security, lower retirement, if they have any at all, and certainly there would be less women in poverty in America. And equal pay for equal work, it hasn't budged, the gap, in 30 years, and if you had equality in the Constitution, then you would be able to enforce equal pay for equal work. It is that simple. It would give the right to women to enforce.

So if I had one question, I would ask the panelists to write for Congress how you think—you are all specialists in this and you have devoted your lives in it—how would America be different if the Equal Rights Amendment had been ratified. I know my life would have been extremely different, and I believe most women's lives. And I want to really thank not only the panelists, but the like-minded men in our country that have been our allies, that have worked side by side with us to try to reach a ratification. And we have waited too long, and so we are not giving up now, and I will continue working with all of you to ratify it and get women's protections into the Constitution for full equality. And I yield back.

In closing, I want to thank all of our panelists for their remarks, and I want to commend my colleagues for participating in this very important conversation.

And with that and without objection, all members have 5 legislative days within which to submit extraneous materials and to submit additional written questions for the witnesses to the chair, which will be forwarded to the witnesses for their response. I ask our witnesses to please respond as promptly as you are able.

Chairwoman MALONEY. This hearing is adjourned.

