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AMENDING THE CONSTITUTION: THE CASE OF THE EQUAL RIGHTS AMENDMENT

The Ohio State University  Ph.D.  1984

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Amending the Constitution:
The Case of the Equal Rights Amendment

DISSEPTION

Presented in Partial Fulfillment of the Requirements for
the degree Doctor of Philosophy in the Graduate
School of The Ohio State University

By
Debrah Bokowski, B.A., M.A., Ph.D

###

The Ohio State University
1984

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The dissertation examined legislative response to the ERA in Congress and six states. Public debate on the ERA in the six states was researched through newspaper articles. A mail questionnaire was sent to legislators in the six states to determine legislator perceptions of the issue, the debate, the lobbyists, and their constituents' attitudes towards the ERA.

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Chapter I

THE ERA FAILURE: THEORETICAL AND EMPIRICAL EXPLANATIONS

The Equal Rights Amendment failed to become the twenty-seventh amendment to the United States Constitution even though it not only had overwhelming congressional approval, but also had the support of the vast majority of the American public and their state legislatures as well. This dissertation will provide an explanation for the failure of the ERA in the context of Madisonian democracy, a democracy which promotes the stability of the system by allowing only incremental changes both in public policy and the structure of the system itself. The vehicle for constitutional change, the amendment procedure, like a microcosm of the Constitution itself, inhibits sudden or sweeping change, allows for minority veto of majority will, and clearly expresses the concept of federalism by giving the states the dominant power in the procedure. The thesis of this dissertation is that the amendment procedure has worked well to inhibit major constitutional and social change. Those amendments which have been successful have more often
reflected change than produced it. The Equal Rights Amendment failed because, unlike previous constitutional amendments, the social change implicit in the amendment had yet to be implemented by the states, and a significant minority perceived that the ERA would produce real change both socially and within the governmental system.

The explanation for the failure of the Equal Rights Amendment has both theoretical and empirical components. The theoretical context comes from the themes of American democratic theory reflected in the design of the amendment procedure. The amendment procedure, like the rest of our governmental structure, is a purposive process in which procedural structure determines policy output. The dissertation will examine the amendment procedure and discuss how the basic themes of our governmental design produce a certain kind of amendment.

The themes of incrementalism, minority veto and federalism are reflected in the empirical functioning of the amendment procedure. In the context of those themes we can form an explanation of why the amendment process has worked as it has to produce the amendments now found in our Constitution and why the Equal Rights Amendment failed to successfully negotiate the tortuous journey towards ratification.
THEORETICAL IMPLICATIONS OF THE AMENDMENT PROCESS

The current American constitution was the result of a quiet, conservative revolution conducted by committees, not militia. It was a revolution designed to promote long-term stability and prevent social unrest, a curious revolution which allowed some change in order to prevent radical change. The replacement of the Articles of Confederation with the Constitution occurred because the government under the Articles was a disaster and massive social and economic unrest was impending. A major change in the government was the only alternative to political chaos.

The new government reflected the conservatism of the founding fathers and their pragmatism in creating a new political structure which would be acceptable to the existing political structure. The results are the recurring constitutional themes of incrementalism, restriction of majority will and federalism. To produce stability the authors of the Constitution provided internal avenues for social adaptation, while insuring that the adaptations would be incremental in nature, thus avoiding social instability. The writers of the Constitution felt social instability would be the result of self-interest left unchecked. Thus, the Constitution checks the interests of majorities and their elected officials with a republican form of government, division of authority
between federal and state governments, separation of function, power and accountability in the federal government, and certain specified limitations on the government. Because the states were sovereign under the Articles, the federalism of the new government allowed the states to retain most of their power and relinquish only those powers necessary for the survival of the system.

In the amendment procedure of Article Five of the Constitution, the basic themes of the Constitution are present in an accentuated form. If the Constitution makes social change difficult, the amendment procedure inhibits it further. Where the expression of majority will is checked and balanced in the rest of governmental procedures, in the amendment process minority veto has abundant opportunities. And in the amendment procedure, clearly individual state interests have the final say in determining constitutional change.

The Procedure

Two-thirds of the states may call for a Constitutional Convention that may propose amendments. Exactly how this method of proposing amendments would work is unclear, since the Constitution is not specific on the matter and there is no historical precedent. Congress can propose amendments by two-thirds majority in both the House and the Senate; the latter a body originally elected by and responsible to
state legislatures. No matter how amendments are proposed, ratification is accomplished by the consent of three-fourths of the states either through state legislatures or special conventions called for the purpose of deciding on the ratification question.

**Check on Majority Rule**

Like the Constitution, the amendment process contains checks and balances with respect to the will of the majority. There is the possible check of the bicameral legislature, House and Senate, at the congressional proposal stage and also in the ratifying process of all but one of the state legislatures, Nebraska. A small, well-placed minority in just one house in thirteen states can stop an amendment.

The majority called for is much higher than a simple majority and, thus, harder to achieve. Not only does it require a two-thirds majority either through both houses of Congress or the states to propose, but the agreement of three-fourths of the states is necessary for ratification. Conversely, it allows minority veto of majority will by one-fourth plus one of the states.

Another hindrance to the formation of national acceptance of amendments is the variety of constituencies represented in the process. The Senate represents entire states, congressmen (mostly) represent much smaller
districts. State senators and representatives have districts smaller still, which vary in size depending on the number of senators (19-58) or house members (39-400) and the size of the state. The districts, and hence the number and homogeneity of the constituents represented, can provide every kind of American variety to the amendment process.

The element of time is also at work in the amendment procedure to hinder the formation of majorities. Madisonian democracy operates on the assumption that people elected at different times will be elected on different issues, and that public opinion on individual issues changes over time. Thus, staggered elections for the House, Senate and President guarantee that no majority will be elected on the wave of current passions. It also makes majorities harder to come by and allows the element of time to affect the outcome of the process.

In the amendment process there are the usual delays and opportunities for blocking measures in both the House and the Senate. In addition there is the time it takes for 38 state legislatures to meet, vote and pass the amendment. Today, most state legislatures are virtually continually in session. However, there are still state legislatures which meet for only a few months of the year, and some meet only

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on odd or even numbered years. Thus, even if a state legislature had nothing else to do or considered the amendment in question a top priority, it still could take many months after congressional passage for the amendment even to be introduced to a sitting legislature, let alone move through both houses and be ratified.

Incremental Change

The structure of both the United States government in general, and the amendment procedure in particular, is designed to produce minimal amounts of change. This process of change through bits and pieces is referred to as incrementalism. Because the amendment procedure requires such enormous levels of public support, and considering the built-in obstacles for achieving it, we will argue that the only kinds of change produced by the amendment procedure will be and have been incremental in nature.

Federalism

The legacy of pre-constitutional state sovereignty still lives in the amendment process where the dominant power and ultimate veto lie with the states. It is an expression of federalism as originally conceived by the authors of the Constitution. The intent of the division of power between national and state governments was to give the national government only those powers necessary and sufficient for
an effective national government, leaving the rest (the lion's share of power directly affecting citizens) with the states. While, in general, power has slowly evolved away from the states into the various branches of the national government, in the amendment process as in the electoral college, states predominate.

**Empirical Explanations**

The influence of the amendment process design is visible in the patterns of successful amendments and the history of the Equal Rights Amendment. The rest of the dissertation will be devoted to the presentation of empirical evidence in support of the existence of patterns of amendment ratification. The empirical evidence will be presented in two forms. The first is an historical examination of the twenty-six amendments to the Constitution. The second, and most extensive, will be an in-depth study of the Equal Rights Amendment in Congress and the states. This study of the ERA is unique in that it emphasizes both stages of the ratification process, the proposal stage and the ratification stage. The ratification stage, in which amendments are considered by the states, has generally been ignored in amendment studies or cursorily discussed.

The first objective of the dissertation will be to provide an extensive discussion of the histories of all
successful amendments and the amendments which failed after congressional passage. From an examination of those histories we will see if there are patterns of amendment ratification. There is extremely little in the political science literature that deals with amendments in a systematic way. The most notable exception is the work of Grimes.\(^2\) Grimes does deal with amendments as a group and produced his own explanation for their success, i.e., they fit into a trend of the extension of democracy. Apart from Grimes, most research on constitutional amendments has been in the form of single case studies, historical material or in terms of Supreme Court interpretations. Thus, this dissertation will significantly add to the scant political science research which looks at amendments comprehensively. It will further add the dimension of putting that comprehensive examination in the context of democratic theory.

After the examination of other amendments the dissertation will turn to a detailed look at the Equal Rights Amendment. The first aspect of the ERA's attempt to become part of the Constitution is the proposal stage, congressional passage. This is usually the area of the amendment process given the most attention and about which more information is usually available. Perhaps this is so

because only a handful of amendments failed to be ratified by the states after receiving congressional approval. This dissertation will contribute additional information about the ERA's congressional passage and will argue that the unique characteristics of its passage had considerable impact on the ERA's chances of successful ratification.

The case of the Equal Rights Amendment illustrates that the perceived ease of state ratification is deceptive. The ratification role of state legislatures in the amendment process is certainly equal to the proposal role of Congress, yet there has been very little research conducted on how state legislatures deal with constitutional amendments. The designers of the amendment process, by giving the states the final say and by requiring that approval be made by a three-fourths majority, had in mind that the states would bring their own unique perspectives to the process. The examination of the ERA in the states reveals the importance of viewing the states as political entities with perspectives of power and policy impact that can be (and have often been) very different than those of Congress. This dissertation will contribute much to our knowledge of how state legislatures consider constitutional amendments and the reasons behind their behavior.

The dissertation will provide detailed research on the ERA activities of six states; Nebraska, Tennessee, Ohio,
Indiana, Missouri and Virginia. The six states included in the study represent the kinds of state action that was taken on the ERA. Nebraska and Tennessee represent states that ratified early and later rescinded. Ohio and Indiana represent the states that ratified the ERA relatively late in the amendment's history. Virginia and Missouri were selected from among the states which gave the ERA considerable attention and yet failed to ratify. The research on the ERA activities in those states will be discussed in three chapters dealing with the history of the Equal Rights Amendment in each state, the nature and extent of debate on the issue and the results of a survey of state legislators.

An important contribution of the dissertation is the result of the six-state survey of state legislators. The survey provides information about the views of individual state legislators that in other amendment studies has most often been unavailable or sparse. The survey enables us to examine why state legislators voted as they did, what impact they foresaw the amendment having, how they evaluated the ERA lobbyists, and how they perceived the issue affecting their position with their constituents.

The history of the ERA in each of the states are necessary additions to the history of the Equal Rights Amendment. They help explain how the eventual decision to
ratify or not came about. The histories also show the effect of the political situation in each state on an amendment's success. These individual state political factors are often overlooked in discussions of amendment ratification which view the process as a national phenomenon only. Newspaper articles from the six states covering a ten year span were used to compile the histories.

The newspaper articles also provided extensive information on the public debate on the ERA issue in each of the states. This information on the state ERA debates is especially important because the ERA did not become a major issue until after congressional passage. Congressional debate on the ERA was minimal and brief. Only after the Equal Rights Amendment had been before the states for over a year did an active public debate on the issue occur. Also, an examination of arguments presented in local newspapers shows that debate in the states was not merely an extension of the congressional debate, but one that differed in content due to the particular perspectives of the states.
Chapter II
PATTERNS IN AMENDMENT RATIFICATION

If the amendment procedure, like the Constitution, was designed to produce a certain type of policy output, then we should find evidence of this in the successful amendments and their ratification histories. Any patterns found in the ratification of constitutional amendments will enable us to put the Equal Rights Amendment's history in a perspective that would be impossible from an examination of the ERA alone. Thus, the first task of this dissertation is to systematically study all of our constitutional amendments to determine the effect of the amendment procedure on constitutional change. Also, there will be a brief discussion of proposed amendments (other than the ERA) which either did not receive congressional approval or were not ratified by the states.

CONSTITUTIONAL AMENDMENT LITERATURE

Out of the small political science literature that deals with the development of constitutional amendments, there are two books which discuss the political evolution of
amendments comprehensively. They are Constitutional Change by Clement E. Vose and Democracy and the Amendments to the Constitution by Alan P. Grimes.

The Vose book explores constitutional change both through amendments and Supreme Court interpretations. Such change is examined in terms of social movements. Vose's approach to the subject is a combination of those of historical and constitutional law. Vose does not attempt to provide a theoretical structure of amendment ratification.

The book by Grimes is a systematic examination of all of the amendments in an attempt to provide an explanation for the pattern of our constitutional amendments. According to Grimes, the amendments "constitute a formal record, in the fundamental law, of the growth of democracy in America." When new political coalitions achieve power they amend the Constitution in order to maintain power, often by means of extending the franchise. The result of the use of constitutional amendment in the struggle for political majorities has been the general extension of democracy.

As Grimes admits, the major objection to his conclusion that amendments have been instrumental in making the Constitution more democratic than it originally was is the number of amendments which are clearly exceptions to that

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3 Grimes, p. xi.
4 Grimes, p. 165.
theme. There are some amendments, such as the presidential succession amendment, which are irrelevant to the democratic theme. Other amendments. Prohibition being the prime example, have restricted rights and privileges rather than extended them.

The lack of a widely accepted theory of constitutional amendment ratification in the political science literature requires that this dissertation present its own framework of amendment ratification. In doing so we will make explicit categories which are implicit in Vose's work and utilize them for organizational purposes. After examining all of the amendments we will see if there are historical patterns common to successful amendments.

**AMENDMENT CLASSIFICATION**

It is useful for us to look at the successful amendments in terms of two groups. The first group of amendments provides constitutional adaptations that could not be done by ordinary statute, either through the national legislature or those of the states. Constitutional change was necessary to bring about the desired objective. The second group of amendments produced national conformity of some policy which in most cases, had already been enacted by a majority of state legislatures and could have become national in scope by statute. By enacting the policy as a
constitutional amendment, however, a national uniformity of policy was ensured. These two groups are not necessarily mutually exclusive.

Adaptation Not Possible by Statute

The Eleventh Amendment

The Eleventh Amendment arose out of disagreements over the interpretation of Article Three of the Constitution, specifically the statement that granted federal courts jurisdiction in cases "between a state and citizens of another state". Beyond the narrower arguments arising from the vagueness of the language of Article Three, there were the contributing conflicts about the issue of state sovereignty and the associated debate between Federalists and Anti-Federalists. Also, there was the economic issue of state debt liabilities. Could states be forced into court against their will by their creditors? The question was whether Article Three of the Constitution denied sovereign immunity to the states.

The framers of the Constitution had conflicting views over the meaning of Article Three. George Mason tried to quiet the fears of Anti-Federalists by saying that Article Three did not mean a state could be dragged into federal court. A state might be a plaintiff, but in a suit brought by an individual, could not be made a defendant.5

5 Thorpe, Francis Newton, A Short Constitutional History of
Alexander Hamilton concurred in the opinion that Article Three did not interfere with the sovereign immunity of states. Other Federalists, James Madison and John Marshall, denied that the Supreme Court could force a state to act as defendant against an individual.

However, John Jay and James Wilson disagreed with the interpretation of the other founders. They were appointed to the Supreme Court by George Washington and handed down a very different interpretation in *Chisholm vs. Georgia*, a case in which executors of a British creditor brought suit against the state of Georgia in the United States Supreme Court. The state of Georgia denied the jurisdiction of the court. Chief Justice Jay in his opinion discussed the issue of whether the Constitution meant only that states could be plaintiffs in suits involving individuals. He claimed that if the Constitution meant to exclude states from being defendants in cases brought by individuals, it would have so stated. He wrote: "if it meant to exclude a certain class of these controversies, why were they not expressly excepted; on the contrary, not even an intimation of such intention appears in any part of the

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6 ibid.

Justice Wilson based his argument on the fact that under the federal constitution, sovereignty was vested in the United States government and therefore the Supreme Court had jurisdiction over any state.\(^9\)

The decision evoked considerable fury in the states. In Georgia the lower house of the legislature passed a bill which stated that enforcement of the decision would be considered a felony punishable by death by hanging, "without benefit of clergy."\(^10\)

The day after the decision was handed down, an amendment to the Constitution was suggested, and the day after that a formal resolution was offered in the Senate. The proposed amendment stated that the judicial power of the United States did not extend to suits brought against any state by citizens of another state or citizens of another country. The amendment was postponed for a year, then brought up, briefly discussed and passed (Senate 23-2, House 81-9). Three years later it was ratified.\(^11\)


\(^{10}\) Thorpe, \textit{op. cit.} p. 104.


\(^{12}\) Thorpe, p. 105.
The Twelfth Amendment

The twelfth amendment was needed in order to alter the method of electing the president and vice-president. The original method conceived by the framers of the Constitution only worked well in the selection of our first president, George Washington. Distrust of popular election of the president, an aversion to congressional election of the executive, and a desire to preserve the relative influence of the states, led the framers to settle on the electoral college. The electoral college was to be a virtuous, deliberative group, appointed by the states, which would select the most qualified man to be president and the second most qualified to be vice-president.

After Washington, serious flaws in the system emerged due to various developments. One was the proliferation of favorite son candidates in the states. The most important development was the rise of political parties. The electoral college method did not take political parties into consideration and contributed to the inevitable situation in 1796 when Adams, the Federalist candidate, became president with 71 votes and Jefferson, a Democratic-Republican, received 68 votes to become vice-president, making an administration of two parties.

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12 Thorpe, p. 107; Grimes, p. 19 and Ames, p. 76.
13 Thorpe, p. 108.
14 Swisher, Carl Brent, American Constitutional
over the electoral college system had begun to grow even before the votes of the 1796 election were counted, but proposed amendments were unsuccessful.\(^{15}\)

The fourth presidential election in 1800 produced a situation which threatened political disaster. The Democratic-Republicans headed by Jefferson clearly beat the Federalist Adams; however, the electors cast the same number of votes for Jefferson's running mate, Aaron Burr. This inadvertently sent the election to the House of Representatives. Adams' supporters proceeded to cast votes for Burr to prevent Jefferson from becoming president. This move meant Jefferson fell one state short of a majority. The deadlock in the House lasted for thirty-five ballots (over seven days). Finally on the thirty-sixth ballot the deadlock was broken, Jefferson received a majority, and Burr was elected vice-president.\(^ {16}\)

At the beginning of the next session of Congress attempts to amend the Constitution and change the method of electing the president were initiated.\(^ {17}\) The Twelfth Amendment called for three main changes in the election of the president. The first, and most important, was for the

\[^{15}\] Thorpe, p. 109.

\[^{16}\] Grimes, p. 21.

\[^{17}\] Ames, p. 78.
separate election of president and vice-president. This provision was not controversial. The second change stated that in the event no one received a majority of electoral votes for president, the House would choose from the top three candidates instead of the first five (which would have also included vice-presidential candidates). Third, it stated that the vice-president would serve as president should the House of Representatives fail to choose a new president before the current president's term had expired.18

The controversy over the Twelfth Amendment centered on the change from 5 to 3 of the number of candidates from which the House could select a president. The Federalists and small states were opposed to it; Republicans favored it. The small states feared that the amendment would weaken the influence of the small states when elections were thrown into the House, and lessen the chances of electing a president from a less populated state.19 Republicans argued that the amendment would preserve the principle of majority rule by making sure that election results would reflect the wishes of the majority.20

18 Grimes, p. 22.

19 Swisher, p. 117; Grimes, p. 24 and Thorpe, p. 115.

By the second session of Congress after the 1800 election, the Republicans had gained enough strength to pass an amendment without the help of the Federalists.\textsuperscript{23} The Senate barely achieved a two-thirds vote (22-10) and the House needed the vote of the Speaker to achieve a two-thirds majority and pass it (84-42).\textsuperscript{22} The strong partisan split was also a sectional one, with opposition heavy in New England.\textsuperscript{23} Public support of the amendment had existed for some time.\textsuperscript{24} Also, Republicans were strong and a popular Jefferson was up for re-election.\textsuperscript{25} Thus, when the states received the amendment, they acted promptly and ratified the Twelfth Amendment in time for the approaching presidential election of 1804.\textsuperscript{26}

The Sixteenth Amendment: The Income Tax

The sixteenth amendment, the income tax amendment, was the result of the Supreme Court ruling in \textit{Pollock vs. Farmer's Loan and Trust Company} in which the court declared unconstitutional an income tax legislated by Congress in 1894. The tax was said to violate Section 9 of Article 1

\textsuperscript{22} Swisher, p. 116.
\textsuperscript{22} Grimes, p. 25.
\textsuperscript{23} \textit{ibid}.
\textsuperscript{24} Thorpe, p. 117.
\textsuperscript{25} Ames, p. 79.
\textsuperscript{26} \textit{ibid}. 
of the Constitution which denies Congress the power to levy a direct tax unless in proportion to the population.

The 1894 income tax was not the first, however. In 1861 an income tax was instituted to help pay the expenses of the Civil War. A three-percent tax was levied on incomes from $600-10,000 (everyone got a $600 exemption). For incomes over $10,000 the rate was five-percent. In 1867, the Commissioner of Internal Revenue reported that out of a population of 37 million, only 266,135 had taxable incomes (over $600 per year). Seventy-six and one-half percent of that revenue came from just seven states, mainly located in the Northeast, plus Ohio and Illinois. The tax system expired in 1872, but nonetheless the Supreme Court in Springer vs. the United States ruled in 1886 that it had been constitutional.

Prior to 1870, publication of tax returns had been legal. In the 1890's various articles showed the location of wealth in the United States. These publications pointed out that a very small percentage of the population


Grimes, p. 68.

possessed a very large percent of the wealth, and that such wealth was still concentrated in a few states.\textsuperscript{31}

In the late 1800's the country went through a series of depressions. This produced a practical and political movement for another income tax. The Populist Party sought a graduated income tax. Tariff revenues were inadequate. Thus, in 1894 a Democratic congress added an income tax amendment to the Wilson tariff bill.\textsuperscript{32} This two-percent tax would have affected only a very few, because it was only on incomes over $40,000. Out of a population of 65 million, just 85,000 persons would be in the happy economic circumstances to be taxed.\textsuperscript{33}

The outcry against this tax was extreme in Congress and the eastern press.\textsuperscript{34} One senator railed "In a republic like ours, where all men are equal, this attempt to array the rich against the poor, or the poor against the rich is socialism, communism, devilism."\textsuperscript{35} Another argument used was based on states' rights. From New York and Massachusetts senators spoke of the income tax as a power belonging solely to the states.\textsuperscript{36} The bill passed the

\textsuperscript{31} Grimes, pp. 68-69.
\textsuperscript{32} ibid.
\textsuperscript{33} ibid.
\textsuperscript{34} Grimes, p. 70.
\textsuperscript{35} Mitchell and Mitchell, p. 330.
\textsuperscript{36} ibid.
House 204 to 140, without any Republican support and defections from eastern Democrats.\(^{37}\)

The income tax had become law, but before any money was collected, opponents brought a test case before the Supreme Court. In *Pollock vs. Farmer's Loan and Trust Company* they ruled that the tax was a direct tax and thus unconstitutional. Both the Democratic and Populist parties were in favor of an income tax that might satisfy the Supreme Court.\(^{38}\) They were eventually joined by Progressive Republicans and the income tax became one of the issues of the reform movement.\(^{39}\)

In 1909 the income tax again appeared in Congress as an amendment to a tariff bill. Opponents in the Senate thought they had a way to delay or kill enactment of such a tax, make it a constitutional amendment. They doubted three-fourths of the states would ratify. They were wrong. Thus, there was the strange situation of the income tax amendment's being introduced by opposition members of Congress and the very lopsided votes in the Senate (77-0) and the House (318-14).\(^{40}\)

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\(^{37}\) Grimes, p. 73.

\(^{38}\) Eriksson and Rowe, p. 303.

\(^{39}\) Grimes, p. 73.

\(^{40}\) Grimes, pp. 73-74.
The amendment was quickly ratified in the South and West, encountering its difficulties in the Northeast, the area of the country with the most concentrated wealth. On February 25, 1913 it became part of the Constitution.41

The income tax amendment did not clarify whether or not it was a direct tax, but removed from Congress the responsibility (Article 1, Section 9) of levying the tax on the states in proportion to their population.62

The Twentieth Amendment

Prior to the Twentieth Amendment, Congress had set the date for the beginning term of office of the president and congressmen at noon on March 4. This meant there could be a lame duck president for four months. Also, newly elected members of Congress did not begin their first session of Congress until thirteen months after their election. Beginning in 1795, attempts were made to change this, but an amendment did not succeed until 1932.43 Opponents to the amendment included the Republican House Speaker Longworth. The opponents wanted a plan to preserve the short session of Congress. When the Democrats gained control of the House in the 1930 election, the amendment was successful.44 It was ratified in record time by the

41 ibid.
42 Eriksson and Rowe, p. 303.
The Twentieth Amendment states that presidential and vice-presidential terms begin on January 20 and congressional terms on January 3rd. Section 2 of the amendment states that Congress shall meet at least once a year, beginning on January 3rd. Section 3 provides for presidential succession in the event the president-elect dies, no president has been chosen, or the president-elect fails to qualify. Section 4 allows Congress to deal with presidential succession in the event of the death or disqualification of presidential or vice-presidential candidates prior to the meeting of electors. The exact procedure is not specified.

The Twenty-second Amendment

The Twenty-second Amendment limits to two the number of times anyone can be elected president. While the success of the Twenty-second Amendment is viewed as Republican ex post facto revenge on the New Deal, even during the first hundred years of the Constitution there were 125 attempts to amend the Constitution with regard to presidential tenure, and between 1899 and 1928 there were eighty-five more attempts. The amendment was supported by

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Grimes, pp. 107, 108.

Eriksson and Rowe, p. 320.

Eriksson and Rowe, p. 321.
Republicans and southern Democrats. It took four years for the states to ratify, with support coming from generally Republican states and those in the South. It was ratified March 1, 1951.

The Twenty-third Amendment

The amendment to give the residents of the District of Columbia a voice in the electoral college also had a multitude of similar predecessors in Congress. Originally the residents were denied that right because some felt that the District would become a haven for criminals escaping the states. The Twenty-third Amendment had its origins as the third part of an amendment designed to remedy the hypothetical situation in which most of the House of Representatives were killed by atomic warfare (solution: have the governors appoint new members). Attached to this amendment were the unlikely companions of a voting rights amendment for D.C. residents and an anti-poll tax amendment. A proposal for all those amendments passed the Senate easily (70 yeas, 18 nays, 12 not.

47 Grimes, p. 115.
48 Grimes, p. 120.
49 Mitchell and Mitchell, p. 231.
50 Grimes, p. 108.
51 Mitchell and Mitchell, p. 231.
52 Grimes, p. 126.
The House, however, voted (without roll-call) on a narrower version of the Senate amendment(s) calling for D.C. representation only in the electoral college. The House version was then sent back to the Senate. It was the end of the session and the Senate accepted the House version without a roll-call vote taken. Opposition to the amendment came from the southern states, perhaps because the D.C. population was 54% black. None of the Deep South states ratified it. However, a three-fourths majority was obtained in less than a year and it became a part of the Constitution on April 3, 1961.

The Twenty-fifth Amendment

The assassination of President Kennedy in 1963 once again highlighted some deficiencies in constitutional provisions for presidential succession. Congress had enacted the Presidential Succession Act of 1947 making the Speaker of the House and the President pro tempore of the Senate next in succession to the Vice-President. However, it did not provide for replacement of the Vice-President should he become President. At sixteen different times in our history the country has not had a vice-

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53 Grimes, p. 127.
54 Grimes, p. 130.
55 Mitchell and Mitchell, p. 231.
56 Pritchett, p. 323.
president. When Lyndon Johnson became president, there was no vice-president from November 22, 1963 to January 20, 1965.\(^{57}\) Also, it was never exactly clear whether a Vice-President became President or merely Acting President. This is the difference between having the office and the "powers and duties" of the office.\(^{58}\)

Another significant problem was that of presidential disability. Who decides when the President is incapable of holding office? What would be the status of the Vice-President in such a situation? President Garfield was shot in July 1881; however, his death did not occur until September. Meanwhile, Vice-President Arthur performed only one official act, fearing that any performance of presidential functions would oust Garfield from office.\(^ {59}\) When President Wilson was incapacitated by a stroke for months, his wife and doctors filtered his access to presidential duties. An attempt by Secretary of State Lansing to have Vice-President Marshall take care of the presidential functions resulted in Wilson's request for Lansing's resignation.\(^ {60}\) After three major illnesses, President Eisenhower made an agreement with Vice-President Nixon to become Acting President under the appropriate

\(^{57}\) Grimes, p. 137.

\(^{58}\) Grimes, pp. 136, 137.

\(^{59}\) Pritchett, p. 325.

\(^{60}\) ibid.
circumstances. The need to avoid further constitutionally vague situations involving presidential succession was clear. The question was whether to solve the problem by statute or by constitutional amendment. It was felt that only a constitutional amendment would provide a clearly legitimate transfer of power. The Twenty-fifth Amendment easily passed both the House and the Senate. No state defeated ratification. The amendment makes it clear that a Vice-President becomes President, not Acting President, when succeeding the President. In instances when the office of Vice-President is vacant, the President, with congressional approval, can appoint a replacement. Section Three describes procedures to transfer duties of the President during a temporary disability when the President declares himself incapable of functioning and the Vice-President becomes Acting President. Section Four deals with the declaration of presidential disability by persons other than the President, and a method for the President to declare that the disability no longer exists.

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61 Grimes, p. 136.
63 Grimes, p. 147.
Summary

There are a number of common characteristics among those amendments whose goal was possible only through constitutional amendment. Perhaps the most prominent characteristic is the difficulty with which the amendments gained enough support for passage. Over the history of the Constitution there have been thousands of attempts at amendment. Among those thousands are the predecessors of amendments which eventually were successful. For example, there were hundreds of attempts to change the Constitution with regard to presidential tenure. And in situations such as the disability or death of the President, even a crisis was not impetus enough to promote bi-partisan support for an obvious constitutional problem.

Another characteristic of these amendments is that they often involved a partisan struggle. They did not achieve the support necessary for ratification until the party which favored the amendment acquired a strong majority in both Congress and the states. Frequently the opposition to the amendments was partisan and geographic.

Constitutional corrections by amendment illustrate that even when problems with the functioning of the original Constitution appeared, the corrections came slowly. Prior to their ratification political and sectional minorities prevented their adoption. When ratification did come, the required political majorities were in place in the states.
National Standard Setting Amendments

The previous section examined those amendments which were necessary to make changes in the Constitution. The policy of the other amendments could have been accomplished by ordinary legislative means. However, they were enacted to standardize a particular social policy nationwide. This usually occurs when the policy is already in place in a majority of states and a minority of states are brought into conformity with the rest of the country by constitutional amendment. In such cases the amendments do not produce wide-spread social change; the change has already been accomplished in most states. Given the difficulty of the amendment process, it is not surprising that production of social change via constitutional amendment would be rare. However, one of the standard setting amendments (18 year old suffrage) did just that and the Equal Rights Amendment, had it been ratified, would also have brought a majority of states into conformity with the few states that enacted equal rights amendments. Thus most standard setting amendments bring a minority of states into conformity with a majority of states but there was one amendment which brought the majority into conformity with a minority of states.

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Those amendments which created a standard national policy are the Bill of Rights, the Civil War amendments, the Seventeenth Amendment, Prohibition and its repeal, the Nineteenth Amendment, the Twenty-fourth Amendment, and the Twenty-sixth Amendment.

The Bill of Rights

The Bill of Rights was proposed to calm the fears of the Anti-Federalists about the untried new federal government. The new Constitution was supposed to have been merely a modification of the Articles of Confederation, the basis for the existing government. When instead a radically new form of government was presented to the states for their approval, many states balked at the idea of a strong, central government. The framers of the Constitution, however, felt power would be sufficiently checked and dispersed to avoid abuses. The Constitution was one of stipulated powers "intended to regulate the general political interests of the nation." Personal concerns were matters for the state governments and all but one state, New Jersey, had declarations of the basic rights of citizens. Certain specific restrictions, such as the prohibition against ex post facto laws, were denied Congress in Article One. The task of the Philadelphia convention was to provide the new central government with

65 Mitchell and Mitchell, p. 194.
the power the Articles of Confederation lacked.\textsuperscript{66}

After the first five states had ratified the new Constitution, the rest of the state ratifying conventions followed the example of Massachusetts which ratified after the promise that certain amendments would be added to the Constitution to check possible abuses of the federal government.\textsuperscript{67}

When the first session of Congress convened, James Madison had a list of over 200 proposed amendments from which to form a bill of rights.\textsuperscript{68} Twelve amendments were proposed by Congress, all but two were ratified.\textsuperscript{69} The Bill of Rights was not overwhelmingly received and was not ratified until North Carolina and Rhode Island finally ratified the Constitution (the Bill of Rights being an incentive for them to do so) and Vermont was admitted as a state. The newest three states ratified the first ten amendments, providing the necessary three-fourths majority.\textsuperscript{70} After all the clamor to get them proposed, Massachusetts, for example, failed to ratify them, and the first ten amendments barely made it into the Constitution.

\textsuperscript{66} ibid.
\textsuperscript{67} Eriksson and Rowe, 232.
\textsuperscript{68} Grimes, p. 9.
\textsuperscript{69} Eriksson and Rowe, pp. 284-285.
\textsuperscript{70} Grimes, p. 18.
Most states and the Northwest Territory already had a version of the Bill of Rights. The most notable version was the Virginia bill of rights (1776) which became a model for others. It included such rights as freedom of religion, due process, trial by jury, and freedom from unwarranted search and seizure, excessive bail, and cruel and unusual punishment. In seeking a national bill of rights, citizens attained protection from abuses by a new layer of government, protection most of them already had from their state government.

The Civil War Amendments

The Thirteenth, Fourteenth and Fifteenth Amendments ended slavery and gave Negroes full citizenship. The history of the Civil War amendments reveals it was not consensus among all states, but a long, bloody civil war which forced the necessary states into ratification.

After the election of Lincoln, in 1861 a proslavery amendment was approved by Congress and sent to the states. The secession of southern states from the union enhanced the position of abolitionists and by default left the Republican party, a party with abolitionist origins, in control of Congress. By late 1863 it was obvious there would be no peaceful solution to the North-South

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71 Grimes, p. 5.
72 Grimes, p. 34.
disagreements. At that point the Thirteenth Amendment was introduced in the House. It did not get congressional approval, however, until February 1, 1865 when the election of 1864 had further depleted the ranks of congressional Democrats and it was clear the Union would win the war.

The Fourteenth Amendment was ratified by coercion. After the Civil War the southern states had reconstructed themselves according to the plan of President Johnson and sent representatives to Congress. The Congress was at odds with the President over reconstruction and refused to seat the southern representatives. Instead they created their own reconstruction plan, which was vetoed by Johnson. In order that their reconstruction plan "would be able to overcome (sic) a presidential veto, survive the scrutiny of judicial review, and be beyond congressional repeal in the future" the civil rights objectives were put in the form of a constitutional amendment. Congress then informed the states they would be considered reconstructed if they ratified the Fourteenth Amendment. President Johnson advised the states not to ratify, and only Tennessee did, thus rejoining the Union in the eyes of Congress.

Overcoming another presidential veto, the Congress passed a

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73 *ibid.*

74 *Grimes,* p. 38.

75 *Eriksson and Rowe,* pp. 298-299.

76 *Grimes,* p. 42.
more extreme military reconstruction act and again made the Fourteenth a condition of re-admission to the Union and renewal of congressional representation.\textsuperscript{77}

In order to guarantee the franchise for Negroes (who were assumed to vote Republican) in both the North and the South, the Fifteenth Amendment was proposed. When left to the public's choice, northerners as well as southerners were likely to deny Negro suffrage.\textsuperscript{78} However, in 1869 Republicans had control of most state legislatures and four southern states were required to vote for the Fifteenth and Fourteenth amendments to be re-admitted to the Union.\textsuperscript{79} Thus, with the necessary, but not quite voluntary, help of four southern states, the Fifteenth was ratified.

The Civil War amendments, which had profound policy impact on the nation, were not the result of consensual decision-making. They were the result of a war. Many states that ratified them were in no position to refuse ratification. This was policy change under most unusual circumstances.

\textsuperscript{77} Eriksson and Rowe, p. 299; Freedman, Samuel S., and Naughton, Pamela J., \textit{ERA: May a State Change its Vote?}, Wayne State University Press, Detroit, 1978, p. 15.

\textsuperscript{78} Grimes, p. 53.

\textsuperscript{79} Grimes, p. 58.
The Seventeenth Amendment: Direct Election of Senators

The Seventeenth Amendment changed the election of U.S. senators from election by state legislatures to direct election by the people. This particular amendment was needed because the method for the election of senators prescribed by the Constitution was breaking down and could not be changed by statute. However, it was in fact a national standard setting amendment because by the time of its passage most states had effectively enacted direct election of their senators. Also, like other amendments in this group, it expanded citizen rights and was part of a larger political movement, the reform movement.

Amendments to provide for the direct election of senators were introduced frequently in Congress beginning in 1826. In many congresses numerous attempts were made. In the Fifty-second Congress twenty-five resolutions on the subject were introduced. The House repeatedly adopted the resolutions, while the Senate failed to act.

Around the turn of the century, pressure to change the system increased. This was largely due to two factors. The first was the abundance of deadlocked Senate elections in the states. The second was the reform movement. Practical and political pressure eventually moved the

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80 Ames, p. 61.
81 ibid.
82 Swisher, p. 558.
Senate to allow itself to be changed.

The practical pressure resulted from deadlocked Senate elections. Between 1891 and 1905 there were forty-six deadlocked senatorial elections. In fourteen of those instances, the result was that no one was elected.83 Some state legislative sessions were totally devoted to electing a senator.84

To avoid the circumstances of not having an elected senator, many western states adopted a method that virtually allowed direct election of senators. The Oregon plan essentially used the same method employed to democratize the Electoral College. A preferential primary registered the popular vote of senatorial candidates. Candidates for the state legislature were then asked to indicate whether or not they would vote for the candidate who had received the most popular vote.85 By 1912, twenty-eight states had adopted some method which amounted to direct election of their senators.86 Also, by 1909 thirty state legislatures had called for a constitutional convention to provide an amendment the Senate seemed determined to stop.87

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83 Eriksson and Rowe, p. 305.
84 ibid.
85 Grimes, p. 76.
86 Eriksson and Rowe, p. 306.
87 ibid.
At the same time that state legislatures were bogged down in electing senators, various political groups were calling for the direct election of senators along with other political reforms such as primary elections, referenda and woman suffrage. Leaders of the Democratic and Republican parties joined the Populist, Prohibition and Independence parties in support of direct election of senators.88 The urban political machines and corporate power in general were seen as undemocratic influences over the selection of senators. The remedy was to elect senators directly.89

Opposition to the Seventeenth Amendment came largely from Republicans of the urban northeast and southern Democrats. The southerners feared the amendment would mean federal intervention in their elections, i.e. the removal of obstacles to Negro suffrage.90 On May 13, 1912 the Seventeenth Amendment was finally passed by Congress. The ratification of the amendment took only eleven months. The response of the southern states was not to act on the amendment at all.91

88 ibid., p. 305.
89 Grimes, p. 75.
90 Grimes, p. 82.
91 ibid.
The Prohibition Amendment

The prohibition amendment was part of a social movement that had swept the country. Although it later came to be widely regarded as a mistake, the campaign for prohibition fit neatly into the political climate of its time and thus reaped the benefits of association with the reform movement and the patriotism of World War I.

Of course, the real driving force behind prohibition was the tireless crusade for temperance which had begun as an organized movement as early as 1826, almost a century before the prohibition amendment. At the forefront of the successful movement to dry out America was the Anti-Saloon League. The League's effectiveness was due to a remarkable grass-roots organization. The state Anti-Saloon Leagues were organized using local churches as their base units. Further up on the hierarchy were the local, county, and the state leagues. The state officials oversaw the activities in each state, with emphasis on lobbying the state legislature. Annually there was a conference to teach new workers and leaders the League methods. Funding came from pledge cards passed out in local churches.

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92 Eriksson and Rowe, p. 307.
93 Vose, p. 81.
94 Vose, p. 82.
The League became adept at drafting legislation and using the legislative process from the local level to Congress. Adopting a piecemeal approach, the League worked for prohibition at all governmental levels.\textsuperscript{95} They were so effective that by the time the prohibition amendment was considered in 1919, thirty-three states already had prohibition provisions in their constitutions.\textsuperscript{96} The temperance advocates realized, however, that as long as there were pockets of "wet" territories, prohibition in "dry" territory was threatened. Thus, in their view, effective prohibition meant national prohibition. When the prohibitionists turned their attention to a constitutional amendment, they had already achieved their victories in towns, counties and state legislatures.

To add to the strength of local dry crusaders, the prohibition movement benefited from two other distinct social phenomena. One was World War I and the other was the turn of the century political reform movement.

The reform movement was largely a middle-class, white, Anglo-Saxon, Protestant attempt to purify politics in America, especially in large cities where corrupt political machines were fueled by non-Anglo-Saxon Protestant immigrants. More was at issue than big city bosses. The nativist backlash against a new kind of non-Anglo-Saxon

\textsuperscript{95} Vose, p. 76.

\textsuperscript{96} Vose, p. 72.
Protestant immigrant was growing. This movement showed its strength in small towns and rural areas free from the immigrant invasion.\textsuperscript{97} Prohibition was seen as a method to reform politics.\textsuperscript{98} However, the real struggle was cultural. The new Catholic and Jewish immigrants with their different languages, customs and religions were perceived as a threat to the native American.\textsuperscript{99}

Added to the prohibitionists' excellent grass-roots organization and the cultural backlash of the reform movement was the patriotic fervor of World War I. It did not help the United States Brewers Association that most were German, and Bavarian Catholics at that.\textsuperscript{100} The election of 1916 sent a dry Congress to Washington\textsuperscript{101} and succeeded in passing a series of acts supposedly designed to conserve food during wartime. At first food could not be used to make intoxicating beverages, later there was a prohibition on the sale of the beverages.\textsuperscript{102} National prohibition was essentially a \textit{fait accompli} before the Eighteenth Amendment.


\textsuperscript{98} Grimes, p. 89.

\textsuperscript{99} Ladd, p. 145.

\textsuperscript{100} Vose, p. 89.

\textsuperscript{101} Vose, p. 91.

\textsuperscript{102} Eriksson and Rowe, p. 309.
The constitutional cause of prohibition was aided by the fact that after the Civil War the new states added to the union were Protestant and Progressive. Also, the reapportionment of the House in 1910 favored rural interests, which were dry, and stayed that way for twenty years because there was no reapportionment in 1920 due to lack of agreement on the plan. Even if the states had large immigrant populations from cultures which condoned drinking, the immigrants were not often eligible voters. It takes time for them to become citizens and for their children, born in America, to grow up and vote. It also takes time for them to become politically mobilized so that they do vote, when able to, and have some party identification. Many non-Protestant immigrants became citizens in the 1920's and gradually became politically mobilized, after national prohibition had taken effect. By the 1932 election, when prohibition was a proven disaster, they began voting.

103 Vose, p. 84.

The Twenty-first Amendment

Political reformers had looked to prohibition to clean up politics. When that failed, the temperance purists lost their allies and could not stave off repeal.\(^{105}\) The repeal forces astutely chose state ratifying conventions to amend repeal in order to avoid the state legislatures still under dry control.\(^{106}\)

The Nineteenth Amendment: Woman Suffrage

Like prohibition, the extension of women's suffrage by the Nineteenth Amendment created national uniformity. Prior to the Nineteenth Amendment, successful campaigns in the states had produced a patchwork of woman suffrage. In some states women could not vote at all, in some they could vote for president and in others they could vote only on local matters.

The woman suffrage movement and the abolitionist movement complemented one another. Woman suffrage, which had its origins prior to the Civil War, went into a kind of remission during the war while abolitionist activities dominated. The leaders of the women's rights movement, Susan B. Anthony, Elizabeth Cady Stanton, Lucretia Mott and others turned their energies towards the campaign to pass the Thirteenth Amendment.\(^{107}\) While the women's movement

\(^{105}\) Grimes, p. 90.

\(^{106}\) Vose, p. 112.
was temporarily eclipsed by the Civil War, the time spent on behalf of abolitionist causes proved useful for the future. In that fight, women learned to organize and use the political system.108

The women expected that as Negro rights were extended, so would be rights for women. They were mistaken. The abolitionists did not want to complicate matters with an issue for which the public held little sympathy. Beginning in 1867, women began their own movement to gain suffrage.109

At that point a division occurred in the movement. Susan Anthony and Elizabeth Cady Stanton led one group which tried to use the courts to grant women the vote under the Fourteenth Amendment. When that failed, they sought a constitutional amendment and organized the National Woman Suffrage Association to bring it about.110

Another approach was utilized by the followers of Lucy Stone who founded the American Woman Suffrage Association and sought suffrage through state action.111

108 Flexner, p. 41.
109 Flexner, p. 150.
110 Vose, p. 64.
111 Eriksson and Rowe, p. 314.
Suffrage for women began in the West where women were scarce and had to endure the rigors of pioneering along with the men. The Wyoming territory first gave women the vote in 1869 and included it in its constitution in 1890. Wyoming was slowly followed by other western states and suffrage for women gradually moved eastward.\(^{112}\) The American Association spent fifty-two years putting woman suffrage into state law. Among other endeavors, they campaigned for fifty-six referenda and over four hundred attempts to have states submit the woman suffrage issue to the voters.\(^{113}\)

The state by state approach worked so well that by the time Congress proposed the Nineteenth Amendment, seventeen states had full woman suffrage, fourteen permitted them to vote in presidential elections, and in the other seventeen states some allowed women to vote on local matters.\(^{114}\) The states which did not grant women the vote were to be found concentrated in the South and along the eastern seacoast.\(^{115}\)

The woman suffrage movement, after some initial victories in the West, went through a long period during which little progress was made in the states. Congress

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\(^{112}\) Eriksson and Roe, p. 314.  
\(^{113}\) Flexner, pp. 176 and 228.  
\(^{114}\) Vose, p. 64.  
\(^{115}\) Vose, p. 54.
ignored the suffrage amendment and the overall movement was fraught with internal dissension and lack of national leadership.

Opposition to woman suffrage came from diverse sources. The monolithic southern opposition was due to fears of federal intrusion into voting rights. The South had managed to deprive Negroes of the franchise and did not want the situation disturbed. Also, some southerners viewed giving women the vote contrary to the laws of God.\footnote{Grimes, pp. 91-92.}

In the Middle West and elsewhere the brewing industry went to great lengths to defeat woman suffrage. In some instances it was alleged the industry was involved with election fraud in a number of state referenda.\footnote{Drys and suffragists were often allied as were wets and anti-suffragists. The progressives, who wanted reform and purity in social life and politics, championed the cause of woman suffrage.\footnote{The Prohibition Party endorsed voting rights for women in 1872. The Progressive Party endorsed it in 1912.\footnote{In the West, woman suffrage was looked upon as a purifying influence on politics. Women were seen as maintaining the traditional social values the reform movement}}
movement sought to preserve. They were also seen as a means of enlarging the nativist vote.\textsuperscript{120}

In the East opposition came from industry fearful of the growing labor movement which the suffragists supported. Woman suffrage and socialism were felt to go hand in hand.\textsuperscript{121} Also, at least initially, political machines like Tammany Hall opposed votes for women, because they feared that women would be reform minded.\textsuperscript{122} Added to this came a chorus of states' rights arguments from eastern as well as southern opponents.

In 1916, Carrie Chapman Catt, president of the National American Woman Suffrage Association, developed a six year plan of action to finally get the woman suffrage amendment ratified. One first step was to get President Woodrow Wilson to support it. The next step was to organize and coordinate activities in both Washington and the states. Along with a congressional lobby, she saw the need for organizations in at least 36 states to ensure pressure on Congress from home and to be ready to fight for ratification in the states when the amendment left Congress.\textsuperscript{123}

\textsuperscript{120} Grimes, p. 93.
\textsuperscript{121} Grimes, p. 94.
\textsuperscript{122} Flexner, p. 309.
\textsuperscript{123} Flexner, pp. 289-292.
In 1918 the House approved the amendment by a bare two-thirds majority, but the Senate rejected it by two votes.\textsuperscript{124} In the spring of 1919, President Wilson called a special session of Congress and urged the passage of the Nineteenth Amendment. The House passed it 304-90, opposition coming from eastern Republicans and southern Democrats. The Senate barely gave it a two-thirds majority (56-25, with 15 not voting), again with opposition coming from eastern Republicans and southern Democrats.\textsuperscript{125}

Mrs. Catt's plan of readiness in the states appeared to have been successful. In a little more than a year, thirty-six states had ratified. Twenty-nine ratifications occurred in special sessions of state legislatures. In twelve states both houses of the legislature gave it unanimous approval.\textsuperscript{126}

The last state to ratify was Tennessee. The amendment easily passed the Senate, but met staunch opposition in the House where the vote finally turned on a young legislator whose mother, a suffragist, had written him to urge him to vote for the amendment.\textsuperscript{127} On August 26, 1920 ratification of the Nineteenth Amendment was proclaimed. Five days later the Tennessee House rescinded its ratification, but

\textsuperscript{124} Eriksson and Rowe, p. 316.
\textsuperscript{125} Grimes, p. 95.
\textsuperscript{126} Eriksson and Rowe, p. 317.
\textsuperscript{127} Flexner, p. 337.
The Twenty-fourth Amendment: Anti-Poll Tax

The Twenty-fourth Amendment bars the use of the poll tax as a prerequisite for voting in federal elections. At the time of its passage only five states used the poll tax, all of them in the South. Previous attempts at elimination of the poll tax began in the 1940s and were passed by the House five times, but killed by filibuster in the Senate.\(^{129}\) Senator Holland of Florida began introducing an anti-poll tax amendment from 1949 on, but each time the measure was killed by the Senate Judiciary Committee.\(^{130}\)

In 1962 Holland contrived to outmaneuver the Judiciary Committee by originally proposing a resolution to make a house which once belonged to Alexander Hamilton a national monument. However, the poll tax amendment was substituted when the vote was taken.\(^ {131}\)

Southerners opposed the amendment on states’ rights grounds. Many liberals felt the amendment approach was needlessly difficult and the same results could be obtained by congressional legislation. Holland argued that the statutory route would result in delays by court tests and

\(^{128}\) Eriksson and Rowe, p. 317.


\(^ {130}\) *ibid.*

\(^{131}\) Grimes, p. 131.
perhaps be ruled unconstitutional. The final Senate vote was 77 yeas, 16 nays, 7 not voting.\textsuperscript{132}

In the House, the Rules Committee had refused to allow the resolution to come to the floor. Thus sponsor Celler brought it up under a suspension of the rules. The resolution also arrived with a gag rule limiting debate to forty minutes and not allowing any amendments.\textsuperscript{133} House arguments mirrored those of the Senate. When the vote was taken it passed 294 yeas, 86 nays, 1 present and 54 not voting.\textsuperscript{134}

In the states, opposition came from the South and Wyoming. It was declared ratified on February 4, 1964.\textsuperscript{135}

The Twenty-sixth Amendment: The 18 Year Old Vote

In the other amendments in the national standard setting category, the policy standard was effectively in place in most states before the amendment reached the states for ratification. The Twenty-sixth, and last amendment, did not follow that pattern. At the time of its congressional consideration, only four states permitted voting under the age of 21. They were Georgia, Kentucky, Alaska and

\textsuperscript{132} Grimes, pp. 131-132.

\textsuperscript{133} Grimes, p. 133.

\textsuperscript{134} Grimes, p. 135.

\textsuperscript{135} ibid.

\textsuperscript{136} Mitchell and Mitchell, p. 235.
Thus, the Twenty-sixth Amendment accomplished real change in the voting rights of most 18 to 21 year olds.

The goal of this amendment could have been accomplished by statute. The first attempt to grant 18 year olds the right to vote in all elections was in a rider to the Voting Rights Act of 1970. However, the legal community was divided over whether this approach was constitutional or not. Many felt the only solution was by constitutional amendment. The Voting Rights Act was quickly tested in the courts, and with remarkable speed achieved a Supreme Court ruling. In *Oregon vs. Mitchell* the court declared that it was constitutional for 18 year olds to vote in federal elections, but that the age requirements for state and local elections be determined by each state.

This situation meant that, unless most of the states quickly changed their constitutions, the states faced the complicated and expensive situation of dual age voting in the 1972 election. The Ninety-second Congress in 1971 received great pressure from state officials to do something about the situation. Senator Randolph (D-Va.) had long supported an amendment to allow 18 year olds the vote in

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\(^{137}\) Grimes, p. 142.

\(^{138}\) Vose, p. 358.

\(^{139}\) Grimes, p. 142.

\(^{140}\) Mitchell and Mitchell, p. 235.
all elections. He introduced the amendment with 86 co-
sponsors.141

Also, the general trend of the 1960's towards extension
of civil rights and the injustice of drafting men to fight
for a social policy in Vietnam that they were powerless to
vote against, provided a movement for the 18 year old
vote.142

The fact that a presidential election was approaching
and the states were facing a very difficult problem, meant
there was basically no opposition to the amendment. It
passed the Senate 94 yrs, 0 nays, 6 not voting.143 There
was some opposition in the House mainly on states' rights
grounds. However, it passed the House 401 yrs, 19 nays,
12 not voting. The whole congressional consideration and
passage took only two months. In less than three and a
half months the necessary states had ratified.144

Summary

National standard setting amendments differ from the
other successful amendments in that their policy goals were
often implemented by statute prior to their adoption as
amendments. In most instances the policy of the amendmen

141 Grimes, p. 144.
142 Grimes, p. 141.
143 Grimes, p. 145.
144 Grimes, p. 147.
had already achieved national support after developing acceptance over a long period of time. The issues of the amendments were also often associated with social movements and new political majorities.

**UNSUCCESSFUL AMENDMENTS**

Immediately after the government began operating under the new Constitution, the attempts to amend it began. Corrections to perceived defects in the basic structure of the government were instigated before there was much experience with the actual functioning of the government. The number of amendments submitted to Congress for approval runs into the thousands.\(^{145}\) Out of the thousands, only thirty-three received congressional approval, and only twenty-six were ratified by the states.

Many of the thousands proposed were the precursors of amendments that eventually did succeed. However, it is clear that the preponderance of amendments submitted to Congress failed to gather the necessary two-thirds support required to send them on to the states. The subject matter of those proposed amendments varies greatly. Their goals have included either curbing or broadening the powers of various parts of the government, limiting the wealth of individual citizens, requiring a popular referendum for a

\(^{145}\) See Swisher, also see Ames for an exhaustive account of amendment attempts in the first 100 years of the Constitution.
declaration of war, and a vast range of other topics. Once the congressional majorities have been achieved, however, the tendency is for the states to ratify. This tendency is understandable given the histories of the successful amendments, which primarily amassed support in the states prior to congressional approval.

Only seven amendments of those receiving congressional approval failed to be ratified by the states. Four of those amendments were pre-Civil War amendments and dealt with Congress. Two of those amendments were presented to the states with the rest of the Bill of Rights. One amendment specified the ratio between population and representatives. The other amendment would not have allowed congressional pay raises to take effect until the next session of Congress. In 1810 an amendment left Congress which would enable Congress to revoke the citizenship of anyone who accepted a title of nobility from a foreign power. Fifty years later, in 1861, when seven states had already seceded from the Union, a conciliatory amendment prohibiting congressional interference with slavery passed a Congress still pledged not to interfere

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146 Swisher, pp. 732-733, see also Ames.


with slavery. Only two states, Ohio and Maryland, ratified it.\textsuperscript{149} The secession of more states and the increase in abolitionist strength prevented ratification before the Civil War settled the issue.

The three post-Civil War amendments which the states have failed to ratify are the Child Labor Amendment, the District of Columbia representation amendment and the Equal Rights Amendment. The Child Labor Amendment and the Equal Rights Amendment both involved attempts to by-pass restrictive decisions of the Supreme Court and to extend to Congress power in areas previously controlled by the states. The District of Columbia representation amendment seeks to extend full representation privileges to the residents of the District of Columbia.

The turn of the century progressive movement which aided the Woman Suffrage Amendment and Prohibition also created support for the movement to prohibit child labor. The impetus for such regulation was both humanitarian and economic. The humanitarian argument stemmed from the fact that 11\% of children aged 10 to 15 were employed, often under atrocious conditions.\textsuperscript{150} Restrictions on child labor varied greatly from state to state. The National Child Labor Committee was formed in 1904 to be a moral force for

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\textsuperscript{149} Grimes, p. 34.
\textsuperscript{150} Grimes, p. 102.
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the protection of children.\textsuperscript{351}

From an economic position, unions opposed child labor because it depressed wages. States that had strict child labor regulations were at an economic disadvantage in relation to states that allowed child labor and thus lowered manufacturing costs.

Congress made two attempts to control child labor by statute, but both were ruled unconstitutional by the Supreme Court. In 1916 Congress prohibited the interstate shipment of goods produced by child labor. However, in 1918 in \textit{Hammer v. Dagenhart} (247 U.S. 251) the Supreme Court ruled that the act was an invasion of the reserve powers of the states. In 1919 Congress approached the issue by taxing the profits of firms which used child labor. But again in 1922, the Supreme Court in \textit{Bailey v. Drexel Furniture Company} (259 U.S. 20) invalidated the act.

At that point Congress proceeded to attempt to by-pass the Supreme Court rulings by constitutional amendment. The proposed amendment would have given Congress the power to "limit, regulate and prohibit the labor of persons under 18 years of age." There was no time limit placed on the ratification of the amendment. Proponents of the amendment included unions, the National Child Labor Committee and many women's organizations which would later support the Equal Rights Amendment.

\textsuperscript{351} Vose, p. 248.
Opposition to the Child Labor Amendment came from those regions which had an economic advantage in the use of child labor and from conservative groups which generally feared more government intrusion into personal life. The southern states and certain northern industrial states, such as New York and Massachusetts, were opposed. Agriculturally dominated states were also against any labor regulation. States' rights arguments were cited and the Child Labor Amendment was declared to be another step toward socialism. Various conservative groups, notably the Sentinels of the Republic, joined forces with the Catholic church in stopping the amendment. The church hierarchy felt the amendment would usurp the influence of the family and the church.\footnote{ibid.}

The conservative groups and regional economic interests did effectively block the ratification of the amendment. Only twenty-eight states ratified. However, the mood of the country was shifting. With the election of Roosevelt and the legislative programs of the New Deal came the Fair Labor Standards Act of 1938 which restricted child labor. In 1947 a Supreme Court with new personnel upheld the act in \textit{U.S. v. Darby Lumber Co.} (312 U.S. 100).\footnote{Swisher, p. 732.} The unratified Child Labor Amendment was no longer necessary.
The most recent constitutional amendment which remains unratified and is currently before the states is the District of Columbia representation amendment. The proposed amendment would treat the District as a state for congressional and electoral college representation, and also for the ratification of future amendments. It would repeal the 23rd Amendment which gives the District representation in the electoral college equal to that of the least populous state.

The District has a population greater than that of ten states, however it has been represented in Congress since 1970 by one, non-voting delegate. Full representation would probably give the District two representatives, plus two senators. Since 1800 there have been twenty-three attempts to provide the District with congressional representation.154

Arguing for the measure, Senator Edward Kennedy (D-Mass.) claimed it was an issue of "justice and equality." Over time the main argument has been that D.C. residents were being taxed without representation in Congress.155 Opposition arguments have centered on the fact that the District is not a state and thus should not be treated as

155 ibid.
such opposition in the Senate came from less populated western states and the South.

The House passed the amendment March 2, 1978 by a 289-127 vote margin, eleven votes more than the required two-thirds majority. In the Senate on August 22, the vote was 67-32, only one vote more than necessary. The amendment was given seven years for ratification. By June of 1982 only ten states had ratified.

The D.C. representation amendment would seem to be an amendment without a constituency in the ratification process. There are humanitarian reasons to give the residents of Washington the same representation the rest of us enjoy; however, when a state votes to count the District as a state in the electoral and amendment process, that state dilutes its own influence. This is especially true of small states with little population. The constituents of state legislators have no self-interest at stake in the measure. There appears to be no nationally organized groups or movements associated with the amendment. Thus, ratification prospects do not seem good.

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157 The 1978 Congressional Quarterly Almanac, p. 793.

158 The 1978 Congressional Quarterly Almanac, p. 794.

If there is a common denominator among the small group of amendments which passed Congress yet failed in the states, it is that prior activity in the states was inappropriate, largely absent, or in the case of the Child Labor Amendment, weak.

The four pre-Civil War proposed amendments dealt with congressional powers. They do not seem to be issues which would emanate from the states, due to concerns of the states or constituency pressure. Successful amendments which involved governmental powers were not the subjects of state legislation and usually arose from impending political crises. There does not appear to have been such impetus for matters such as the revocation of citizenship for titled Americans. The slavery issue was a matter of deep concern for the states, but the pro-slavery amendment surfaced at a time of deep division over the issue, a disastrous environment for amendment ratification.

The states do not seem to be under any pressure to ratify the District of Columbia amendment, an issue which has virtually disappeared from the political agenda. Also, as mentioned, the states have a disincentive to ratify the amendment because it dilutes their influence.

Of the unratified group the Child Labor Amendment most closely followed the pattern of the successful amendments by
being part of a larger reform movement and gaining some success in the states prior to congressional approval. However, the opposition to it was well organized and a significant minority of the states had an economic interest in preventing restrictions on the employment of children.

**CONCLUSION**

The preceding histories of the successful amendments illustrate that the concepts of minority veto, federalism and incrementalism are at work in the amendment process to only allow ratification of amendments which emerged from particular kinds of circumstances.

One of the most prominent aspects of the history of most of the amendments is the fact that prior to ultimate congressional approval, the amendment, or some version of it, met with repeated failure. Thousands of proposed amendments failed to muster the necessary two-thirds majorities. In a few cases the amendment attempts ranged over 50 to 100 years and involved hundreds of resolutions introduced in Congress. The necessity of achieving a two-thirds majority, or put another way, the ease of minority veto, has meant that change through constitutional amendment has not come swiftly. The issues involved were given ample time for public debate and the mobilization of political support.
Another characteristic of successful amendments is that they were often one of the (if not the major) issues in a larger political movement. Sometimes the movements were associated with the ascent of new political parties. Thus, the Civil War amendments resulted from the dominance of the new Republican party, itself the vehicle for the expression of the Abolitionist movement. Because issues like prohibition and woman suffrage were associated with a larger political trend, the movement towards political reform, the success of the political movement meant there existed political majorities and organizations ready to work for the issue the amendment concerned. Often the successes of the new political coalition enabled the election to Congress of persons sympathetic to the movement's goals, and created the support necessary for congressional passage of the amendment.

Because victories in local and state elections or in state legislatures usually preceded congressional passage, the political movements frequently achieved in the states the policy goals of amendments well before the amendments were proposed by Congress. With all but one of the national standard setting amendments, before congressional approval a majority of the states has passed legislation which achieved the same result as the amendment. In effect then, most of the national standard setting amendments did
not produce a policy change in the vast majority of the states because the policy was already in place. Constitutional amendments have rarely promoted change on a national scale. They have affected only a minority of the country by creating a uniform national policy. Real policy change came in increments as gradually more and more states adopted the policy, prior to its proposal by Congress in the form of an amendment.

The power of states in the federalistic structure of the amendment process is clear. In essence the states have been the source of the national standard setting amendments, as well as the final judges on ratification. The groundwork for many amendments was laid by local political victories which sent to Congress like-minded people. Once amendments were proposed, ratification was easier if the same policy was in effect in the states. For example, the temperance groups first found success in local and state elections. They created state majorities to make the states dry and elected congressmen who would propose to make the country dry. When the Prohibition Amendment arrived in the states, the groundwork for its ratification had already been in place. The only national standard setting amendment which did not have prior success in a majority of the states was the 18 year old vote amendment. However, the impetus behind it came from the states which faced a costly and confusing election without it.
The lack of rapid change in the Constitution has applied to the other amendments as well. Situations which desperately needed attention, and could only be remedied by constitutional amendment, were not resolved because even in the face of political crisis the support necessary for an amendment was not quickly gained.

The amendment process was designed to allow for change, but also designed to make it difficult to achieve. Article Five of the Constitution has worked well to maintain the stability of our government, and yet enable our fundamental law to slowly adapt to the needs of a changing society.
Chapter III

THE CONGRESSIONAL HISTORY OF THE ERA

The congressional passage stage of the Equal Rights Amendment differed from that of other amendments in two important respects, timing and procedure. Both of those aspects reflect the fact that the ERA's congressional passage was not the culmination of the 20th century drive for women's rights, but rather the beginning.

The histories of past amendment attempts indicate that the pivotal point in the progress of successful amendments is congressional approval. The histories discussed in Chapter Two illustrate why that has been the case. They show that congressional passage was often the result of new political majorities in Congress which reflected the political sentiment of the nation as a whole. Local success in the form of state statute and the election of responsive legislators most often preceeded the introduction of policy in amendment form. Because the ERA became an issue at the beginning of the new women's movement, the political machinery necessary to secure ratification in the states did not emerge until after congressional passage.

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The congressional passage of the ERA is marked by unique procedural events, most notably its sudden floor appearance due to discharge petition. Other amendments followed the usual legislative procedures which are accompanied by long consideration amid the lobbying of proponents and the opposition, and often constituency pressure for action. The ERA followed a very distinctive congressional course, which proved successful in that congressional passage was obtained. However, the sometimes glacial movement of legislation through normal channels requires the kinds of depth of support necessary for amendment ratification in the states. It became clear that at the time of congressional passage the ERA had yet to acquire that kind of political support.

The following examination of the congressional history of the ERA is important because the nature of that passage foretells difficulties in state ratifications. Most frequently in articles and books on the ERA the congressional stage is glossed over, no doubt due to the uninterestingly lopsided quality of the final votes of both the House (354-12) and the Senate (84-8). The details of the history of the ERA in Congress will reveal that the votes mask a shallowness of support for the amendment, which became evident as the state ratification stage evolved.
There were two distinct periods of ERA congressional history. One basically dormant period prior to 1970 and the period of active consideration which followed 1970. The first period was marked by token support, lack of organization both for and against the amendment and general legislative inactivity on the issue. The second period of ERA consideration was marked by the surprising effectiveness of ERA supporters and the unusual methods they employed.

**CONGRESSIONAL CONSIDERATION OF THE ERA BEFORE 1970**

The battle for ERA ratification began in 1923. It was introduced by the National Women's Party because of judicial rulings that sex was a legitimate basis for class legislation. The refusal of the Supreme Court to make sex a suspect classification under the equal protection clause of the Fourteenth Amendment was and continues to be the major rationale of the need for the Equal Rights Amendment.

Since 1923 some version of an equal rights amendment has been introduced in every Congress. The original version was "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction." In 1943 it was revised to read "Equality of rights under  

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the law shall not be denied or abridged by the United States or by any state on account of sex." Routinely, every year about 100 legislators would introduce women's rights bills, but little or nothing was done to promote their passage.161

In its half-century of apparent congressional limbo, the ERA did receive hearings from the Senate Judiciary Committee and it was approved and sent to the floor. The Senate passed it in 1950 and 1953 but with an amendment attached which allowed for the retention of "any rights, benefits or exemptions now or hereafter conferred by law upon members of the female sex."162 This was the Hayden amendment and it effectively nullified the ERA. When it was first introduced by Sen. Carl Hayden (D-Arizona) it was passed unanimously, indicating a lack of support for the original version.163 When the ERA was introduced in the Senate in 1959, the sponsors withdrew it because the Hayden rider was again attached.164 During this period Senate action was futile because the House had sent the ERA to a legislative oblivion. The House Judiciary Committee held


163 Sherrill, p. 110.

164 Boles, p. 38.
hearings on it only once, in 1948. From then on each year when an equal rights resolution was introduced in the House it automatically went to Emanuel Celler's Judiciary Committee where no action was taken on the bill.

The ability of the House Judiciary Committee, and especially its chairman Emanuel Celler (D-New York), to essentially veto the ERA for many years indicates that there was little political force behind the ERA to even move it through normal legislative procedures, such as hearings and a floor vote.

THE 91ST CONGRESS

The House

What happened in 1970 that caused the momentum to build for congressional ERA passage? Simply put, it was the women's movement, the emergence of an organized, effective lobby. It is not the intent here to develop a history of the women's movement in America or enumerate the many valid social and economic reasons for its rise; that has been admirably done elsewhere. Among other things, the civil rights movement failed women. As Jo Freeman elaborates in *The Politics of Women's Liberation*, many women who had worked hard to end discrimination against blacks and fight against the war in Viet Nam discovered that the battles

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165 ibid.
they had won were for others and that, even within the 60's and 70's movements to end injustices, women were discriminated against and their problems ridiculed. If women's rights were to be secured, it would have to be done by women themselves, within their own political movement.

Previously women's rights advocates were listened to and then ignored. But by 1970 the ladies were using the media to dramatically maintain their visibility. At that time there was a reservoir of women who had been active in civil rights organizations and the anti-war movement. They were politically involved in other causes and had experience which allowed quick mobilization when the ERA needed rescuing from the House Judiciary Committee by discharge petition.

One influential group was the Citizen's Advisory Council on the Status of Women. Picked by President Nixon, they were successful, professional women. On February 7, 1970, they endorsed the ERA and sent a legal analysis to Nixon and the press. The analysis was written by Mary Eastwood, a lawyer in the Justice Department and a founder of the National Organization for Women. This legal analysis was to become the cornerstone of the 1970 ERA debate. Another group which wished to address women's issues was the Nixon-appointed Task Force on Women's Rights and Responsibilities.

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866 Freeman, p. 272.
The Republican women who had been politically active on behalf of Nixon and Agnew discovered that the White House ignored their concerns. They were angry and eager to support women's rights.167

The impetus to do something in behalf of women's rights seems to have come from a wide spectrum of women. There were those from the New Left who discovered that male leadership attitudes toward women kept them in subservient and sexually stereotyped roles. Republican women also discovered blatant discrimination within their political party. Apart from women themselves, no one took women's issues seriously. While not unified into a common organization, women from very diverse political backgrounds had the shared experience of being treated as second-class citizens and not having their problems taken seriously. They were highly motivated to have their problems addressed and could tap into a variety of existing organizations. Like the suffrage movement, the women's movement began with women who had a wealth of political experience.

By 1970 the effect of Title VII of the Civil Rights Act was being felt and the courts were invalidating state protective labor legislation. Some labor organizations reversed themselves and endorsed the ERA. Endorsements also came from the Citizens' Advisory Council on the Status of Women and the Labor Department. Women demonstrated at a

167 Sherrill, p. 103.
Senate Judiciary Subcommittee on Constitutional Amendment hearing, demanding and getting hearings for the ERA.\textsuperscript{168}

That was May 1970.

In June, a fiftieth-anniversary conference of the Women's Bureau was held. With a new coalition of lobbyists and the celebration of the fiftieth anniversary of women's suffrage coming up on August 26, 1970, Martha Griffiths (D-Michigan) filed a discharge petition to release the ERA from the strangling grip of the House Judiciary Committee.\textsuperscript{169}

This may have been seen, at least initially, as merely a symbolic gesture. Discharge petitions historically have been futile moves. Wrenching bills from standing committees violates the norm of committee territorial power and is not to be done frivolously. The discharge rule was first adopted in 1910, the present form in 1935. It is used to bring to the floor any bill that has been before a standing committee of the House for 30 days or has been approved by a committee but has been before the Rules Committee for seven legislative days without receiving a "rule" for floor debate. Or, the two procedures can be combined and a bill may be removed from committee and freed from a special rule of the Rules Committee at the same

\textsuperscript{168} Freeman, p. 213.

time. A majority of the House (218) must sign a petition to discharge the bill. Also some complicated parlimentary manoeuvring is involved. Since 1910 only 24 bills have been discharged from committee and 20 passed the House out of 835 discharge attempts. Most of those attempts, 464, came between 1910 and 1922. Perhaps seeing the futility of it all, by the 68th Congress in 1923 only four discharge petitions were filed compared to 241 the previous session. In more modern times, between 1937 and 1960, only ten percent of all petitions achieved the required number of signatures, and only two bills became law as a result of such action. Historical precedent would tell us that the use of the discharge petition should be a last resort, a symbolic gesture, or an act of wild optimism.

Initially it would appear that the ERA discharge petition was a symbolic gesture to commemorate women's suffrage. However, Martha Griffiths felt failure would strengthen the previous decisions of the Supreme Court and gave the petition drive an all out effort. She was a

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171 Ibid.


173 Sherrill, p. 99.
member of the Ways and Means Committee, a committee which seems to have the word "powerful" as a prefix. Apparently she had built up a reservoir of owed political favors from her years on the committee and called them all in for the petition drive. Depending on the source, she lined up either twelve or fifteen committee chairmen to sign the petition. Wilbur Mills (D-Arkansas), Ways and Means Chairman, helped with the petition drive, as did Republican leader Gerald Ford (R-Michigan).

Along with the individual effort of Griffiths, a major lobbying campaign was instituted and an organized letter writing campaign began to spur on reluctant members of Congress with pressure from home. The National Ad Hoc Committee for the ERA was formed. This group was able to tap the resources of many women's organizations. Another influential group was the Business and Professional Women's Association. At the time they were conveniently gathered in Hawaii at their annual convention and urged the members to lobby their congressmen on behalf of the ERA.

As momentum gathered Chairman Celler announced hearings, probably to stave off the discharge petition, but the signature drive went on anyway. Before many realized what

176 Freeman, p. 213.
175 Sherrill, p. 100.
176 Freeman, p. 214.
was happening, the necessary signatures were obtained.\textsuperscript{177}

The ERA arrived on the floor of the House on August 10, 1970 with no hearings or committee report. The floor of the House is not noted as a place of scholarly research where the impact of legislation is carefully studied. That is the job of committees and their staffs. But due to the discharge petition route the usual work of both proponents and opponents was not done. The opposition, which had relied on Celler's intransigence for twenty years, was unprepared. Representatives did not have information from hearings or reports. The debate was swift: various sources indicate between an hour and an hour and a half. The content of the debate was no source of adequate information either.

The last-ditch efforts of Chairman Celler were insufficient. He described the differences between men and women as being as great "as between a horse chestnut and a chestnut horse." He called the ERA a "blunderbuss amendment" that would be disastrous for laws which needed to take into account the differences between men and women. He asked for more time to work on the amendment and promised to hold hearings in a month.\textsuperscript{178} In a conciliatory move Celler referred to Martha Griffiths as "the

\textsuperscript{177} Javits, p. 78.

delightful, delectable and dedicated gentle lady from Michigan."

The arguments for and against revolved around the topics of protective labor legislation, the draft, divorce laws and pensions. The basis for many speeches in the debate was the often inaccurate 18 page memorandum put out by the Citizen's Advisory Council. Exaggerated claims were made about situations or situations that had already been corrected, such as the existence of dual pay schedules for men and women public school teachers. Proponents made conflicting statements about the scope of the ERA, i.e. does it pertain to private action or only governmental? Griffiths said it would only apply to the government. Minority leader Gerald Ford said it applied to private industry as well. What was the congressional intent of ERA passage? That was not made clear in the confusion.

Griffiths even managed to maneuver southern conservatives over to her side by interpreting the ERA as a legislative weapon against the Supreme Court. The anti-
Supreme Court argument worked. It may have been helped by the fact that it gave southern representatives the opportunity to chide civil rights advocate Celler. Thus the unusual scene of anti-civil rights Rep. Albert Watson (R-South Carolina) chastising his old opponent, Celler, for being hypocritical on civil rights.88

In the end, the ERA passed by the overwhelming vote of 352-15.89 Superficially the vote would seem to indicate near unanimous support for the amendment. However, it was preceded by lack of hearings, minimal debate, and major lobbying by House leaders, not a drive by organized interests which had long-term, national grass roots, support. Thus, the winning margin could be seen as the result of internal House politics since there is scant evidence of the widespread external political pressure usually associated with amendment approval.

88 Newsweek, op. cit., p. 15.
The Senate

The Senate Judiciary Subcommittee on Constitutional Amendments held hearings on the ERA May 5-7. Senator Eugene McCarthy (D-Minnesota) introduced it. Those testifying in favor of the ERA included some female House representatives, the president of the National Federation of Business and Professional Women's Clubs, representatives from the National Organization for Women, the National Education Association and other women's groups. The most notable opponent was the AFL-CIO. The subcommittee favorably reported the bill, but did not issue a report. The full committee failed to take any action on the ERA.

Things looked good for the ERA in the Senate. Newsweek predicted "if it can escape the unsympathetic clutches of Judiciary Committee Chairman James Eastland (D-Mississippi), it faces almost certain victory - 83 senators have signed up to co-sponsor it." The ERA did escape Eastland's clutches by being placed directly on the Senate calendar by the Senate leadership, without the approval of the Judiciary Committee. On the surface there was cause for encouragement. The Senate had passed the ERA in 1950 and 1953, however, as Sen. Jacob Javits (R-New York)

188 *Newsweek, op. cit.*
189 Boles, p. 38.
pointed out in the past "active opposition may have been
stilled in the Senate because it was thought the amendment
was as good as dead upon reaching the House." 190

As Newsweek cheerfully and naively proclaimed, with so
many co-sponsors the ERA was a sure bet. While Newsweek
was confident there were 83 co-sponsors, six sources
reported five different tallies. Thus Newsweek said there
were 83. Freeman and The New York Times reported 81, Boles
claimed there were 80. Congressional Quarterly stated 79,
and Sen. Javits had the low estimate of 75. Even accepting
the lowest estimate, the ERA seemed an easy winner. And it
was, sort of.

The Senate was surprised and ill-prepared to deal with
an issue they never expected to handle. Shortly before the
Senate Judiciary Committee hearings began Sen. Sam Ervin
(D-North Carolina) said:

Frankly...I'm not supposed, as a senator to
say anything derogatory about the House, but I
doubt if anybody except the chief proponent of
the bill gave more than 15 minutes' study and
research to this business before they voted. And
when we hold our hearings I'm not going to be as
prepared as I would like. To tell you the truth, I
never expected this thing to ever come up, and
consequently I didn't make any preparation to
fight it. I was astounded when the thing passed
the House." 191

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190 Javits, p. 78.

191 Sherrill, p. 110.
Even though the bill had been placed directly on the Senate calendar, it appears the Judiciary Committee opted for some control over the issue by holding hearings in September anyway. Not surprisingly, the testimony for the full committee appears to be decidedly weighted towards the opposition. Paul Freund, Harvard University law professor claimed the ERA was "too simplistic", and that to compress relationships between men and women into "one tight formula is to invite confusion, anomaly and despair." Others, including labor organization representatives, complained the ERA would bring about the exact opposite of what the supporters sought; that protective labor legislation was necessary; and that discrimination against women came from social practices that the amendment would not remedy.192

On October 7, 1970 the Senate began three days of debate on the Equal Rights Amendment. Senators were concerned about the wording of the House passed version. They were also concerned about more substantive issues such as the effect of the ERA on unemployment laws, family law, military service, criminal law and jury duty.193 Sen. Birch Bayh (D-Indiana) said the ERA would help eradicate protective laws which hinder women in the job market. However, he claimed the most important reason to enact the


193 Javits, p. 78.
ERA was for its symbolic value. Sen. Sam Ervin, leader of the opposition, said it would rob women of rights they currently enjoy and result in years and years of litigation to clarify its meaning.\textsuperscript{194}

Then came the crippling amendments. An amendment to attach an anti-school desegregation rider was introduced by Sen. James Allen (D-Alabama) and was defeated 17 to 57. Then Sen. Ervin offered his version of the Hayden rider - exemption from the draft for women, plus preservation of laws "reasonably designed to promote the health, safety, privacy, education or economic welfare of women or to enable them to perform their duties as homemakers or mothers."\textsuperscript{195} Essentially the Ervin amendment made the ERA impotent. It was passed 36-33. The Baker amendment, allowing non-denominational prayer in public schools, also diminished the ERA's chances. This was passed 50-20.\textsuperscript{196}

If support had been firm for the ERA, with all of its co-sponsors holding off amendments specifically designed to kill it, the ERA would have made it through the Senate in a form identical to the House version. Senate sponsors felt any additions to the House-passed version would kill the amendment because the House leader in conference

\textsuperscript{194} The 1970 Congressional Quarterly Almanac, p. 708.
\textsuperscript{195} Javits, p. 78.
\textsuperscript{196} The 1970 Congressional Quarterly Almanac, p. 709.
committee would be Emanuel Celler. Thus there was speculation that many senators had become co-sponsors because they had felt confident that House passage would be impossible, given the opposition of Celler. But the futility of sending it to a Celler led conference committee was avoided and no final vote was taken in the 91st Congress because the ERA was filibustered to death.

THE 92ND CONGRESS

By the time the 92nd Congress convened there was a coordinated lobbying effort based in Washington. A small body called Women United brought together 92 national organizations to press for the passage of the Equal Rights Amendment. The national organizations orchestrated a massive letter writing campaign by their members in that election year. Congress was deluged with mail in favor of the ERA. Also there were 20-35 full and part-time volunteers lobbying Congress on behalf of the ERA.

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197 The 1971 Congressional Quarterly Almanac, p. 656.
198 Boles, p. 39.
199 The 1971 Congressional Quarterly Almanac, pp. 656 and 657.
201 Freeman, p. 218.
The House

House action in the 92nd Congress was relatively uneventful compared with the unusual way the ERA was passed in the 91st. Hearings were held in March of 1971 by the House Judiciary Subcommittee No. 4. Arguments for and against the amendment were presented during four days of hearings.

Martha Griffiths testified on March 24:

Women have lagged behind Negroes in coverage by existing equal rights because the Supreme Court had refused to apply the equal protection clause of the 14th Amendment to women as it has to minority groups. The women's rights amendment would not affect areas of privacy, such as separate wash rooms for men and women, but it would outlaw discriminatory actions by government agencies.202

In the next few days others testified on the ERA's behalf. An American Civil Liberties Union lawyer noted a constitutional amendment was the proper remedy for the "deeply entrenched" discrimination against women in our society. He noted the results of protective legislation are often dubious and that arguments that the ERA would result in integrated prisons and restrooms bordered on "being frivolous." Adele Weaver, president of the National Association of Women Lawyers said that women needed equality before discrimination would end. "It is going to take as long to eliminate the prejudice against the female

202 The 1971 Congressional Quarterly Almanac, p. 656.
sex as it is to eliminate prejudice against the black race — perhaps longer, because not as many people appreciate the seriousness of the problem.\textsuperscript{203}

Opponents included Sen. Sam Ervin, who felt protective laws should remain and state discriminatory laws should not be remedied by constitutional amendment. The AFL-CIO felt the ERA would eliminate benefits for women and would not extend them to men.\textsuperscript{204}

When the ERA left the full House Judiciary Committee by a 32-2 vote, it did so with an amendment proposed by Charles Wiggins (R-California) which stated:

\begin{quote}
This article shall not impair the validity of any law of the United States which exempts a person from compulsory military service or any other law of the United States or of any state which reasonably promotes the health and safety of the people.\textsuperscript{205}
\end{quote}

The amendment was added because of confusion over the legal effects of the ERA. Supposedly the Wiggins amendment would obviate such confusion and prevent "judicial chaos." Not everyone on the committee agreed with this. Fourteen Democrats opposed the amendment and wanted the original language. Rep. McClory (R-Illinois) presented his own separate view for the original text. Chairman Celler opposed the ERA even with the Wiggins amendment and Reps.

\textsuperscript{203} ibid.

\textsuperscript{204} ibid. pp. 656 and 657.

\textsuperscript{205} ibid.
Hutchinson and Dennis presented minority views that said legislative authority already exists for the elimination of discrimination based on sex. Thus, the ERA left the Judiciary Committee with considerable dissension in the ranks.

There was another amendment to the ERA when it left the Judiciary Committee. This one would specify that equal rights applied to all persons regardless of citizenship. This was rejected on the floor 104-254. It was argued that the other, the Wiggins amendment was simply designed to kill the ERA and repeal the portion of the 1964 Civil Rights Act which prevented discrimination by sex in employment. Speaking in favor of the Wiggins amendment Emanuel Celler dramatically declared "War is death's feast. It is enough that men attend." The Wiggins amendment was defeated 87-265. The Equal Rights Amendment passed the House 354-12.

The Senate

The Senate Judiciary Committee once again faced the ERA. Various attempts to change the wording of the House-passed version occurred in subcommittee and the full committee, including an attempt to exclude women from the draft. These were all soundly defeated. In the committee's report

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206 ibid.
207 ibid.
it stated that it was time that women were given equal rights and that the country could not wait for each of the states to remedy inequities, thus "Only a constitutional amendment can provide the legal and practical basis for the necessary changes."208

On the Senate floor, debate lasted four days, no doubt due to the nine attempts to amend the ERA by Sen. Ervin. Proponents presented the general case for the elimination of discrimination against women and the establishment of equality before the law for both men and women. Ervin prophesied the spectre of social and legal chaos. He graphically described the results of women in the military, "their fair forms blasted into fragments by the bombs and shells of the enemy."209 Sen. James Buckley said he agreed discrimination against women existed but that it should be corrected on a case by case basis. The amendment, he claimed, would result in federal regulations and court decisions "too bizarre to contemplate."210

The nine amendments proposed by Sen. Ervin included provisions such as the exemption of women from the draft and combat, to allow various protective legislation, guarantee privacy, and retain fathers' support of children.

208 The 1972 Congressional Quarterly Almanac, p. 200.
209 ibid., p. 201.
There were two attempts to substitute the original wording of the amendment. One would have allowed laws that distinguished between males and females based on physiological differences. The other substitute text was a conglomerate of all the previous amendment attempts. All were soundly defeated. The purpose behind the amendments was probably to find some acceptable version of the ERA which varied from the House version, thus sending the ERA to certain death in conference committee. This failed and on March 22, 1972 the Senate passed the ERA by an 84–8 vote. Voting against passage were two southern Democrats, Ervin and Stennis, and six conservative Republicans. The Republicans were Buckley of New York, Cotton of New Hampshire, Fannin and Goldwater of Arizona, Bennett of Utah, and Hansen of Wyoming.

Summary

The Senate vote, lopsided as it was, was apparently more the result of a successful feminist lobby than a "hearts and minds" conversion of Senators. The history of the ERA in Congress shows that it took unusual pressure to move congressmen to support it. A surprise women's lobby.

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211 The 1972 Congressional Quarterly Almanac, p. 201.
212 ibid, p. 199.
highly mobilized, was a major factor in the Senate. In the House, Martha Griffiths' position on the Ways and Means Committee and her enlistment of Wilbur Mills to the cause was of perhaps inestimable value. Certainly unusual circumstances became the rule in ERA passage. Committees were by-passed both in the House and the Senate. Debate was often shallow and sometimes ludicrous. Contradictions abound. Especially in the 91st Congress there appears to have been an air of hurried confusion about the issue.

THE ERA AND OTHER AMENDMENTS IN CONGRESS

The congressional history of the Equal Rights Amendment is both similar and dissimilar to that of other national standard setting amendments. It is similar in that the origins of the amendment occurred long before congressional passage. Like other amendments, it was introduced repeatedly before there was enough momentum for its passage. Also, the ERA issue appeared within the context of a larger social movement, the movement for increased women's rights. The women's movement, moreover, was bipartisan and did not require the dominance of any political party in order to gain a two-thirds majority in both houses.

The major difference between the ERA and most of the successful amendments of its kind lies in the sequence of
its progress through the amendment process. Even though many of the issues of successful amendments had been discussed frequently, the issues did not achieve the necessary congressional majorities until the political movement they were associated with had, over time, developed a large popular following. The modern organization of the women's movement and the serious drive for ERA ratification occurred virtually simultaneously. The movement did not have the time to build a strong, national political base before the ERA lobby pushed the amendment through Congress. Thus, at the time of congressional passage, the organization was very young, operated mainly in Washington, and had not developed a grass roots organization in the states where ratification occurs.

If the proponents were not well organized, neither were the opponents. As indicated, the congressional opposition was unprepared for the pro-ERA lobby and when the usual procedural tactics failed to kill it, they were unable to stop it. The small opposition to the ERA was bi-partisan, conservative, and regionally varied.
Chapter IV
THE ERA DEBATE IN THE STATES

The Equal Rights Amendment faced an unusual challenge when it emerged from Congress for consideration by the states. Previous national standard setting amendments had their issues debated and legislated in the states before congressional passage (the exception being the 18 year old vote amendment). The initial movement to pass the ERA began at the congressional level with lobbying by the national organizations of various women's groups. The structure that orchestrated the successful congressional lobby did not have a grass roots organization in the states at that time. As Freeman noted, "this coalition could not be quickly replicated in the states, and it was there that the ERA stimulated a well-organized, determined opposition."215 The ERA proponents, not having faced an organized opposition in Congress, were not ready for it in the states.

The following three chapters will deal extensively with the state ratification phase of the amendment process. This is an area which has received little attention, and

215 Freeman, p. 220.
almost none other than case studies of individual states. This dissertation will examine the state ratification phase of the Equal Rights Amendment in six states. We will begin with an analysis of the public debate on the ERA in the six states and relate that to public opinion on the issue. With Chapter Four providing a background of the ERA debate in the states, Chapter Five will relate what actually occurred in those states regarding ERA consideration. Then Chapter Six will discuss the findings of a survey of state legislators in the six states so that we might better understand why the Equal Rights Amendment either succeeded or failed in those states.

The ratification decision of any state is made within the context of a public debate, a particular political situation, and the ebb and flow of public sentiment on the issue. While any state cannot help but be affected by the national media debate and national politics of an amendment, much of the ERA debate and politics had a uniquely local quality. Thus, to fully understand why the states reacted as they did to the ERA, a close examination of the public debate in the states is essential.

The most important aspect of the ERA debate is the discussion of issues. The newspaper coverage will tell us what form the ERA debate took and which issues were argued the most and by whom. It should also reveal the nature and
extent of information about the ERA being presented in the local print media. Thus, analysis of ERA newspaper coverage enables us to understand how an important aspect of ERA media coverage was presented to the public.

The newspaper articles help us to view the environment of public sentiment on the amendment, but they only indicate what information was available, not what information was received and how it was translated into public opinion on the ERA. The last section of Chapter Four will be devoted to a scientific assessment of public opinion about the Equal Rights Amendment.

**ANALYSIS OF ERA NEWSPAPER COVERAGE**

**Methodology**

Measurement of public debate on an issue cannot be complete. The entire scope of the debate would include television, newspapers, radio and magazines plus informal communications between individuals. We cannot say who was watching or listening to or reading what sources of information over almost a ten year period. One source that seems the most reliable is local newspapers. Copies of articles on the ERA are available beginning in 1972. The source for the newspaper articles used in this study is the Newsbank library service. Newsbank indexes and puts on microfiche articles about local, state and regional news from all of the states.
The ERA issue was included in Newsbank indexing from 1972 and covered a wide range of ERA related articles from women's club news to mass protests and state legislative activity. The newspapers indexed were usually from the major metropolitan areas of the state. Use of the index service provided a convenient method to examine an aspect of media treatment of the ERA across the country.

States were chosen for inclusion in the study according to the kind of action they took on ERA ratification. Therefore there are three categories of states: those that ratified, those that failed to ratify, and those that ratified and later rescinded. Ohio and Indiana were chosen to represent the ratifying states because they ratified after years of public debate and legislative activity. Missouri and Virginia represent those states which failed to ratify, also after much debate and legislative consideration. Nebraska and Tennessee represent the small group of states which ratified very soon after congressional passage and then reconsidered their action and rescinded ratification.

In all, the Newsbank service indexed one-hundred and ninety newspaper articles which dealt with ERA consideration in those six states.

The articles were content analyzed by the author alone for subjects specifically mentioned in the articles, and
thus a measure of inter-coder reliability was not necessary.

**Extent and Type of Coverage**

The Equal Rights Amendment did not appear as a serious issue in newspapers until 1973 when legislative activity on the issue in many states was finished. In 1972, when most of the ratifying states passed the ERA, it was treated either as a non-issue or as a topic for women's features. In the six states included in the newspaper analysis, it is safe to say that, until after 1972 for the most part, the Equal Rights Amendment was not regarded as news. After 1973, when controversy over the amendment became more developed, newspaper reporting of ERA consideration was informative and serious.

In 1972 there appeared only 2% of all ERA articles in the analysis. Newspapers in Nebraska and Tennessee failed to cover their states' ratifications at all. From what few articles that did appear in 1972, it seems that the ERA was largely treated in terms of women's clubs news. The only 1972 article that covered the ERA as a legislative issue did so in a manner unusual for coverage of the state legislature. The *Dayton Daily News* reported that a vote on the ERA had been postponed in the Ohio Senate. Then it turned to a physical description of the ERA lobbyists, "The women, including some dazzling beauties dressed in hot
pants and mini skirts, came to push for approval of a resolution ratifying an amendment to the U.S. Constitution." The article also reported comments from male lobbyists for other causes such as "Look at that blonde" and "I still regard them as sex objects. Just so they don't give that up, I don't care." The only comment recorded from proponents was the understandable statement by Sen. Clara Heisenborn that "some people don't understand what this is all about, but they will." Opposition arguments included comments by senators who felt women were not equal to men and the Senate majority whip who felt that no new amendment was needed.216

From 1973 on, with the exception of Tennessee, newspapers generally kept their readers informed of legislative activity on the ERA. Along with reporting committee hearings and floor votes, newspapers in most of the states presented information on how state legislators had voted on the ERA or were leaning to vote on the ERA. Often, an entire list of the state legislators was printed giving everyone's position on the issue. The exceptions were Nebraska and Tennessee, which ratified quickly and inconspicuously.

When the ERA was reportedly involved in state politics, it was usually through the governor's lobbying or state party endorsements. In a number of states newspapers

clearly indicated where both political parties and important political figures stood on the ERA issue. In each of the states, except Tennessee, these discussions appeared. There appears to be no pattern to these endorsements and the success or failure of the ERA in a state.

**Arguments in the ERA Debate**

Newspaper articles on the ERA not only covered legislative events, but also the activities and arguments of the various ERA lobbyists. Coverage of rallies, demonstrations, and hearing testimony presented to the public the views of the very diverse people who were concerned about ratification of the ERA. The attention to issues varied from state to state and did not necessarily correspond to the volume of ERA articles. For example, Ohio and Indiana newspapers seemed to devote more attention to ERA arguments than did the other states' newspapers.

It is important to note that in all states, anti-ERA reasons were reported in the press more frequently than pro-ERA ones. Irrespective of the content of the debate, for sheer volume the ERA opposition made its varied points more times than proponents. For instance, in Virginia anti-ERA arguments appeared twice as often as pro-ERA ones.
Opposition Arguments

The ERA opposition seemed to be limited only by their imagination in presenting a plethora of dire consequences which, they claimed, would be the result of ERA ratification. Those opposing the ERA covered a wide spectrum of arguments. For example, those who were against the ERA on grounds of maintaining state power might disagree with some of the more extreme arguments such as that the ERA would result in the complete moral breakdown of America.

The most mentioned anti-ERA argument concerned women and the draft. The next mentioned anti-ERA reason was the dilution of states' rights. These were closely followed by citing of concern that the ERA would result in husbands not being liable for the full support of their families, that it generally would be a threat to the family, and that public restrooms would not be sexually segregated.

To a very large extent the legislators limited their reasons for being against the ERA to arguments involving governmental power. There were a few legislators who claimed that the ERA was a communist plot. Some felt it would promote homosexuality and various social ills. But they were far outnumbered by legislators making arguments about states' rights. Thirty-seven percent of legislator anti-ERA statements concerned the fear that the ERA would
remove certain legislative powers from the states. It is interesting to note that, by far, the most cited reason for legislator opposition was not the issue of equal rights for women, but spheres of power between the federal and state government.

In Ohio a state senator said:

By passing the amendment, we will take the question of rights out of the hands of the legislature, which is responsive to the people, and put it in the hands of those least responsive, appointed federal judges.\(^\text{217}\)

In Indiana the South Bend Tribune reported:

Rep. Richard M. Dellinger, R-Nobelsville, said he agreed that emotional opposition based on fears about restrooms was nonsense, but he said he feared the amendment would deprive states of their right to deal with sex discrimination and instead invite federal intervention.\(^\text{218}\)

The same article quotes another Indiana representative who claimed the federal government and courts have been depriving the states of their rights to govern through administrative edict and judicial interpretation.

In newspaper articles, the next most frequent reason given for a legislator's opposition was that the amendment was not needed (16%) because women were guaranteed equal rights under the Fourteenth Amendment. Following that, legislators cited constituency opposition (14%) as their

\(^{217}\) The Columbus Evening Dispatch, February 8, 1974.

\(^{218}\) The South Bend Tribune, February 15, 1973.
reason for voting against the ERA. These reasons are followed by a variety of others including fears of unforeseen effects, and the loss of privileges women now enjoy. Concerns about women in the military were voiced, but that issue definitely did not play the role it did with anti-ERA lobbyists.

Arguments about the negative effects of the ERA on women as individuals and on their families and society were largely left to non-legislators. Fears that women would have to be drafted, leave their families, impair the effectiveness of the military and wind up prisoners of war was a common theme (The John Birch Society was distributing reprints of an article by John G. Schmitz entitled "Your Daughter will be Drafted").

Another feared outcome of the ERA was often presented by Phyllis Schlafly of Stop ERA who claimed that under the ERA wives would not be entitled to support from their husbands. She claimed that men could refuse to provide more than half the money needed to support a household. This legal enforceability of the husband’s obligations, she maintained, is the cornerstone of family life in the United States. In Indiana Mrs. Schlafly stated that the amendment would

take away from the American woman her most important rights of all — namely the right not to take a job, the right to care for her own baby in her own home and to be financially supported by her husband. 221

In the same vein the ERA was seen as contributing to the divorce rate and as a threat to "the American way of life because it would contribute to the disintegration of families." 222

One frequent fear expressed by anti-ERA lobbyists, and rarely by legislators, was the unisex restroom. A representative of the Mormon church in Ohio testified that the ERA will result in the overturning of Griswold vs. Connecticut (a right to privacy case).

"Mrs. Rider charged the ERA 'will automatically strike down the separate-but-equal doctrine in regards to sexes' with the result that 'all public facilities will have to abandon separate accommodations for the sexes.'" 223

Various church groups and local clergy often appeared at hearings to denounce the ERA as being against the will of God and the teachings of the Bible. A woman in Memphis, Tennessee said:

It tries to make men and women equal in the home, and of course that is against the Bible. Women have it made right now. 224

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Proponent Arguments

The arguments of those in favor of the ERA generally do not differ whether the proponent was a state legislator or pro-ERA lobbyist. The arguments of supporters mainly fell into three categories: 1) statements about equality under the law, 2) an end to discrimination in social and economic matters and 3) denials of the arguments made by opponents. This later category comprised 38% of the total pro-ERA arguments.

By far the argument made most often by proponents was that the Equal Rights Amendment would guarantee women equality under the law. In an article about ERA support from the Virginia Synod of the Lutheran Church, such an argument was presented by a Charlottesville lawyer who claimed protective legislation had become an encumbrance on women's rights. He said:

Why must it be that a divorced woman must receive permission from her former husband to buy a home? Why must it be that my son is picked over my daughter in administering my estate?...It's been 199 years since the Declaration of Independence and I think it's time that we freed everyone.225

After the more general statements about equality under the law, the most common strictly pro-ERA arguments were based on pleas to end discrimination of various kinds. Sometimes the reasoning was stated in general terms like

225 The Richmond Times-Dispatch, April 21, 1975.
"the amendment would liberate American women from unjust discrimination based on sex in business, employment and other areas of state, local and federal law." In other instances, more specific ways that discrimination would be eliminated were mentioned. "The Equal Rights Amendment is the answer to discriminatory laws against women in such areas as credit ratings, securing loans, obtaining credit cards, probate and employment."227

The third most frequent set of arguments made by proponents were denials of anti-ERA arguments. As mentioned previously, almost 40% of the time they are reported denying accusations made by the opposition. This defensive position meant proponents spent as much time reassuring women about their standing with a military draft as trying to convince them that the ERA would help them economically.228

228 We might well wonder at the sincerity of remarks made to the press by state legislators, both for and against the ERA. Were their remarks merely for constituent consumption, a form of Congressional Record verbiage? There is no way to prove or disprove the legislators' veracity. However, remarks made to the press and comments made on the confidential survey discussed in Chapter Six are strikingly similar, both in content and proportion.
PUBLIC OPINION ON THE ERA

Given the small number of articles and the dearth of debate, it would be easy to conclude that early in the state ratification stage the Equal Rights Amendment was absent from the public agenda. At that point in American history there were other compelling issues on the public agenda which demanded attention. The most prominent of these were the Viet Nam war and the presidential election of 1972.

Significantly, the various pollsters chose to ignore the Equal Rights Amendment until relatively late in the ratification phase, thus leaving no scientific measure of public opinion in the early 1970's. As a result we have no way to compare public opinion on the ERA during various crucial stages of its progress, i.e. the congressional proposal phase, the early ratification period of 1972, and the period of difficult ratifications and rejection. The data that is available, however, all indicate stable support for the ERA over time.

We will look at the nature of public opinion on the ERA to determine first the level of public awareness of the issue, and second, the extent to which citizens were cognizant of their legislators' activities regarding it. Third, we shall study the level of support for the ERA among the public. Fourth, the stability of that support
will be examined to determine if support for the ERA fluctuated along with its success in the ratification process.

Public Awareness of the ERA

The first step in citizen response to an issue is the awareness that there is such an issue. There are no measures of public awareness of the Equal Rights Amendment when it was initially considered by Congress and during its first years before the state legislatures. However, the ERA achieved a very high level of recognition among the public, at least after it had been before the states for a number of years. In a 1977 National Opinion Research Center survey 88% of those polled were familiar with the ERA.\(^{229}\) Similarly, a 1978 Gallup Poll found a 90% recognition level.\(^{230}\)

We have determined that in most of the six states covered in the newspaper analysis, the public was provided with information about ERA related activity in their state legislatures and national polls reveal a high level of ERA recognition. However, awareness of an issue and the availability of information about it does not necessarily

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\(^{229}\) National Data Program for the Social Sciences, Cumulative Codebook for the 1972-1977 General Social Surveys, conducted by the National Opinion Research Center, University of Chicago, October 1977, p. 149.

translate to citizen knowledgeability of what their state legislature was doing (or had done) about the issue.

A study (Bokowski and Clausen, 1979) using 1976 Survey Research Center data from a national sample found very low levels of public knowledge about ERA activities in state legislatures. Respondents were asked by the SRC interviewers if the ERA had been considered in their state. If the response was yes, they were then asked if the amendment had passed or had been rejected. Sixty-one percent of those taking a position on the ERA had no idea of whether or not their state had considered the amendment. Another seven percent claimed it had been considered but did not know the outcome. Among proponents of the ERA, 71% professed no knowledge of the state's activity, while 59% of the opponents seemed equally ignorant of their legislature's activity.231

The accuracy of respondents' claims as to what happened in their state was checked against what actually had occurred at the time the survey was taken. It was found that among respondents taking no position on the ERA, only six percent were correct. Only 18% of the proponents knew what was going on in their state. Opponents were the best

informed at 26%.232

Eliminating the wrong guesses of respondents provides even further evidence that overwhelmingly points to the conclusion that citizens everywhere, regardless of their position on the issue, had not paid and were not paying attention to the fate of the ERA in their state legislatures.

**Level of ERA Support**

Various polls of public opinion on the ERA show that support has been strong and stable, even though more Republicans were becoming opposed to the ERA.

In 1975 the Gallup Poll first asked "Do you favor or oppose this amendment?" Over time, the results of the Gallup Poll can be seen in Table 1.233

<table>
<thead>
<tr>
<th>Year</th>
<th>Favor</th>
<th>Oppose</th>
<th>No Opinion</th>
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<tbody>
<tr>
<td>1975</td>
<td>58%</td>
<td>24%</td>
<td>18%</td>
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<td>1976</td>
<td>57</td>
<td>24</td>
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<td>1978</td>
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<td>31</td>
<td>11</td>
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<tr>
<td>1980</td>
<td>58</td>
<td>31</td>
<td>11</td>
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</tbody>
</table>

232 *ibid.* p. 13.

According to 1980 Gallup poll information, there has been a significant shift of Republicans toward opposition. While Democrats favor the ERA 2:1, 47% of the Republicans favor it and 41% are opposed. Independents' support falls in between the levels of Democrats and Republicans. Independents were the most supportive group in 1976.236

In 1976 the University of Michigan Survey Research Center collected data on public attitudes towards the ERA. Respondents were given the following statement:

"An effort is being made to pass an amendment to the United States Constitution which would guarantee equal rights for all citizens regardless of sex. Do you approve or disapprove of the Equal Rights Amendment to the Constitution?"

They found that 70% of those polled said they approved of the Equal Rights Amendment.235 The SRC results were similar to those reported by other polls.236

There is not much in the way of state polls or national polls with state samples on the ERA. What is available for the six states in this study comes from a variety of sources, some more reliable than others. If the Newsbank articles are accurate, only three states reported state surveys on the issue. They were the two non-ratifiers.

234 ibid.

235 Bokowski and Clausen, p. 3.

Missouri and Virginia, and Indiana. In those states, the reported results indicated approval of the ERA by the citizens.

A scientific poll of Virginia, with a reported possible error margin of three to five percent, claimed that 59% of Virginians favored the ERA, twenty-eight percent opposed the ERA, and thirteen percent had no opinion. The results ranged from 70% in favor in northern Virginia to 46% in the Richmond area. 237

In Indiana, a scientific poll taken by Republicans in the summer of 1974 showed support for the ERA by a 3:1 margin. The South Bend Tribune warned such results could be misleading.

While they may show the sentiments of Hoosiers pretty accurately, they do not necessarily show how many on either side will actually regard ERA as a issue on which to decide how to vote. 238

And from Missouri, where the state legislature had continually rejected the ERA, comes evidence that the residents of Missouri have favored the ERA for some time. The St. Louis Globe-Democrat attempted to measure Missouri public opinion with a telephone survey of a random sample of registered voters, accurate to within five percent. This was taken in December of 1976 and showed that 60% favored the ERA, 27% opposed it and 13% were undecided. 239

238 The South Bend Tribune, February 16, 1975.
The 1976 poll showed an increase of support from a similar 1975 Globe-Democrat poll which found 56% of Missourians in favor of the ERA, 28% opposed to it, and 16% undecided. The 1976 poll showed strong support for the ERA in St. Louis (69%) and Kansas City (64%), but the rest of the state favored it too (53%). More Democrats and Independents indicated support than the bare majority (51%) of Republicans.239

By 1979, another Globe-Democrat telephone survey (with a two to four percent sampling error) showed a slight decrease in support. Fifty-four percent favored ERA passage, 36% did not, and 10% did not know. No group or geographical area polled opposed it. Again, support was strongest in the two major metropolitan areas of St. Louis and Kansas City.240

CONCLUSION

Early in the ratification phase the Equal Rights Amendment was not regarded by local press as a serious item on the public agenda. Active debate on the issue was slow in coming. Newspaper coverage of the debate in the six states shows general uniformity in the arguments of proponents and a decisive split among opponents. Opponent lobbyists, usually composed of conservatives and religious

240 The St. Louis Globe-Democrat, November 1, 1979.
affiliates, argued against the ERA on the basis of a feared negative impact on the country's social structure. State legislators, however, were rarely quoted as voicing those concerns. Instead, their fears of ERA impact turned more to a growth of federal power, through the Supreme Court and Congress, at the expense of the legislative sphere of the states.

While there are no measures of public opinion on the Equal Rights Amendment early in its history, the measures of public opinion available indicate a stable support for the amendment over time. There is also indication that knowledge of state legislative activity on the issue is very low. This low level of public awareness of legislative activity on an issue is not unusual. Knowledge of an issue and intensity of feeling about an issue are not synonymous. Because pollsters failed to measure such feelings does not mean they did not exist. However, from the measures available, there appears to be no evidence of any depth to the public support of the ERA.

The stability of support for the ERA and the dissimilarity of arguments of state legislators and anti-ERA lobbyists would appear to show a lack of effectiveness on the part of the anti-ERA lobby arguments. However, due to the inattentiveness of the pro-ERA public combined with anti-ERA sentiments of some legislators, it seems an
intense, concerned minority was able to veto the wishes of the majority. Had the majority of pro-ERA supporters been equally as active they would have presumably prevailed.
Chapter V
THE ERA IN THE STATES

In Chapter Four we discovered that public support for the Equal Rights Amendment remained strong and did not waver in the face of anti-ERA rhetoric. The opposition arguments also did not seem to be effective with state legislators. However, state legislators did not respond to the public support for the amendment which was measured by scientific polling, otherwise all of the states in the survey would have ratified and none rescinded. What additional factors were entering into the decisions of the state legislators? In order to provide a more complete explanation of why the ERA failed in the ratification phase, it is necessary to examine the histories of ERA progress in individual states. Such information has largely been lacking in the analysis of constitutional amendments, yet the perspective of individual states was expected to play a crucial role in the amendment process. In this chapter the focus shifts from an aggregate look at the states to an examination of individual circumstances in each of the surveyed states. First, however, some initial
ratifications will be discussed as a background to the activities in the surveyed states.

INITIAL ERA ACTIVITY IN THE STATES

Hawaii was the very first state to ratify the ERA, doing so within 32 minutes of Senate passage.241 This remarkable feat could only be accomplished by a state that very much wanted to be the first to ratify the Equal Rights Amendment. The incredible speed of ratification was accomplished because Senator Daniel Inouye's office sent word of Senate passage to the Hawaiian state legislative reference bureau. Within 20 minutes of the word from Washington, the president of the state senate presented a resolution to ratify. Within five minutes of the state senate passage, the resolution was before the Hawaii House where, as in the Senate, it passed unanimously.242 One reason for Hawaii's lead in the ERA bandwagon was its time edge over "eastern" states like Nebraska, Delaware and New Hampshire, which ratified the next day, March 23rd.243

In a matter of days, six states had ratified. After a few weeks the number had doubled. A year after the Congress sent it to the states, the Equal Rights Amendment

242 Boles, p. 142.
243 Boles, p. 2.
had been ratified by 30 states, with only eight more needed for a three-fourths majority.\textsuperscript{244} Unusual legislative procedure enabled many states to deal with the ERA more quickly than usual, and in the process smothered the expression of any opposition. This can be done when one side has near complete control over the legislative process, as ERA proponents had.\textsuperscript{245} It was not uncommon in 1972 and the early part of 1973 for rules to be suspended, committee referral to be avoided, brief or no hearings to be held, and floor debate to be minimal. Thus, the legislative stampedes of Hawaii, Nebraska, Tennessee and others were not aberrations, but in a sense the norm for early ratification. Thirty out of thirty-five of the states which did ratify the ERA did so early on in the process.

The ERA bandwagon lost its momentum in 1973. After that there were a few ratifications which followed years of consideration in some states, while in other states a decade of consideration failed to achieve ratification, and some of the early ratifying states chose to rescind their vote for the ERA. The matter of rescindment will be treated independently of the ratification histories. This is because rescindment is not a part of the amendment process, as stipulated in Article Five of the Constitution.

\textsuperscript{244} ibid.
\textsuperscript{245} ibid., p. 143.
The legal and political implications of a state's rescinding an amendment are very different than for ratification of an amendment.

THE HISTORY OF THE ERA IN SIX STATES

Nebraska

Nebraska was part of the rush to be the first state to ratify. On March 23rd, the day after Senate passage, the Nebraska Unicameral suspended the rules, immediately took up the ERA resolution, and passed it unanimously (38-0) in minutes.

The Newshank newspaper clipping service has no clippings from Nebraska on the ERA's ratification. Apparently ratification in Nebraska was swift and invisible. Even if Nebraska residents could have predicted their state would bring up the issue at that precise time, they would have had little or no opportunity to voice their positions before it was all over and Nebraska had become the third state to ratify. We can only assume that initial ERA activity in Nebraska was unknown to all but a very few...

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246 The element of state pride, wanting to be "number one", was definitely an impetus for many early ratifications. This is evident in the absence of any opposition whatsoever in many legislatures and was specifically a stated reason to vote for the amendment given by some of the state legislators polled in the survey discussed in Chapter Six.

247 Boles, pp. 2 and 143.
Cornhuskers. Given the fact that the ERA was rescinded in the very next legislative session, there is reason to wonder if normal legislative procedures coupled with adequate public debate might have produced a different outcome in 1972.

Tennessee

There are no Newsbank clipping for Tennessee's ratification; the scenario for Tennessee seems to have been roughly the same as for Nebraska. The House passed the ERA 72-0 on March 23rd, the day after congressional passage. The Tennessee legislative record shows that the rules were suspended and there was immediate consideration of the ERA. Forty-eight members, including the Speaker, introduced the resolution. No one voted against it. Nebraska's speed in ratification was helped by the fact that it has a unicameral legislature. The Tennessee Senate proved less hurried than the House, perhaps because they discovered Hawaii had already ratified by the time they received the motion. Still, it only took them a few weeks after House passage to vote on it, 25-5. And like Nebraska, the Tennessee legislature also changed its mind and voted to rescind.

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248 Comments from Tennessee legislators also tell of trying to be the first state to ratify (See Chapter Six).
Ohio

Unlike Nebraska or Tennessee, Ohio did not jump on the ERA bandwagon. In 1972 the ERA did not get out of committee in either the House or the Senate. Thus, the Ohio legislature allowed both proponents and opponents of the measure time to organize and express their opinions.

The main proponents included the League of Women Voters, the National Organization for Women, the Council of Churches, the American Civil Liberties Union, and the National Women's Political Caucus. The state Democratic convention endorsed the ERA. The governor, Democrat John Gilligan, went on record as favoring the amendment, but, proponents claimed, did nothing to help its passage in the legislature.

The reticence of the governor and certain key Democratic senators to act favorably on behalf of the ERA was considered to be due to the AFL-CIO's opposition to the ERA. Chief AFL-CIO Washington lobbyist, Andrew J. Biemiller, said they opposed the ERA because of its potentially destructive impact on women's labor legislation....it could destroy more rights then (sic) it creates by attempting o (sic) create equality through sameness.250


In Ohio the AFL-CIO was considered a substantial source of Democratic votes. The organization had eight lobbyists assisted by local union officials working against the ERA. The opposition of three Democratic senators on the Senate Committee on Financial Institutions, Insurance and Elections which received the ERA was generally seen as stemming from AFL-CIO pressure.

Other ERA opposition in Ohio was led by the Ohio branch of Stop ERA, nationally headed by Phyllis Schlafly. Also there was Women of Industry, Happiness of Women, American Women Already Richly Endowed, and Restore Our American Republic.

By 1973 the public debate in Ohio was very lively. The committee hearing room of the House State Government Committee was jammed and corridors flooded when an estimated 500 to 1000 people showed up for hearings in February. Because of the crowds, hearings went on for weeks, alternating between proponents and opponents. The conditions for the public's expression of opinion were terrible, but the legislators refused to move the hearings to a larger hearing room available nearby.

On March 28, 1973 the Ohio House passed the ERA 56-40 after three hours of debate broadcast nationally by public

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251 The Columbus Dispatch, April 19, 1973.
television. Twenty-five of the necessary 50 votes came from Democrats, with eleven Republicans also voting in favor. Voting against the ERA were 28 Republicans and 12 Democrats. Of the four female House members, three voted for it (two Republicans, one Democrat) and one (a Republican) voted against it.

In April of 1973 the Ohio Senate Committee on Financial Institutions, Insurance and Elections held hearings on the ERA. The Senate committee moved to the larger hearing room in the State Office Building where they began with a "marathon" hearing for proponents at which about 300 persons attended.

The Senate committee ended their final hearing at 2AM Wednesday, April 18 and within eight hours voted 6-3 to kill it in committee. Senate sponsor Marigene Valiquette was the only Democrat on the committee to vote for it, while the three Democratic male senators voted against it. Despite public statements of support, proponents received "virtually no lobbying clout" from the governor's office.

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254 ibid.


Various reasons were cited by the six senators for their opposition. Sen. M. Morris Jackson, a Democrat, said he feared the ERA would result in the sharing of public facilities, and "bring women down to the level of men." Previousiy he had stated "women are a special something. They're not equal to men." Republican Sen. Anice Johnson, a housewife, said she opposed the ERA because of concerns about the effects on the family. Democrat Anthony Novak claimed that since Florida recently defeated it there was no point in Ohio voting on it. Republican Paul Matia objected to Section 2 of the amendment, which, he felt, would delegate powers to Congress. Thomas Van Meter, Republican, said "I would not want my two little girls or other girls to be drafted and possibly serve on the front lines of combat." Democrat Robert O'Shaughnessy, previously a declared supporter, voted no, he claimed, because of Section 2's provision for congressional enforcement.

The strong hand of the AFL-CIO was seen especially regarding the O'Shaughnessy switch. The senator, however, while admitting he is "a close ally" of the Ohio AFL-CIO maintained, "I don't think I was unduly influenced by that." Ohio Democratic party chairman William A. Lavelle

257 The Columbus Dispatch, April 19, 1973.
259 The Columbus Dispatch, April 19, 1973.
was upset that three of the Democrats on the committee had ignored state and national Democratic party positions and would not even allow a floor vote. He then sent telegrams to the three senators asking them to reconsider their votes, but none expressed any desire to do so. Sen. O'Shaughnessy said "I put a lot of thought into this thing and I think it would be assinine (sic) and ridiculous for me to change my mind." Heavy pressure in terms of mail and the local Democratic party were at work to see if he could be budged. Pro-ERA persons on the Franklin County Democratic Executive Committee circulated a petition to suspend his endorsement.

The six opposing senators were deluged with letters and telephone calls but no move for reconsideration appeared. Sen. Novak admitted that other senators claimed relief that the committee had freed them from taking a stand. However, in May the committee reconvened and Sen. Jackson, at the urging of Governor Gilligan, moved to reconsider the ERA. No one else had changed their mind and the Equal Rights Amendment was dead for that session by a 5-4

260 ibid.
vote. However, in 1973 came a crucial change in the amendment's Ohio fortunes. This did not directly result from anything going on in Ohio. In October of 1973 the national convention of the AFL-CIO reversed its position on the ERA and overnight the chief foe of the ERA in Ohio, AFL-CIO Ohio president Frank King, became a major ally. With that switch Senate passage seemed certain. The two formerly rigidly opposed members of the Senate Committee on Financial Institutions, Insurance and Elections, O'Shaughnessy and Novak changed their votes on January 22, 1974. After a brief visit to the Senate Rules Committee, the ERA was placed on the calendar for February 7, 1974. After two hours of debate on the floor, it passed 20-12, exactly as predicted. Voting for it were six Republicans and fourteen Democrats. Voting against it were ten Republicans and two Democrats. The 33rd state had ratified the Equal Rights Amendment.

268 The Cleveland Plain Dealer, February 8, 1974.
Indiana

Indiana was the last state to ratify, doing so on January 18, 1977. The vote was not overwhelming in the House (54-45), and the Senate just made the 26-24 necessary for passage.

In 1972 the Equal Rights Amendment was not on the legislative agenda in Indiana. There apparently was a time when the ERA was "as safe politically as praising apple pie and motherhood." At that time many Indiana legislators made campaign promises to vote for it that were discarded in 1973 when the issue had become more controversial. At that time state legislators were receiving more mail on the ERA issue than about anything else. Indications were that the mail was running about 50-50 on the ERA.

The proponent groups in Indiana included the Indiana ERA Ratification Committee which was a coalition of groups including the League of Women Voters, the American Association of University Women, Church Women United and the Indiana State Teachers Association. Also, both state political parties endorsed it. The AFL-CIO Indiana affiliate opposed the ERA. The opposition in Indiana had a very conservative cast: the John Birch Society was frequently mentioned along with some loosely related, very

small, specifically anti-ERA groups such as the Committee to Expose the Equal Rights Amendment. The United Conservatives of Indiana were also working against it.272

Hearings in both the House and the Senate were reported, but the siege atmosphere of the Ohio hearings must have been lacking. There is no report of crowds or unusual goings on at the hearings.

Once the ERA resolution was introduced to the Indiana Senate the President Pro Tempore, Philip E. Gutman, Republican, ordered an impact study done by the Legislative Council to determine the effect of the ERA on Indiana law. He then suggested that once the data was available the senators might want to "take a long, hard look" at the ERA, possibly delaying the vote until the 1974 session.273

The ERA went to the House Committee on Human Affairs. It apparently had no trouble in being reported out of committee because within weeks it had reached the floor of the House and was favorably voted upon on February 14, 1973.274 A 51 vote majority was necessary and the Equal Rights Amendment received a 53-45 vote approval. Even though both parties had endorsed it, the vote was partisan. Republicans voted against it by 42-29. Democrats were


solidly for it 24-3. There were six women in the House, four voted for the ERA, two opposed it.275

While the House was voting on the ERA, it was stalled in the Senate Committee on Government Affairs. As one article put it, the House gave the Senate a "Valentines Day present many Senators hoped they never would receive.276 The committee held an ERA hearing for an overflow crowd comprised of advocates of both sides of the issue early in March.277 By April 2nd the full Senate voted and decisively turned away the ERA, 34-16. Again, the vote had a partisan slant. Four Republicans voted for the ERA, 26 Republicans voted against it. Twelve Democrats supported it, and 8 opposed it. Republicans outnumbered Democrats 3:2 in the Senate. The three women in the Senate voted along party lines, the two Democrats were for it and the Republican against it.278

In 1974 the ERA died in the Senate committee.279

On January 27, 1975 the Indiana House again passed the ERA 61-39, a margin wider by eight votes than the 1973 vote.280 The Senate Governmental Affairs Committee voted

276 ibid.
279 The Indianapolis Star, January 22, 1975.
by voice vote not to send the ERA to the Senate floor. However they did vote to send a substitute—a state ERA.\textsuperscript{261} ERA proponents claimed the state ERA was dangerous, because while purportedly eliminating sex discrimination, it would allow for the retention of currently discriminatory laws.\textsuperscript{262}

By 1977 Indiana legislators felt they had enough votes in the House and possibly in the Senate and wanted to get the ERA issue settled. Since there had been numerous previous hearings, a final joint House-Senate hearing was held in the main ballroom of the Indiana Convention-Exposition Center which was jammed with 1,200 people.\textsuperscript{263}

The ERA quickly moved through the House procedures and was again passed on January 12, 1977 by 54-45, seven votes less than in 1975. Among the supporters present were Judy Carter, daughter-in-law of the then President-elect Jimmy Carter, and Maureen Reagan, daughter of Ronald Reagan.\textsuperscript{264}

As the bill headed for the Senate, no one could predict the outcome. In the 50 member Senate, 26 votes were needed for passage and most speculation was that it would be an extremely close vote.

\textsuperscript{281} The Indianapolis Star, February 27, 1975.
\textsuperscript{282} The Gary Post-Tribune, March 22, 1975.
\textsuperscript{283} The Indianapolis Star, January 5, 1977.
\textsuperscript{284} The Gary Post-Tribune, January 12, 1977.
The Senate moved quickly on the amendment with charges of "ramrodding" coming from the opposition. The Senate Judiciary Committee, without discussion, passed the ERA 6-4 just two days after House passage. This speed was viewed as necessary because some pro-ERA votes were seen as wavering, and there were no votes to spare. The opposition gave signs it might try to force an advisory referendum on the matter, probably just to buy time to weaken the ERA support.

But the opposition had another plan as well, one that might have worked, if not for a slip-up which eliminated the element of surprise. When the Judiciary Committee reports were to be voted upon, some anti-ERA Republicans shouted "no" on the wrong reports. They meant to vote 'no' on the ERA report. This gave a clue as to what would follow and the Democrats arranged for a caucus, which gave them time to literally round up the troops. The state police found two senators driving home to Hammond. The majority leader returned from Anderson, and a sick supporter came back to vote. The Democrat controlled (28-22) Senate accepted the Judiciary Committee report on the ERA by a 26-23 vote, the bare necessity. Twenty-three Democrats voted for the report, 5 voted against it. Eighteen Republicans voted against the report, 3 voted for

Had the committee report failed to pass, the final ERA vote would have been delayed by as much as a week and a half due to the upcoming presidential inauguration and Senate rules.

Failing to turn away the Judiciary Committee report, the opposition tried again. This time they attempted to substitute the text of the ERA to allow for a study (ending September 1978) and a referendum to be held in November 1978. The Lt. Governor, Robert Orr, a Republican, ruled the amendment out of order. He was sustained by a 26-23 vote. However, the individual votes were different than the ones on the 26-23 committee report vote, leaving doubts about the final ERA Senate vote.

More drama was to follow. The Senate gallery was packed when, the following day, the Senate convened to vote on the ERA. One pro-ERA Republican senator had received threatening phone calls and needed a state police escort. Senate minority leader Martin Edwards moved to delay the ERA vote until March 15. There followed a Democratic caucus to convince senators to table the Edwards motion. During the caucus it was felt that Sen. Wayne Townsend was wavering. Senate majority leader Teague called U.S.

Senator Birch Bayh and suggested that he ask Jimmy Carter to call Townsend. Carter could not be located but his wife Rosalyn talked to Townsend and asked him to vote for the ERA.²⁹⁰ According to Townsend, "I told them I would, but if I decided to run for re-election I expected them to campaign for me in my district."²⁹¹ He got their promise. Townsend heightened the tension by waiting almost a full minute after everyone else voted to cast his vote to table the Edwards motion. The final ERA vote was 26-24. Immediately afterwards the senators sat in silence for several minutes. Majority leader Teague wept and prayed.²⁹² Perhaps they sensed an historic occasion, or maybe they were just numb from five years of battle.

Missouri

The state legislature of Missouri considered the ERA off and on for ten years, and never quite managed to collect and maintain enough support for ratification. While state newspaper polls showed popular support for the amendment, the state legislature faltered.²⁹³

²⁹³ See chapter 3, p. 32.
In Missouri the cast of proponents and opponents was quite similar to that of previously discussed states, with the exception, of course, of local personalities.

Proponents included the Missouri ERA Coalition, the National Federation of Women's Clubs, the League of Women Voters, the American Bar Association and the Communication Workers Union. The Women's Political Caucus appeared to be particularly active in behalf of the ERA. From 1975 on, the AFL-CIO actively supported the amendment. Also, Betty Ford personally participated in lobbying Republicans. Both House (Sue Shear) and Senate (Raymond Howard) sponsors were Democrats.

Opposition to the ERA from Missouri residents seemed to come largely from church related groups and individuals. Some Catholics associated the ERA with a pro-abortion stand. Catholic legislators were often cited as being the impetus of much anti-ERA activity in the state legislature. Protestant fundamentalists created an impact on the legislators with anti-ERA mail and by descending upon the state capitol at appropriate times. The most visible non-resident, as usual, was Phyllis Schlafly of Stop ERA. Stop ERA appears to have been the most significant non-religious anti-ERA lobby.

There was some attempt to ratify the Equal Rights Amendment late in the 1972 session of the legislature but
it failed.294 There is some indication that prior to 1973 representatives felt the public was in favor of the ERA and that it had wide support among the legislators.295 Early in the 1973 legislative session a strong lobbying campaign against the ERA appeared, composed of women from the St. Louis area.296 Despite the endorsement of Republican Governor Bond, the Democratic House leadership, and both national parties, the surge of opposition apparently caused Missouri legislators of both parties to back away from their support. This was dramatically evident when the Democratic caucus of the Missouri House failed to back the ERA as one of its key issues in a 44-27 vote.297

In 1973 the Senate Judiciary Committee, after hearings with overflow crowds, voted 7-3 not to approve the ERA.298 In the Missouri House the ERA was buried in the Constitutional Amendments Committee by the chairman, Democrat Howard E. Hines. Given the Senate committee vote, Hines felt any House consideration would be futile and might embarrass some members.299

297 The St. Louis Post-Dispatch, February 1, 1973.
To force a committee vote on the ERA, five pro-ERA members walked out of the committee, leaving it without a quorum to vote on a mass transit issue. To provide a quorum, Hines had the speaker, Pro Tempore, Richard DeCosters, appoint another committee member. DeCosters, an ERA opponent, appointed another ERA opponent, Democrat Gladys Harriott. DeCosters and Democratic majority leader Rothman, both ex-officio members of all committees, were called upon to help provide a quorum with new member Harriott. The mass transit bill was then approved and the ERA was brought up and defeated. 

The ERA eventually did make it to the Missouri House floor, however. There, by a vote of 93-53, the House members adopted an amendment that would require a state referendum on the ERA. In that form, the ERA received preliminary approval 84-74. Needing 82 votes for final approval, it failed 70-81 one week later due to switches caused by constituent pressure, the unacceptable referendum amendment and its questionable constitutionality. It was a bipartisan rejection.

ibid.

The St. Louis Post-Dispatch, April 5, 1973.


For the 1974 legislative session, the President pro tempore of the Senate, William J. Cason, sent the ERA to the Rules Committee because it was thought to have a better chance there. But Democratic Senator Lawrence Lee of St. Louis, Senate majority leader and chairman of the Rules Committee, had other plans. He delayed the bill, then lost when the committee voted (5-2) to bring it to the floor. However, Lee placed the ERA 100 bills down on the Senate calendar, making it virtually impossible for it to come up before the April 30 end of the legislative session. This was the strategy of a number of Catholic senators, mainly from the St. Louis and Kansas City areas, who associated the ERA with a pro-abortion position.

In early 1975 the Equal Rights Amendment had good prospects for ratification. Momentum had shifted in its favor. One major factor was the new membership in the legislature. The group of 33 new legislators was viewed as more sympathetic to the ERA than the incumbents they defeated. Among the new legislators was Doris Quinn, a Democrat from Independence from the Women's Political Caucus, who defeated ERA nemesis Howard Hines, former chairman of the Constitutional Amendments Committee.

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304 The St. Louis Post-Dispatch, February 20, 1974.
305 The St. Louis Post-Dispatch, February 24, 1974.
307 The St. Louis Post-Dispatch, January 26, 1975.
The pro-ERA leadership in the House and Senate also gave the ERA some help by moving it to more favorable committees. Pro-ERA electoral winds may have helped to create the shifts. In the House, Speaker Rabbitt, a possible candidate for lieutenant governor, sent the ERA to the Judiciary Committee where it was quickly approved. In the Senate, the ERA, having been unsuccessful in both the Senate Judiciary Committee and Rules Committee, got another chance in yet another committee. To make sure that the ERA found a favorable committee, Senator Cason, an announced candidate for governor, simply created a favorable committee for it. This brand new committee, the Constitutional Amendments Committee, was then filled with ERA supporters. The chairman of this committee, Democrat Donald Hanford, was an ERA opponent who had previously been removed as chairman of a committee two years ago by Cason. The new committee quickly held hearings and approved the ERA. There was speculation that Hanford's speed and vote were the payment for his committee chairmanship.

Other factors relevant for an optimistic outlook on ratification included heavy lobbying by proponents, including a paid lobbyist on duty every day, lack of such organized lobbying by the opposition, and the support of

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309 ibid.
organized labor.330

Success did come in the House, but by the barest margin (82-75), the minimum votes necessary for passage. Support held despite a last minute mail and telegram barrage from opponents. Pro-ERA First Lady Betty Ford called Republicans and is credited with changing one vote. Many representatives avoided the issue by not voting or voting present.331

The opposition blitz continued with pressure on the Senate. Extremely heavy anti-ERA mail and busloads of church women descended on the Senate. Said one senator, "the mail was coming in so fast it was unbelievable. One week we got 2500 letters against the ERA and 200 or 300 for."332 Senators who had pledged support of the ERA began to falter and the needed 18 votes began slipping away. Finally Cason had to postpone the vote because the necessary support just was not there.333 When the Senate vote did come, the Equal Rights Amendment failed 14-20.334

By 1977, ERA passage in Missouri was even more remote. Where previously friendly Senate leaders had by various means helped the ERA, new Senate leaders were opposed. The

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330 ibid.
331 The St. Louis Globe-Democrat, February 7, 1975.
332 The St. Louis Post-Dispatch, March 16, 1975.
333 The St. Louis Globe-Democrat, March 12, 1975.
House waited for Senate passage before acting.\textsuperscript{315} When the Senate vote came it fell six votes short (12-22).\textsuperscript{316}

In 1980, proponents felt there was no hope for passage in the Senate.\textsuperscript{317} Indeed, time and hope ran out for ERA proponents in Missouri.

\textbf{Virginia}

The South as a region has been very unsympathetic to the Equal Rights Amendment. Some of the border states, Maryland, West Virginia, Tennessee and Kentucky ratified, but the Deep South remains unratified.\textsuperscript{318}

Virginia's entire congressional delegation was behind the ERA in 1972.\textsuperscript{319} However, Virginia representatives in the state legislature did not follow suit. In 1973, a battle over the ERA was in full force in Virginia with participants similar to those in the 1973 fights in Ohio, Indiana and Missouri. The American Association of University Women, the YWCA, and the Business and Professional Woman's Association endorsed it. Stop ERA (with lobbying in person by Phyllis Schlafly). Various

\textsuperscript{315} \textit{ibid.}

\textsuperscript{316} \textit{The St. Louis Post-Dispatch}, October 8, 1978.

\textsuperscript{317} \textit{The St. Louis Globe-Democrat}, January 31, 1980.

\textsuperscript{318} Tennessee and Kentucky later rescinded their ratifications. The South also rejected the woman suffrage amendment. Boles, pp. 2 and 3; Grimes, p. 96.

conservative groups, and the Virginia Federation of Women's Clubs were opposed.320

The House of Delegates Committee on Privileges and Elections held a hearing attracting about 1,000 people, and then voted 13–2 against reporting the measure. The committee was overwhelmingly Democratic; the only two Republicans split their votes. At that point, Senate sponsor Democrat Clive DuVal ceased his efforts in the upper chamber.321

In the 1974 session of the Virginia House of Delegates, the Privileges and Elections Committee was expanded to twenty members. House sponsor Democrat Dorothy McDiarmid felt the expansion would improve the ERA's chances to receive a floor vote.322 The expanded committee was the recipient of a memo from the attorney general's office which claimed the ERA would result in fully integrated dormitories and prisons. The committee rejected the ERA by a 12–8 vote.323 A few days later the Senate Privileges and Elections Committee voted 10–5 to table the ERA.324


322 The Norfolk Virginian Pilot, February 1, 1974.


324 The Richmond Times-Dispatch, March 1, 1974.
By 1975 Virginia, Mississippi and Arizona shared the distinction of never having had a floor vote on the ERA.\(^{325}\)

In the Virginia House the Privileges and Elections Committee, composed mostly of delegates from rural areas, continued its opposition.

The Senate saw the ERA briefly appear on the floor, however it was quickly sent back to committee. The Senate Privileges and Elections Committee had sent the ERA to the floor, however two members were absent, one abstained and two were paired. One member who had been absent, an ERA opponent, requested that the Senate send the ERA back to committee where a state-wide advisory referendum could be attached to it. This was done and the Senate voted 21-19 to send it back to the Privileges and Elections Committee.\(^{326}\) Once back in the committee there were three votes on the bill, all 8-7, one not to report it to the floor, one not to have a referendum and one to "pass the resolution by indefinitely."\(^{327}\)

In 1976 in the House, a maneuver to by-pass the Privileges and Elections Committee and place all constitutional amendments directly on the House floor failed overwhelmingly 62-36.\(^{328}\)

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328 *The Washington Star*, January 14, 1976; *The Richmond*
A 1977 attempt to pass the ERA in the Senate failed on the floor by one vote when Senator Joe Canada, the Republican candidate for lieutenant governor, changed his vote to "no". The Senate vote failed 20-18, lacking one vote for a majority.329

ERA supporters in 1978 had originally planned to bring the amendment to the floor of the Virginia House by again attempting to have constitutional amendments brought directly to the floor, but that plan was abandoned.330

The 1978 legislative session saw a surge of ERA-related lobbying and demonstrations. There were mass rallies pro and con. Three thousand pro-ERA people marched in Richmond.331 A few days later, 1,500 opponents massed at an anti-ERA "coffee". The end result of all the activity was the usual rejection (12-8) by the House Privileges and Elections Committee followed by Senate sponsors carrying the measure over to the next year.332

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However, the next year did not bring an ERA victory in the Virginia Senate. The Privileges and Elections Committee by an 8-7 vote kept the ERA from a full Senate vote. Again in the House they attempted to bring the ERA directly to the floor, failing by a 52-42 vote, a pro-ERA gain of six votes, but defeat nonetheless. Sending the ERA back to the House Privileges and Elections Committee meant defeat by another 12-8 vote.333

But the ERA would not die. In a surprise move coming within a week of tabling it indefinitely, the House Privileges and Elections Committee allowed the ERA to come to the House floor. It was met with a number of amendments, most notably one that would require a state referendum in 1980—well beyond upcoming 1979 elections. ERA supporters were forced to vote to send it back to committee to avoid fatal delays in its consideration. By a 50-36 vote, ERA opponents won in a no-lose situation.334 The ERA would have been delayed either by going back to committee or by waiting for a referendum.

ERA prospects seemed much brighter in 1980. The Senate Privileges and Elections Committee changed four members and of them, three were in favor of the ERA, changing the committee's make-up to 9 members for the ERA and 6 against


A close floor vote was predicted with an ERA win 21-19. The tempo of the controversy picked up too. Where interest had seemed to be lagging in the previous session, 7,500 were in a pro-ERA march and 1,000 attended and anti-ERA rally. The amendment finally emerged from the Senate Privileges and Elections Committee and onto the floor by the foreseen 9-6 margin. Once out of committee it was clear the vote would be extremely close, and there was speculation that the lieutenant governor, Democrat Charles Robb (husband of ERA supporter Lynda Johnson Robb), might have to break a tie vote. However, a Republican senator invoked a "personal privilege" and abstained from voting. This left the ERA one vote short of a majority (20-19) and did not allow Robb to cast the tie vote.

Even though it came close to passage in the Senate on two occasions, the ERA was still considered doomed in the House. Virginia legislators spent ten years on the ERA without seeming to make significant shifts in the strength of either proponents or opponents.

In the next section of this chapter we will examine another way that states rejected the ERA, by rescinding their previous ratifications.

335 The Richmond Times-Dispatch, January 10 and 18, 1980.
RESCISSION

Out of the thirty-five states which ratified the Equal Rights Amendment, five states, Nebraska, Tennessee, Kentucky, Idaho and South Dakota voted to rescind their ratifications. Once, the rescindments of these states might have been crucial to ERA passage or at least have provided the basis for a court battle to nullify ERA ratification. Since the extended deadline for ratification of the ERA has expired, the question over the validity of rescindment is moot for the ERA. However it could prove to be a living issue for future amendment attempts.

One strong argument against the validity of rescission is that the possibility of it is nowhere mentioned in the Constitution. Article Five spells out two alternatives for both proposing and ratifying amendments, but nothing on the revocation of a ratification.

In 1939 the Supreme Court addressed the issue of rescission in the case of Coleman v. Miller. They concluded that

We find no basis in either constitution or statute for such judicial action. Article V, speaking solely of ratification, contains no provision as to rejection. Nor has the Congress enacted a statute relating to rejection.337

336 The South Dakota legislature resolved that if the ERA were not ratified by the original deadline, their previous ratification would be void. Congressional Quarterly Almanac. 97th Congress, 2nd Session. 1962. Vol. XXXVIII. Congressional Quarterly, Inc., Washington D.C., p. 377.
The power to deal with the matter of rescission was left to Congress, and historically there were numerous attempts by Congress to pass legislation recognizing the validity of rescission. They all failed.

There has never been an instance in which an amendment failed to be ratified because of rescission. The closest historical precedent involved the Fourteenth Amendment. As discussed previously in Chapter Two, southern states were needed for ratification and only one southern state, Tennessee, voluntarily ratified. When ratification became a pre-condition for re-admission to the union, enough southern states passed it to achieve the necessary 28 states for ratification.

Before the required states had ratified, however, both New Jersey, the fourth state to ratify, and Ohio, the seventh state to ratify, had rescinded. When Louisiana became the 27th and South Carolina the 28th states to ratify, Secretary of State William H. Seward proclaimed that the Fourteenth Amendment had been ratified. At that point he could only make that proclamation by refusing to consider valid the rescission of New Jersey and Ohio. In his proclamation Seward stated that there was much uncertainty as to the validity of the rescission of the two states. 338

338 Freedman and Naughton, p. 15.
The proclamation was sent to Congress to resolve the issue. The Senate approved the list of ratifying states without debate. It was then sent to the House where the rescissions of New Jersey and Ohio were ignored, a concurrent resolution was passed and the Fourteenth Amendment became part of the Constitution.\(^{339}\) Of course, in this case, the government had just fought a war over related issues and put extreme pressure on southern states to ratify. Perhaps that entered into a deliberate refusal to allow New Jersey and Ohio to rescind. Whatever the motives behind it, a precedent to invalidate rescission was set.

The absence of constitutional provision for rescission and the precedent of the Fourteenth Amendment have not stopped states from making what is possibly a futile gesture of disapproval of prior action. However, given the ability of the Supreme Court to re-set precedent and stretch the Constitution to fit almost any need, rescindment may always be a possibility, however remote. We will examine the rescindment activities of two of the states rescinding the ERA, Nebraska and Tennessee.

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\(^{339}\) Freedman and Naughton, pp. 16 and 17.
Nebraska

Nebraska unanimously ratified the ERA in 1972 within one day of congressional passage. In their attempt to be the first to ratify, the legislators eliminated public debate on the issue. In 1973 when the ERA debate was nationwide, the Nebraska Unicameral took another look at the legislation they had been so eager to pass the previous year.

In 1972 opposition to the ERA did not emerge. The next year, however, they were organized. Phyllis Schlafly of Stop ERA was present, as usual. The rescindment drive in Nebraska appears to have largely revolved around a member of the legislature, Richard Proud. Proud had been a lobbyist for Mutual of Omaha and worked as an attorney for them. The National Organization for Women claimed that the anti-ERA campaign in Nebraska was directed by large insurance companies which did not want equality for the sexes in insurance.340

The Nebraska Republican Party Central Committee and the Democratic State Chairman opposed rescindment. Also fighting rescindment were the League of Women Voters, the National Organization for Women, and the State Commission on the Status of Women.

340 The St. Louis Post-Dispatch, March 16, 1975.
The rescindment resolution was sent to the Government and Military Affairs Committee. There a 4-4 deadlock vote prevented any action on it for awhile. At that point, Senator Proud appeared to be waiting to seek a resolution to dislodge his bill and put it directly on the floor. The resolution did make it to the floor, and by a 31-17 vote Nebraska reversed its prior unanimous approval of the ERA. Nebraska's rescindment then initiated a flurry of debate about whether or not the action was legal.

Tennessee

While not displaying the rapidity of Nebraska, Tennessee managed to ratify the ERA about a month after it left Congress. Within a year, the Tennessee legislature was debating rescindment, despite advice from the state attorney general that the process would not be legal. In 1973 the House General Welfare Committee held hearings and considered a rescindment bill for three weeks before voting 7-5 to defer action indefinitely. The measure was supported by a few conservative Republican senators and a Republican woman representative. In 1974 however, the legislature took up rescindment once more, this time

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succefully (56-33 in the House, and 17-11 in the Senate).

CONCLUSIONS

The history of the ERA in the six states shows two periods of state legislative reaction to the amendment. The first was undoubtedly the time of the ERA bandwagon. This lasted about a year after congressional passage. States were discarding usual legislative procedure in the rush to be the first, or one of the first, to ratify. Public sentiment on the issue could hardly have been consulted when, as in Nebraska and Tennessee, the legislature voted on the resolution within one day of congressional passage.

Certainly not all of the bandwagon ratifiers changed their mind given time to reflect on the issue, but Nebraska and Tennessee did. While their rescindments of the ERA would probably not have invalidated their original ratification, the votes to rescind were clear signs of the fluidity of ERA support.

The post-1972 period of ERA consideration in the state legislatures is marked by increasing partisanship on the issue and near stand-offs in the battles between proponents and opponents. Many early ratifications were marked by unanimity or such lopsided victories that it is clear

345 Boles, p. 3.
overwhelming support had to have come from both political parties. Later legislative votes showed that Republican opposition was strong. Victories in Ohio and Indiana were due to the ability of Democratic ranks to hold firm, just long enough to ratify.

After the ERA bandwagon stopped, it is evident that proponents and opponents were often closely matched in strength. The victories in Indiana and Ohio, and even the defeats in Missouri and Virginia, show that the switching of just a few votes could have meant either success or failure. A few votes in Ohio were shoved into the pro-ERA column by the political muscle of organized labor. The clout of presidential influence secured Indiana's ratification. In Missouri and Virginia, however, the ephemeral proponent majorities either fell back in the face of an opposition blitz or were never quite there at all; but it was close. At times, because of shifts in the membership of both camps, it is easy to see how Ohio and Indiana could have remained unratified or Missouri and Virginia might have ratified.346

As with the histories of other constitutional amendments, the above individual state histories reveal the impact of the amendment process on the fortunes of amendments. In the case of the Equal Rights Amendment the

\[346\] Public support of the ERA remained strong at all times, even in the non-ratifying states.
influence of the procedure was towards failure. The ERA was an issue new to state legislators. When the initial enthusiasm for the amendment died down and serious debate began, legislators had no background from which to assess the impact of the amendment on state laws or its impact on the voters. The groundwork on the issue, the incremental acceptance of the issue was lacking. The capacity for minority veto was demonstrated in Missouri and Virginia where active minorities in the population were able to veto the sentiments of the majority of the citizens of those states.

The amendment procedure also highlights the idiosyncracies of individual states. Particular political situations peculiar to each state have played a role in the ratification decision. For example, in Ohio, at the time of ERA consideration, organized labor was considered to be a strong influence on the election of various state legislators. Shifts in the ERA position of the AFL-CIO created shifts in the ERA position of certain key state legislators and tipped the balance in favor of the ERA in Ohio. The apparent heavy influence of organized labor on the Ohio ERA ratification was unique to Ohio, just as the unique politics of all the surveyed states played some part in the ERA ratification decision.
In the ratification stage of the amendment process the focal point of attention is the membership of the state legislatures. All the debate, all the lobbying by interest groups, all the constituent pressure is aimed at influencing the votes of those people. The legislators have their own perspective on the amendments as the recipients of all the lobbying and as representatives of their districts and state. To determine state legislator perceptions of the campaign to ratify the Equal Rights Amendment, a survey of state legislators was conducted in the six states used in this study.

The survey was designed primarily to cover three areas. The first is the rationale for the legislators' votes on the Equal Rights Amendment. This includes the reasons why legislators voted on the ERA and why, if applicable, they later changed their mind. It also includes the reasons why legislators voted as they did on the issue of rescindment. The second area of questions dealt with how the legislators felt about the more prevalent arguments the various
lobbying groups presented about the impact of the ERA and how the legislators perceived the effectiveness of the ERA lobby. The last area of the survey specifically asked legislators how they perceived their constituents' attitudes towards the ERA and what impact they felt their position on the ERA had on their re-election.

The results of the survey confirm the argument that state legislators, in significant numbers, have a unique perspective on the ERA which may have accounted for its ultimate failure.

**SURVEY METHODOLOGY**

The population from which the survey sample was drawn was composed of all state legislators who had served while the ERA was under consideration in the six states used in the previous analyses. The states were selected to provide the entire diversity of legislative response to the ERA. Some legislators from Nebraska and Tennessee were in the legislature when the ERA was passed within a day. Some of those same legislators also voted on rescinding their ratification. It was hoped that responses from legislators in those states could clarify the reasons for the behavior of state representatives at two distinctly important times in the ERA's history. The legislators from

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347 Consideration here means that at least one floor vote took place in the house and session in which that state legislator served.
Ohio and Indiana considered the ERA during a period of strong controversy and passed it. The legislators of Missouri and Virginia discussed and voted on the ERA for ten years, without ratifying it. Responses from Ohio and Indiana should shed light on the reasons for ERA victory, while responses from Missouri and Virginia should indicate why they failed to ratify the amendment.

Because the ERA was often voted on (floor vote) in more than one legislative session, the population of state legislators from which the sample was drawn exceeded the size of the six state legislatures. The survey was implemented in 1980. Many of the legislators surveyed had not served for years. Thus, the population was a mix of persons who had retired from public service, gone on to other professions (including the U.S. Congress) and current state legislators. Some had not dealt with the Equal Rights Amendment for eight years, others in Missouri and Virginia were actively involved with the issue.

The nature of the population created specific problems for the survey. The legislators were not all conveniently located at state capitols. They were widely dispersed across their home states and some had retired out-of-state. Only Nebraska keeps an up-to-date directory of former state legislators. Finding some of the people in the population proved to be impossible. Because of the great geographic
dispersion of the legislators, personal interviews and even phone interviews proved to be economically unfeasible if severe restraints on the sample size were to be avoided. A mail questionnaire was the most appropriate survey method given the nature of the population to be surveyed. Grants from the Graduate School of the Ohio State University and the Ohio State Women's Studies program enabled a mail questionnaire, with a follow-up second mailing, to be sent to a sample of 586 state legislators.

Since there had been floor votes in all of the state senates in the six states and because the size of state senates tends to be reasonably small and uniform (around 50), all relevant state senators were included in the sample. The rest of the sample was composed of 60 representatives from each of the states in which a House floor vote occurred. In Nebraska, because of the unicameral legislature, and in Virginia, where there was no House vote, no "representatives" were sampled. The members' names were chosen by a random number sampling method from rosters provided by the state legislatures.

There was an initial mailing of approximately 500 questionnaires and cover letters. A follow-up second mailing was sent about a month after the initial mailing to those who had not responded. When the first mailing of

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348 We are considering everyone in the Nebraska Unicameral a senator.
questionnaires returned, there was a healthy response from all but two states, Missouri and Tennessee. Assuming that the follow-up, second mailing would not radically alter the response rate in those two states, it was decided to expand their samples by including all relevant members of their Houses. In this way, even if the response rates were still low, the number of responses might be increased to a comparable level with the other states. Indeed that is what happened.

This methodology does allow for the possibility of bias in the samples from Missouri and Tennessee because the opportunity for self-selection was greater for legislators from those two states. Unfortunately there were no adequate resources to check the objective characteristics of the entire population of state legislators. However, the self-selected samples from Missouri and Tennessee very closely correspond to the entire Missouri and Tennessee state legislator populations in terms of their vote on the ERA. The Missouri sample and population split evenly in their support for the ERA. In both the Tennessee sample and population only a few legislators were recorded as having voted or responded as having voted against the ERA.

A total of 586 legislators were contacted and 175 returned the questionnaires, bringing the overall response rate to 30%. The response rate per state varied
considerably. Nebraska had the highest return rate of 51% (N=26); Indiana was next with 42% (S=17, H=25); then came Ohio with 40% (S=10, H=19). Virginia 38% (S=17), Missouri 22% (S=7, H=29, 2 unknown), and Tennessee with only 16% (S=7, H=15, 1 unknown).³⁴⁹

In comparison with the entire population of legislators in the six states, the respondents were comprised of slightly more Republicans and more females than the population as a whole.

The questionnaire itself consisted of ten questions covering two pages.³⁵⁰ It was designed to be completed in under fifteen minutes. There was a mixture of closed and open-ended questions. The precise content of the questionnaire will be presented below, as the results of the survey are discussed.

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³⁴⁹ The response rate of this survey compares favorably with another survey of state legislators done by Uslaner and Weber. Because the only state which provided an up-to-date mailing list, Nebraska, had the highest return rate, one might assume that the return rate for the other states could have been higher had current mailing lists been available or had the legislators all been current members of their legislatures. Uslaner, Eric H. and Weber, Ronald E., Patterns of Decision Making in State Legislatures, Praeger Publishers, New York, 1977, p. 4.

³⁵⁰ See Appendix.
SURVEY RESULTS

Using the Constitution to Promote Women's Equality

In the past, sometimes the objective of a constitutional amendment was not opposed, but the use of the amendment procedure to achieve that objective was. The first question on the questionnaire asked respondents "How do you feel about using the constitutional amendment procedure to promote equal rights for women?" Forty-nine percent of the respondents expressed support for the use of an amendment to achieve equal rights for women and forty-four percent were opposed to that method.

The group of legislators which expressed unqualified support for the amendment procedure was comprised of twice as many Democrats as Republicans. Typical of comments in support of the amendment procedure is this statement by a Nebraska legislator.

In an area as basic and overriding in importance as equal rights for all people, the use of a constitutional amendment is mandatory. Our constitution should contain a clear, unequivocal statement affirming the rights of all people.

Also from Nebraska comes another often repeated sentiment that the amendment procedure is the only way equal rights for women can be obtained.

The only way it can really be done - State statutes are too easy to be repealed and would not be the same in every state.
Those opposing the use of a constitutional amendment to promote women's rights were largely Republicans. One frequently mentioned reason was that the Constitution already gives women equality and thus the ERA is unnecessary.

Unnecessary - major feature of our constitution has been its flexibility. Present amendments form adequate basis for equality of sexes.

Another often stated argument against the need for constitutional change was that the goal of equal rights could be accomplished (and many said should be accomplished) by federal or state law. They felt the addition of a new amendment would promote the transfer of decision making power in some areas from legislatures to the judicial branch.

Reasons Behind the ERA Vote

The state legislators were asked what their vote(s) on the ERA had been and then they were asked about why they voted the way they did. The results of those questions revealed strong support for the ERA. Of the state legislators responding to the survey, twice as many claimed to have voted in favor of the ERA as claimed to have voted against it (This does not include votes to rescind). This ratio roughly corresponds to the ratio of the votes of the total population of legislators in the six state survey
Democrats favored the ERA by a 5:1 ratio, while Republicans mainly opposed it by a 3:2 ratio. The few (17) women legislators who responded to the survey voted for the ERA by about a 10:1 ratio, a significantly higher margin than their male counterparts.

Responses to the question "What were your reasons for voting for or against the amendment?" can be seen in Table 2.

Table 2

<table>
<thead>
<tr>
<th>Party Affiliation and Reasons for the ERA Vote</th>
<th>Dem.</th>
<th>Rep.</th>
<th>Unknown</th>
<th>Total</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>General statements of ERA support</td>
<td>58%</td>
<td>17%</td>
<td>47%</td>
<td>38%</td>
<td>65</td>
</tr>
<tr>
<td>Unnecessary</td>
<td>7</td>
<td>17</td>
<td>5</td>
<td>12</td>
<td>20</td>
</tr>
<tr>
<td>Do it by statute</td>
<td>5</td>
<td>12</td>
<td>0</td>
<td>8</td>
<td>14</td>
</tr>
<tr>
<td>Constituents</td>
<td>5</td>
<td>8</td>
<td>11</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>Impact unclear</td>
<td>2</td>
<td>22</td>
<td>5</td>
<td>12</td>
<td>20</td>
</tr>
<tr>
<td>Women in draft</td>
<td>3</td>
<td>5</td>
<td>0</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Remove rights</td>
<td>4</td>
<td>5</td>
<td>16</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>16</td>
<td>14</td>
<td>16</td>
<td>15</td>
<td>26</td>
</tr>
</tbody>
</table>

n=73     n=81     n=19     n=173

The reasons given by respondents who voted for the ERA were usually stated in very general comments about support for women's rights and the equality of all people. Specific impacts of the ERA were not usually mentioned.
Those who voted against the ERA were mainly Republicans and tended to give multiple reasons for their opposition. The two most frequently mentioned anti-ERA reasons were that they felt apprehensive, in a general way, about impact of the ERA and that the ERA was unnecessary due to the equal protection clause of the Fourteenth Amendment.

The uneasy feeling about the impact of the ERA was the reason used most often by Republicans, and only once by a Democrat. These legislators were not so much concerned about specific consequences, but were worried about unforeseen problems that the ERA might bring. Among many state legislators there is an anathema associated with broadening the scope of the Supreme Court, which they feel would happen if the Court were given another amendment to interpret. This fear of the unknown, and specifically mistrust of possible Supreme Court interpretations, was a common theme. An Indiana lawmaker said

"My main reason for opposing the amendment was a lack of confidence in U.S. Supreme Court for a reasonable interpretation, especially in light of some of their recent decisions."

The perception that the ERA was unnecessary was cited equally as often as the fear of ERA impact. Legislators wrote "unnecessary cluttering of the Constitution" and "Adequate laws now exist. The Supreme Court would have many unexpected interpretations."
Another frequently mentioned reason was that the same objectives could be accomplished by specific legislation either in Congress or the states. Very few Democrats made statements of that kind. Some legislator comments were "unnecessary. Pre-empt state's rights," and "I believed it to be an infringement upon the right of the state to legislate in this area and further concentrated power at the federal level."

Constituency influence on the ERA vote was rarely cited (5% for Democrats, 8% for Republicans). Also, the arguments of anti-ERA groups such as women in the draft and the loss of women's "privileged position" were mentioned by just a few legislators.

Some Nebraska and Tennessee legislators responded with comments which specifically declared that the states were in a race to be the first to ratify the Equal Rights Amendment. As discussed previously, Nebraska and Tennessee managed to ratify the ERA within one day of congressional passage by suspending normal legislative procedures. Responses from Nebraska and Tennessee lawmakers support the idea that state pride played a considerable role in some initial ratifications.

Some comments from Nebraska senators were:

The original was passed in a rush without public hearings and in an emotional binge to be number one. Hawaii beat us. This resulted in repeal.
And

We were within hours of being the first state to ratify it — Hawaii because of time difference beat us.

A Tennessee legislator described a similar circumstance.

Tenn. was the last state to ratify voting rights for women — I responded in haste to the effort to be the first state to ratify ERA. "Act in haste, regret at leisure" — an in depth examination persuaded me that ERA did not do what it was purported to do and therefore voted to rescind.

**Stability of Support for the ERA**

The fortunes of the Equal Rights Amendment changed dramatically over the ten year period in which the lawmakers in the six state survey served in their state legislatures. Were changes in ERA prospects due to fluctuations in legislator positions? The survey results indicate that only a small percentage (18%) of legislators indicated a change in position on the ERA. Change in position does not necessarily imply the opportunity for a change in voting on the ERA. Of those who had the opportunity to vote on the ERA more than once, again there is remarkable stability. Out of 121 legislators who claimed to have voted on the amendment more than once, in only twelve cases did they vote inconsistently, either on a floor vote or in committee. And, of those twelve whose votes did change, eleven formerly pro-ERA votes turned
negative and only one legislator reportedly moved from opponent to proponent. Almost all of the vote changes came from Nebraska and Tennessee, the rescinding states. In all only 9% of the state legislators claimed to have voted inconsistently on the ERA.

In three of the six surveyed states there have been votes on whether or not to rescind ratification of the ERA. In Nebraska and Tennessee the legislatures reversed their approval of the ERA. In Indiana, where the ERA barely passed, the move to rescind failed.

The questionnaire asked those legislators whose states had considered rescindment how they voted on the measure, and what most influenced their vote decision. Of those who voted on a rescindment measure (n=54), 48% favored the measure and 52% were opposed to it. Those who opposed the moves to rescind the ERA usually cited their support for equal rights for women. A Nebraska lawmaker said "I have consistently favored ERA ratification and did not want Nebraska's approval rescinded."

Some of those favoring rescindment commented that they had more time to think about it and the conclusion was opposition. Also mentioned were statements in favor of a legislative remedy, the citing of constituent opposition and the expression of fears of Supreme Court interpretation.
Because Nebraska elects its legislators in non-partisan elections, only those from Tennessee and Indiana could be examined for the relationship between party identification and the vote to rescind. While the numbers are small (34), the differences between Democrats and Republicans is stark. Only one Democrat voted in favor of rescindment. Republicans voted to rescind by better than a 2:1 margin.

Legislator Perceptions of ERA Impact

We have seen that the policy outcomes of many amendments had already been achieved in most states prior to congressional passage of the amendment. Thus, for most amendments whose goal could be achieved by statute the perceived policy impact would have to have been very low. For example, if a state was already dry, or gave women the vote, or in effect directly elected its U.S. senators, the passage of amendments which provided those same objectives would not produce much, if any, discernable impact on the state. Given the difficulty of the amendment procedure, we would expect any proposed amendment which was perceived to produce significant policy impact to have a difficult time gaining support. The ERA could have failed at ratification because it was perceived to move at more than an incremental pace towards changing the legal and social status of women.
The questionnaire included closed-ended questions designed to measure whether or not legislators perceived positive, negative or no impact in a variety of areas as a result of ERA ratification. The results of these questions are in Table 3. The areas of impact selected for questioning follow the predominant arguments used by both sides of the ERA debate as discussed previously in Chapter Four.

The questions relating to the impact of the ERA on promoting economic equality for women indicate that most legislators (54%) saw the ERA eliminating blatant forms of discrimination, very few (15%) felt it would result in economic equality and about a third (31%) thought the impact would be purely symbolic. More Democrats than Republicans saw positive economic benefits to the ERA; almost half (42%) of Republicans viewed any impact as purely symbolic. In non-ratifying states slightly higher percentages saw impact as symbolic (Missouri 39% and Virginia 40%) and lower percentages saw positive impact (Missouri 9% and Virginia 13%).

The argument that the ERA would contribute to the decline of the nuclear family was not convincing to most legislators. Again, the most sizeable group (43%) saw the ERA having no impact on the family. Among Republicans, however, 35% did see it as having a negative effect on the
Table 3  
**Legislator Perceptions of ERA Impact**

<table>
<thead>
<tr>
<th>Economic Impact</th>
<th>Democrats</th>
<th>Republicans</th>
<th>Total*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Job and Pay equality</td>
<td>17%</td>
<td>9%</td>
<td>15%</td>
</tr>
<tr>
<td>2. Some discrimination ended</td>
<td>61</td>
<td>49</td>
<td>54</td>
</tr>
<tr>
<td>3. Symbolic impact only</td>
<td>22</td>
<td>42</td>
<td>31</td>
</tr>
<tr>
<td>Impact on the Family</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. No direct bearing</td>
<td>53</td>
<td>39</td>
<td>43</td>
</tr>
<tr>
<td>2. New rights</td>
<td>31</td>
<td>26</td>
<td>30</td>
</tr>
<tr>
<td>3. Disintegration of family</td>
<td>16</td>
<td>35</td>
<td>27</td>
</tr>
<tr>
<td>Impact on Privacy Rights</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. No effect on privacy</td>
<td>87</td>
<td>71</td>
<td>77</td>
</tr>
<tr>
<td>2. Remove privacy</td>
<td>13</td>
<td>29</td>
<td>23</td>
</tr>
</tbody>
</table>

*Total includes non-partisan elected

American family. The only other significant minority who agreed with that were the 38% of Missouri legislators.
The possibility of women being drafted into the military (even without the ERA) was quite real at the time the survey was taken. The Supreme Court had yet to rule that Congress could exclude women from the draft. With an Equal Rights Amendment it is possible a different ruling could be given. A majority of state legislators (52%) felt the ERA would result in women being drafted. Only 19% of the Democrats, but 30% of the Republicans thought women would also be performing combat duties.

One of the more dire ERA consequences predicted by opponents was that passage would lead to the abolition of certain separate facilities (e.g., toilets) for men and women, thus forcing a lack of privacy between the sexes. State legislators overwhelmingly (77%) rejected that argument. Democrats (87%) more so than Republicans (71%).

In general, Democrats perceived more positive impact and Republicans perceived more negative impact as a result of the ERA. However, taken as a whole, the state legislators appeared to view the impact of the ERA as minimal. There are no strong majorities predicting great benefits or dire consequences.

However, those lawmakers who voted to rescind the ERA were an exception to the tendency to view the ERA as having minimal impact. More of them saw negative consequences resulting from ERA ratification than the sample as a whole,
or Republicans as a group. Those who voted to rescind saw the ERA only as a symbolic gesture in terms of improving the economic condition of women. Fifty percent of them felt the ERA would contribute to the disintegration of the American family. Forty percent foresaw women being drafted into the military and sent into combat. They split 50/50 on the issue of loss of privacy between the sexes. Although numerically the group is too small to generate hard generalizations or subtle distinctions, clearly the group which voted to rescind perceived stronger and more negative consequences of the ERA's ratification than the sample as a whole.

Overall, the results of the closed-ended impact questions show that state legislators did not foresee much impact in the areas debated most often by the ERA lobbyists.

Legislator Evaluations of ERA Lobbyists

Legislator evaluations of ERA lobbyists show that the arguments put forth by the various ERA lobbyists failed to be convincing. While anti-ERA spokespersons claimed the defeat of the ERA was proof of their effectiveness, the comments of state legislators indicate that neither side of the ERA controversy was perceived as very effective.

Early in the history of the ERA ratification drive, there was only one organized lobby, that being the
proponents. The pro-ERA forces, while not organized at a grass-roots level, managed to gain the support of the leadership in many state legislatures which enabled the use of extraordinary legislative procedures and rapid ratifications.

By 1980, when the questionnaire was administered, both sides of the controversy were well-organized and had been heavily lobbying the state legislators. Ninety-five percent of the lawmakers had been contacted by pro-ERA groups and ninety-one percent were contacted by the opposition. Thus, almost all of the legislators in the survey had experience with both lobbying camps and were in a position to provide evaluations.

Legislators were asked to name the groups or individuals who had lobbied them in behalf of or in opposition to the ERA. Among the pro-ERA lobbyists, the most often mentioned group was NOW, the National Organization for Women. The League of Women Voters was a close second, constituents were third. In the opposition camp the most often mentioned were church groups. Constituents were the second largest specific category mentioned. Third was Stop ERA. Another often mentioned category consisted of various right-wing political groups.

The evaluations of the lobbyists is summarized in Table 4.
Table 4

Evaluation of ERA Lobbyists

<table>
<thead>
<tr>
<th></th>
<th>ERA Proponents</th>
<th>ERA Opponents</th>
</tr>
</thead>
<tbody>
<tr>
<td>good/effective</td>
<td>20%</td>
<td>17%</td>
</tr>
<tr>
<td>informed/reasonable</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>helpful</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>sincere/dedicated</td>
<td>16</td>
<td>10</td>
</tr>
<tr>
<td>uninformed/unreasonable</td>
<td>10</td>
<td>16</td>
</tr>
<tr>
<td>poor/ineffective</td>
<td>18</td>
<td>10</td>
</tr>
<tr>
<td>extreme/emotional</td>
<td>22</td>
<td>30</td>
</tr>
<tr>
<td>n/175</td>
<td>n/175</td>
<td></td>
</tr>
</tbody>
</table>

The seven categories of evaluation emerged from comments to the open-ended request to "describe and evaluate" both sides of the lobbying effort. Overall, the comments reveal an evenness in state legislator perceptions of both lobbying camps. Both sides received similar evaluations and in relatively the same proportions. Neither side emerged as terribly effective. Most noteworthy were the many comments which describe both sides as being extreme in their arguments and tactics, and too emotional in their presentation. The largest category of evaluations for both the pro and con groups was the extreme/emotional one. Typical of responses in that category are, "Their effect was negative. Both sides were too hysterical and were not
effective" and "Too radical in their approach and discussion. Too extreme in their tactics."

While generally the legislator evaluations of the lobbyists were uniformly not good, there is evidence of selective perception at work on the evaluations. Those who voted for the ERA made significantly more positive comments about proponents (57% positive) than the opponents (33% positive). ERA opponent lobbyists received more negative evaluations (62%) than the pro-ERA lobby (36%). Those voting against the ERA responded negatively to ERA proponents 64% of the time. They were slightly less critical of the opposition.

Democrats were balanced in their descriptions of proponents (47% positive, 43% negative), and more critical of the opposition (36% positive, 59% negative). Republicans seemed not to have had any significant bias and viewed both camps approximately 50/50.

Legislators who voted on rescindment indicated the most pronounced differences in perception of pro- and anti-ERA forces. How a legislator voted on rescindment is a strong indicator of his/her evaluation of the lobbying groups. Those voting to rescind were twice as likely to give a negative evaluation of proponents and twice as likely to give a positive assessment of the opponents.

\[35\] Miscellaneous comments comprise the missing percentages.
Those voting against rescission were twice as likely to give a positive description of proponents and twice as likely to give a negative one to the anti-ERA forces.

When the legislators are grouped according to how their state reacted to the ERA, the results are as follows. In the rescinding states (Nebraska and Tennessee) a strong, negative evaluation was given to both sides. The pro-ERA camp received 66% negative comments and even the anti-ERA lobbyists were evaluated derogatorily 66% of the time. In the states which ratified the ERA and did not rescind (Indiana and Ohio), pro-ERA groups were described positively 62% of the time and the anti-ERA groups received just the opposite treatment with 67% unfavorable responses. In Missouri and Virginia where the ERA was not ratified, the evaluation of both sides was negative in a majority of responses, 64% for the pro-ERA side and 57% for the anti-ERA groups.

In general neither lobbying camp was perceived as very effective. The ERA opposition, which claimed credit for the ERA's failure, got a majority of positive responses only from those who voted to rescind ERA ratification.
Legislator Perceptions of Constituent ERA Attitudes

The perceptions by state legislators of how their constituents viewed the ERA may not necessarily match the results of scientific polls on the subject. Indeed, owing to the numerous, contradictory indications of what constituent attitudes towards the ERA were, we should not be surprised at discrepancies between what is discovered by pollsters and what is perceived by state legislators. State polls from Missouri and Virginia, where it was not ratified, showed majority support for the ERA. A study at the national level indicates a weakly committed or disinterested populace. Strong anti-ERA lobbying by citizens, especially in Missouri and Virginia, suggests strong voter sentiment against the ERA. Thus, there are a variety of indicators of a variety of constituent positions.

What is especially lacking in the scientific surveys taken on the Equal Rights Amendment is any measurement of intensity of feeling. Such measures might have shown whether the approving majorities were weakly in favor or how large the intensely pro and con groups were. Given the change in fortune of the ERA, it would also be reasonable to expect large shifts in public opinion from favorable to opposed to the issue.
Unfortunately, no measures of intensity were used on the ERA issue and no scientific polling took place before 1974, when shifts in public opinion could be expected to have taken place. State legislators, however, were dealing with the issue from 1972 until 1980 when the questionnaire was administered. When asked about their perceptions of their constituents' ERA position, most lawmakers indicated that they were aware of how their constituents felt. The perceptions of constituent attitudes on the ERA over time are presented in Table 5. The purpose of Table 5 is to determine perceived stability of attitude on the ERA. It was not designed to map change in ERA attitudes at specific times. The legislators in the survey served their states at various times over a ten year span. While it was not possible to provide a common set of dates for Time 1 and Time 2, it was possible to present each legislator with a specific Time 1 and Time 2 based on that lawmaker's term of service and when ERA floor votes occurred in his/her legislature. For example, a Nebraska legislator's Time 1 might be 1972, the year Nebraska ratified, and Time 2 would be 1973 when the legislature rescinded. The aggregation of responses in Table 5 shows direction of movement of perceived attitudes over time. Category one indicates the perception that the consensus of the district was support for the ERA. Category two indicates the legislator
perceived a majority of the district in favor of the ERA. Categories three and four are neutral attitude perceptions. Three reflects the perception that the constituents are divided in their opinions and four reflects the perception that the constituents are not interested in the ERA as an issue. Categories five and six correspond to categories one and two in perceptions of ERA opposition.

Table 5

Perceptions of Constituent ERA Attitudes

Time 2

<table>
<thead>
<tr>
<th>For ERA</th>
<th>Against ERA</th>
<th>N</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 2 3</td>
<td>4 5 6</td>
<td></td>
</tr>
<tr>
<td>For ERA</td>
<td>1 16 0 2 1 0 1 20</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2 2 7 6 2 1 0 18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3 0 2 10 0 5 1 18</td>
<td></td>
</tr>
<tr>
<td>Time 1</td>
<td>4 0 0 3 10 3 5 21</td>
<td></td>
</tr>
<tr>
<td></td>
<td>5 0 0 1 1 27 2 31</td>
<td></td>
</tr>
<tr>
<td>Against ERA</td>
<td>6 0 1 2 1 1 15 20</td>
<td></td>
</tr>
<tr>
<td></td>
<td>18 10 24 15 37 24</td>
<td></td>
</tr>
</tbody>
</table>

Several points stand out clearly. The first point is the stability of the perceptions. For the most part there is little perceived attitude change among the constituents.
Sixty-six percent of the responses lie on the diagonal indicating no perceived position change at all. A small amount of movement indicates a perception of weakening of ERA support. There is very little perceived movement from opposition to support. What is surprising, considering early ERA success and survey findings of stable, favorable majorities, is that perceived constituency opposition is so large and so stable. Thirty-five percent (frequency=45) of the state legislators perceived that a majority or more of their constituents were opposed to the ERA and remained so over time. Only twenty percent (frequency=25) of the legislators perceived stable support among their constituents, significantly less than had been measured in state, regional and national surveys. The rest of the legislators either perceived no dominant constituency position or perceived unstable constituency attitudes. As Table 5 indicates, most of the movement involved slight perceived erosions of ERA support.

When change in perception of constituency attitude is analyzed controlling on party identification, Republicans perceived less support, more division, and a substantially larger, stable opposition.
ERA Impact on Elections

The rhetoric of both sides of the ERA controversy included threats of retaliation at the polls for those state legislators who voted "incorrectly" on the Equal Rights Amendment. Such threats assume not only that voters do vote according to issues, but that the ERA would be salient enough to citizens to determine (or be a significant factor) in how they would vote. The political science literature does not support making those assumptions casually.

Numerous conflicting articles and books in the political science literature are devoted to the controversy about whether or not voters actually use positions on issues to determine how they vote.\textsuperscript{352} The authors of The American Voter chose three criteria as being necessary conditions for issue voting. They are:

1. The issue must be cognized in some form.
2. It must arouse some minimal intensity of feeling
3. It must be accompanied by some perception that one party represents the person's own position better than does the other parties.\textsuperscript{353}


\textsuperscript{353} Campbell, Angus; Converse, Philip E.; Miller, Warren E.; Stokes, Donald E.; \textit{The American Voter}, University of Chicago Press, 1960, p. 170.
Using the *The American Voter*’s criteria for issue voting, does public response to the Equal Rights Amendment indicate that a constituent’s stand on the ERA might have been a vote determinant? (As the authors of *The American Voter* point out, fulfilling the criteria only means it is possible to vote on the basis of an issue, not that it will be used as a determinant of the vote). 356

The first criterion is that the ERA must be “cognized in some form.” In Chapter Four it was shown that ERA recognition reached levels of 90% nationwide. However, when some elementary awareness of state legislative activity on the ERA was examined, levels of ignorance among citizens were overwhelmingly large everywhere. Depending on the standard used for determining cognition, one could argue that the criterion had been met. However, it would be unrealistic to conclude that citizens who were oblivious to the fact that their state legislature had dealt with (or was dealing with) the ERA would then have any basis on which to use the ERA as reward or punishment in the voting booth.

The second criterion is that the issue arouse some minimal intensity of feeling. Since most voters apparently did not follow the progress of the ERA in their state it could mean they did not care enough to find out what the legislature was doing on the issue. Unfortunately, there

356 *ibid*., p. 171.
are no studies which measure intensity of feeling towards the ERA so we do not know if those few who were informed felt strongly one way or another, whether they were interested specifically in the ERA or whether they were simply a small group of generally well-informed citizens.

The third criterion presented in The American Voter is that voters should be able to distinguish between parties (candidates) on the issue. In many of the early ratifying states (Nebraska, Tennessee) virtually the entire legislature voted for it, so punishment or reward at the ballot box would be difficult. In such instances voters would have had to wait for a move to rescind before being able to distinguish positions among legislators. In states which did not ratify quickly and unanimously, generally voters were presented with adequate, accessible information about their representative's position on the ERA. While we cannot make the inference that voters actually used the information in their voting decision, the necessary information was there for them to do so. Indeed there is evidence that voters did not use the information because they were quite uninformed. Thus, if the ERA was used as a determinant in the vote on state legislators, it was certainly limited to those few, knowledgeable citizens.

The more objective criteria of The American Voter may indicate a reluctance to consider the Equal Rights
Amendment a strong issue in the re-election of state legislators. The survey addressed the lawmakers' subjective evaluation of the ERA as an election issue and also found that in a relatively small number of cases was it considered a factor in running for the state legislature. The state legislators in the sample were asked how they viewed the effect of the ERA issue on their re-election prospects. The largest group of responses (32%) claimed the ERA was not a factor at all in their re-election. Another 20% felt positive and negative effects were evenly balanced. Only 13% felt the ERA issue had helped considerably. Twenty percent felt it had helped some. Thirteen percent said the ERA had somewhat hurt their re-election prospects and only one percent claimed it had hurt them a lot.

Among proponents of the ERA, 21% claimed they were helped by the issue. 16% percent claimed they were hurt by it. Among ERA opponents, 3% felt their stand helped in re-election, and only 10% felt their position hurt them. Thus the Equal Rights Amendment as an election issue was felt more by ERA proponents than ERA opponents.
CONCLUSIONS

The results of the survey of state legislators explains how minority opposition to the ERA worked to thwart ERA ratification because 1) there was no perceived grass roots movement for the ERA which compelled enough legislators to vote for it, 2) the legislators themselves were not, by and large, part of, or even particularly supportive of, the women's movement, and 3) the perceived threat to the legislative interests of states was not countered by perceived benefits of the amendment.

Throughout the survey legislators indicated a relatively small amount of constituency pressure for the amendment (or even against the amendment). Constituent pressure did not play a major role in determining how to vote on the ERA. Little constituency impact was felt at the polls. And contrary to scientific measures of public opinion, state lawmakers perceived more opposition than that reported by pollsters.

If the women's movement did not seem to have strength at the grass roots level, it does not appear to have recruited many state legislators either. This probably is the case because such a small percentage of the state legislators were female. Nonetheless, women's movement rhetoric is noticeably lacking in supporters' responses. Rather the declarations of support echoed the basic themes of equality
found in our democratic creed, like "I believe in equality for all people."

State legislators also were not captured by the arguments both for and against the amendment. They did not foresee the policy impact predicted by either proponents or opponents. Both groups of lobbyists received less than enthusiastic evaluations.

Thus state legislators generally were not greatly influenced by lobbyists. Throughout the responses one has the sense that the legislators were largely following their own reasoning on the issue. In Nebraska and Tennessee they rushed to be the first state to ratify, then later viewed ERA impact with concern. Prior to congressional passage, nothing had prepared them to deal with the issue or its implications. Those that favored the amendment stated basic beliefs in the equality of all, statements of cultural norms, not specific social movement policy. Those lawmakers who opposed the ERA most often did so on states' rights grounds, grounds which historically have often been the basis for amendment opposition.
Chapter VII
CONCLUSIONS

This dissertation has provided empirical evidence to support the thesis that the influence of the Madisonian democracy themes of incrementalism, minority veto and state dominance on the amendment process requires a particular set of political conditions in order for amendments to successfully complete a process which resists change. In the case of the Equal Rights Amendment, those conditions were not met and the conservatism of the amendment process was not overcome. The most important condition of amendment ratification has been the incremental development of support for the policy of the amendment, often over long periods of time, and in association with widespread political and social change. The acceptance of the policy must be so widespread that it can defeat the possible veto of the inevitable minority which opposes it, and also overcome sectional differences among the states and state interests.

The standard of the amendment procedure is not majority rule. Majority rule means there is equality among the
actors in the decision making process. However, in the amendment procedure minorities can have a disproportionate voice if they apply it in a negative way. Because minorities of one-third plus one or one-fourth plus one can veto the wishes of the majority, those political groups or those states which resist constitutional change have a more powerful voice than those which promote constitutional change. Since the Constitution institutionalized social conflict, there will always be some group of political actors opposed to whatever change is proposed.

The overcoming of those inevitable political minorities requires a particular set of political factors. First, there is usually a gradual development of support for the issue. This often occurs after repeated initial failures, sometimes in amendment form, sometimes in statutory form. Often success is achieved locally through the elections of new political majorities. Issues of amendments were often adopted by political parties. The success of the amendment often relied on the election of majorities of that party to Congress and also in state legislatures. When that occurred, these new political majorities could adopt the issue by statute and eventually by constitutional amendment. The political majorities and issues were frequently associated with larger social movements such as the political reform movement and the abolitionist
besides building a general acceptance of the issue, success in non-amendment form has typically meant that proponents of the issue developed political experience in dealing with the issue, and in the process created a grass roots organization to deal with it when it came back to the states in amendment form.

The incremental nature of the process, repeatedly found in the histories of successful amendments, is striking when we look at the length of time spent in the development of some constitutional issues. Both temperance and woman suffrage, for example, took nearly a century to achieve inclusion in the Constitution.

This nationwide, incremental development of support typically found in amendments explains why the pivotal point for the successful amendments was congressional passage. Often ratification by the states came within a few years of congressional passage, not because it is an easier step in the process, but because so much of the groundwork was already done in the states prior to congressional approval. Congressional defeat, sometimes repeatedly, is not atypical for amendments. However, once the massive two-thirds majorities were achieved, it seems the nation was ready for the constitutional innovation.
WHY THE ERA FAILED

The Equal Rights Amendment failed because the factors which overcome the conservative nature of the amendment process were lacking in its progress. First, the ERA was unexpectedly thrust on the public without any gradual building of grass roots support at all. Second, the social movement which incorporated it as an issue, the 20th century women's movement, was in its organizational infancy when the ERA passed Congress and was incapable of dealing with the inevitable opposition, thus allowing minority veto. Third, related to both of the above, the congressional passage of the ERA was atypical in timing and procedure from other amendments, reflecting the fact that pressure for the ERA initially came from a Washington lobby and not from congressional districts. Fourth, there was a perception among some state legislators that the states as such had an interest in protecting against an encroachment of their powers by the federal government through enforcement of the ERA. And fifth, there is evidence that public support for the amendment, though widespread, lacked intensity.
Absence of Incremental Support for the ERA

The timing of the emergence of the Equal Rights Amendment as a real, as opposed to dormant, issue was completely backwards to the patterns of the successful amendments. There was no grass roots support for the ERA when it initially passed the House, and little when it left Congress. While the amendment was constantly re-introduced each session of Congress, replete with co-sponsors, the support remained only symbolic without any constituency pressure for genuine consideration. There was no constituency pressure because there was no organized activity on its behalf and negligible related activity at the local level. Without such constituency pressure, burial in committee did not produce a demand for active consideration of the issue in the House.

Infancy of the Women's Movement

The Equal Rights Amendment's congressional consideration was a major issue around which a number of women's groups joined in the beginnings of the 1970's women's movement. The movement was in its infancy and consisted of some new groups like the National Organization for Women and more established women's organizations such as the Business and Professional Women's Association. The more women's issue oriented groups like NOW largely consisted of a national organization without the accompanying hierarchical structure
at the bottom. Small, local groups began proliferating in the 70's but they lacked coordination with each other and their national organization at the top. Various parts of the movement (and even within specific organizations) did not know what the others were doing. The ERA emerged from Congress in 1972 without an experienced, well-structured movement to guide it.

It is important to recognize that the women's movement itself was not perceived as a mainstream social movement. In the eyes of the media and the minds of many, feminists appeared radical and liberal. This perception was reinforced by women in the forefront of the movement behaving in atypically feminine ways (aggressively) and seeking goals which ran counter to social sex-role stereotypes of women as passive, dependent and nurturing. The education of the public to women's changing perceptions of themselves and their economic and social needs had just begun to occur. It is understandable if the largely male state legislative population was confused about the goals of the women's movement and viewed aggressive lobbying by women (both for and against the ERA) as radical and extreme behavior.

The evidence from debates on the ERA in the states and the state legislator survey indicate that state legislators rarely were part of the women's movement. Women comprised

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355 See Freeman.
only around 10% of state legislatures in 1980, even though from the late 60's through the 70's their numbers more than doubled.\textsuperscript{356} Thus, the movement itself could have had few members serving in the state legislatures which decided the issue. Also, a sizeable portion of the female state lawmakers were Republicans who generally voted against the ERA.

\textbf{Congressional Passage of the ERA}

The chapter on the congressional passage of the ERA showed that unusual procedures were necessary for approval because the usual pressures for passage from constituents, new political majorities, and the success of a larger social movement were absent. While the ERA received the endorsement of both political parties, especially prior to 1972 and even later, neither party adopted the ERA as a major issue.

Women members of Congress have always numbered less than 5% of the membership.\textsuperscript{357} And the most common characteristic of that small group is being a congressional widow.\textsuperscript{358} Congressional widows usually begin their tenure


\textsuperscript{357} Handel, \textit{ibid}.

by filling out the terms of their dead husbands. not arriving in Congress after a career in politics. Thus, as with the state legislatures, the Congress did not contain meaningful numbers of lawmakers who would in all likelihood have been at the forefront of the women's movement. And because the women's movement was just beginning there was no one there who had been elected on its issues or who would vote due to grass roots pressure on the issue. Instead, it seems the most crucial aspect of the ERA congressional victory was the position of Martha Griffiths on the House Ways and Means Committee and the sudden emergence of the pro-ERA Washington lobby.

Thus, passage of the Equal Rights Amendment was made possible by internal politics in both the House and the Senate and pressure from a Washington-based lobby with no grass roots. Because there was no grass roots organization awaiting it in the states, congressional passage was not the key factor it typically has been for other amendments.

State Interests

The amendment procedure was designed to give the states a dominant voice in the process. Two-thirds of the states can call for a constitutional convention to propose amendments, or amendments may be proposed by the House and the Senate, the latter originally elected by state legislatures. Three-fourths of the states must agree
before an amendment is ratified. The only part of the procedure not controlled by state interest is that step in the version of proposing amendments which calls for a vote of two-thirds of the House of Representatives.

The framers of the Constitution presumed that states would have a different perspective on issues than the Congress, and in many instances that has been the case. The difference in perspective largely comes from the historical disagreement over the scope of powers given the federal government and those given the states. Also, the states as individual political and economic entities often have conflicting interests among themselves, as well as the federal government. The one-fourth plus one veto of the states also allows for regional interests to block the desires of the rest of the country. In the case of the ERA the southern and certain western states have remained unratified. These states also tend to view the government in Washington with distrust and apprehension on other issues as well. The states' rights arguments heard in connection with the ERA are not unusual in conservative states which are generally concerned about the encroachment of the federal government. States' rights arguments were often cited in opposition to other amendments as well. The newspaper articles and the legislator surveys showed that fears of federal intervention into the realm of state
legislative authority were prevalent among those who opposed the ERA. While often specific impacts of the ERA were not foreseen, there was, in general, a mistrust of how Congress might implement the amendment and what kinds of rulings the Supreme Court might make to comply with it.

Shallowness of Public Support

Related to the lack of pre-ratification stage grass roots work done in the states on behalf of the amendment and the inexperience of the women's movement is the apparent shallowness of the public's support of the ERA. In 1972 the public had not been incorporated into the women's movement, nor had the various goals of the movement become salient issues.

The public, it seems, approved of equality for all, a basic democratic belief. However, they were largely oblivious to state legislative activity regarding an amendment which would accomplish that goal. The discrepancy between scientific evidence of support for the ERA and legislator perceptions of opposition point to the conclusion that support was not as widely or forcefully expressed as opposition sentiments. In effect, a passive majority allowed an intense minority to pressure legislators and prevent ratification.
THE FUTURE OF THE EQUAL RIGHTS AMENDMENT

In light of the many reasons why the Equal Rights Amendment failed, can we conclude that the ERA has a viable future? Proponents have already begun another ratification campaign. However, the conclusions of this dissertation would indicate that unless the problems which accounted for its failure are rectified, further attempts at ratification are probably futile. But the lesson of the successful amendments is that such problems can be overcome, failures are not final, and that proponents should try, try again. Factors which could be important in getting the ERA ratified are the development of the organization of the women's movement, the achievement of the goals of the ERA by non-amendment means, and current demographic and political trends toward a stronger voice for women in the political process.

When the Equal Rights Amendment left Congress there was no adequate organization ready to promote it. While initially more disorganized than the proponents, the ERA opposition associated itself with existing conservative political groups and churches. The use of existing organizational structures certainly must have helped the ERA opposition respond effectively to the ERA drive even during its infancy.
The campaign to ratify the ERA would do well to follow the plan of Carrie Chapman Catt in the drive to gain woman suffrage by ensuring the existence of strong, local organizations ready for the amendment in enough states to ratify, before congressional passage. Also, women's groups have begun to develop networks among themselves to promote issues and candidates.\textsuperscript{359} Once these networks exist, they can be utilized when an important issue appears on the political agenda. They would not need to be organized from scratch and could be tapped for a wide variety of resources. An experienced women's group network would also have the skills and expertise to handle a lobbying campaign on state legislatures. And especially if they have achieved prior successes, they could bring to an ERA ratification drive a reputation of political muscle.

The pattern of many successful amendments whose goals could be accomplished by statutory form also is that the more the issue of the amendment has already been adopted, the more likely the issue will be adopted in amendment form. This is the incremental approach. When the Equal Rights Amendment was passed by Congress only the beginnings of progress toward social and legal equality for women had begun. And most importantly, the idea that such inequities

\textsuperscript{359} See Flammang, Janet A., "Grassroots Politics in the Feminist Capital of the Nation", Prepared for delivery at the 1984 Annual Meeting of the Western Political Science Association, Sacramento, April.
existed and should be abolished had just recently been voiced again. Now, even without the ERA, there has been legal progress in eliminating some of the more blatant forms of sexual discrimination in our society. Our perceptions of women's capacities have drastically changed (for example, female astronauts are a fact). Yet women still earn less than men and work disproportionately in the secondary labor market of clerical workers, teachers, nurses, etc. As various forms of legal inequalities are abolished and as social stereotypes of women change, the goals associated with the Equal Rights Amendment will be accepted and its ratification more easily accomplished. In general, as the social and legal need for the Equal Rights Amendment diminishes, the greater its likelihood of ratification.

Another factor which could brighten the fortunes of the ERA is the changing demographics of the American population which could increase the influence of women in the political process by their increasing numbers and by the possibility of the higher salience of women's issues. Women of voting age will outnumber men of voting age by 9 million by the year 2000.360 Not only will there be more women voters, but women vote more frequently than men and

tend to vote more Democratic than men.361 This could make them a significant part of the Democratic coalition and require that the party recognize women's issues. Trends away from the traditional nuclear family and towards more women as heads of households mean women in greater numbers will face new economic and social problems, and those problems will need to be addressed by the political agenda.362 These problems may also produce a greater support for the ERA among women, if women begin to feel that ERA passage would have a positive impact on their lives. If women, as a group, demonstrate strength at the ballot box, issues of concern to them, including the ERA, are more apt to be considered. Indeed the new political majority in this case could be composed not of a political party, but of a gender.

361 ibid., p. 404.

362 See Kelly, Rita Mae, "The Reconfiguration of Gender Politics", Prepared for delivery at the 1984 Annual Meeting of the Western Political Science Association, Sacramento, April.
THE_EQUAL_RIGHTS_AMENDMENT

Resolved by the Senate and House of Representative of the United States of America in Congress assembled (two-thirds of each House concurring therein). That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

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.

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

SECTION 3 This amendment shall take effect two years after the date of ratification.
CONSTITUTIONAL AMENDMENT QUESTIONNAIRE

1. How do you feel about using the constitutional amendment procedure to promote equal rights for women?

2. In each of the following groups, A, B, C, and D, which statement do you personally feel most adequately conveys your opinions on the impact of the proposed "Equal Rights" amendment? Make an X beside the statement in each group which is closest to your opinions.

Group A

1. There will be equality for women with regard to getting jobs, and getting equal pay with men.

2. Some blatant forms of economic discrimination against women may be eliminated, but the ERA will not guarantee job and pay equality with men.

3. The ERA is purely symbolic and will have no direct impact on women gaining economic equality with men.

Group B

1. Passage of the ERA will have no direct bearing on marriage and family relations.

2. Passage of the ERA will give women new rights in the area of family relations.
3. Passage of the ERA will contribute to the disintegration of the American family.

Group C

1. Women will be drafted into the military services, but will not necessarily serve in combat situations.

2. Women will be drafted and will perform combat duties.

3. The ERA will not result in women being drafted into the military.

Group D

1. There will be no difference in a person's rights to privacy.

2. ERA passage will force lack of privacy between the sexes.

3. How did you vote on your state's ratification of the Equal Rights Amendment to the Constitution? Mark an X in the appropriate space.

   Favor Oppose Abstain Not Applicable

   a. in committee ___ ___ ___ ___ ___

   b. first floor vote ___ ___ ___ ___
c. second floor vote ___ ___ ___ ___

d. other (explain) ___

4. What were your reasons for voting for/against the amendment?

5. Did your position on the ERA change over time? Yes__ No__

   (If yes) 5a. What factors influenced your change in position?

6. Was there a vote in your legislative chamber to rescind your state's ratification of the ERA? Yes__ No__

   (If yes) 6a. How did you vote on the motion to rescind? For___ Against___ Abstain___

   6b. What most influenced your vote decision?

7. Were you contacted by proponents of the ERA? Yes__ No__

   (If yes) 7a. What groups (or individuals) were these?

7b. How would you describe and evaluate the proponents and their efforts on the ERA?

8. Were you contacted by opponents of the ERA? Yes__ No__

   (If yes) 8a. What groups (or individuals) were these?
8b. How would you describe and evaluate the opponents and their efforts on the ERA?

9. In the following year(s), do you think your constituents' attitudes towards the Equal Rights Amendment were: (check one)

   a. mostly for the ERA   
   b. clear majority for   
   c. quite evenly divided 
   d. generally not interested 
   e. clear majority against 
   f. mostly against 
   g. don't know

10. How has your position on the ERA affected your election prospects? Check one.

   1. helped a great deal
   2. helped some
   3. positive and negative influences were evenly balanced
4. hurt some
5. hurt a great deal
6. was not a factor at all
7. did not subsequently run for re-election
8. don't know
Appendix B

BIBLIOGRAPHY


