TESTIMONY BY ELEANOR SMEAL
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BEFORE THE UNITED STATES HOUSE COMMITTEE ON OVERSIGHT AND REFORM
FULL COMMITTEE HEARING ON THE EQUAL RIGHTS AMENDMENT: ACHIEVING FULL CONSTITUTIONAL EQUALITY FOR ALL

I would like to thank you, Chairwoman Maloney for your strong leadership in, and dedication to, ratification of the Equal Rights Amendment, and certifying and placing it into the U.S. Constitution. I also thank you for holding this important and, I believe, historic hearing on the Equal Rights Amendment. I also thank ranking member James Comer, and the staff of this important committee. I am very honored to be able to testify at this hearing.

I would like to begin by reading into the record the complete text of the ERA. It is only 52 words long:

> Section One: Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.
> Section Two: The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
> Section Three: This amendment shall take effect two years after the date of ratification.

The Feminist Majority (FM) and the Feminist Majority Foundation (FMF) both organizations founded in 1987, are dedicated to winning gender equality for all, reproductive health and non-violence in United States and globally. We specialize in both college and high school educational and action programs as well as communications through Ms. Magazine which is wholly owned by FMF. The Feminist Majority is our political and educational arm which encourages and works for gender equality in the decision-making tables of the state, nation, and the world and to enhance feminist participation in public policy. For example, we have advocated for the passage of the Violence Against Women Act and its reauthorizations, the Affordable Care Act and it provisions to eliminate sex discrimination in pricing and benefits in health insurance, to end extremist violence against women's health clinics, to end gender apartheid in Afghanistan under Taliban rule, and to work for Women, Peace and Security. In all of our years of work we have fought for constitutional equality of rights and the end of sex discrimination. The Feminist Majority/Feminist Majority Foundations are lead organizations in the ERA Coalition.

I have worked for the ratification of the ERA for over 50 years. I began my work as a young active member of the greater Pittsburgh, Pennsylvania chapter of the National Organization for Women, then as President of Pennsylvania NOW, then as Chair of the Board of NOW when I helped to lead the campaign to ratify the ERA in Indiana and then as president of National NOW when NOW led the 1977-1978 federal campaign which resulted in both houses of Congress voting for the extension of the ERA time limit in its preamble. And year in and year out, I have long since lost count of the speeches I have given, rallies, events and marches I have attended and led for the federal Equal Rights Amendment and/or state ERAs.

When we worked for the ERA time extension in 1977-1978, the Department of Justice, Office of Legal Counsel (OLC) and several constitutional scholars provided legal opinions that it was

permissible for Congress to extend or remove the deadline that was in the preamble or proposing clause of the amendment and not voted on by the states. Moreover, the OLC said the vote required by either house in removing the time line was a simple majority vote, not a supermajority vote. However, noted constitutional scholars have said the removal of the time line is not necessary because the timeline is not binding. The 27th amendment was first introduced by James Madison in 1789 over 200 years ago and finally approved by the 38th state in 1992. It was then certified by the National Archivist in 1992 and it is now in the Constitution.

On January 6, 2020, the OLC issued an opinion in response to a question from the National Archivist, before the 38th state had ratified, that Congress could not remove the ERA timeline. This opinion is not binding. The executive branch of government does not have a role in the amending process. The 38th state, Virginia, did ratify the amendment on January 15, 2021. Each of the three states legislatures, Nevada, Illinois and Virginia, that ratified the ERA in the 21st century obviously thought that the ERA was still needed and that denial or abridgement of rights by the United States or any state on accounted of sex should be prohibited.

The United States House of Representatives, the people's house, the most representative legislative body in the United States, approved the resolution to remove the time limit in the ERA proposing clause immediately after Virginia ratified the ERA. This was not necessary and only served to clarify that the ERA was still pending. I respectfully ask the House Oversight and Reform Committee to request that the National Archivist certifies the Equal Rights Amendment as the 28th amendment because it has met the U.S. Constitution's requirements for an amendment to be adopted. It was approved in 1971 by the House with an overwhelming vote of 354 to 24 and by the Senate in 1972 by a vote of 84-8 and ratified by 38 states or three-fourths of the states' legislatures in 2020. It has simply met the U.S. Constitution's requirements for an amendment to be adopted.

Six generations of U.S. women and their allies have been consumed by this fight to amend the U.S. Constitution. Americans have overwhelmingly supported the ERA in public opinion polls for decades. According to a new Associated Press poll, 74% of people support the ERA. This is consistent with polling for decades and for polling not only nationwide, but in the necessary states. Most Americans believe we already have such an amendment. When we fought for the ERA in the 1970s a very common retort of our opposition was women already have equal rights and would cite Title IX of the Educational Amendments Act of 1972 or Title VII of the Civil Rights Act of 1964 covering employment discrimination in companies with more than 15 employees engaged in interstate commerce. No one, they argued, would take these rights away.

But, a restrictive Supreme Court decision in the 1984 Grove City Case weakened Title IX. We had to fight to restore Title IX with the Civil Rights Restoration Act of 1988. In 2006, in the Lily Ledbetter sex discrimination case involving wages, the Roberts court gutted Title VII of the Civil Rights Act. Until this case, every time an employee was paid a discriminatory wage, it counted as an act of discrimination. The Roberts court, in a 5-4 decision, ruled the complaint had to be filed within 180 days of the act of wage discrimination. Ledbetter did not know she was systematically being underpaid; it was some decades before she found out. Ledbetter lost her large settlement. To restore Title VII, Ledbetter toured with candidate Barack Obama and told the nation of this systematic pay discrimination. The Lily Ledbetter Fair Pay Act in 2009 as an

amendment to Title VII was passed to restore Title VII and states that the "180-day statute of limitations for filing an equality pay lawsuit regarding pay discrimination resets with each new paycheck." Ledbetter helped to restore the law for others, but never received her initial large settlement.

I'm frequently asked what makes you continue to fight for so many years. I am not a lawyer. But I have lived most of my adult life fighting against blatant sex discrimination and I know that far too often sex discrimination prevails. Far too many suffer with no recourse for justice. The above cases are just a sampling of the patchwork of statutes and cases. We have weak constitutional rights to fight sex discrimination at the national level and in most states.

We have the 14th Amendment Equal Protection Clause and that does not always work for sex discrimination cases. And you cannot always show interstate commerce. Let's look at the Violence Against Women Act. Originally, it had a federal Civil Right of Action for the survivor of the violence—meaning a survivor could take a civil case to win monetary judgement in a federal court if a university, police department, or district attorney refused to act. The Violence Against Women Act was passed in 1994. By 2000, the civil right of action was declared unconstitutional by the Supreme Court because Congress had no constitutional power or jurisdiction to provide such a federal civil right of action. This was the Virginia Tech case of a women student being raped by football players. She entered federal court when the university and the local/state authorities failed to act, suing for monetary judgment from the individual perpetrators and the University. The court said that the interstate commerce clause and the 14th Amendment could not be used to help her. After all, we have more and more originalists on the Supreme Court and, of course, sex discrimination was not originally prohibited. The Equal Rights Amendment would say once and for all that gender discrimination and assault is prohibited by the United States and any state.

The Equal Rights Amendment has met all the constitutional requirements for the adoption of an amendment to the Constitution of the United States. The procedural blockades are not a part of the amending process. The National Archivist's duty is to certify the ERA as the 28th Amendment. How many more decades must we wait for constitutional equality? How many people must suffer? When a person is cheated out of decent wages because of sex discrimination, when sex-based violence is not adequately dealt with, when educational opportunities are denied because of sex discrimination, when essential workers, who are disproportionally women of color, are cheated out of wages commensurate with the task, we all lose.