SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 31

(SENATE AUTHORS: RUUD)

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A resolution

clarifying that the 1973 ratification by the 68th Minnesota Legislature of the proposed 1972 Equal Rights Amendment to the United States Constitution was only valid through March 22, 1979.

WHEREAS, the 92nd Congress of the United States, during its second session, with the constitutionally required supermajority vote of two-thirds of both houses thereof, by March 22, 1972, gave final approval to House Joint Resolution No. 208, commonly referred to as the "Equal Rights Amendment" (or simply "ERA"), to propose that particular amendment to the United States Constitution, pursuant to Article V thereof, to the state legislatures for ratification, which reads in detail as follows:

"Article ...

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SEC. 3. This amendment shall take effect two years after the date of ratification."; and

WHEREAS, in offering that proposed federal constitutional amendment to America's state lawmakers, the 92nd Congress chose a deadline of seven years - or until March 22, 1979 - for the likewise constitutionally mandated supermajority of three-fourths of the country's state legislatures to affirmatively act upon the proposition; and

WHEREAS, Congressional power to impose such a deadline was acknowledged by the United States Supreme Court in the 1921 case of *Dillon v. Gloss* [256 U.S. 368]; and

WHEREAS, in the form of Resolution 1 - House File No. 3, the 1973 Regular Session of the 68th Minnesota Legislature responded by ratifying the proposed Equal Rights Amendment to the U.S. Constitution; and

WHEREAS, in so doing, the 68th Minnesota Legislature was cognizant of the seven-year deadline which the 92nd Congress had placed upon state legislative deliberation of the proposed ERA and Minnesota lawmakers ratified that initiative in 1973 with the understanding that nationwide state legislative consideration of the measure would conclude as of March 22, 1979; and

WHEREAS, trusting the 92nd Congress, and taking federal lawmakers at their word, members of the 68th Minnesota Legislature did not perceive any particular necessity to specify themselves that the aforesaid Resolution 1 - House File No. 3, would expire on March 22, 1979 - as within the text of that 1973 Minnesota memorial, a passing reference is made to the seven-year ratification deadline; and

WHEREAS, the 95th Congress, by votes of mere simple majorities - significantly less than supermajorities - in each house thereof, adopted House Joint Resolution No. 638, by October 6, 1978, which was placed before then-President Jimmy Carter who proceeded to sign it on October 20, 1978, even though such action was out of compliance with the U.S. Supreme Court's 1798 ruling in the case of *Hollingsworth v. Virginia* [3 U.S. (3 Dall.) 378], which litigation clarified early in American history that the nation's chief executive has no formal role to play in the federal constitutional amendment process; and

WHEREAS, that House Joint Resolution No. 638 of the 95th Congress purported to extend to June 30, 1982, the previously agreed-upon March 22, 1979, deadline for state legislatures to discuss and move favorably upon the 1972 Equal Rights Amendment, thus attempting to grant to the ERA a "second bite at the apple"; and

WHEREAS, that action by the 95th Congress was highly controversial, vigorously contested, and viewed by some Americans at the time as tantamount to "changing the rules in the middle of the game"; and

WHEREAS, even with the much-disputed revised deadline of June 30, 1982, the proposed 1972 Equal Rights Amendment still fell short of the required approvals by the legislatures of 38 of the 50 states in the Union as no additional state legislatures ratified the ERA between March 22, 1979, and June 30, 1982; and

WHEREAS, a federal district court agreed that the 95th Congress's attempt to extend the 1972 ERA's ratification deadline was improper and ruled, in the December 23, 1981, case of *Idaho v. Freeman* [529 F.Supp. 1107], that the 1972 ERA had in fact expired on the original deadline of March 22, 1979, noting that "...the running of the seven-year time limitation tolls and terminates any ratifications enacted by the states to that point."; and

WHEREAS, the federal district court further decreed that a state's legislature indeed may rescind a prior ratification of a proposed federal constitutional amendment as long as such rescission occurs before that measure receives the number of state legislative approvals necessary for successful completion of its ratification process; and

WHEREAS, the U.S. Supreme Court, preferring to dodge having to rule on the actual merits of *Idaho v. Freeman*, opted instead, on January 25, 1982, merely to stay the lower court's decisions and then took no further action upon the matter until reconvening for its October term, after the High Court's annual three-month hiatus, at which time the Justices declared the obvious, on October 4, 1982, in the follow-up cases of *National Organization for Women, Inc. v. Idaho* as well as *Carmen v. Idaho* [455 U.S. 901 and 918 and 459 U.S. 809 and 1032], that the entire controversy was moot - deeming ERA's procedural nonconformities, and the proposal's mixed reception in the state legislatures, to be no longer cause for concern given, again, that no state's legislature ratified the 1972 ERA between March 22, 1979, and June 30, 1982; thus, nothing definitive, with any value of judicial precedent from the nation's highest court, emerged from what had been a years-long raging national debate; and

WHEREAS, in a further effort to contrive a jury-rigged ratification of the 1972 ERA - decades beyond both the March 22, 1979, deadline and the putative revised June 30, 1982, deadline - some of the proposed amendment's supporters, during the 1990s, concocted a fanciful theory that if the legislatures of three more states were to late-ratify the 1972 ERA (the so-called "three-state strategy"), that the 1972 ERA would formally, albeit belatedly, become part of the U.S. Constitution ("third bite at the apple") if a sympathetic Congress were to "turn a blind eye" to the many procedural irregularities of such a scenario and move to formally proclaim the 1972 ERA to have officially become the U.S. Constitution's 28th Amendment, a discretionary prerogative belonging to Congress that was recognized by the U.S. Supreme Court's 1939 ruling in the case of *Coleman v. Miller* [307 U.S. 433]; and

WHEREAS, adherents to this "strategy" (found in 1997, Volume 3, Issue 1, Article 5 *William & Mary Journal of Women and the Law*) for reanimating the 1972 ERA point to the unorthodox 1992 ratification of the U.S. Constitution's 27th Amendment and claim that the 27th Amendment's acceptance as part of the nation's highest law - notwithstanding the 27th Amendment's age and despite its periods of protracted dormancy - offers precedent for the 1972 ERA to correspondingly find its way into the U.S. Constitution by similarly unconventional means; and

WHEREAS, that comparison is flawed given that the 27th Amendment never had any deadline at all imposed by Congress upon its ratification among the state legislatures while the 1972 ERA, by contrast, had one and, depending upon a person's point of view, perhaps as many as two deadlines - both of which nevertheless came and went literally decades ago; and

WHEREAS, clearly influenced by the questionable logic of this ill-advised theory, the Legislature of the State of Nevada, on March 22, 2017, adopted Senate Joint Resolution No. 2

(published verbatim in the United States Senate's portion of the *Congressional Record* of April 5, 2017, at pages S2361 and S2362; designated by the U.S. Senate as "POM-15"; and referred to that body's Committee on the Judiciary) which purported to belatedly ratify the Equal Rights Amendment - 45 years to the day when the 92nd Congress offered it in 1972; and

WHEREAS, likewise swayed by the dubious rationale of this misguided "strategy", the Illinois General Assembly, on May 30, 2018, approved Senate Joint Resolution Constitutional Amendment No. 4 (also reproduced word-for-word in the U.S. Senate's section of the *Congressional Record* of September 12, 2018, at page S6141; equivalently designated by the U.S. Senate as "POM-299"; and assigned as well to the U.S. Senate Committee on the Judiciary) tardily ratifying the 1972 ERA - thus subscribers to this extravagant hypothesis of ERA-resuscitation are now down to a mere "one-state" theory; and

WHEREAS, since 2011, in the Virginia Senate - on at least five separate occasions - this "strategy" has triggered one-house votes to behindhand approve the 1972 ERA; the most recent successful and favorable one-chamber vote example was on January 26, 2016, when the Virginia Senate adopted Senate Joint Resolution No. 1 by the narrow margin of 21 yeas and 19 nays; and while the Virginia House of Delegates has, thus far, not concurred in such action, that circumstance could certainly change; and

WHEREAS, at some point - as in Nevada during 2017 and as in Illinois during 2018 - it may be that approval of the 1972 ERA might gain the positive votes of both state legislative chambers, within the same legislative session, in Virginia or elsewhere; and

WHEREAS, in a brazen display of audacity, this delusional theory further stipulates that the ERA ratification rescissions of the Nebraska Legislature in 1973 (Legislative Resolution No. 9), of the Tennessee General Assembly in 1974 (Senate Joint Resolution No. 29), of the Idaho Legislature in 1977 (House Concurrent Resolution No. 10), and of the Kentucky General Assembly in 1978 (House [Joint] Resolution No. 20), are all invalid and nugatory and that the original zealous ERA ratifications by lawmakers in those four states, hurriedly effectuated between March and June of 1972, remain every bit as viable today as devotees of this presumptuous "strategy" assert that the never-rescinded ratifications of 31 other state legislatures (including Minnesota) - which accumulated during the decade of the 1970s - allegedly still are; and

WHEREAS, acceptance of a belated ratification of the 1972 Equal Rights Amendment - when the originating 92nd Congress clearly saw fit to specify a deadline upon its consideration, and ratifying state legislators acted in the good faith belief that, once established, such deadline would hold firm - makes a sad mockery of the entire concept of such time limitations and would result in the side effect of no proposed federal constitutional amendment ever really being perceived as having failed among the states; and

WHEREAS, in the years 2021 and 2022, in the United States, women and men have achieved equal legal rights through alternate means in the absence of the 1972 ERA; and

WHEREAS, in today's world, it is not entirely certain how federal judges would construe the word "sex" as contained in the proposed 1972 ERA; and the massive transfer of power away from the states and over to the federal government by the 1972 ERA's second section would doubtless divest Minnesota, and other states, of their ability to legislate in conformity with their own unique needs; and

WHEREAS, under the legal doctrine of *qui tacet consentire videtur, ubi loqui debuit ac potuit*, it is important that Minnesota lawmakers not be idle and mum relative to efforts underway in other states to resurrect the long-expired 1972 ERA, as that doctrine stipulates that silence equals consent; and

WHEREAS, whatever positive features or laudable attributes the 1972 Equal Rights Amendment might possess aside, the Minnesota Legislature wants no part of this ERA-revivification circus which could potentially trigger irreversible consequences of very high constitutional magnitude; NOW, THEREFORE,

BE IT RESOLVED, that the 92nd Legislature of the State of Minnesota, 2021-2022, deems it appropriate and necessary to make hyper abundantly clear - as South Dakota lawmakers similarly did in early March of 1979 with their adoption that month of Senate Joint Resolution No. 2 - that the vitality of the aforementioned Resolution 1 - House File No. 3, Regular Session of 1973, by which Minnesota lawmakers ratified the 1972 Equal Rights Amendment, officially lapsed at 11:59 p.m. on March 22, 1979; and

BE IT FURTHER RESOLVED, that, after March 22, 1979, the Minnesota Legislature - while certainly in agreement that women and men should enjoy equal rights in the eyes of the law - should not be counted by the Congress, by the Archivist of the United States, by lawmakers in any other state of the Union, by any court of law, or by anyone else, as still to this day, in 2021-2022, having on record a live ratification of the proposed Equal Rights Amendment to the federal Constitution as was offered by House Joint Resolution No. 208 of the 92nd Congress on March 22, 1972; and

BE IT FURTHER RESOLVED, that, in a manner which would furnish confirmation of delivery and tracking while en route, the Minnesota Secretary of State, not later than 30 days after the final approval of this memorial, shall transmit, in separate envelopes, properly certified paper copies of this memorial - pursuant to the Standing Rules of the United States Senate, namely, Rule VII, paragraphs 4, 5, and 6 - to the Vice President of the United States (in his capacity as presiding officer of the U.S. Senate and addressed to him at Suite No. S-212 of the United States Capitol Building); to the Secretary and Parliamentarian of the U.S. Senate; and to both U.S. Senators representing Minnesota; accompanied by a signed cover letter to each addressee drawing attention to the fact that it is the 92nd Minnesota Legislature's courteous, yet firm, request that the full and complete verbatim text of this memorial be duly published in the U.S. Senate's portion of the *Congressional Record*, as an official memorial to the U.S. Senate, and that this memorial be referred

to whichever committee(s) of the U.S. Senate that would have appropriate jurisdiction over its subject matter; and

BE IT FURTHER RESOLVED, that, in a manner which would furnish confirmation of delivery and tracking while en route, the Minnesota Secretary of State, not later than 30 days after the final approval of this memorial, shall likewise transmit, in separate envelopes, properly certified paper copies of this memorial - pursuant to the Rules of the United States House of Representatives, namely, Rule XII, clauses 3 and 7 - to the Speaker, Clerk, and Parliamentarian of the U.S. House of Representatives; and to all members of the U.S. House of Representatives who represent districts in Minnesota; likewise accompanied by a signed cover letter to each addressee drawing attention to the fact that it is the 91st Minnesota Legislature's courteous, yet firm, request that the substance of this memorial be duly entered in the U.S. House of Representatives' portion of the *Congressional Record*, as an official memorial to the U.S. House of Representatives, and that this memorial be referred to whichever committee(s) of the U.S. House of Representatives that would have appropriate jurisdiction over its subject matter; and

BE IT FURTHER RESOLVED, finally, that, in a manner which would furnish confirmation of delivery and tracking while en route, the Minnesota Secretary of State, not later than 30 days after the final approval of this memorial, shall also transmit, pursuant to Public Law No. 98-497, a properly certified paper copy of this memorial, accompanied by a signed cover letter, to the Archivist of the United States at the National Archives and Records Administration in Washington, D.C.