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ERA Project FAQ on the District Court's Decision in *Virginia v. Ferriero*

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ERA Project FAQ on the district court's decision in *Virginia v. Ferriero*

The district court dismissed the lawsuit on the following grounds:

1. **The states that brought the lawsuit do not have standing.** This means that the states that brought the lawsuit were not injured by the fact that the Archivist refused to publish the amendment. Their argument is that the Archivist's refusal to publish the Amendment undermined their sovereign power to ratify a change to the Constitution. But the court disagreed: "The Archivist's proclamation has no legal effect ... the Amendment becomes law when it secures ratifications from three-fourths of the states – not when the Archivist certifies and publishes it." (p. 12) The legal doctrine of standing requires that the parties bringing the lawsuit have been harmed by the party they have sued in a legally recognized way, i.e.: the driver of the car that hit you, the business that refused to pay a debt they owed to you, etc. Because the Archivist's publication of the Amendment would have no legal effect, the states were not harmed by his refusal to publish it.
2. **The question of the validity of the congressionally created deadline for ratification (seven or ten years) is not a political question, and thus the court can rule on it.** (The Archivist and several academic amici argued that the court shouldn't decide this issue because it is a political, not legal, question.) The district court construed an established Supreme Court precedent on this issue extremely narrowly. *Coleman v. Miller* clearly reasoned that the timeliness of constitutional amendments was a political question for Congress, not courts, to interpret. *Virginia v. Ferriero* instead ruled that the validity of the deadline was something the court could decide. Many constitutional law scholars may disagree with the court's approach to this issue.
3. **The seven-year deadline for ratification is valid, and thus the ERA falls three states (or more) short of the 3/4 requirement of Article V of the Constitution.** First, the Supreme Court has already found that Congress has the power to create a deadline for the states to ratify an amendment, and the Archivist has no power to ignore a congressionally created deadline. Second, the fact that the ERA's deadline is in the preamble to the amendment's text, rather than in the text itself (as was the case with the Prohibition Amendment, for instance), does not make it legally ineffective. "Congress wanted to stop 'cluttering up' the Constitution with provisions that were useless immediately upon ratification." (p. 30) The court acknowledged, however, that the Supreme Court has not yet ruled on this issue, so it was deciding the question for the first time.
4. **The court did not address the question of states' power to rescind earlier ratifications of the ERA.**
5. **The court did not rule on whether Congress's extension of the ERA deadline or any future effort to remove the deadline is constitutional.**
6. **The court did not express an opinion on the merits of the ERA as a matter of policy.**

[The ERA Project](#) at Columbia Law School's Center for Gender and Sexuality Law is a law and policy think tank established in January 2021 to develop academically rigorous research, policy papers, expert guidance, and strategic leadership on the Equal Rights Amendment (ERA) to the U.S. Constitution, and on the role of the ERA in advancing the larger cause of gender-based justice.

The ERA Project does not engage in lobbying, but instead develops academic, legal and policy expertise to support efforts to expand protections for gender-based equality and justice.