



# Attorney General Doug Peterson

# News Release

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In order to understand the basis for Nebraska intervening in the federal lawsuit regarding the ERA, it is important to understand the procedural history.

In 1972 Congress passed a joint resolution proposing the ERA as a potential amendment to our U.S. Constitution. However, in order for the ERA to become part of the Constitution, it was necessary to have at least 38 states formally vote through their legislative bodies to ratify the amendment approved by Congress. Congress specified that the states had seven years to reach the threshold of 38 states.

When it was apparent that they were not going to reach the 38-state threshold at the end of seven years, Congress extended the deadline three more years.

The Nebraska Unicameral voted to ratify the ERA in 1972, soon after Congress first proposed it to the states. However, the following year—on March 15, 1973—the Unicameral reconsidered the matter and voted 31-17 to rescind its earlier ratification. Thus, Nebraska went on record as being a non-ratifying state.

Recently, there has been a movement to get states who had not previously ratified the ERA to reconsider their prior decision, in spite of the fact that the time limit issued by Congress has expired many decades ago.

Over the last few years, Nevada, Illinois, and most recently Virginia all moved to ratify the old ERA passed by Congress in 1972. Such states concluded (1) that the time limit issued by Congress was not enforceable and (2) that states like Nebraska—states that rescinded their prior ratification vote—should still be counted as supporting the ERA. This clearly ignored the formal action taken by the Nebraska Unicameral to rescind its ratification back on March 15, 1973.

Based upon these two faulty conclusions, the states of Nevada, Illinois, and Virginia have filed a lawsuit in federal court asking the court to issue a declaratory judgment that the ERA has been passed by the necessary 38 states. Obviously, this legal argument is not consistent with the actions taken by the Nebraska Unicameral. It is also inconsistent with a prior U.S. Supreme Court decision that held once the time period expired, efforts to pass the ERA had become moot. The three states also disregard a recent U.S. Department of Justice opinion

issued on January 6, 2020, confirming that the time to approve the ERA has expired and cannot be revived.

Notably, Justice Ruth Bader Ginsburg was asked her thoughts on the matter a few months ago, and she made it quite clear that she felt that the time to pass the ERA has expired and that it made more sense to start over. She stated that the ERA cannot be ratified unless it is “put back in the political hopper” and its proponents “start[] over again, collecting the necessary number of states.” *Justice Ginsburg to Address New Georgetown Law Students*, Georgetown Law (Sept. 12, 2019), [bit.ly/3bbokcd](https://bit.ly/3bbokcd) (remarks begin at 1:03:35). And earlier this month, Justice Ginsburg added that “a number of States have withdrawn their ratification [of the ERA],” so “if you count a latecomer [like Virginia] on the plus side, how can you disregard States that said, ‘We’ve changed our mind?’” *Searching for Equality: The 19th Amendment and Beyond*, Georgetown Law (Feb. 10, 2020), [bit.ly/2tUgeUw](https://bit.ly/2tUgeUw) (remarks begin at 43:55).

Nebraska intervened in this lawsuit along with four other states because the case asks the court to ignore Nebraska’s decision not to ratify the ERA. Our legal position is consistent with prior decisions of the U.S. Supreme Court, the U.S. Department of Justice opinion of January 2020, and the recent opinions expressed by Justice Ginsburg.

As Attorney General, I cannot allow the formal action taken by the Nebraska Unicameral to rescind its prior ERA vote to be ignored. Therefore, intervening on the matter was necessary. This is consistent with my oath of office.

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