

FIRST SUPPLEMENT TO MEMORANDUM 2023-40  
**Equal Rights Amendment: Discussion of Issues**  
**(Public Comment)**

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The staff received an email comment on Memorandum 2023-40 from Kathy Spillar of the Feminist Majority Foundation. The comment is attached.

The comment refers to an attached prepublication article. Consistent with Commission practices regarding published materials, the article was not reproduced in this memorandum.

Respectfully submitted,

Kristin Burford  
Chief Deputy Director

**EMAIL FROM KATHY SPILLAR, FEMINIST MAJORITY FOUNDATION  
AUGUST 15, 2023**

Kristin,

Hope all's well with you.

I reviewed your August 11 memo on ERA issues, and wanted to express an opinion on the options you lay out to address constitutional doctrines and that the Law Review Commission will be considering. If I understand it all, we definitely would not support option 1 – even the less detailed option of “simply naming the relevant constitutional provisions.” I’ve attached an article that will appear in the fall issue of Ms., that could not be more on point for your analysis with respect to recent SCOTUS rulings on the first amendment – and I know staff is not recommending the approach, so just adding emphasis to your conclusion. For similar reasons, we wouldn’t support approach 2 (silence) or approach 3 (acknowledging potential constitutional limitations) ... and would support option 4 – expressing the state’s “interest in broad application of the sex equality principle,” and the idea of extending this approach even further with the language you draft citing the state’s compelling interest in ensuring “full citizenship stature and equal opportunity ...” This seems to me to be where you and the staff are leaning, but wanted to weigh in.

We can only hope the US Supreme Court eventually overturns some of the blatantly sex discriminatory rulings it has issued.

Thanks for all the good work you all are pursuing – if you think a call with me and Betsy Butler would be helpful, let us know.

Best,  
Kathy