MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 8, 1979

The thirtieth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman, in room 405 of the capitol building at 9:39 a.m. on the above date.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE JOINT RESOLUTION 12:

This is a joint resolution of the Senate and the House of Representatives clarifying the intentions of the 43rd legislature concerning the time limit placed upon the ratification of the Equal Rights Amendment.

Senator Lensink stated that he recognized the extreme importance to everyone concerning this bill and the marked difference of opinion. He asked everyone to respect the viewpoints of each side. He stated that he would give twenty minutes to the proponents and twenty minutes to the opponents.

Senator Galt, sponsor of the bill, gave the committee a packet of testimony and offered a statement. He introduced Betty Babcock.

Mrs. Betty Lee Babcock, Helena, Montana, gave a statement in support of this resolution. (See Exhibit A.)

Mrs. Cheryl Cozzens from Billings, Montana, gave a prepared statement in support of this resolution. (See Exhibit B.)

Mrs. Kenneth D. Peterson, attorney in private practice in Billings, gave a statement in support of this resolution.

Miss Angela Romaine gave a statement in support.

Mrs. Marilyn Wessil, from Bozeman, introduced Jean Ellison, from Stevensville, who gave a statement in opposition to this resolution.

Mrs. Earl Rosell from Billings, gave a statement in opposition to this resolution.

Mrs. Barbara Schelling, McCloud, Montana, representing women in rural Montana, gave a statement opposing this legislation.

Maggie Davis, representing the League of Women Voters, gave a statement in opposition.

Fran Elge, Billings, Montana, and representing the ERA Council with 1200 individual members, said that they strongly oppose this resolution.

Flora Martin, a professional home econominist and representing Montana Association of Home Economists, gave a statement in opposition.

Jim Murray, Executive Secretary of Montana AFL-CIO, gave a statement opposing this bill.

Sister Kathryn Rutan, representing the National Assembly of Women Religious and Network, which encompasses 5,000 Catholic sisters in the United States, stated they have been supporting the ERA movement since 1973.

Phil Campbell, representing the Montana Educators Association, stated that they have supported the ratification of ERA since 1973.

Gary Jepsen, pastor of the St. John's Lutheran Church, stated that in 1972, at their national conference, they passed a resolution supporting ratification of ERA and were opposed to the resolution.

Mary Munger, R.N., representing the Montana Nurses Association, and also a chairperson at the International Women's Year conference, stated that 1200 members in 1973 voted to support ratification of ERA.

Mrs. Irene Schnell, Butte, representing the National Federation of Business and Professional Women stated that it took two hundred years for women to become citizens under the constitution and that they opposed this resolution.

Senator Galt made a closing statement and he stated that you can vote for this resolution and still be a backer of the ERA movement.

Senator Lensink said that he appreciated the excellent testimony and the excellent manner in which it was presented to the committee and that the committee will act on this bill soon.

(See numerous amounts of written testimony presented.)

CONSIDERATION OF SENATE BILL 288:

Senator Brown gave an explanation of this bill, which is an act to provide additional authority for converting shares of a corporation on merger.

There were no further proponents and no opponents.

Senator Towe moved that the bill do pass. Motion carried unanimously.

CONSIDERATION OF SENATE BILL 293:

Senator Towe gave an explanation of this bill, which is an act to revise youth court act to allow restitution. The sponsor of this bill is Senator Thomas, but he was not able to attend.

Becky Giles gave a statement in support of this bill and explained how a youth who had been paroled from Pine Hills wrecked five cars and how they suffered much loss from this youth's action.

Jerry Metzyer, coordinator for the youth court in Great Falls, stated he was the co-author of this bill and gave testimony in support of this bill.

Senator Thomas arrived at the hearing and gave a further explanation of this bill.

There were no further proponents or opponents.

Senator Van Valkenburg questioned why there was a limitation of $1,500.00 and felt that if the kid had a $1,500.00 hot rod, why should he not lose his hot rod.

Senator Turnage said that he did not feel that the guardians should be liable and he stated that there are some youths who would just love to stick mom and dad just to get even.

There was further discussion on problems in the bill.

Senator Towe moved that the bill be amended on page 9, line 14 by inserting "." and strike the remainder of new material following the word "youth". The motion carried unanimously.

Senator Towe moved that this bill do pass, as amended. The motion carried unanimously.

RECONSIDERATION OF SENATE BILL 288:

Ward Shanahan, representing the Business Section of the State Bar of Montana, offered some amendments to this bill. Senator Towe moved that we reconsider action taken previously on this bill.

Senator Towe moved the adoption of the amendments. The motion carried unanimously.

Senator Towe moved that the bill do pass as amended. The motion carried unanimously.

There being no further business, the meeting was adjourned at 11:04 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, CHAIRMAN

Date 2/8/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	Come in later		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

Please sign [illegible] to Senate [illegible] Judiciary

SENATE Judiciary COMMITTEE

BILL ______ VISITORS' REGISTER DATE 2/8/89

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPO
Cheryl Cozzens				
Helen C. Thomas				
[illegible] Partridge	myself	SJR12	✓	
[illegible]	myself	SJR12	✓	
Norma Bird(?)	myself	SJR12	✓	
[illegible]	myself	SJR12	✓	
Mary Smith(?)	myself	SJR12	✓	
[illegible]	myself	SJR12	✓	
[illegible]	myself	SJR12	✓	
[illegible]	myself	SJR12	✓	
[illegible]	myself	SJR12	✓	
Gail [illegible]	myself	SJR12	✓	
[illegible]	myself	SJR12	✓	
[illegible]	myself	SJR12	✓	
Shirley J. [illegible]	myself	SJR12	✓	
Jacquelyn A. Smith	myself	SJR12	✓	
[illegible] Shirley(?)	myself	SJR12	✓	
[illegible]	myself	SJR12	✓	
[illegible] Carter(?)	myself	SJR12	✓	
Pam Brittain	myself	SJR12	✓	
[illegible]	myself	SJR12	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

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SENATE Judiciary COMMITTEE

BILL SJR 12 VISITORS' REGISTER DATE 2-8

NAME	REPRESENTING	BILL #	Please note bill no. (check one) SUPPORT	OPPOSE
Patricia Callbeck Hayne	United Methodist Women Society, St. Paul's UM Church - Hlna	SJR 12		✓
Martha Ellen Blenkarn	" "	"		
Shirley Stromberg	Womens Resource Ctr Gt Falls	"		✓
Carla Gay	Self	"		✓
Denita Wheeler	Homemaker, Artist	SJR 12		✓
Linda Sandman	Self Social Worker	SJR 12		
Kay L. Howard	Self; Sociologist	SJR 12		✓
Charline Jamison	Self Comm Dev Spec	SJR 12		✓
Elsie Murphy	Self and husband	SJR 12		
Nancy Harvey	self - AAUW	SJR 12		
Linda King	self	SJR 12		✓
Marilyn McKibben	Self	SJR 12		✓
Helen Cleaveland	self	SJR 12		✓
Barbara Dix	self, husband Paul, League Women Voters, AAUW	SJR 12		✓
Carolyn Fletcher	self	SJR 12		✓
Wanda Van Myers	self & AAUW	SJR 12		✓
Lynne Hanson	self & National Democratic Women Club	SJR 12		✓
Mary Frances Hagdorn	AAUW - self	SJR 12		✓
Judy Jenker	Self - Homemaker	SJR 12		✓
Gail Bummond	Self - Missoula AAUW	SJR 12		✓
Irene Dwile	Nat'l Business & Prof Clubs	SJR 12		✓
Dorothy M. Fabrian	Myself	SJR 12	✓	
George W Fabrian	Myself	SJR 12	✓	
Mary Carol Hill	Myself	SJR 12	✓	

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SENATE Judiciary COMMITTEE

BILL _____ VISITORS' REGISTER DATE 2/8/12

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
[illegible]	self	SJR 12	✓	
Landlord Attorney	self	SJR 12	✓	
[illegible]	self	SJR 12	✓	
Elena Baseuttes	self	SJR 12	✓	
[illegible]	self	SJR 12	✓	
Rebecca C. Dale	self	SB 293	✓	
Andrea L. Merrick	self	SJR 12		✓

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SENATE Judiciary COMMITTEE

BILL SJR 12 VISITORS' REGISTER DATE 2/5/

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
Kenneth D. Peterson	Self	SJR12	X	
Barry Hilbrade	"	SJR12		
Janet Phillips	"	SJR12		
K. Wiegand Walker	self	SJR12		X
Bob Hoyt		"		X
Carter L. Nagy	Self	"		
Stephen A. Gough	"	"	X	
Caryl Bonham	YWCA & self			
Eileen Stevens		"	X	
Rebecca K. Williams	Self - NOW	SJR 12		
Carol Zion	" & NOW	SJR12		
Toni Bergeon	myself (LWV)	SJR12		X
Rose McCormick	self	SJR 12		

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SENATE Judiciary COMMITTEE

BILL ____________ VISITORS' REGISTER DATE 2-8-79

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
Kathleen M. Uhde Billings	myself	SJR 12	✓	
Carole G. Walters - Billings	self - Self Employed Owner of Business	SJR 12	✓	
Marjorie M Dixon Billings	self & family	SJR-12	✓	
Olive A. Layman - Billings	self - Homemaker	SJR-12	✓	
Edith Van Dyken	self	SJR-12	✓	
Eva Spaulding	Montana Common Cause	SJR-12		✓
Boyd Ebelard	citizen	SJR 12	✓	
Rich Deady	self	SJR 12	✓	
Mary L. Munger	Montana Nurses Assn.	SJR 12		✓
Virginia A Knight	Womens Lawyers Assoc. Women's Section Mont Bar Assoc	SJR 12		✓
Frances Elge	Montana Equal Rights Council	SJR 12	[illegible]	✓
Mrs. A.C. Eggebow	Ranch wife	SJR 12		✓
Margaret S. Davis	League of Women Voters	SJR 12		✓
Barbara Schilling McLeod	Rancher myself	" "		✓
Katharine G MacDonald	Am. Assoc. Univ. Women	" "		✓
Lou de Young	farmer	" "		✓
Dianna [illegible]	Women Involved in Montana Farm Economics	SJR 12		
Virginia B. Dukker	League Women Voters	SJR 12		✓
Sister Kathryn Rutan	National Assembly of Women Religious and NETWORK	SJR 12		✓
Flora Martin	Montana Home Economics Assn.	SJR 12		[illegible]
Irene B. Snyder (Mrs.)	Montana Stop ERA	SJR 12	✓	
Betty [illegible]	Montana [illegible] CURA	SJR 12	·	
Harriet Morey	Montana Stop ERA	SJR 12	✓	
Lynne Patrick	Pro Family [illegible]	SJR 12	✓	

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SENATE Judiciary COMMITTEE

BILL SJR12 VISITORS' REGISTER DATE 2-8-

Please note bill no
(check on

NAME	REPRESENTING	BILL #	SUPPORT	OPP
Norma Bardy	myself and family	SJR12	✓	
Donna Sullivan	myself	SJR12	✓	
Mary Ann McCoy	myself	SJR12	✓	
Mary J. Smith	myself & children		✓	
Ethel C. Thomas	myself	SJR12	✓	
Rose L. Evans	Eagle Forum - Self & Family	SJR12	✓	
Viola J. Barrett	myself	SJR12	✓	
Kenneth P. Barrett	"	"	✓	
Lolueta Engen	myself	SJR12		✓
Pat Regan	Senate District 31			

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SENATE Judiciary COMMITTEE

BILL SJR 12 VISITORS' REGISTER DATE 2-8-79

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO:
Yvonette Cotton	Myself	SJR 12	✓	
Jane Lopp	myself	"		✓
Roberta Wells	"	SJR 12		✓
Janet Evonne Cornish	~~(Myself)~~	SJR 12		✓
Earl Pasell	myself	SJR 12		✓
Kaye McClung	myself	SJR 12	✓	
Jerry Buckingham	myself	SJR 12	✓	
Kelly Parkinson	myself	SJR 12	✓	
Shireadene Kraft	myself	"	✓	
Hamett Allredge	myself	SJR 12	✓	
Eleanor Jones	myself	SJR 12	✓	
Lorin Erickson	myself	SJR 12	✓	
Mary E. Gross	myself	SJR 12	—	✓
Alice R. Kent	myself	SJR 12	✓	
Mary Bell	self	SJR 12	X	
Norma H. Heaney	(Bozeman) my family	SJR 12	✓	
Gay Shellenberg	myself	SJR 12	✓	
Lorene C. McClure	My family + myself	SJR 12	✓	
Opal M Clegg	my family + myself	SJR 12	✓	
Laura Nicholson	myself	SJR 12		✓
Marilyn Rasmussen	Myself	SJR 12		✓
Nancy Lundvall	myself	SJR 12		✓
Mary Ellen Stahl	myself	SJR 12	✓	✓
Mary Lou Jursa	self + Retired	SJR 12	✓	

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SENATE Judiciary COMMITTEE

BILL SJR12 VISITORS' REGISTER DATE 2-8-7[illegible]

Bill to rescind ERA

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPOSE
Beverly Glueckert	self	SJR-12	✓	
Rita Mae Williams	self + family	SJR-12	✓	
Mrs. Judy McKenzie	self + family	SJR 12	✓	
Delores Etchart	Glasgow Stop ERA women	SJR12	✓	
Diane Etchart	self + several friends	SJR12	✓	
Mike Weber	self	SJR 12	✓	
Naomi Dreessen	self + Right to Life	SJR12	✓	
Kathryn Kijawa	AAUW & self	SJR12	≠	✓
[illegible] Knacker	AAUW & self	SJR12		✓
Chris [illegible]	self	SJR12	✓	
[illegible]	self	SJR12	✓	
[illegible]	self	SJR12	✓	
Linda Parker	self & family	SJR12	✓	
Jack Nichols	Self	SJR12	✓	
Doris D. Nichols	self	SJR12	✓	
[illegible] Braun	self + family	SJR12	✓	
Ronda Dudley	self	SJR12	✓	
Carie Kaczmarek	self	SJR12	✓	
Gary [illegible]	self and family	SJR12	✓	
[illegible] West	myself	SJR12		✓
[illegible] Larson	myself	SJR12	✓	
Carol Hagemann	self	SJR12		✓
Karen Zackheim	myself	SJR12		✓
[illegible] Meloy	" AAUW	SJR12		✓

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SENATE Judiciary COMMITTEE

BILL SJR 12

VISITORS' REGISTER

DATE

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPOSE
[illegible]	[illegible]	[illegible]	X	
Cynthia [illegible]	self	SJR 12	X	
[illegible]	self	SJR12	X	
[illegible]	self	SJR [illegible]		X
[illegible]	self	SJR 12		X
Jan Brown	self	"		X
Gail Blodgett	self	SJR12	X	
LINNEA TANGEN	SELF	SJR12	X	
[illegible]	self	SJR 12	X	
[illegible]	self	[illegible]	X	
[illegible]	self - child	SJR12	X	
Ed Southwick	Self	SJR12	X	
[illegible]	[illegible]	SJR12	X	
[illegible]	self	SJR12		X
Carolyn [illegible]	self	SJR12		X
[illegible]	self	[illegible]		X
[illegible]	[illegible]			X
[illegible]	[illegible]	SJR12		X
[illegible]	self	[illegible]		X
Sharon [illegible]	self	SJR12		X
[illegible]	self	SJR12		X
[illegible]	self + child	SJR12		X
[illegible]	self			X
[illegible]				X

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SENATE *Judiciary* COMMITTEE

BILL *SJR 12* VISITORS' REGISTER DATE ______

NAME	REPRESENTING	BILL #	SUPPORT	OPP
			Please note bill no. (check one)	
[illegible]	[illegible]	SJR12	—	X
[illegible]	"		—	X
Margaret [illegible]	AAUW	SJR12	—	X
Margaret K. [illegible]	AAUW & self	SJR12	—	X
Shirley Peterson	self	SJR12	—	X
Kathy Huddleston	AAUW	SJR12	—	X
Cheryl Brown	AAUW	SJR12	—	X
[illegible]	AAUW & self	[illegible]	—	X
Mary Michelotti	[illegible] self	SJR12		
[illegible]	[illegible] & self	SJR12		
[illegible]	[illegible]	SJR12		X
Judy [illegible]	AAUW	[illegible]		
[illegible]	AAUW	[illegible]		
Tom Berning	STF	SJR12		
[illegible]	STF	[illegible]		
[illegible]	Self	SJR12		X
[illegible]	Self	SJR12		X
Marie McEntire	Self	SJR12	+	
[illegible] Dawson	self	SJR12	X	
Rebecca [illegible]	self	[illegible]	X	
[illegible]	self	SJR12	X	
[illegible]			/	
Mary Cramer	Eagle Forum		X	
[illegible]	self		X	

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SENATE *Judiciary* COMMITTEE

BILL ____________ VISITORS' REGISTER DATE ____________

NAME	REPRESENTING	BILL #	Please note bill no. (check one) SUPPORT	OPPO
[illegible]		[illegible]		X
Marguerite [illegible]		SJR 12		X
Nora A. Cox [illegible]		SJR 12		X
Sarah Sue [illegible]	Mt. Equal Rights [illegible]	SJR 12		X
Anita [illegible]	Msla Equal Rights [illegible]	SJR 12		X
[illegible]	[illegible] equal Right	[illegible]		
[illegible]		SJR 12		X
Chris [illegible]		SJR 12		X
[illegible]	myself & family	SJR 12		X
[illegible]	myself & my family	SJR 12		X
Mary Ellen Hassen	myself	SJR 12		X
[illegible]	[illegible]	SJR 12		X
[illegible] Kline	Domestic [illegible]	SJR 12		X
[illegible]	Business + Professional	SJR 12		X
[illegible]	[illegible]	SJR 12		X
Mike Dahlem	A.S.U.M	SJR 12		X

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Please sign (Return to Secretary) Judiciary

SENATE Judiciary COMMITTEE

BILL SJR 12 VISITORS' REGISTER DATE 2-8

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
Kerry Cook		SJR12		✓
Alexis MacDiarmid	self	SJR12		✓
Alan St. Germaine	Self	SJR12		✓
Marsha Richardson	self	SJR12		✓
Wanda Lewing	self	SJR12		✓
Judy A Nelson	self	SJR12		✓
Shyron Tenidez	Self	SJR12		✓
Craig Knight	self	SJR12		✓
Kris Stewart	self	SJR12		✓
Dee Dee Smith	Self	SJR12		✓
Don Hyde	self	SJR12		✓

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SENATE Judiciary COMMITTEE

BILL SJR 12 VISITORS' REGISTER DATE 2-8-79

NAME	REPRESENTING	BILL #	Please note bill no. (check one) SUPPORT	OPPO
Hilde A. McQuillan	self	SJR 12	✓	✓
[illegible]	"	SJR 12	✓	[illegible]
Bob Copp	self	SJR 12		✓
~~[illegible] Corbett~~	~~self~~	~~[illegible]~~		
Olive B. Rice	self	SJR 12	✓	
Robert H. Rice	self	SJR 12	✓	
James D. Jensen	self & Spouse	SJR 12		X
Shelley Hopkins	self	SJR 12		X
Jonitta Dudley	self	SJR 12	✓	
Jessie Fisher	self	SJR 12	✓	
Norma Terrell	"	SJR 12		✓
Hazel Matthews	self	SJR 12		✓
Jane Van Meter	Self	SJR 12		✓
Lucille Romney	Self	SJR 12	✓	
Patricia L. Vermeulen	Self	SJR-12	✓	
Henrietta K. Moss	self	SJR-12	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

1. SJR 12 is a reaffirmation of the states rights in the amendment process.

2. The states have the right to put any wording in their resolutions of ratification.

3. Montana put a time limit in HJR 4 which was ratified accordingly.

   Montana held up her end of the constitutional amendment process.

4. Congress should respect our right and our ratification document which includes a specific time limit.

5. Congress, however, did not abide by their end of the process because the extension changes the way our ratification was written. Montana did include a time limit in HJR 4.

6. I, along with others, do not like the feds interfering with states' rights.

   Congress is manipulating the constitution, which includes our state rights.

7. SJR 12 opposes this ≠ manipulation, that being the extension.

8. Baseball game: serious matter. Could you see the last game of the Wrold Series? Let's say the Yankees won but

a all of a sudden the Commission on Baseball says there should be another game ~~because~~ the Dodgers ~~were not given enough~~ time to ~~who~~ show how good they were?

Society is governed by rules

an extra inning to see if Can catch up

In my eyes, this is what Congress is doing and believe me — it is serious.

9. How about Allydar and Affirmed? After the first race, people were saying...if the race had been longer Alydar would have won. Well the races got longer, and Alydar never caught up.

starting late

10. A voter for SJR 12 is a vote for fair play and for

Opinion & comment

The Montana Standard

DUNCAN R CAMPBELL JR
Publisher

BERT GASKILL
Editor

JEFFREY B GIBSON
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(Successor to Butte Silver Bow
Founded in 1876

ERA 'interference'

Supporters of the Equal Rights Amendment, in an effort to prevent a public expression of opinion on that issue, have gone to the U. S. Supreme Court in an effort to block an ERA referendum in Nevada.

The referendum, scheduled for next month, was created by the Nevada legislature, which has not ratified the ERA. ERA supporters tried to convince the Nevada Supreme Court that the referendum should not take place. They failed. Now they have asked Supreme Court Justice William Rehnquist to stop the vote or, failing that, to forbid the counting of the votes until after the legislature votes on the amendment.

The vote is designed as an advisory [illegible] "interference" than the waving of public opinion polls by ERA supporters or opponents as they try to influence legislators with "proof" of what the people want. A non-binding referendum is no more interference than John or Joan Q Public buttonholing his or her legislator and asking him to vote one way or the other on the ERA.

These people, who are so concerned about "interfering" with ratification votes, and with "tainting" the ratification process, are the same people who are conducting large-scale economic boycotts against key states that have not ratified the ERA, in an effort to cause enough economic distress [illegible] will be forced to vote

Economy

BY PETER S. NAGAN

WASHINGTON — Economists in both the government and private sector have rarely been so uncertain about the business outlook as they are today.

This is not to say that they haven't drawn up projections for the next four or five quarters. They have charted trends and come up with numbers on production, employment, inflation, profits, and so on.

Quite a few think that we'll see a recession next year, with climbing unemployment. But other economists believe that business activity will keep rising. To compound the confusion, there are differences over how brisk the rate of expansion will be.

But many of the seers have very little confidence in their predictions. They would not be at all surprised to find, a year from now, that things did not go according to their forecasts.

The experts are still using the same forecasting methods that served quite well in past decades. The trouble is that they don't seem to be working the way they once did.

The country — and, indeed, the world — seems to have moved into a different era than the one for which present economic theory was devised. Thoughtful

DOONESBURY

sible.

But the ERA supporters obviously feel that the vote would not go their way, and that some legislators would be influenced by the results to vote against the amendment. So they are arguing that because the U. S. Constitution doesn't say anything about advisory votes in connection with the ratification process, advisory votes can't be held.

To carry it a step further, the ERA backers say the referendum would constitute "interference" in the ratification process, and would "taint" that process, and cause any subsequent legislative vote to be "the fruit of a poisoned tree."

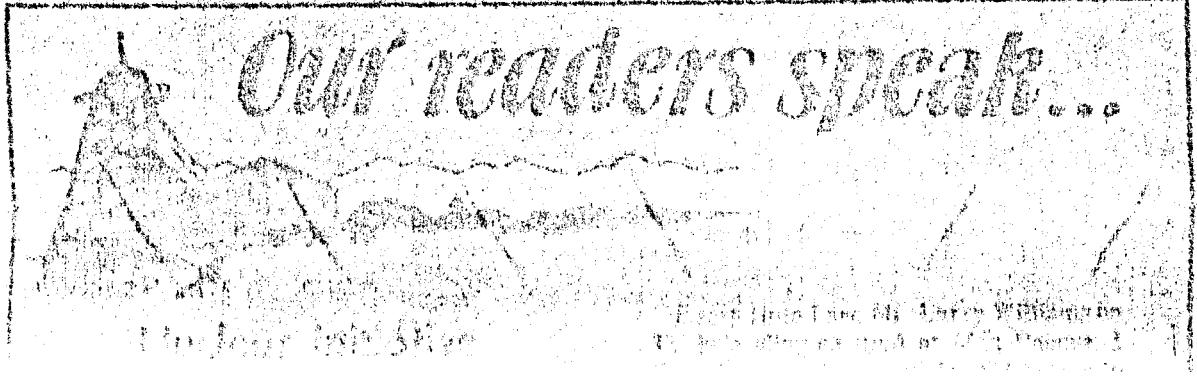
Imagine that. Involving the people in an issue of enormous public importance is "interference" with the democratic process! Participatory democracy — once so highly valued by liberals — now "poisons" the tree of government. A legislature that feels the public's opinion should be considered before it votes on a constitutional amendment "taints" the ratification process. Incredible.

Advisory votes are no more "interference" in the ratification process than the vigorous lobbying campaigns of both sides. They are no more

The same people, too, are the ones who orchestrated the amazing time limit extension in the just-adjourned Congress. This gives ERA backers more time to carry the day, but denies opponents their equal rights by preventing states from ever changing their minds once they vote yes on the ERA. (They can always change their minds if they have voted against ratification, of course.) And they talk about "interference" in Nevada. In Washington, the supporters did more than interfere, they put the fix in, pure and simple.

No, it's not concern for the purity of the ratification process that motivates the ERA backers in the Nevada matter. It's fear. They're afraid the people will recommend against the ERA and that the legislators will pay as much attention to that recommendation as they do to threats of economic blackmail and political retaliation. That's why they're trying to convince the courts that Nevadans must be disenfranchised.

And who could blame Nevada's voters if they did vote no? The undemocratic tactics of the amendment's supporters contradict their purported concern for equal rights.



Creative

BY JONATHON PEDMON

WASHINGTON — More and more judges are sentencing criminals to community work rather than jail sentences.

The "alternative" or "creative" sentences include working for non-profit organizations, getting a job to pay restitution to the victims of the crime, or obtaining medical treatment if the crime is alcohol- or drug-related.

In some instances, sentences are tailored to the specific facts of the crime.

In Illinois, Cook County Circuit Court Judge Marvin Aspen sentenced a convicted pornographer to donate 3,000 non-pornographic books to the county jail.

While a majority of the alternative sentences are for less serious crimes and traffic offenses, some judges are using alternative sentences for serious crimes as well.

In Solano County in northern California, a [illegible] sentence [illegible]

The alternative sentencing trend [illegible] been inspired by individual judges [illegible] traditional penalties as fines and jail terms are inappropriate in many cases because

NAME WARD A. SHANAHAN BILL NO. SB 288

ADDRESS 301 First National Bank Bldg. Helena, Montana 59601 DATE February 8, 1979

WHOM DO YOU REPRESENT Business Section, State Bar of Montana

SUPPORT XXXXX OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The Companion Section of the Corporation Act was inadvertently omitted from the bill and should contain the same language as the first section. Therefore, please amend the bill as follows:

Page 1 line 5 after 35-1-801 add "and 35-1-802".

Page 1 line 6 after "merger" add "and consolidation".

Page 2 line 8 insert a new "Section 2" as follows:

(1) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) the manner and basis of converting the shares of each ~~merging~~ corporation into shares or other securities or obligations of the surviving corporation or any other corporation or, in whole or in part, into cash or other property;

(d) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter; (e) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

Renumber Section 2 as written as "Section 3".

Ward A. Shanahan

Ward A. Shanahan, Chairman
Business Section
STATE BAR OF MONTANA

OPINIONS & IMPRESSIONS

Don't extend ERA

Congress gave the 50 states seven years to ratify the Equal Rights Amendment. That deadline expires on March 22, 1979. And now, with the ERA three states shy of ratification, supporters are pleading for more time.

(The ERA must be ratified by 38 states to become part of the Constitution. To date it has been approved by 35 of them.)

ERA backers asked Congress to extend the deadline another seven years but they failed. The House has approved a 39-month extension—to June 30, 1982—and now it is up to the Senate to decide if the extension will in fact become a reality.

Seven years is a long time; particularly when the public has been subjected to seven long years of emotional and bitter arguments over the ERA by proponents and opponents of the measure. Some of the state legislatures that have ratified the amendment have been embroiled in battles to rescind the amendment and in fact four states have rescinded approval. Whether they can in fact rescind the ERA is a matter that Congress also must decide.

Frankly we're sick and tired of hearing about how passage of the ERA will force women to serve in combat roles in the armed services; that men and women will have to share common bathroom facilities and all of the other gibberish that we've been subjected to for the last seven years.

As far as we're concerned, Congress gave the country seven years to approve or reject [illegible] and if the amendment fails to be ratified by the original deadline, so be it.

Enough is enough. Let's hope the Senate feels [illegible]. We're sure a large majority of the population also agrees.

Betty Lee Babcock
0 Madison,
Helena, Montana

My name is Betty Lee Babcock and I wish to speak in support of Senate Joint Resoluion 12.

I represent a great many Women and their families throughout Montana. I served as the chairman of the elected delegates to the International Women's Year in Houston, Texas and since the Conference and the alleged Extension of the Equal Rights Amendment by the Congress our number of supporters has increased considerably.

We oppose the action taken by Congress to extend the time limit for Ratification until June, 1982. The very passage of the Extension Bill proves that the ERA Supporters cannot obtain the necessary ratification of 3 more States by the March 22, 1979 Deadline. The Extension Bill is a confession of FAILURE to win under the Rules. We object strongly to the Feminist Groups who are trying to restructure the American Society.

Among Liberal PRO-ERA Supporters are the New YorkTimes, Washington News, Detroit News, Denver Post and the Washington Post. All of which, although strongly endorsing the ERA could not endorse the UNFAIR and constitutionly questionable PRO-Extension Positon.

For Example, the Denver Post in July 20th, 1978 Editorial concluded: ERA will be an Honored part of this Constituion if it passes Fairly,but if Congress tries to rig the rules in its favor it will dishonor the very tenets of Democracy that ERA itself enshrines."

The same feeling has been evidened by our own Montana Editorials. Newspapers which were in Support of ERA were emphatically opposed to the Extension.

The Montana Standard in an October 23rd, 1978 Editorial statedand I Quote;

"And they talk about 'Interference' in Nevada. In Washington, the Supporters did more than interfere, they put the fix in, pure and simple." The undemocratic tactics of the Amendments Supporters contradict their purported concern for Equal Rights."

The Independent Record, August 17th, 1978 in an Editorial against the Extention concluded;

"As far as we are concerned, Congress gave the Country Seven Years to approve or reject the Equal Rights Amendment and that is plenty of time. If the Amendment fails to be Ratified by the Original Deadline, so be it. Enough is Enough. Let's hope the Senate feels the same way. We're sure a large segement of the population also agrees.

The Daily Interlake of Kalispell stated : (June 21, 1978) "Another Seven Years too Much for ERA. As it now stands if Congress adopts the Extension, that would be interference with States Rights. Assuming an Extension is granted for ERA, depend upon it, there will be Court Challenges. Seven Years is enough, another seven years would be too much."

When the Equal Rights Amendment was ratified in Montana in 1974 is seemed clear that the seven year limit was a major factor in getting it passed and it was our hope the fight would be over. And now that the time is near and it appears that we have wom they have changed the Rules. This is extremely UNFAIR,

Exhibit A

I would like to enter in the testimony a telegram from former State Senator David James. (Read Telegram) Several other Senators who were in the Senate and Participated in the Debate at that time have echoed his Sentiments. I believe this confirms the fact that they were of the same opinion.

Senator Sam J. Ervin Jr. in a letter to the House Judicary Committe, on June 19, 1978 said; " At least 28 States describe the Proposed ERA they are Ratifying as one which shall be valid to all intents and purposes as part of the Constituion when Ratified by Legislators of 3/4's of the Several States within SEVEN YEARS from the date of it Submission by the Congress."

Four of those States Ratified without adverting in anyway to the time limit and so it can be presumed that those who did include the time limit, did so intentionally. Montana was one of several States That did.

Gentlmen: Montana Ratified the ERA in 1974 upon the condition that the Amendment would be Ratified by 38 States within Seven years. Why the time Limit?? Because a Constituional Amendment must reflect the Will of the people in all sections or States at relatively the same period.

Montana, when ratifying this Amendment was agreeing that seven years was the period of time during which the will of the people would be reflected.

The Congress should not be allowed to attempt to change the terms of a LAW-- or Resolution passed by the MONTANA LEGISLATURE.

Their action is an unprecedented attempt to encroach upon the STATES RIGHTS.

We ask you to uphold the HONOR, INTEGRITY and the SOVEREIGNTY of the STATE OF MONTANA.

PLEASE Vote in FAVOR of SENATE JOINT RESOLUTION 12.

Honorable Chairman, Committee: My name is Cheryl Cozzens. I am from Billings and wish to speak in favor of SENATE JOINT RESOLUTION 12.

The opponents of SENATE JOINT RESOLUTION 12 have tried to label this resolution as a recission bill. This is simply not true. It does not seek to annul, abrogate, cancel or void anything. It does not seek to overturn or replace HOUSE JOINT RESOLUTION 4 which ratified the ERA. In fact, SENATE JOINT RESOLUTION 12 simply reaffirms the wording of HOUSE JOINT RESOLUTION 4 which specifically stated that Montana's ratification was conditioned upon the ratification by three-fourth's of the states within a seven year time limit from the date of its submission by the Congress. Whether we take action or not, some constitutional authorities, like Jules B. Gerard, claim that if 38 states have not approved the proposed ERA by March 22, 1979, Montana and 27 other states will find their ratification void, as the 43rd Legislature intended, for it was felt that seven years was more than ample time to allow for a contemporaneous consideration by the State Legislatures. In fact, up to this time, never has a constitutional amendment been passed with more than a four year time limit.

It has been stated by our opponents that this limit can be altered because it is not in the body of the resolution, but simply a preamble.

It was, constitutional law authority, Professor Noel Dowling, who attempted to clean up the wording of the Constitution by placing the time limits in the resolution rather than in the body of the amendment. He explained this change, which started with the 23rd Amendment in the following words:

> The seven year limit is put in the resolution rather than in the text of the amendment. There is no doubt about the power of Congress to putit there; and it will be equally effective.

Exhibit B

> The usual way, to be sure, has been to write the limitation in the amendment; but we hope such an unnecessary cluttering up of the Constitution can be ended.

As stated by Professor Dowling, the time limit is "equally as effective in the preamble as in the actual text of the Amendment.

What SENATE JOINT RESOLUTION 12 does do is protect the process of constitutional amendments. It will not prevent any future attempt to ratify the ERA, provided it is re-submitted and the Federal Government upholds the original contract deadline it submitted to the states. The states, acting in good faith, have upheld their part of the contract. It is somewhat like an individual making a morgage agreement with a bank and failing to get the money by the deadline, so he seeks to extend the time limit without approval of the other contracting party, the bank. It is changing the rules in the middle of the game and allowing for special interest groups, if they don't like the way the game is going, to federally encroach on the rights of state legislatures and change the rules.

SENATE JOINT RESOLUTION 12 does not declare Montanans to be opposed to the concept of ERA. It simply reaffirms that no single political or moral issue should be allowed to destroy the constitutional system or amending process as decreed by the highest law of the land. If ERA is still a viable issue let's resubmit it again and recommit the states to its ratification. To do otherwise would cost us far more than we could ever gain.

I, as a citizen of this great state, have elected you to represent me and to protect my state's rights. You have sworn to uphold the Constitution and by doing so, the division of powers therein. I implore you to reaffirm that pledge by voting for SENATE JOINT RESOLUTION 12.

COMMON CAUSE/MONTANA

February 6, 197[illegible]

P.O. Box 822
Helena, Montana 59601 Telephone (406) 442-6959

Common Cause of Montana opposes SJR 12, to clarify the intentions of the of the 43rd Legislature concerning the time limit placed upon the ratification of the Equal Rights Amendment in House Joint Resolution 4, Laws of 1974.

1. The intent of SJR 12 is to rescind the Equal Rights Amendment that the 1974 Legislature ratified.

2. This SJR is an attempt to misrepresent the ratification of the Equal Rights amendment by the 1974 Legislature.

3. ERA TEXT The following is the complete text of HJ Res. 208 proposing an equal rights amendment to the U.S. Constitution as approved by Congress March 22, 1972. (1972 Almanac p. 199)

[Preamble of Amendment]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therin). 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:

[Body of Amendment]

"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."

4. The first part of the above text is the preamble of the amendment explaining the procedure set out by Congress.

5. The second part in quotations is the body of the amendment that was ratified by the 1974 Montana Legislature.

6. CONGRESS IS RESPONSIBLE FOR SETTING TIME LIMITS ON AMENDMENTS NOT THE STATE LEGISLATURES. In the U. S. Supreme Court case, Dillion v. Closs (1921), the court established that ratification of a constitutional amendment must come within a reasonable time after it is proposed and that "keeping within reasonable limits" Congress has the power to "fix a definite period" for the ratification of amendments.

7. In the Supreme Court case, Coleman v. Miller (1939), the court ruled that the question of what constitutes a "reasonable limit of time for ratification" is a political matter Congress is empowered to determine under Article V of the United States Constitution. This also shows that Congress is Responsible FOR SETTING TIME LIMITS NOT THE STATE LEGISLATURES.

8. The 1st through the 17th and the 19th Constitutional Amendments contained no time limit for ratification.

9. The 18th and 20th through 22nd Amendments contained a 7 year time limitation in the body of the amendment. The body of the Amendment is ratified by the states. Therefore, the time limitation could not be altered without resubmitting the Amendment to the states.

10. Congress placed the time limitation into the Resolve Clause of all succeeding Amendments including the equal Rights Amendment. The Resolve Clause is not a substantive part of the Amendment--just a procedural or explanatory part.

11. The reason that the time limit was originally incorporated into the 18th Amendment was so that proposed amendments which are no longer current would not be floating around forever. In the U.S. Senate debate on the 18th Amendment in 1917, a time limitation was proposed by a supporter of prohibition, Sen. Harry Ashurst of Arizona, who stated that a limitation was necessary "so that we will not hand down to posterity a conglomerate mass of amendments floating around in a cloudy, nebulous, hazy way, which a Senate here may resurrect and ratify and a State ther may galvanize and ratify." After that a time limitation of seven years was placed into the body of the 18th Amendment.

In closing--

The U. S. Congress has extended the original period for ratification of ERA by 39 months. The 1974 Legislature's ratification should be effective until June 1981.

The following is a quote from U.S. Senator Hodges last summer during the rescission debate in Washington, D.C.: "I do not concede that ERA will erode religion. It is true that there are isolated passages in the Bible that speak of a women's role as subservient to men. But, there are also passages that say the sun goes around the earth. One cannot isolate one passage from the Bible and get the truth anymore than one can listen to one note and feel the power of Beethoven's Ninth Symphony--or take one square inch and see the beauty of Mona Lisa...." ..."When the issue is so fundamental that it relates directly to over one-half of our nation, and also equally to the male half--for no one truly has freedom unless all do--then earlier concerns over legal precedents pale into insignificance."

Common Cause members throughout Montana ask you to recommend a DO NOT PASS FOR SJR 12.

Western Union Mailgram

COMMENTS ON SENATE JOINT RESOLUTION 12

The Humanist Society of Montana would like to be placed on record as opposing Senate Joint Resolution 12. This resolution is not an act that would clarify the intentions of the 43rd Legislature, rather, it would recind Montana's ratification of the Equal Rights Ammendment

We believe, as a central value, in the preciousness and dignity of the individual. We also believe that without equality under the law that this cannot become a reality. Until the ERA is ratified and becomes law, women of this country will not share in the equal protection of their rights and liberties. Instead, these very tenants of freedom are at the mercy of the varying whims of legislatures and the Congress.

I would like to point out that the twenty-seventh ammendment guarentees that:

> Equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex.

Senate Joint Resolution 12 is an attempt to recind the ratification of this ammendment. It represents a step backward for the people of Montana, and is a vote against the people of Montana.

The ERA benefits man as well as women, and means that individuals should be judged according to their capabilities and abilities, and NOT by their biology. It does not mean that there will be mandatory unisex restrooms, or that women will not be able to choose the role in life they want to fulfill, nor will it mean that women will be drafted for combat duty in the armed forces.

In closing I would like to remind this committee that voting to recind the State's ratification of the ERA violates the Montana Constitution. Article II, section 4 states:

> The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither state, nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

A vote in favor of Senate Joint Resolution 12 is a vote against the Montana Constitution, a vote against women, and a vote against all citizens of our State.

I urge you to oppose this Resolution.

STAN WALTHALL, FEBRUARY 8, 1979

PROPOSED AMENDMENT XXVII[19]

House Joint Resolution 208

Proposing an amendment to the Constitution of the United States relative to equal rights for men and women.

Resolved by the Senate and House of Representatives 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."

---

[19] This Amendment was proposed by Congress on March 22, 1972, when the Senate passed unamended the resolution adopted by the House of Representatives on October 12, 1971. As of December 1, 1972, 22 States had ratified:

Hawaii, March 22, 1972; Delaware, March 23, 1972; New Hampshire, March 23, 1972; Idaho, March 24, 1972; Iowa, March 24, 1972; Kansas, March 28, 1972; Nebraska, March 29, 1972; Tennessee, April 4, 1972; Alaska, April 5, 1972; Rhode Island, April 14, 1972; New Jersey, April 17, 1972; Texas, April 19, 1972; Colorado, April 21, 1972; West Virginia, April 22, 1972; Wisconsin, April 22, 1972; New York, April 23, 1972; Michigan, May 22, 1972; Maryland, May 26, 1972; Massachusetts, June 21, 1972; Kentucky, June 26, 1972; Pennsylvania, September 20, 1972; California, November 13, 1972.

AHA Annual Meeting 8 April 1978

RESOLUTION ON ERA

WHEREAS, the American Humanist Association has long been on record as endorsing the Equal Rights Amendment; and

WHEREAS, the ratification of the ERA has now been successfully stalemated, against the wishes of the American people, by margin votes in three key states; and

WHEREAS, the time limit on ratification, imposed by opponents of the ERA in Congress, is only months from running out, and if it runs out that would mean introducing the amendment again in Congress, which took 50 years after it was first introduced to act on it favorably; and

WHEREAS, equality under the law should be the right of every citizen in a democratic society but has been denied to women for 200 years; therefore

BE IT RESOLVED: that the AHA hereby endorses H.J. Res. 638, which extends the time limit for ratification of the Equal Rights Amendment and that the Association immediately notify the President and key members of Congress of this action; and

BE IT FURTHER RESOLVED: that the AHA joins those organizations boycotting States that have not ratified the ERA, and will not hold Annual meetings or National Board meetings in unratified States. This decision to be conveyed to the National Organization for Women, ERAmerica, and other groups working for the ERA, and to the Governors, State Legislatures, Chambers of Commerce, and Hotel and Restaurant Associations of unratified States; and

BE IT FURTHER RESOLVED: that despite its boycott of unratified States the American Humanist Association will continue to encourage and help members and chapters in unratified States in their efforts toward ratification of the Equal Rights Amendment.

Section 2. Self-government. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

Convention Notes

No change except in grammar [Art. III, sec. 2]. Gives Montanans the right to govern themselves and to determine their form of government.

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

Revises 1889 constitution [Art. III, sec. 3] by adding three rights, relating to environment, basic necessities, and health. The last sentence is also new and provides that in accepting rights people have obligations.

Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Compiler's Notes

Section 3 of the Transition Schedule provides that "rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive."

Convention Notes

New provision prohibiting public and private discrimination in civil and political rights.

Cross-References

Freedom from discrimination as civil right, sec. 61-301 et seq.

Nondiscrimination in education, Const. Art. X, sec. 7.

Section 5. Freedom of religion. The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Convention Notes

Revises 1889 constitution [Art. III, sec. 4] by using wording of the U.S. constitution to guarantee free exercise of religion and prohibit the state from establishing a religion.

Cross-References

Schools not to instruct in sectarian doctrine, sec. 75-7521.

Section 6. Freedom of assembly. The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

Senator Kennedy + Members of the committee

Because some of you have received letters from a member of WIFE stating her position on ERA. using WIFE stationary I feel that I must explain that WIFE has no official position on ERA. We have as many diverse opinions on ERA as we have members and each member has a right to her own opinion.

I personally am very opposed to SJR 12 and the omnibus id manager to die. We in Wyoming need to go forward with positive action about what is good for our State + stop endlessly regressing + squabbling -

Thank You
Sharon Peters
Lobbyist
Women Involved in Tax Ed

n CS-34

NAME Ronald Fernelius Bill No. _____

ADDRESS 3216 E. Lyon DATE 2/8/79

WHOM DO YOU REPRESENT Myself

SUPPORT X OPPOSE _____ AMEND H.J.R. 12

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

~~I'm~~ ~~support~~ Montana E.P.A. ~~H.J.R. 12~~ support our
I support letting ~~H.J.R. 12~~ appeal as
is allowed for in our Montana Constitution.

I support H.J.R. 12.

Ronald N. Fernelius

orm CS-34
79

NAME Grace R. Tester Bill No. ______

ADDRESS 320 Agnes Missoula MT DATE Feb 8, 19__

WHOM DO YOU REPRESENT Myself

SUPPORT ✓ OPPOSE ______ AMEND HJR 12

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I support ~~[illegible]~~ HJR 12.

In my opinion there has been sufficient time for ERA ratification if the country had wanted it.

Grace R. Tester

m CS-34

NAME Pam Brittain Bill No. SJR-12

ADDRESS 3216 40th St W. Billings DATE Feb. 8, 1979

WHOM DO YOU REPRESENT Myself

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am in favor & fully support SJR-12.

Form CS-34
-79

NAME Tom Hanes Bill No. SJR-12

ADDRESS 3190 Parkhill Billings DATE Feb 2 1977

WHOM DO YOU REPRESENT Myself

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am in favor of the resolution SJR-12.

rm CS-34

NAME Susan C. Spears Bill No. SJR 12

ADDRESS 2426 Colleen Dr Bldg. M Apt DATE 2/8/79

WHOM DO YOU REPRESENT Concerned Citizens

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

rm CS-34
9

NAME Vola G. Garrill Bill No. SJR 12

ADDRESS 900 Highland, Helena, Mt. DATE 2/8/79

WHOM DO YOU REPRESENT

SUPPORT V OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Betty Pucket SJR 12

2-8-79

Harold Moray — SJR 12 — Support
1126-5th Ave
Helena, Mont. Feb 8 79

CS-34

NAME Mrs Neal Halsey (Joan) BILL No. SJR 12

ADDRESS 2041 Forest Park Dr. DATE 2-9-79

WHOM DO YOU REPRESENT myself

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: Montana's ratification [illegible] only for the seven years ending Mar 22, 1979. I'm for "fair play" in legislation [illegible] spirit of any other form of agreement [illegible]

I am in agreement with the above statement.

Patricia Drake
4431 Rimrock
Billings, Mont. 59102

Patricia Johnson
3821 [illegible] Way
Billings, Montana [illegible]

Yvonne Babcock
1541 Patricia L.
Billings, Montana 59102

Form CS-34
-79

NAME Nini Snyder Bill No. SJR12

ADDRESS 1085 Lorentzen Helena DATE 2/2/79

WHOM DO YOU REPRESENT Montana Stop ERA

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I support the complete contents of the resolution and urge the Senators to hear the voice of the grassroot women

rm CS-34
9

NAME Bev Gleason Bill No. SJR 12

ADDRESS 2 So. Raleigh DATE 2-2-79

WHOM DO YOU REPRESENT Montana Eagle Forum

SUPPORT SJR 12 OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I belive extension of ERA is a violation of the constitution of the U.S. The fate of our constitution is at stake since the congressional extension was in violation of the constitution without a two thirds vote. The Montana ratification definitly states the Mont ERA will be null & void after March 22, 1979.

orm CS-34
79

NAME [illegible] Bill No. [illegible]

ADDRESS 4325 [illegible] DATE [illegible]

WHOM DO YOU REPRESENT [illegible]

SUPPORT ✓ OPPOSE ______ AMEND ______

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

CS-34

NAME Gladys C. Peterson Bill No. SJR 12

ADDRESS 322 N 48th St. W. Rte 4 Billings MT DATE 2-9 1979

WHOM DO YOU REPRESENT Concerned Citizen

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

orm CS-34
'9

NAME Anita R. Feltis Bill No. SJR-12

ADDRESS 2931 Cook Ave. DATE Feb 8, 197

WHOM DO YOU REPRESENT Myself

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am against extending Montana's vote in the ERA beyond March 1979.

m CS-34

NAME Mary Ann McMahon BILL NO. SJR 12

ADDRESS 1004-24th St. W. Blgs. Mt. DATE 2/8/79

WHOM DO YOU REPRESENT Myself

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Form CS-34
-79

NAME Lorraine G. Lawrence Bill No. 12

ADDRESS 749 St. Johns Billings 59102 DATE 2.8.1979

WHOM DO YOU REPRESENT myself

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I wholeheartedly support bill # 12.

orm CS-34
79

NAME _____ Bill No. _____

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT _____

SUPPORT ___X___ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

orm CS-34
79

NAME Pam B. Magnuson Bill No. STP 12

ADDRESS 2413 Orchard Drive DATE 1/8/79

WHOM DO YOU REPRESENT Myself

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I support the Senate Resolution #12 in favor of not extending the ratification date of the Equal Rights Amendment beyond March 22, 1979.

SJR 12 - ERA - OPPOSED

I represent the Montana State Democratic Women's Club - in the absence of C.A. Buckley, President, snowbound in Lewiston.

The Democratic Women of Montana strongly oppose SJR 12 as does the platform of the Montana Democratic Party.

Lois A Gunderson
Helena

rm CS-34
9

NAME _____ Bill No. _____

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT _____

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Rebecca C. Giles SB 293

Support

Comments:

As a victim of juvenile crime, I advocate a more comprehensive restitution program. In October 1978, a youth or people from Pine Hills stole a car, became involved in a high speed chase with the Tulsa police, ran a police road block, lost control and smashed both our cars, running one into our house and finally smashing the stolen car into our house and coming on our front porch at 4:15 a.m. He was never formally charged, was allowed to choose to return to Pine Hills and subsequently escaped from there. We have been forced to file court action against the guardian in hopes of gaining restitution. This boy was not required to even repair the damage he did to our home "in any". He was a ward of the state, released to relatives at their request, on parole, in violation of that parole, and not required to make any form of restitution to the owners of property which he destroyed. What do you think the law should be regarding the juvenile?

orm CS-34
79

NAME Mrs Mary C. Doubek BILL NO. SJR 12

ADDRESS 764 S Montana Ave DATE 2/8/79

WHOM DO YOU REPRESENT Helena Eagle Forum - Pioneer Unit

SUPPORT yes OPPOSE ~~OPPOSE~~ ~~AMEND~~

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: As former State Chairman of Montana Stop ERA and Montana Citizens To Rescind ERA ..... as expressing opposition to ERA since 1972, I have looked forward to the expiration date of march 22, 1979 as originally promised by Congress in HJR. 208 and by our State Legislature in HJR 4.

We view the Extension as illegal and unConstitutional as it passed Congress by a simple majority instead of the required two thirds majority.

People who are opposed to SJR 12 are the same ones who have said they are tired of the ERA issue and want it buried and stop bringing up the issue. Yet they are the ones who insist prolong the agony by the extension of it. We are not discussing ERA. We simply are for SJR 12 because it is a Constitutional issue. Lets abide by the rules as set forth in our Constitution and which were stated in the originall

We wish to abide by the rules, Let March 22 1979 be the Expiration date and lets direct our Legislature to retrieve our Ratification March 23 1979 if the prescribed 38 States have not ratified. Thank you for your consideration.

Respectfully
Mrs. Mary C. Doubek
(Miss) Maureen Doubek

February 8, 1979

Members of the Committee, my name is Janet Cornish, 321½ N. Alabama Street, Butte, and I wish to express my opposition to Senate Joint Resolution 12, introduced by Senator Jack Galt, calling for the expiration of Montana's ratification of the Equal Rights Amendment (ERA) on March 23, 1979.

The arguments surrounding the ERA have become stale and perhaps somewhat unconvincing with the passing of time. It has become passé to discuss matters of sex discrimination in hiring practices, by creditors, academic institutions and in the law itself. Some have become impatient and say that seven years is enough time for ratification of the ERA. Mr. Galt's resolution reflects that impatience.

Yet, the debate over the extension of the ratification period has served to cloud the essence of the ERA itself, which states that "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex". The ERA, if ratified, will guarantee that the protection of our rights as afforded by the structure of the law shall not be denied to <u>any</u> person. This does not threaten our basic democratic structure but rather enhances it.

Certain religious tenets concerning the status of women may conflict with this basic statement of equality. But our Constitution has separated religious doctrine from questions of law in order to assure that no one religious system will dominate.

And yet the question of equal protection under the law seems to have been forgotten as we turn to arguments over the time extension for ratification. I am forced to recall the many years of struggle that Black Americans endured and continue to endure in the name of equality. It was more that 100 years after the passage of the 14th Amendment that a Civil Rights Act was finally approved. It was only 144 years after the Declaration of Independence that women, through the 19th Amendment, gained the right to vote.

Is this committee to recommend that seven years is enough time to consider an amendment which effects more than half of our population?

The issue of human rights must not be taken so lightly. I encourage the members of this committee to show their continued support for the ERA and vote against Senate Joint Resolution 12.

Thank you.

Janet Eunice Cornish
Mary Ellen Pitale
[illegible]
[illegible]
[illegible]
[illegible]
Joan D. [illegible]

[illegible]
[illegible]
Margaret E. Small
Mary [illegible]
[illegible]
[illegible]
[illegible]
[illegible]

LEAGUE OF WOMEN VOTERS OF MONTANA

9 February 79

SJR 12

If the sponsors of this legislation wished to register their opposition to extension, they could have done so in a far more direct and simple fashion. Senate Joint Resolution 12 is "cheap" recission.

By and of itself the extension by Congress has no bearing on Montana's ratification of the Equal Rights Amendment. Montana's ratification was not conditioned on the text of United States House Joint Resolution 208, nor did this state ratify HJR 208 as claimed in SJR 12 (page 2, line 8). Only the courts can decide whether the extension is legal, which will not happen until the issue is "ripe", ie. when the required 38 states have ratified.

Stop E.R.A. has camouflaged this recission attempt in legalese and constitutional gobblygook. Indeed the focus is off the merits of the Equal Rights Amendment - merits which have been recognized and supported by a majority of Montanans for over five years.

Stop E.R.A. speaks of preserving the U.S. Constitution, yet they oppose granting equal protection under the laws to 51% of the population. They would even have us believe that the extending of constitutional rights to individuals - female individuals - is secondary to and less important than maintaining the rights of states.

The foundations of democracy in the United States are the rights held by individuals. And that is what America's Constitution and the Equal Rights Amendment are all about.,

The League of Women Voters first supported the ERA in May 1972. Since then we have reaffirmed our position three times.

The League of Women Voters of Montana with members in Billings, Liberty County, Great Falls, Missoula, Miles City, Helena, Bozeman, Alberton, Lincoln County, Flathead County, Lewistown, Ravalli County, and throughout the state urges that SJR 12 be given a DO NOT pass recommendation.

Margaret S. Davis
917 Harrison
Helena, Montana 59601

Margaret S. Davis

Our Side

Another 7 years too much for ERA

ERA...the Equal Rights Amendment...is still in status quo.

The Illinois Legislature recently defeated a resolution to ratify the amendment. The score is still 35 states which have approved the amendment....three more to go...three states Idaho, Nebraska and Tennessee have thought twice and rescinded their original ratification.

That poses a legal problem...does ERA have three states to go...or six?

The proposed ERA amendment could be the 27th in the United States constitution, but the original Congressional action is putting the proposal up to the states for approval by three quarters of them, self-destruct March 22, 1979.

A House subcommittee has approved action which could extend the ERA deadline another seven years. The proposal faces a tough fight in the full House Judiciary Committee and the Senate might initiate another filibuster All of this is taking place in an election year and it's pretty certain the pressure will be on the legislators seeking re-election.

In the past history of this nation more than 6,000 amendments have been proposed since 1791. Only 22 of them have been deemed of sufficient national importance to send them to the states. Of that 22, subsequently 16 were ratified. Another performance by legislatures six amendments were ratified in a year's time seven in two year's time, three took three years. None of those amendments, now law of the land, required anything like four years.

Now ERA backers faced with a nine months deadline, still have to line up three more states It's relatively apparent the supporters feel they won't have their way unless they have more time. Wouldn't it be equally imperative if the extension does go through Congress those states favoring rescision would have the same seven years in which to consider an original action?

Frankly, seven years ago equal rights were inequitable But much progress has been made through state laws to bring about changes. The discrimination gap is far narrower now than it was seven years ago In effect the original premise of the intended amendment has changed radically.

Historically, seven years has always been enough time in the past to ratify an amendment. Is another seven years likely to be effective? We don't [illegible]

SJR 12 - ERA - OPPOSED

I represent the Montana State Democratic Women's Club in the absence of C.A. Buckley, President, snowbound at Harlowton.

The Democratic Women of Montana strongly oppose SJR 12 as does the platform of the Montana Democratic Party.

Lois A Grudemo

February 8, 1979

Members of the Committee, my name is Janet Cornish, 321½ N. Alabama Street, Butte, and I wish to express my opposition to Senate Joint Resolution 12, introduced by Senator Jack Galt, calling for the expiration of Montana's ratification of the Equal Rights Amendment (ERA) on March 23, 1979.

The arguments surrounding the ERA have become stale and perhaps somewhat unconvincing with the passing of time. It has become passé to discuss matters of sex discrimination in hiring practices, by creditors, academic institutions and in the law itself. Some have become impatient and say that seven years is enough time for ratification of the ERA. Mr. Galt's resolution reflects that impatience.

Yet, the debate over the extension of the ratification period has served to cloud the essence of the ERA itself, which states that "Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex". The ERA, if ratified, will guarantee that the protection of our rights as afforded by the structure of the law shall not be denied to <u>any</u> person. This does not threaten our basic democratic structure but rather enhances it.

Certain religious tenets concerning the status of women may conflict with this basic statement of equality. But our Constitution has separated religious doctrine from questions of law in order to assure that no one religious system will dominate.

And yet the question of equal protection under the law seems to have been forgotten as we turn to arguments over the time extension for ratification. I am forced to recall the many years of struggle that Black Americans endured and continue to endure in the name of equality. It was more that 100 years after the passage of the 14th Amendment that a Civil Rights Act was finally approved. It was only 144 years after the Declaration of Independence that women, through the 19th Amendment, gained the right to vote.

Is this committee to recommend that seven years is enough time to consider an amendment which effects more than half of our population?

The issue of human rights must not be taken so lightly. I encourage the members of this committee to show their continued support for the ERA and vote against Senate Joint Resolution 12.

Thank you.

Janet Eunice Cornish

[illegible signatures]

MONTANA HOME ECONOMICS ASSOCIATI

POSITION STATEMENT REGARDING THE EQUAL RIGHTS AMENDMENT

As a profession long concerned with the quality of family life and the well-being of individuals, the Montana Home Economics Association strongly supports the ratification of the Equal Rights Amendment by Montana. We believe the ERA is vitally needed to provide the guidance and impetus necessary for the eventual achievement of fairness for all.. Equality must exist in the attitudes of Americans as well as in the law before it will become reality, and we doubt that attitudes will change unless we as a nation have committed ourselves to a policy of equality, in writing , in our Constitut ion. As home economists, we do not view ratification of the ERA as a threat to family structure-- on the contrary we see possibilities for improved quality in living as family members learn, in the sense of fairness , to share responsibilities and privileges; and to regard each other as having equal stature with different abilities and potentials. Having interest in and concern for homemakers , we think they have long been overlooked in their occup ation. It is time that they be recognized as valuable citizens, that some worth be placed on their contributions, and that their efforts be respected as supp ortive of the national economy and the well-being of most American citizens, young and old. We believe that in this time of shortages, women are an untapped resource which we can no longer afford to underrate, and that their abilities and decisions deserve to be perceived as socially worthy by both sexes. Obviously s uch perceptions and attitudes cannot be legislated, nor would we want to do so--- but they will not develop on their own without legislation w hich insures equal rights; and such legislation will likely not develop without the backing of the Constitution. If it does, it will be costly, lengthy and sporadic. We therefore recommend that SJR 12 not be passed and that ratification of ERA is the best beginning we have in long overdue equality, and fairness in the American sense, and pl edge our efforts to the ensuing processes necessary to achieve true justice for all..

Original statement developed in 1973. Support continued at the 1978 Annual Business meeting in Kalispel and reaffirmed their support of this statement on January 29, 1979.

Rebecca C. Allen SB 293

Support

Comments:

As a victim of juvenile crime, I advocate a more comprehensive restitution program. In October 1978, a youth on parole from Pine Hills stole a car, became involved in a high speed chase with the Allen police, ran a police road block, lost control and smashed both our cars running one into our house and finally smashing the stolen car into our house and coming on our front porch at 4:15 a.m. He was never formally charged, was allowed to choose to return to Pine Hills and subsequently escaped from there. We have been forced to file civil action against the guardians in hope of gaining restitution. This boy was not required to even repay the damage at even $5 per week". He was a ward of the state, granted to relatives at their request, on parole in violation of that parole, and not required to make any form of restitution to the innocent victims. When do you draw the line on protecting the criminal?

MONTANA HOME ECONOMICS ASSOCIATI

POSITION STATEMENT REGARDING THE EQUAL RIGHTS AMENDMENT

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Original statement developed in 1973. Support continued at the 1978 Annual Business meeting in Kalispel and reaffirmed their support of this statement on January 29, 1979.

rm CS-34
9

NAME Mrs. Mary E. Quebek BILL NO. SJR 12

ADDRESS 764 S Montana Ave DATE 2/8/79

WHOM DO YOU REPRESENT Helena Eagle Forum - Pioneer Republican

SUPPORT yes OPPOSE ~~OPPOSE~~ ~~AMEND~~

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: As former State Chairman of Montana Stop ERA and Montana Citizens To Rescind ERA ..... as expressing opposition to ERA since 1972, I have looked forward to the expiration date of March 22 1979 as originally promised by Congress in HJR 208 and by our State Legislature in HJR 4.

We view the Extension as illegal and unconstitutional as it passed Congress by a simple majority instead of the required two thirds majority.

People who are opposed to SJR 12 are the same ones who have said they were tired of the ERA issue and who wanted us to stop bringing up the issue. Yet they are the ones who wanted prolong the agony by the extension of it. We are not discussing ERA. We simply are for SJR 12 because it is a Constitutional issue. Lets abide by the rules as set forth in our Constitution and which were stated in the original bills.

We wish to abide by the rules, let March 22 1979 be the Expiration date and lets direct our Legislature to retrieve our ratification on March 23 1979 if the prescribed 38 states have not ratified. Thank you for your consideration.

Respectfully
Mrs. Mary E. Quebek
(Miss) Maureen Poole

rm CS-34
9

NAME Pam B. Lingren Bill No. STF 12

ADDRESS 2413 Orchard Dr. DATE 1 8 79

WHOM DO YOU REPRESENT Myself

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I support the above resolution #12 in favor of not extending the ratification of the Equal Rights Amendment beyond March 22, 1979.

rm CS-34
9

NAME Lorraine G. Lawrence BILL NO. 12

ADDRESS 749 St. Johns Billings 59102 DATE Feb. 8, 1979

WHOM DO YOU REPRESENT myself

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I wholeheartedly support bill # 12.

rm CS-34
9

NAME _____ Bill No. _____

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT _____

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

orm CS-34
79

NAME Angela M. Roman BILL NO. SJR 12

ADDRESS Box 82 - Simpsonville Hall DATE 2-8

WHOM DO YOU REPRESENT _____

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

rm CS-34
9

NAME Ruth Corbett BILL NO. SJR 12

ADDRESS 1322 8th Ave DATE Feb 8-79

WHOM DO YOU REPRESENT Montana Stop ERA

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Terry Buckingham
Box 45 Rimrock Hall
Eastern Montana College
Billings Mt. 59101
Same as above

Gaye McClung
Box 51 Rimrock Hall
EMC Billings Mt.
59101

Kelly Parkinson
Box 50 RRH (EMC)
Billings, MT
59101

Kay H. Buckingham
2103 Glenn St
Blgs 59102

Joe E. Collins
1305 Parkview Rd
Helena Mont. 59601

CS-34

NAME Greg Stapleton Bill No. SJR 12

ADDRESS Helena, Mt. DATE 2-8-79

WHOM DO YOU REPRESENT Common Cause of Montana

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

rm CS-34
9

NAME _____ Bill No. _____

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT _____

SUPPORT _____ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Ruth Corbett Bill No. SJR12

ADDRESS 1322 8th Ave DATE Feb 8-79

WHOM DO YOU REPRESENT Montana Stop ERA

SUPPORT X OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Terry Buckingham
Box 45 Rimrock Hall
Eastern Montana College
Billings Mt. 59101
Same as above

Gaye McClung
Box 51 Rimrock Hall
EMC Billings Mt.
59101

Kelly Parkinson
Box 60 RRH (EMC)
Billings, MT
59101

Kay H. Buckingham
2103 Glenn St
Blgs 59102

[illegible]
1341 Poplar Rd
Helena Mont. 59601

Form CS-34
-79

NAME Angela M. Romain Bill No. SJR 12

ADDRESS Box 82 - Simpsonville Havre DATE 2-8

WHOM DO YOU REPRESENT _____

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

CS-34

NAME Bruce Spaulding Bill No. SJR-12

ADDRESS Helena, Mt. DATE 2-8-79

WHOM DO YOU REPRESENT Common Cause of Montana

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

E. (JAKE) GARN
UTAH

4203 DIRKSEN SENATE OFFICE BUILDING
TELEPHONE: 202-224-5444

JEFF M. BINGHAM
ADMINISTRATIVE ASSISTANT

United States Senate

WASHINGTON, D.C. 20510

COMMITTEES:
ARMED SERVICES
BANKING, HOUSING AND URBAN AFFAIRS
INTELLIGENCE

November 3, 1978

Dear Legislator:

On October 6, 1978, the United States Senate passed H. J. Res. 638, a resolution purporting to extend the period for ratification of the Equal Rights Amendment (ERA) until June 30, 1982. Although there are many questions about the constitutionality of Congress's action, it is likely that efforts to have state legislatures ratify ERA will now continue unabated until mid-1982. That is, there will be presumption that H. J. Res. 638 is a valid legal instrument that has some kind of effect on the states. Although I confess that I am not convinced of the constitutionality of this measure (not to mention its wisdom), I recognize that those of you in states that have not ratified the proposed amendment will continue to be under intense pressure to do so. Under the presumed legality of this measure, states that have not yet ratified ERA may continue to do as they have in the past, i.e. consider the measure and either ratify it or reject it.

States that have already ratified ERA may also continue to do what they have in the past, i.e. either continue to support their prior action or rescind. It is true that the effectiveness of rescission is unknown, but it is also true that the efficacy of this extension is unknown. This latter fact did not deter, or even give pause to, those in Congress who were intent on extending the deadline and locking in 35 states regardless of those states' present attitudes. The arguments for rescission are particularly important now, because I do not see how we can obtain a "contemporaneous consensus" during a period that will run for over 10 years unless we allow legislatures to give or withdraw their contemporary consent.

The arguments for and against the right of rescission are several and varied, and they will not be decided in this letter. However, it is a fact that there is no definitive decision of any tribunal (whether the Supreme Court or Congress) on the effectiveness of rescission. The "precedent" of the Fourteenth Amendment and the dictum in Coleman v. Miller are relevant but they certainly do not dispose of the issue; the objective researcher will quickly find that neither the Reconstruction "precedent" nor the Coleman language will bear the burden of argument that is placed upon them.

There have been several excellent analyses of rescission and similar issues. I have found the following particularly helpful:

SENATE COMMITTEE JUDICIARY

Date 2/ 1983 Bill No. SB [illegible] Time

NAME	YES	NO
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)		✓
Turnage, Jean A. (R)	✓	
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)	✓	
Galt, Jack E. (R)		absent
Towe, Thomas E. (D)	✓	
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)	✓	
	5	2 1

abstained

Secretary

Chairman

Motion: Do pass as amended

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 2/7/79 Amt. Bill No. 217 Time 2:30 p.m.

NAME	YES	NO
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)		✓
Turnage, Jean A. (R)	✓	
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)		✓
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)		✓
Brown, Steve (D)		✓
Van Valkenburg, Fred (D)		✓
Healy, John E. (Jack) (D)		✓
	4	6

Alice Conway
Secretary

Chairman

Motion: Do pass

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date _____ _____ Bill No. SB 211 Time _____

NAME	YES	NO
Lensink, Everett R., Chr. (R)		✓
Olson, S. A., V. Chr. (R)		✓
Turnage, Jean A. (R)		✓
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)	✓	
Galt, Jack E. (R)		✓
Towe, Thomas E. (D)		✓
Brown, Steve (D)	✓	
Van Valkenburg, Fred (D)		✓
Healy, John E. (Jack) (D)	✓	
	4	6

Alice Omans
Secretary

_____
Chairman

Motion: Do pass, as amended

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 2/6/79 Bill No. 222 Time

NAME	YES	NO
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)	✓	
Turnage, Jean A. (R)	✓	
O'Hara, Jesse A. (R)		abstained
Anderson, Mike (R)		✓
Galt, Jack E. (R)		abstained
Towe, Thomas E. (D)	✓	
Brown, Steve (D)		✓
Van Valkenburg, Fred (D)	✓	
Healy, John E. (Jack) (D)	✓	
	6	2

2 abstained

Secretary

Chairman

Motion: To strike language on page 1, lines 20 and 21,

(include enough information on motion--put with yellow copy of committee report.)

(4-27)

STANDING COMMITTEE REPORT

February 3, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 296

Respectfully report as follows: That Senate Bill No. 296

DO PASS

E.C.

Everett R. Lensink Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 8, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 322

Respectfully report as follows: That Senate Bill No. 322

DO PASS

G.O.

Everett R. Lensink Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 8, 19 79

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 217

Respectfully report as follows: That Senate Bill No. 217

DO NOT PASS

~~DO PASS~~

Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 9 19 79

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 225

Respectfully report as follows: That Senate Bill No. 225,
introduced bill, be amended as follows:

1. Page 1, line 24.
Following: "office,"
Insert: "conviction of"

And, as so amended,

DO PASS

Everett R. Lensink, Chairman.

STATE PUB. CO.
Helena, Mont.

L. Orfield, The Amending of the Federal Constitution (1945); Corwin & Ramsey, "The Constitutional Law of Constitutional Amendment," 26 Notre Dame Lawyer 185 (1952); (Rees) Comment, "Rescinding Ratification of Proposed Constitutional Amendments--A Question for the Court," 37 La. L. Rev. 896 (1977); and Elder, "Article V, Justiciability, and the Equal Rights Amendment," 31 Okl. L. Rev.63 (1978). Of course, other commentators reach other conclusions--and this amply demonstrates that the question is not settled.

It will surely be argued that Congress's recent action establishes some kind of rule or precedent on rescission. But, if our recent activity establishes anything at all it is that we did not establish any rule whatsoever on rescission. In fact, one of the strongest arguments used against the rescission amendments was that adoption of such amendments would establish an unwanted precedent and that the 95th Congress had a duty to remain "neutral." For example, Senator Birch Bayh (D-Indiana), the Senate floor manager of the extension said, "I do not see how the rescission effort is going to be blunted in any way by a neutral action here [viz., the rejection of my amendment to expressly authorize rescissions during the effective period of H. J. Res. 638] when it has not been blunted by specific legal advice to the contrary up to now." The strongest supporters of extension (without rescission) in both the Senate and the House took the position that rejection of a rescission amendment was a "neutral" position.

I have my own views on the advisability of adding the Equal Rights Amendment to the Constitution, but I do not believe these views on the merits of the amendment are relevant either to the issue of extension or ratification. The issue of extension ought to be decided by reference to neutral principles, which require all amendments to be considered under the same fair, familiar, and unchanging rules. The issue of ratification ought to be decided by the people, speaking through their elected state representatives, and not by the national legislature which, we had all thought, had discharged its duty in the amending process in 1972 when it referred the proposed amendment to the states.

Any debate on the Equal Rights Amendment in your own legislature will likely be emotional and divisive, and I extend my best wishes to you as you attempt to represent your constitutents' views and express your own judgments on the proposal's merits. I have enclosed a copy of some of my remarks on rescission, which you may find of interest.

Sincerely,

Jake Garn

JG/loz
Enclosure

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 95th CONGRESS, SECOND SESSION

Vol. 124 WASHINGTON, MONDAY, AUGUST 7, 1978 No. 122

Senate

Testimony of Senator Jake Garn

Mr. Chairman:

I appreciate this opportunity to appear before you and the distinguished members of this committee. S. J. Res. 134 raises issues of overriding Constitutional importance and I am glad to participate in these hearings and trust that the witnesses who appear during the next three days will provide the best information available on all sides of the issues.

This testimony will not be a treatise on Constitutional law; there are experts enough on the Constitution who will testify before this committee or who have appeared before the House Judiciary Committee. What this testimony will be is a plea for detached, objective fairness. My testimony will be relevant to both the Constitutional questions and the policy questions, however, because in areas in which Constitutional language and history do not evidence a clear intent then matters of morality, philosophy, and wise policy are helpful in establishing what will become precedent and, perhaps, law.

It is very unfortunate that the issue of extension is being intertwined with the merits of the Equal Rights Amendment (ERA) itself. For example, a recent flyer printed by the National Organization for Women (N.O.W.) says, "Opponents have been using the deadline as a weapon, shifting the dialogue from the merits of the ERA to the time limit itself."[1] I have friends who support ratification of ERA—I do not—but I hope that those who favor ratification will be able to detach their views on the amendment's merits from their views regarding fair and certain procedures. This distinction is critical, and it is a distinction that underlies much of American law, i.e. we have public rules regarding substance and public rules regarding procedure. We do not change our procedures to correspond with our views of substantive rightness or wrongness, wisdom or folly. We do not prejudge the merits of an issue before submitting it to the judicial or legislative process and then, if we adjudge the issue as "good" or "bad", change the rules accordingly. Our judicial system takes good cases and bad under the same rules; our legislative process requires the Administration's bills, and the opposition's bills, and conservative and liberal bills to succeed or fail according to their merits without changing the formal process. Of course, the Administration and the opposition and others are free to lobby, cajole, campaign, and twist arms if necessary, but the formal process remains unbiased, unchanged, and—ideally—even untainted.

I think the merits of ERA must be separated from the issue of procedure. Certainly, because I oppose ERA, by position will be suspect, but I want to assure this committee and all others who read this statement that I will apply the same standard to all other Constitutional amendments. For example, I am a cosponsor with Senator Bayh and others of S.J. Res. 1, a proposed Constitutional amendment to provide for the direct election of the President, and if S.J. Res. 1 is ever placed in a position similar to that now faced by ERA my position would be the same. My position will be exactly the same with respect to S.J. Res. 14 and 15, the two proposed Constitutional amendments which I have introduced dealing with abortion. I fell very, very strongly about the need for these amendments because I believe abortion is a cancer growing in the body politic the like of which has not flared in this country since Dred Scott, but I would not change the process of amendment to favor these amendments. I think the abortion amendments are critical and urgent; I think for every day of delay in referring and ratifying these amendments we consent to our own Slaughter of the Innocents, but I am not willing to substitute my judgment for the judgment of the Congress and the

Footnotes at end of article.

various state legislatures, nor am I willing to skew the process to favor my own substantive views. This being my view, I can no more justify an extension of the deadline for ERA ratification because there can be "No time limit on equality" than I could justify a change of rules for the abortion amendments because "It is time for the killing to stop." This sloganeering is not the way in which to settle important Constitutional and policy questions.

Mr. Chairman, as I said at the beginning of my remarks, my plea is for detached, objective fairness. In this regard I believe it is important to remind the Senate of an earlier, analogous situation because I believe we can learn valuable lessons from the experience of the 92nd Congress. In late 1971 the Senate took up and passed S. 215, the Federal Constitutional Convention Procedures Act. The bill was designed to provide guidelines for what we might call the second track of Article V of the Constitution.

The first track is the traditional method of amending the Constitution, i.e. the Congress, by two-thirds vote of each house, refers amendments to the states which are valid as part of the Constitution when ratified by the legislatures of three-fourths of the states (or by state conventions). The second track system, and the amending method to which the 1971 bill addressed itself, is the convention method, i.e. the method by which two-thirds of the state legislatures may petition the Congress for the convening of a Constitutional convention, and the proposals of the convention are then referred to the state legislatures for ratification. Second track amendments also require three-fourths of the state legislatures to ratify before they become part of the Constitution.

Both tracks are fully authorized under Article V, although the second track has never been used for the adoption of an amendment. Nevertheless, as of 1971 the states had made over 250 applications to Congress for the covening of a Constitutional convention.[2] The most serious applications for a convention (judging from the number of states which made petitions) included such diverse causes as direct election of U.S. senators, prohibition of polygamy, limitation of federal taxing power, reapportionment, and revenue sharing.

The express purpose of the 1971 Senate bill was "to provide the procedural machinery necessary to effectuate that part of article V of the Constitution of the United States which authorizes a convention called by the States to propose specific amendments to the Constitution."[3] I want to emphasize that the bill was intended to establish the machinery for the utilization of a fully legitimate and parallel (i.e. parallel to the traditional method) method of amendment, and that the reason and logic of the Federal Constitutional Convention Procedures Act are applicable, by analogy, to first track questions, such as that presented in the ERA extension case.

Perhaps the first thing to note about the 1971 act is that it was debated, and passed unanimously, without the heat and pressure that occurs when such debate takes place at a time when a particular amendment is pending. Naturally, the constituency of any pending amendment (and their opponents) made calm reflection difficult. This fact, which is all too self-evident now, was foreseen by the Judiciary Committe in 1971:

The commitee urges passage of this bill now in order to avoid what might well be an unseemly and chaotic imbroglio if the question of procedure were to arise simultaneously with the presentation of a substantive issue by two-thirds of the State legislatures. Should article V be invoked in the absence of this legislation, it is not improbable that the country will be faced with a constitutional crisis the dimensions of which have rarely been matched in our history.[4]

Similar sentiment was spoken on the Senate floor when the bill was being debated. For example, the Chairman of this subcommittee, Mr. Bayh, made the following statement:

"I think it is vitally needed legislation. I say let us act now. Let us not wait until a constitutional crisis presents itself, when we may not be able to deal dispassionately and with wisdom with such an important matter as amending the Constitution of the United States."[5]

And a few minutes later, the then-junior Senator from Indiana repeated his hope for decisions made in a calm atmosphere:

"I agree with Senator Ervin that the ground rules for a constitutional convention ought—if at all possible—to be established before a convention is called to deal with a specific topic, lest views on the substantive issues color what should be neutral decisions about fair procedures. Let us set the ground rules in advance, at a time when we can agree objectively on what they should be. I also agree that we ought to take the middle ground in framing such a bill—avoiding both those procedures which make constitutional change too easy and those which stifle needed reform altogether."[6]

We can see, then, the stress that was placed on the issue of calm and objective reflection in 1971. However, the difference between the 92nd Congress and the 95th Congress is not that they desired objectivity more, but that they operated in a climate in which it was possible. Surely every member

of this committee and every witness want to take an objective look at this issue (and some may even claim to do so), but I am afraid we are too close to the emotionalism and pressures that surround the substance of ERA. If I am right, then we can learn a great deal about what a truly objective analysis would produce by studying the arguments and conclusions of the 92nd Congress.

The 92nd Congress, in the Federal Constitutional Convention Procedures Act, dealt with three issues that are relevant to the bill at hand. Those three issues are rescission, the value of simple majority rule contrasted with supermajority rule, and timeliness of Constitutional petitions. Let me deal with these issues in order.

The Federal Constitutional Convention Procedures Act (the Act) specifically authorized rescission. Section 13 of the Act was as follows:

Sec. 13. (a) Any State may rescind its ratification of a proposed amendment by the same processes by which it ratified the proposed amendment, except that no State may rescind when there are existing valid ratifications of such amendment by three-fourths of the States.

(b) Any State may ratify a proposed amendment even though it previously may have rejected the same proposal.

(c) (precludes judicial review and allows Congress to be the sole judge concerning ratification and rescission.) [7]

The report of the Judiciary Committee gave the reasoning for this provision, and I quote the entire section of the committee report entitled "Rescission of Applications and Ratifications":

The question of whether a State may rescind an application once made has not been decided by any precedent, nor is there any authority on the question. It is one for Congress to answer. (Note that this statement deals with an application of a state for a Constitutional *convention.*) Congress previously has taken the position that having once ratified an amendment, a State may not rescind.

The committee is of the view that the former ratification rule should not control this question and, further, should be changed with respect to ratifications. Since a two-thirds consensus among the States in a given period of time is necessary to call a convention, obviously the fact that a State has changed its mind is pertinent. An application is not a final action. It merely registers the State's views. A State is always free, of course, to reject a proposed amendment. On these grounds, it is best to provide for rescission. Of course, once the constitutional requirement of petitions from two-thirds of the States has been met and the amendment machinery is set in motion, these considerations no longer hold, and rescission is no longer possible. *On the basis of the same reasoning, a State should be permitted to retract its ratification, or to ratify a proposed amendment it previously rejected.* Of course, once the amendment is part of the Constitution this power does not exist.[8] (Emphasis added.)

It seems to me that the Judiciary Committee, in a time of calm analysis, adopted the fairest possible procedure. States that had once rejected an amendment would be free to change their mind and later ratify; those that had once ratified would be free to reconsider and, if desired, rescind the earlier action. No state would be irrevocably bound by its earlier decision until the Constitutional (or, in the case of applications for a convention, statutory) standard of three-fourths (two-thirds for applications) had been reached.

The standard contained in the Act was an attempt to codify fair play. It was an attempt to ensure that the debate continued full and healthy within each state for the entire time authorized. We are hearing a great deal about the need to "continue debate on a viable issue," but the fact remains that under the Constitutional scheme set forth by opponents of rescission the debate may continue only in those states which have not yet ratified the pending amendment. Persons living in states that have ratified the amendment must content themselves with writing letters to the editor. Why don't we adopt a method of amendment in which proponents and opponents of a proposed amendment may continue to participate in the active, meaningful debate until the amendment is ratified by the Constitutional three-fourths of the states? As N.O.W. says, "The issue (in this case, of ratifying the ERA) continues to be one of pressing concern, and the debate is, if anything, livelier than it was when the ERA was introduced in 1972."[9] This statement may be true, but if the issue continues to "press" us into debate even "livelier" than before, why not permit opponents in the ratified states to participate? It is not the advocates of rescission who wish to cutoff debate, it is the opponents because for them the debate may only continue in those states they have not yet won. In short, they say, ERA is an issue in only 15 states. Those of us who believe rescission is eminently just, want the debate to continue not only in the 15 states that have not ratified, but also in the four states that have rescinded and the 31 states that have ratified but have not rescinded. Are we now to prohibit continued debate?

If so, we abandon a lofty principle adopted by the Senate in 1971 during a period of studied consideration of Constitutional principles for a position that is tainted with prejudice and which is adopted under intense political pressure.

The second issue raised in the Fedral Constitutional Convention Procedures Act is that of simple majority versus supermajority. The issue in the Act is not identical to the issue being considered today by this committee, but it is analogous and it should control unless substantial objections are raised against it. I hold that it should control.

Section 10 of the Act, as reported from committee, provided that once a Constitutional convention had been convened (on the application of two-thirds of the states) then amendments could be proposed by a simple majority of the delegates. This position was defended by Senator Ervin who claimed that the supermajorities necessary to call the convention (two-thirds of the states) and ratify proposed amendments (three-fourths of the states) provided sufficient guarantee against unwise amendments and therefore the Act should follow the precedent of the Philadelphia Convention at which a simple majority vote carried a motion. This view was opposed however by those who claimed that since the convention was, in a sense, operating as Congress does when it debates and refers an amendment that the convention should operate under a two-thirds requirement as the Congress does on Constitutional amendments. The opposition was led by the junior Senator from Indiana, Senator Bayh, who proposed and managed the amendment which changed the bare majority requirement to a two-thirds requirement. The Bayh Amendment (Number 450) was adopted 45 to 39.[10]

Senator Bayh's arguments can be summed up best by citing the "Separate Views of Messrs. Bayh, Burdick, Hart, Kennedy, and Tunney" in the Senate report. Those interested in the Senator's floor statements, and his references to several excellent authorities, may refer to the Record.[11] The relevant part of the "Separate Views" follows:

Section 10, which permits the convention to propose amendments by a bare majority vote should be amended to require a two-thirds majority. As presently written, it undermines the traditional safeguard which has protected the integrity of the Constitution since 1789. That safeguard, of course, is Article V's requirement that amendments be proposed by two-thirds of the Congress. All Senators know very well the difference between persuading half and persuading two-thirds of our colleagues of the wisdom of a course of action. Article V's requirement guarantees that a decisive majority of the members of not one but two deliberative bodies agree that the amendment is the wisest means of dealing with a fundamental national problem, and that they come to that agreement before the amendment is submitted to the States. We should require that the convention act through the same decisive majority of its delegates. Only if such a broad consensus is reached at the time the amendment is drafted—a time when viable alternative amendments are still under consideration—can we be confident that there is widespread agreement that the specific language of the amendment proposed best fulfills its purpose. By allowing a bare majority of the convention to propose an amendment, the bill opens the door to the submission of a proliferation of amendments to the States.

It is true that three-quarters of the States must ratify any proposed amendment. But during ratification the States cannot make any changes in the proposal. It is presented to them in final form on a take it or leave it basis. In each State, only a majority of the legislature need be convinced that the particular amendment proposed is better than no amendment at all. Ratification, therefore, is simply not a substitute for the reasoned deliberation and the building of a substantial consensus which ought to precede the proposal of change in the basic framework of our political system. It is for this reason, we feel, that the founding fathers wisely required in Article V a two-thirds vote by each House before the Congress could propose an amendment, even though such an amendment, too, must subsequently be ratified by three-quarters of the States. Our own constitutional history demonstrates this principle. Since 1927, 28 constitutional amendments have been voted on by one or both Houses of Congress. Of those debated, only 7 finally won support from enough members of Congress to be proposed to the States. But of those 7, not one was rejected by the States. In fact, since 1789 only 5 proposed amendments—two of them part of the original Bill of Rights—have been rejected by the States.

For these reasons, proposals should be sent to the States for ratification only if approved by two-thirds of the delegates to the convention.[12]

There are, as I said, differences between the situation addressed by Senators Bayh, Burdick, Hart, Kennedy, and Tunney and the present situation. But it seems to me that anyone reading the views of these distinguished Senators with an open mind will be impressed with the emphasis that was placed on a supermajority. The majority of the Senate was certainly impressed because it passed

the Bayh supermajority amendment on a 45 to 39 roll call votes. The votes of Senators who are members of the 95th Congress on the Bayh Amendment are shown in Appendix A.

I concede that the issues are not identical, but issues seldom are. I must say that the Bayh Amendment provides greatly needed help in assessing the current situation and that it should give pause to anyone who quickly concludes that an extension of a ratification deadline can be agreed to by a simple majority of the Senate and House. The Views and floor statements are replete with references to the necessity of a supermajority. And note that the supermajority requirement was placed in the Act at this point: after two-thirds of the States had petitioned for a convention and before it is known whether the states will assent to the specific amendment referred from the convention to the states. In the present case, it is being proposed by some than an extension can be granted after two-thirds of each house have referred an amendment to the states, and after the states have had seven years in which to act. It is my opinion that those who supported the Bayh Amendment in 1971 have established a standard for extension that, at a minimum, requires a two-thirds vote of each house.

Finally, the Federal Constitutional Convention Procedures Act provides some guidance on the issue of timeliness. The Act as reported from committee provided that both applications for convention and referred amendments would remain timely for seven years. The report stated:

Article V is silent on the question of how long a proposed amendment should remain available for ratification or rejection by the States. It is likewise silent on the question of how long applications for a convention should remain valid. There is general agreement that, to be meaningful, applications for a constitutional convention to propose an amendment on a single subject should be a contemporaneous recognition by the States of the need for solution of a constitutional problem. There is some difference of opinion about the time period that is an appropriate measure of this contemporaneity. In the recent past, in making provision for the ratification of amendments proposed by Congress, 7 years has been specified as the appropriate time period within which ratification should take place. The bill provides that the same period—7 years—shall be the valid period. A shorter time, for instance 1 or 2 years, would not afford the States adequate time for debate and deliberation on so fundamental a question as a proposed constitutional amendment. On the other hand, a much longer time, say 15 years, would not satisfy the reasoned desire for consensus.[13]

This language has been helpful to me, and I trust that it will be as helpful to those who say "No time limit on equality" or who press for a 14 year (unless their amendment remains unratified at the end of that time period) ratification deadline or who believe that the number of years that the amendment remained pending before Congress before being referred is somehow relevant to the question of contemporaneity and a reasonable ratification period.

The same Senators who opposed the simple majority vote in convention also opposed the 7 year deadline during which a state's convention call would remain valid. In the same Separate Views cited above, Senators Bayh, Burdick, Hart, Kennedy and Tunney had this to say about the 7 year deadline: I emphasize that they were addressing themselves to the period during which a convention call would remain contemporaneous and valid, not the period during which an amendment which had been referred to the states could remain pending.

We believe that a State's call for a convention should not remain effective for seven years, as section 5 of the bill now provides. The call for a convention, as Professor Paul A. Freund has said, should reflect "a contemporaneously felt need." Of course, enough time must be provided to give the State Legislatures an opportunity to consider joining the request. However, in our view, four years would be a sufficient length of time. The vast majority of the legislatures—33 at latest count—now meet annually. Even the 17 legislatures which meet only in alternate years would have two sessions in which to act.[14]

Senator Bayh introduced an amendment to change the convention-call rule from 7 years to 4 (Amendment No. 451 [15]), but he never called it up.[16] "I would have preferred a shorter period of time than 7 years," said Senator Bayh, "so that if something is greatly concerning the country, it can be dealt with quickly." However, because the Senate had accepted Senator Bayh's earlier amendment and because the House had not yet considered the measure he did not call up his second amendment.

Mr. Chairman, the language of the Federal Constitutional Convention Procedures Act itself, its report, and its debate can serve as excellent guides for the current debate. I think the Act was a reasonable and reasoned piece of legislation that was debated, amended, and passed during a time of Constitutional calm. Our present circumstances are not so peaceful—we are under extreme pressure to do that which is politically expedient. My fear is that our present tendency is to respond to the pressure and heat and I am afraid that by doing so we will warp neu-

tral principles that were shaped during a time of calm analysis and which should remain strong, straight, and sure.[17]

AMENDING THE CONSTITUTION ACCORDING TO GALLUP AND HARRIS

Mr. Chairman, before I conclude my remarks and make my recommendation for resolution of the problem, let me address one other aspect of the issue. This aspect concerns the use of polling percentages as an argument for this or that option. An example of this is N.O.W.'s statement that "All reputable polls indicate that the vast majority of Americans, including those in the unratified states, want the ERA."[18]

It is true that the polls show wide support for ERA ratification. On July 17, 1978, Louis Harris wrote, "After a two-year period of serious erosion, support for passage of the Equal Rights Amendment to the Constitution has now risen to 55–38 percent, up from 51–34 percent back in January,"[19] George Gallup's July, 1978, poll showed an even wider margin.[20] Gallup shows support for extension equally divided; Harris shows a majority favoring extension. This, of course, is interesting information and any politician worth his salt will pay attention to the numbers, but if these numbers have any relevance to the formal process of amending the United States Constitution it is not clear. Article V is explicit about the manner of ratification: after two-thirds of each house of Congress have passed a proposed amendment it is referred to the states, and the proposal becomes a part of the Constitution only when ratified by three-fourths of the state legislatures. The polls are relevant to this extent: if that many people want ERA ratified they should see that their state legislators vote for it and, if they do not, they have the option of replacing them with men and women who will do a better job of representing the people's views.

There are, then, the self-evident problems of conducting public policy according to the polls, but there are also polls which complicate what we are led to believe is a two-to-one mandate for ERA. For example, the Committee on the Status of Women commissioned a poll by Decision Making Information of California which showed that by a margin of 61–35 percent the American people opposed sending draft-age women into combat; by a margin of 65–23 percent they objected to transferring final power over marriage, divorce and child custody from the states to the federal government; by a margin of 51–44 percent they opposed making all school and college activities coeducational; and by a margin of 66–28 they opposed giving homosexuals the right to marry and teach in schools. Additional information on the survey, including the exact questions asked, appears in Appendix E.

I am well aware that the questions asked by Decision Making Information are very controversial in and of themselves. There is considerable debate about the effect of ERA on laws relating to homosexuals. Some believe that ERA will have no effect on such laws; others believe that laws making distinctions on what has become known as "sexual preference" will violate the express provisions of the Amendment, and others believe that the whole issue of homosexual rights and ERA is a bugaboo and irrelevant. For these reasons, we have state legislators making decisions based on the best information available to them. They can determine for themselves whether ERA will affect homosexual rights; they can decide about women, the draft, and their constituents' views; and they can make the other judgments that are implicit in any legislative decision but which are of extraordinary importance in any decision regarding an amendment to the federal Constitution.

Of course, Congress needs to be careful about playing this polling game. If we are going to make Constitutional decisions on the basis of the polls, we had better prepare to move in several areas, and do it quickly. A recent listing of Senate Joint Resolutions to amend the Constitution[21] shows the following:

Six joint resolutions to balance the budget;[22]

Four joint resolutions to restrict the terms of office of the President, Senators, and Members of Congress;[23]

Two joint resolutions calling for a change in the electoral college;[24] and one joint resolution which would establish a national referendum.[25]

We could ignore these resolutions (as we probably will, except for the change in the electoral college) with impunity if it were not for the polls, which show support for all of these measures.[26] My point, of course, is that you will not see the United States Senate running off to enshrine polled percentages in the Constitution. We are a long way from a balanced budget amendment, a restricted term amendment, and an initiative amendment. Why? Because we do not amend the Constitution according to Gallup and Harris. Naturally we all know this about balanced budgets and restricted terms and national initiatives; my hope is that our knowledge is as sure in regard to ERA.

RECOMMENDATION

Mr. Chairman, I believe the best way for this committee to act is to report a joint resolution to the floor that is identical to

House Joint Resolution 208, the original resolution containing the Equal Rights Amendment which was referred to the states on March 22, 1972, with one addition. The addition would permit states to rescind during the ratification period under the same conditions which were expressed in the 1971 Act.

If this is done, I will not propose or support any amendments to the resolution itself, i.e. I will neither propose nor support any amendments dealing with busing, school prayer, abortion, balanced budget, and so on. Also I will use what influence I have to see that my colleagues do not propose or support such amendments.

If a resolution reaches the floor and it does not have the above elements, I will have serious reservations about it and will support amendments designed to protect what I understand to be the integrity of the amending process. If these kinds of amendments are not successful then I believe it is my duty to support those efforts, under the rules of the Senate, which will provide for a thorough debate of the many issues surrounding extension.

FOOTNOTES

[1] Flyer printed by National Organization for Women, dated July 10, 1978 and entitled "National Lobby Day." (Hereinafter, N.O.W. flyer.)

[2] *See,* table of "State Applications Calling for Convention to Propose Constitutional Amendments from 1787 to September 1971 by Subject Matter" in 117 *Cong. Rec.* 36754 (1971) (remarks of Senator Ervin).

[3] S. Rep. No. 92–336, 92d Cong., 1st Sess. 1 (1971).

[4] *Id.* at 2.

[5] 117 *Cong. Rec.* 36761 (1971) (remarks of Senator Bayh).

[6] *Id.*

[7] The Act is printed at 117 *Cong. Rec.* 36806 (1971).

[8] S. Rep. at 14, *supra* note 3.

[9] N.O.W. flyer.

[10] The vote is found at 117 *Cong. Rec.* 36770 (1971).

[11] Senator Bayh's remarks appear at 117 *Cong. Rec.* 36760–36770 (1971).

[12] S. Rep. at 18, *supra* note 3.

[13] *Id.* at 11.

[14] *Id.* at 19.

[15] 117 *Cong. Rec.* 36760 (1971).

[16] *Id.* at 36803.

[17] An identical Act was passed by voice vote in the 93rd Congress on July 9, 1973. 118 *Cong. Rec.* 22731 (1973).

[18] N.O.W. Flyer.

[19] The Harris Survey, July 17, 1978.

[20] The Gallup Poll, July 16, 1978.

[21] *Digest of Public General Bills and Resolutions,* 95th Cong., 1st Sess. (Final Issue, Part 2). Prepared by the Congressional Research Service, Library of Congress.

[22] S.J. Res. 2, 26, 50, 51, 53, 65.

[23] S.J. Res. 20. 25, 27, 28.

[24] S.J. Res. 1 and 8.

[25] S.J. Res. 67.

[26] The headlines of some of the polls are descriptive: "Huge Majority Backs Carter Goal of a Balanced Budget," The Gallup Poll, August 28, 1977. "Public to Congress—Retire the Electoral College," The Gallup Poll, February 10, 1977. "Majority of Voters now Favor Limit on Terms of Senators, Representatives," The Gallup Poll, December 4, 1977. "National Initiative Process Favored by 57% of Voters," The Gallup Poll, May 14, 1978.

APPENDIX A

Members of the 95th Congress who voted on S. 215, the Federal Constitutional Convention Procedures Act, and the Bayh amendment (No. 450) in the 92nd Congress:

Senator, Bayh amendment, and final passage (S. 215):

Baker, no, yes.
Bayh, yes, yes.
Bellmon, n.v., yes.
Bentsen, yes, yes.
Brooke, yes, yes.
Burdick, yes, yes.
Byrd, Va., n.v., n.v.
Byrd, W. Va., no, yes.
Cannon, yes, yes.
Case, yes, yes.
Chiles, no, yes.
Church, yes, yes.
Cranston, yes, yes.
Curtis, n.v., announced against, n.v., announced for.
Dole, no, yes.
Eagleton, yes, yes.
Goldwater, no, yes.
Gravel, n.v., n.v., announced for.
Griffin, yes, yes.
Hansen, no, yes.
Hatfield Mark, no, yes.
Hollings, no, yes.
Inouye, yes, yes.
Jackson, yes, yes.
Javits, yes, yes.
Kennedy, yes, n.v.*
Long, no, n.v.
Magnuson, yes, yes.
Mathias, n.v., n.v.
McGovern, yes, yes.
McIntyre, yes, yes.
Muskie, yes, yes.
Nelson, yes, yes.
Packwood, n.v., n.v.
Pearson, yes, yes.
Pell, n.v., n.v.
Percy, yes, yes.
Proxmire, yes, yes.

Randolph, yes, yes.
Ribicoff, n.v., n.v., announced for.
Roth, no, yes.
Schweiker, yes, yes.
Sparkman, no, yes.
Stafford, yes, yes.
Stennis, no, yes.
Stevens, yes, yes.
Stevenson, yes, yes.
Talmadge, no, yes.
Thurmond, no, yes.
Tower, n.v., announced against, n.v., announced for.
Weicker, no, yes.
Williams, yes, yes.
Young, no, yes.
Total, 53.

*Congressional Quarterly shows Senator Kennedy "Announced for or CQ poll for." See, Congressional Quarterly Almanac, 92nd Congress, 1st Session (1971) p. 41-S.

Appendix B

Results of National Survey: Equal Rights Amendment—Related Questions

I'd like to now talk for a minute or two about a proposed amendment to the United States Constitution called the Equal Rights Amendment or ERA. It reads as follows: "Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex." Some favor it while others oppose it, but for different reasons.

1. *If* the ERA means that if a war were to occur, draft age women will be sent into military combat just like men, would you favor or oppose the Equal Rights Amendment?

	Percent
Favor	35
Oppose	61
Not sure	4

2. *If* the ERA means that final power over marriage, divorce and child custody will be transferred from the States to the federal government, would you favor or oppose the Equal Rights Amendment?

	Percent
Favor	23
Oppose	65
Not sure	12

3. *If* the ERA means that every school and college, including all their activities, must be coed, would you favor or oppose the Equal Rights Amendment?

	Percent
Favor	44
Oppose	51
Not sure	5

4. *If* the ERA means that homosexuals will be able to get marriage licenses and teach in schools, would you favor or oppose the Equal Rights Amendment?

	Percent
Favor	28
Oppose	66
Not sure	6

This national probability survey was conducted between March 26 and April 3, 1977, by Decision Making Information of Santa Ana, California. The study contains the results of 1,201 telephone interviews with adults (18 years and over) within the continental United States. The sample was drawn from the universe of households with telephones. All forty-eight states were included in the randomly selected sample. In general, random samples such as this yield results projectable to the entire universe of the adult population in the United States within ±2.9 percentage points in 95 out of 100 cases.

Any release to the public of these results should include all of the above reporting minima along with the exact wording of the questions asked.

STATEMENT OF SAM J. ERVIN, JR., FORMER UNITED STATES SENATOR FROM NORTH CAROLINA, BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION OF THE SENATE COMMITTEE ON THE JUDICIARY CONCERNING THE POWER OF CONGRESS TO EXTEND THE DEADLINE FOR RATIFICATION OF THE EQUAL RIGHTS AMENDMENT

When it submitted the Equal Rights Amendment to the states for ratification or rejection on March 22, 1972, Congress resolved that the proposed amendment should become a part of the Constitution if ratified by three-fourths of the states within seven years from the date of its submission.

The Subcommittee is considering S. J. Res. 134, which was introduced in the Senate by Senator Birch Bayh and others and which undertakes to extend the deadline for ratifying the Equal Rights Amendment an additional seven years.

Apart from such matters as the fairness of changing the rules of the game in the ninth inning, S. J. Res. 134 presents to this Subcommittee and the Congress the serious constitutional question as to whether Congress has the power to extend the deadline for ratifying the Equal Rights Amendment.

How Constitution Is To Be Interpreted

Before elaborating my abiding conviction that the Constitution denies to Congress the power to do so, I wish to state how I believe the Constitution is to be interpreted.

I am not numbered among the legal activists who interpret the Constitution to mean what it would have said if they instead of the Founding Fathers had written it.

On the contrary, I believe the Constitution is to be interpreted in the manner described by America's greatest jurist of all time, Chief Justice John Marshall, in his famous opinion in Gibbons v. Ogden, (1824) 9 Wheat. 1, 188, 9 L.Ed. 23, 68. I quote his words:

"As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said."

Unconstitutionality of S. J. Res. 134

I submit the proposal embodied in S. J. Res. 134 is unconstitutional for several reasons, which I shall enumerate.

1. Congress has no powers except those granted to it by the Constitution either in express words or by necessary implication from express words. Since Article V, which governs its actions in proposing amendments, does not expressly or impliedly authorize Congress to extend the deadline fixed by it on March 22, 1972, for the ratification by the required number of states of the Equal Rights Amendment, Congress has no power to take such action, and the proposal embodied in S. J. Res. 134 is clearly unconstitutional.

As the Supreme Court declared in Afroyim v. Rusk, (1967) 387 U.S. 253, 257, "Our Constitution governs us and we must never forget that our Constitution limits the Government to those powers specifically granted or those that are necessary and proper to carry out the specifically granted ones." (Underscoring added.)

To answer the constitutional question raised by S. J. Res. 134, recourse must be had to Article V of the Constitution, which defines the power of Congress to propose to the states for ratification or rejection amendments to the Constitution. Insofar as it is relevant to the question posed by S. J. Res. 134, Article V reads as follows:

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution ** which ** shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several states."

Dr. Oliver Wendell Holmes makes this trenchant observation in his Autocrat of the Breakfast Table:

"Life and language are alike sacred. Homicide and verbicide -- that is, violent treatment of a word with fatal results to its legitimate meaning, which is its life -- are alike forbidden."

Those who maintain that Congress has the power to extend for seven additional years the deadline for state action on ERA are committing first degree verbicide on the words of Article V.

They make a two-pronged attack on the Constitution's words. First, they assert that Congress can extend the deadline because the Constitution is silent on the subject; and, second, that Congress can extend the deadline, even by a majority vote in each House, because the time for ratification or rejection is a matter of procedure and not a matter of substance.

The first of these arguments, i.e., that Congress can do anything with respect to any matter on which the Constitution is silent, is a most revolutionary proposition, which is totally irreconciliable with the indisputabl truth that the Constitution contains an enumeration of all the powers granted by the people to the Federal Government. Every decision of the Supreme Court on the subject recognizes this principle:

"Whenever a question arises as to whether the federal government has the right to exercise any particular authority, recourse must be had to the Constitution itself in order to determine whether such authority is found therein either by express words or by necessary implication." 16 Am. Jur. Constitutional Law, Section 199.

Nothing can be found in Article V or any other provision of the Constitution which confers on Congress by express words or by necessary implicati the power to extend by seven years the deadline for state action respecting ERA. Hence, such congressional power is non-existent.

2. The Supreme Court has declared that Congress has no power to extend the deadline for ratifying ERA beyond March 22, 1979.

This proposition finds complete support in the unanimous opinion of the Supreme Court in Dillon v. Gloss, (1920) 256 U.S. 368, 65 L. Ed. 994, where the Court assigns two reasons for this conclusion.

The first reason is that proposal of an amendment by the Congress and its ratification by the states are not treated by the Constitution "as unrelated acts, but as succeeding steps in a single endeavor."

S. J. Res. 134 undertakes to do in two endeavors what the Supreme Court declares must be done in a single endeavor.

In stating the second reason why Congress cannot extend the deadline for ratifying a proposed amendment, the Court asserts, in substance, that a proposed amendment loses its potency unless it is ratified in a reasonable time after its submission by Congress, and that Congress cannot permit any state to vote on the matter after that date unless it proposes the amendment to the states a second time, i.e., anew.

When it submitted the Equal Rights Amendment to the states for ratification or rejection on March 22, 1972, the 92nd Congress resolved that ERA should become a part of the Constitution only if it should be ratified by

the legislatures of three-fourths of the states within seven years from the date of its submission. By so doing, the 92nd Congress declared that a reasonable time for state action on ERA will expire March 22, 1979.

In fixing the seven year limit for state action on ERA, the 92nd Congress followed the precedents set by Congress in submitting virtually all recent amendments to the states. Besides, its action harmonized with the Supreme Court decision in Dillon v. Gloss, which expressly adjudged that the Congress which submits a proposed amendment may fix a definite period for its ratification provided it keeps within reasonable limits, and that the Congress which submitted the 18th Amendment acted within reasonable limits when it specified that it should be ratified by the requisite number of states within seven years.

Advocates of ERA have already had a longer time to persuade the requisite number of states to ratify ERA than the advocates of any amendment ever added to the Constitution. All amendments heretofore adopted have been ratified within periods varying from a minimum of 4 months to a maximum of less than 4 years.

In the very nature of things, the power to fix a reasonable time for state action on a proposed constitutional amendment must reside in the Congress which submits it. It cannot be determined retroactively by a subsequent Congress motivated by the fact that the requisite number of states have refused to ratify it within the reasonable limit originally established.

The 95th Congress has power to legislate for the future. It has no power to amend the past. And that is precisely what it would be trying to do if it undertook to amend a congressional resolution adopted on March 22, 1972, by striking out seven years and inserting in its place fourteen years.

The reasons why a fair inference or implication from Article V is that ratification must be within a reasonable time after the proposal are well stated by the Supreme Court in Dillon v. Gloss. Let me quote the Court's words:

"First, proposal and ratification are not treated as unrelated acts, but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the

reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the states, there is a fair implication that it must be sufficiently contemporaneous in that number of states to reflect the will of the people in all sections at relatively the same period, which, of course, ratification scattered through a long series of years would not do."

After stating these things, the Supreme Court declared that if a proposed amendment is not ratified by three-fourths of the states within a reasonable time, it is "not again to be voted upon, unless a second time proposed by Congress." (256 U.S. 368, 375, 65 L.Ed. 994, 997)

Congress cannot extend the deadline by passing S. J. Res. 134 because it would be attempting to do in two endeavors what the Supreme Court says must be done in a single endeavor and because a reasonable time for the ratification of ERA has expired.

To be sure, however, Congress can submit the ERA to the states anew, i.e., a second time. For understandable reasons, advocates of ERA do not desire Congress to submit the amendment to the states a second time, i.e., anew. They recognize that such action can be taken by Congress only by a vote of two-thirds of both of its Houses, and will impose upon them the burden of persuading the legislatures of three-fourths of the several states to adopt new ratifying resolutions if ERA is to become a part of the Constitution.

Hence, it is not surprising that they seek to beat what they deem to be a constitutional devil around the stump. They emulate the ostrich. By sticking their heads in the sand, they blind themselves to the wording of Article V what the Supreme Court expressly declared in the case of Dillon v. Gloss.

Having done this, they conjure up these unsupportable notions: First, Congress can extend the deadline for ratifying the ERA by a simple majority vote of both Houses; second, a state which has ratified ERA cannot change its mind and rescind its ratification, but a state which has rejected ERA can change its mind and ratify it; and third, by extending the deadline for ratification instead of submitting ERA a second time, i.e., anew, to the states, Congress can embalm and preserve the vitality of ratifying resolutions adopted by states prior to the expiration of the original deadline of March 22, 1979.

These notions are clearly untenable. The first notion is totally inconsistent with the words of Article V. If it extends the deadline, Congress will be proposing that states vote on ERA during an additional 7 years, and Article V makes it as clear as the noonday sun in a cloudless sky that Congress cannot propose that the states vote on any amendment except by a two-thirds vot of both of its Houses.

The first notion attempts to put asunder what Article V irrevocably puts together. Indeed, it attempts to rewrite Article V in its entirety.

The Article clearly requires Congress to do everything connected with proposing amendments by a two-thirds vote of both Houses. It makes no distinction between matters of procedure and matters of substance -- between the time for state action and the wording of a proposed amendment.

The second notion ignores the fundamental difference between the delegated powers which Congress enjoys and the original powers which a state legislature enjoys. Congress cannot take any action whatever unless it is authorized to do so either expressly or impliedly by a provision of the Constitution of the United States. A state legislature on the contrary can do anything it is not forbidden to do by the Constitution of its state or by the Constitution of the United States.

Neither the Constitution of any state nor the Constitution of the United States forbids a state to reverse its action in respect to a proposed amendment at any time before the amendatory process is complete, i.e., until the proposed amendment has been ratified by three-fourths of the states and thereby made a part of the Constitution. Consequently, until that has happened, a state which has ratified ERA can change its mind and rescind its ratification, and a state which has rejected ERA can change its mind and ratify it.

Four of the states, Tennessee, Nebraska, Idaho, and Kentucky, have expressly rescinded their prior ratification of ERA, and thereby reduced to 31 the number of states whose ratifications of ERA are still valid.

For the two reasons previously stated, Congress has no power to extend the deadline for ratifying ERA beyond March 22, 1979. But even if it possessed such power, Congress could not keep ratifications made before the expiration of

the original deadline in force after that time by passing S. J. Res. 134. This is true because those ratifications applied to a proposed amendment which was to be effective only if it should be ratified by the legislatures of three-fourths of the states within SEVEN -- not fourteen -- years from its submission by the Congress.

3. What has just been said is emphasized by the express language of the ratifying resolutions of at least twenty nine of the states which describe the proposed amendment they are ratifying as one 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.

The twenty nine states so describing the proposed amendment they were ratifying as one expiring after March 22, 1979, if not ratified by three-fourths of the states by that time, and the years of their ratifying resolutions are as follows:

1.	California	1972
2.	Colorado	1972
3.	Connecticut	1973
4.	Delaware	1972
5.	Hawaii	1972
6.	Idaho	1972
7.	Indiana	1977
8.	Iowa	1972
9.	Kansas	1972
10.	Kentucky	1972
11.	Maine	1974
12.	Massachusetts	1972
13.	Michigan	1972
14.	Minnesota	1973
15.	Montana	1974
16.	Nebraska	1973
17.	New Hampshire	1972
18.	New Mexico	1973
19.	New York	1972
20.	North Dakota	1975
21.	Ohio	1974
22.	Oregon	1973
23.	South Dakota	1973
24.	Texas	1972
25.	Vermont	1973
26.	Washington	1973
27.	West Virginia	1972
28.	Wisconsin	1972
29.	Wyoming	1973

By virtue of their express language, the ratifying resolutions of these twenty nine states will become null and void after March 22, 1979, if ERA is not ratified by the legislatures of three-fourths of the states by that date.

It is to be noted that ERA was ratified by these twenty nine states in the following years: 15 states in 1972, 9 states in 1973, 3 states in 1974, 1 state in 1975, and 1 state in 1977.

It is not only unconstitutional, but also irrational to count these states as voting for ratification after March 22, 1979, if ERA is not ratified by three-fourths of the states by that date. This is so because these ratifications were made in political haste immediately after ERA was submitted, and before legislators had reason to know that ERA is unnecessary, unrealistic, and destructive of the system of government the Constitution was ordained to establish.

Since this Subcommittee is concerned solely with the question of whether the deadline for ratifying ERA should be extended, I refrain from discussing how unnecessary, how unrealistic, and how destructive of our existing system of government it is. I have added to this statement appendices dealing with these matters, and ask that they and the copy of the opinion in Dillon v. Gloss be printed in the record of the hearings following this statement.

August 3, 1978.

Sam J. Ervin, Jr.

Sam J. Ervin, Jr.
P. O. Box 69
Morganton, N. C. 28655

Conclusion of Se[illegible] Proceedings of October 5, 1978, Appear in This Issue After Today's Senate Proceedings

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Senate

Mr. GARN.

Mr. President, we are about to vote on House Joint Resolution 638, the resolution purporting to extend the period during which States may ratify the proposed equal rights amendment. It is important to clarify what we are voting on, and to review some of the arguments advanced for and against the extension, so that the American people will understand what Congress is trying to do today—and, what is perhaps more important, what we are not trying to do.

Five points stand out above all:

First, the extension resolution is unconstitutional. Congress does not have the power to bind the 35 States that ratified the ERA resolution containing limiting language, to a similar but distinct resolution that omits the limiting language.

Second, the extension resolution could have had a limited constitutional effect, of creating a new 39-month period in which 38 States might ratify the ERA, if it had been passed properly. Since the resolution was not called up under a two-thirds rule, however, and since it did not pass the House by a two-thirds vote, it cannot operate as a new proposal of an amendment that could be ratified by the States.

Third, the debate in Congress on the extension resolution was largely directed to the merits of the ERA, rather than to the very different question of constitutionality of extension. This underscores the very limited value of this resolution even as persuasive authority for the courts, who will ultimately have to rule on the constitutionality of the rescission That so many Members of Congress were unable to separate their desire for the ratification of the ERA from their judgment on the constitutional effect of a rescission underscores the danger of the argument that questions of amendment procedure are "political questions," on which Congress can do anything it wishes without the chastening effect of judicial review.

Fourth, to the extent that proponents of the extension did address the constitutionality of extension, and of the related question of rescission, they largely relied on several myths about the text, history, and interpretation of article V of the Constitution. Some of these myths were of very recent vintage, woven specially for the occasion of the debate on this unprecedented and unconstitutional resolution.

Fifth, and most important of all, both the proponents and the opponents of this resolution seem to be in agreement that State legislatures are free to rescind their ratifications of the ERA. Let me repeat that: even the ardent proponents of this extension, and the Senators who voted against the Garn amendment that would have recognized the right to rescind, indicated very clearly that States may rescind their ratifications. We disagree only on who has the right to determine the validity of those rescissions. Some, including Senator BAYH and the other major proponents of extension, feel that a future Congress will sit in judgment on the rescissions. Others, including myself, feel that the U.S. Supreme Court will ultimately decide whether the rescissions are valid. The message to the States should be clear: If you no longer approve of the ERA, then rescind your ratification. It is the only way you can signal to the ultimate tribunal that you no longer can be counted as part of the "contemporaneous consensus" needed for ratification. The entire Congress agrees that a contemporaneous consensus is necessary, and that some future tribunal will have to judge whether it exists. So no State should be dissuaded from rescinding. On the contrary, there is more reason now than ever before for States to take affirmative action to indicate their change in sentiment.

I will discuss each of these points briefly, Mr. President, but I cannot exhaust the list of things that are wrong with this resolution in the short time available. There will be lawsuits over this resolution; indeed, it might be called the Constitutional Lawyers Relief Act of 1978. I hope that the courts, in reviewing the record, will consider all the floor proceedings and all the data and opinions inserted in the RECORD by myself and others over the last 6 weeks or so. After a review of those data and opinions and these proceedings, I am confident that the action we are about to take will not bear scrutiny.

I hope the Court ultimately will look at just the constitutional process. They

will not be involved in the politics of deciding whether they are for or against a particular amendment.

1. THE UNCONSTITUTIONALITY OF THE EXTENSION RESOLUTION

Mr. President, article V of the Constitution, like many other provisions in that document, is very short. It provides as follows:

> The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress: Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article V does not attempt to set out every detail of the amending process. But it does state certain principles, assigning the power of proposal to Congress, and of final ratification to the States.

It has been suggested that where the Constitution is silent, Congress is free to legislate. This is contrary to the general principle that our Federal Government is one of limited powers, and to the principle announced in the 10th amendment that residual power is in the States rather than in the Federal Government. Nevertheless, it is arguable that as an incident to its power to propose amendments and to designate the mode of ratification. Congress may enact "housekeeping" legislation to provide for matters of detail that may arise in the amending process.

Congress may not, however, use its "housekeeping" power to alter the delicate balance of State and Federal power in the amending process. It may not, under the pretext of providing for a situation not expressly mentioned in article V, do violence to the principles clearly stated by that article.

Article V does not expressly mention extension. Nor does it mention rescission. Nor, for that matter, does it mention any number of other hypothetical proposals; but the absence of a specific reference in the Constitution is hardly evidence that the framers intended Congress to have a free hand in deciding whether a certain procedure is valid or invalid. On the contrary, a procedure may be so far-fetched that the framers never thought anybody would propose it, and felt no need to prohibit it. Article V, for instance, does not expressly prohibit Congress from unilaterally deciding to treat Puerto Rico as a State for the purpose of securing a three-fourths majority of the States; but nobody would seriously propose that Congress may do so.

Taking a careful look at this extension resolution, I think it is fair to say that it falls into the class of procedures so far-fetched that the framers would not have thought they needed to prohibit it, It is certainly not a matter of detail. It takes way from the States the right to ratify or reject the proposal they were presented in 1972, retroactively turning each State ratification into a blank check made to the order of Congress. This violates the balance of State and Federal power that was so carefully drawn in article V.

Here is what happened in 1972. Congress presented the States with a resolution containing certain limiting language. The resolution stated that—

> [T]he following article . . . shall be valid . . . as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years . . .

Thirty-five States ratified that resolution. As Prof. Jules Gerard has pointed out, 24 States expressly mentioned the time limit in their ratifying resolutions. The other States also ratified the entire resolution, as limited by the time limit. They ratified no other resolution. Congress now proposes to take the ratifications of House Joint Resolution 208 of 1972, and to declare unilaterally that those ratifications are also to be regarded as ratifications of House Joint Resolution 638 of 1978, which does not contain the 7-year time limit, but substitutes a longer time limit.

Senator BAYH has admitted during this debate that Congress would be powerless to bind the 35 ratifying States to this new congressional resolution if the time limit were in the text of the proposed amendment. But he argues that since the time limit was in the resolving clause and not in the text, Congress is free to go back and take out the limiting language. This is wrong, for two reasons. First, it ignores the fact that every State had the time limit on the bargaining table when it ratified. There is no need to rely on hypothetical "reliance" by the States, although Professor Gerard makes a persuasive case that such reliance did exist. Simple contract law, which is after all just a way to determine whether there has been a meeting of the minds between parties to a transaction, is enough. The States that ratified the resolution with the limiting language cannot be presumed to have given their acceptance to a resolution containing no such language.

The history of the amending process provides another equally strong reason to reject the reasoning of Senator BAYH, which is also the reasoning of the Justice Department and of the majority of the "constitutional experts" Senator BAYH

has relied upon in debate. The location of the limitation in the resolving clause was clearly intended to differ only in style, not in substance, from a limitation in the text.

Grover Rees III has detailed this history in his memorandum to the House subcommittee:

The Effect of the Location of the Seven-Year Limitation.

If the seven-year limitation were in the text of the proposed amendment itself, it is difficult to imagine anyone suggesting that Congress could now change the text and thereby bind states which had previously ratified the amendment to the new language. The time limit is, however, located in the preamble, or "resolving clause."

Since Congress presented its entire resolution to the states, the location of the time limit should make no difference. The seven-year provision was on the bargaining table so to speak, when the states indicated their assent. The location should only make a difference if the legislative history affirmatively suggests that the states had reason to know that the seven-year limitation was not binding on Congress, and could be changed at will. There is not a trace of any such evidence in the history of the E.R.A. or of constitutional amendments generally; indeed, there is affirmative evidence to the contrary. It is clear that the location of the time limit in the resolving clause was purely a matter of form, to which no substantive importance was attached by those who drafted and voted on the E.R.A.

Interestingly, the location of the seven-year limitation seems to have been the work of Senator Ervin, an E.R.A. opponent. When the amendment was introduced in the 91st Congress, it contained no time limit at all. During debate on the resolution, Senator Ervin introduced an amendment which, among other things, imposed a seven-year limit. He said it "would require" that ratification occur within seven years for the E.R.A. to be valid, adding:

Certainly, any proposed amendment to the Constitution of the United States for which there is any real demand can be ratified by the legislatures of the required number of States within 7 years after the date of its submission.—[116 Cong. Rec. 36302 (1970)]

Senator Dole added that the "provision requiring that the amendment be ratified within 7 years has been included in amendments proposed by Congress commencing with the 18th, and will prevent an anomaly amendment from lingering in limbo for an indefinite number of years." Id. 36450. That proponents of the limitation intended it to have the same effect as similar clauses in prior amendments is significant, since until the 23rd Amendment, these clauses were all contained in the text of the amendments themselves.

Senator Ervin's amendment to the E.R.A. resolution passed, over the opposition of Senator Bayh and other leading E.R.A. proponents (Senator Bayh expressing his opposition to other parts of the Ervin amendment, and not mentioning the time limitation). The E.R.A. was not passed by the Senate in the 91st Congress, but when it was introduced in the 92d Congress (H.J. Res. 208, S.J. Res. 8, 9), it contained the time limitation exactly as worded by the Ervin amendment. The Ervin language remained in the resolution as approved by the Senate Judiciary Committee. The committee report, submitted by Senator Bayh, noted under "Legislative History" that the time limit had been included as a result of the Ervin amendment in the 91st Congress [Sen. Report No. 92-689, 92d Cong., 2d Sess. 1972 at 4-5]. The report also stated: "The proposed Equal Rights Amendment reads as follows: . . . the following article . . . 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 . . ." Id. at 1-2 (emphasis added). The report added:

This is the traditional form of a joint resolution proposing a constitutional amendment for ratification by the States. The seven year time limitation assures that ratification reflects the contemporaneous views of the people. It has been included in every amendment added to the Constitution in the last 50 years. It is interesting to note that the longest period of time ever taken to ratify a proposed amendment was less than 4 years.—[Id. at 20]

Not a word in the legislative history of the E.R.A. indicates that Senator Ervin, who proposed the time limitation, or the Senate Judiciary Committee, who reported it favorably, or anyone in Congress or in the state legislatures, intended the limitation to have any different substantive effect because of its location in the resolving clause rather than in the text. The obvious reason is that language in the resolving clause does not actually become part of the Constitution when the amendment is ratified, whereas a limitation in the text would "clutter up" the Constitution with language which had become ineffective. That no substantive distinction was drawn is underlined by the committee report's casual inclusion of the resolving clause in what purports to be a recital of the text of the Amendment. Moreover, the numerous references to similar language in past amendments imply that the E.R.A. provision was intended to have the same effect as the previous limitations, most of which had been contained in the text of the amendments, and which therefore clearly could not have been tampered with by Congress after some states had ratified.

It is instructive to examine the first instance in which Congress placed the time limitation in a resolving clause, rather than in the text of a proposed amendment which ultimately became part of the Constitution. The 23rd Amendment, granting the Presidential vote to residents of the District of Columbia, was proposed by S.J. Res. 39 in the 86th Congress. This resolution originally contained no language about the D.C. vote at all, but was instead a resolution, favorably reported by the Senate Judiciary Committee, to propose a constitutional amendment providing for emergency interim appointments of members of the House of Representatives. The Senate added the D.C. language, and then the House kept the new language and deleted the original language about House appointments. The resolution itself, however, had a long and well-documented legislative history, with particular reference to the seven-year time limitation for ratification.

The committee report on S.J. Res. 39 [Sen. Report No. 86-561, 86th Congress, 1st Sess.], says the resolution was "identical in text" to S.J. Res. 8, which had passed the Senate in the 84th Congress. S.J. Res. 8, when introduced by Senator Kefauver in the 84th Congress, contained a time limitation in the text

of the amendment. Prior to committee hearings on the resolution, Kefauver apparently wrote to a number of constitutional law scholars, asking for suggestions on the language of the amendment. Only one response of those printed in the record of the hearings recommended a change in the location of the seven-year limitation. Professor Noel Dowling of Columbia Law School drafted an entire new version of the resolution, noting:

"The 7-year limitation is put in the resolution rather than in the text of the amendment. There is no doubt about the power of Congress to put it there; and it will be equally effective. The usual way, to be sure, has been to write the limitation into the amendment; but we hope such an unnecessary cluttering up of the Constitution can be ended."

[Hearing before a Subcommittee of the Committee on the Judiciary, United States Senate, 84th Cong., 1st. Sess., on S.J. Res. 8 (1955), at 34]

The committee substituted Dowling's language for the original. In response to a question from Senator Russell in Senate floor debate, Senator Kefauver stated:

"The general idea was that it was better not to make the 7-year provision a part of the proposed constitutional amendment itself. It was felt that that would clutter up the Constitution. Sometimes that is done. We wanted to put the 7-year limitation in the preamble. So the intention of the preamble is that it must be ratified within 7 years in order to be effective."—[101 Cong. Rec. 6628 (1955)]

In response to Senator Russell's continued questioning, Senator Kefauver agreed to an amendment, which was then passed by the Senate, to insert the word "only" before "if ratified . . . within 7 years" in the resolving clause. Senator Kefauver made it clear that he and the Judiciary Committee staff felt the addition of the word would not change the effect of the limitation. Id.

Professor Dowling's letter, and the subsequent exchange on the Senate floor, are the only evidence of legislative intent behind the location of the time limit in the resolution that eventually became the vehicle for ratification of the 23rd Amendment—the apparent model for subsequent proposed amendments which include the limit in the resolving clause. They indicate that the change was made purely in the interest of a more elegant Constitution, and with no intention of altering the substantive effect of the time limitation so as to allow Congress to modify it after ratification by a number of states.

In conclusion, Mr. President, Congress may not make an offer to the States, secure acceptance of that offer, and declare unilaterally 7 years later that the acceptance applies to a different offer. And no "housekeeping" power in Congress can justify such an enhancement of the limited congressional role in the amending process at the expense of the role given to the States by article V.

II. THE FATALLY DEFECTIVE PROCEDURES

As I have pointed out, Mr. President, Congress is perfectly free to resubmit the ERA for ratification by the States, and to designate a reasonable time for such ratification. If we had followed the proper procedures in adopting the resolution we are about to vote upon today, it could fairly be construed as such a referral to the States. However, the U.S. Supreme Court has pointed out in Powell against McCormack that Congress may not use mere nomenclature to do something with a simple majority vote when the Constitution requires a two-thirds vote to achieve the same effect. Thus the House could not "exclude" Adam Clayton Powell under a rule requiring a simple majority, since the Constitution required a two-thirds vote to "expel" him. And we cannot "extend" the ERA by a simple majority vote and pass it on to the States for 3 additional years, when to achieve the same effect by an original proposing resolution would require a two-thirds vote of both Houses, by the clear language of article V.

Prof. Charles Black of the Yale Law School, in a letter I have already inserted into the RECORD, presents yet another reason that this extension proposal, to have whatever validity it might have under any theory of the amending process, needs a two-thirds vote in each House:

It is my opinion that a two-thirds vote is required for this extension proposal. As I said in my testimony before the House Subcommittee, the original resolution that passed both Houses of Congress and sent ERA to the country was worded in a clearly and expressly conditional form, providing that the text of the amendment should have validity as part of the Constitution, if the ratification took place within seven years. This integral proposal—a proposal for validity conditioned on a certain time-limited event—was the only thing that any body ever voted on or could have voted on; it was, in fact, the only proposal ever made to the States. It is impossible to know how many votes on the proposal were influenced by the inclusion of this time limitation. We do know that it was carefully considered and intended to have serious effect as a part of the proposal. But the main strength of my case is in the text of the proposal itself. It proposes that validity be conditional on ratification within seven years. That conditional proposal was the only proposal that ever passed. It seems to me plainly to follow that an alteration in the content of the proposal has to be passed by the same majority required to pass the proposal.

I think that if the act of extension were to have been offered on the day following the passage of the original proposal, and if it had been suggested that a simple majority vote was enough, the ludicrousness of this position would have been entirely clear, but I can't see why it would make any difference that a good deal of time has elasped.

Some people say that this matter of time pending is a "mere" procedural matter. This kind of thing is somewhat hard to understand on the part of lawyers, because lawyers know that the difference between a lynching and a fair trial is only a matter of procedure. I would add that nothing could be more important than the following of meticulously correct procedure with respect to the amendment of the American Constitution—the basic document legitimating our government.

III. THE FAILURE TO ADDRESS THE REAL ISSUES

From the moment that this extension proposal began to surface, it became clear that its only chance for success

was for the proponents to focus on the merits of the ERA and to ignore or gloss over the grave constitutional questions involved. Mr. President, if this extension proposal had been suggested in connection with an antiabortion amendment, or even with a noncontroversial amendment to provide for the Presidential succession or to make the marigold the national flower, this Congress would not have given it the time of day. But the lobbyists for the extension made it clear that they regarded a vote on extension as a vote on the ERA. Senators were told, "We know that if you're for women, you'll find a constitutional argument that will allow you to vote for the extension." And too many Senators who discussed this extension proposal were unable to confine themselves to its constitutional merits. Instead, they said how much they loved their daughters and spent time refuting the idea the ERA would lead to co-ed restrooms and homosexuality in the schools. Those were not the issues.

Perhaps it is unfair to blame Senators and Congressmen from concerning themselves with the political aspects of the problem. They are legislators, and it is their job to vote for the result they think desirable for their constituents. But who will ensure that the proper constitutional procedures are followed? Traditionally, that is the function of the courts. Yet the extension proponents claim that the courts will not intervene in this case, even if Congress should act in a constitutionally questionable manner. They say it is a nonjusticiable "political question." Yet the precedents for such a view, which I shall discuss, are very weak; and the practical folly of it, the real danger of it, could not have been more vividly illustrated than by the fact that when we should have been calmly and dispassionately analyzing the meaning of article V, we were instead worrying about restrooms and constituent pressures. I look forward to the day, and it is certain to come, when this issue will get the fair trial it deserves, in a tribunal whose job it is to adjudicate and not to legislate. I am confident that the U.S. Supreme Court will not shirk its responsibility to give article V of the Constitution a day in court.

IV. CONSTITUTIONAL MYTHOLOGY

As I have indicated before, Mr. President, the few constitutional arguments that were advanced for the extension resolution rested on a novel and flawed view of the amending procedure. It is a view in which Congress reigns supreme, performing the multiple roles of prosecutor, judge, jury and executioner.

Here are some of the elements of this Byzantine model of the amending process, some of the myths about the text and history of article V that have been thrown together especially for the purpose of this debate:

First, there is the myth that article V commits the final resolution of constitutional questions arising in the amending process to Congress. Some Members of Congress may even have operated under the impression that the text of article V contained such a grant of power. The following excerpt from the House subcommittee hearings illustrates this fact:

Ms. HOLTZMAN. Does Congress have to accept the ratifications by two-thirds vote?

Professor BLACK. Cetrainly not. No, indeed.

Ms. HOLTZMAN. Isn't that inextricably linked to the substance?

Professor BLACK. But the acceptance of ratification by Congress is not an article V power. It is not so stated. It is not in article V. As a matter of fact——

Ms. HOLTZMAN. Where is it?

Professor BLACK. It is not anywhere. There is no statement as to who accepts ratification. It is a matter of practice from time to time. And it has been changed from time to time.

* * * * *

Ms. HOLTZMAN. Profesor Black, surely there must be something in the Constitution that gives Congress the power to accept amendments?

Professor BLACK. If you say so, show it to me. If you say there is. I would think that would put the burden on you to tell me where it is. I don't happen to recall if there is a passage like that.

I don't have the whole thing memorized by heart, but I don't believe there is.

Ms. HOLTZMAN. So Congress has no constitutional power to determine whether ratifications have properly taken place, whether 38 States have ratified?

Other Members of Congress have suggested that Congress has an implicit right to resolve all constitutional questions in the amending process, despite the absence of any language in article V suggesting such a power. The only authority for such a congressional power is in the case of Coleman against Miller. That case was widely criticized, even at the time it came out, as confusing and internally inconsistent. Professor Orfield, the most widely recognized contemporary expert on the amending process, did not know what to make of it. The case, even if it can somehow be reconciled with commonsense and with the clear language of article V, does not have anything to do with extension. Nobody had ever suggested extension at the time. And since the holding of Coleman was that some cases arising out of the amending process, but not others, were nonjusticiable, it cannot be authority for anything outside its own facts.

Most important, Coleman has been implicitly overruled by much later and more reasoned Supreme Court decisions, including Baker against Carr and Powell against McCormack.

Powell is the strongest case. Adam Clayton Powell had been denied his seat in the House, and he sued the Speaker of the House and won, over the strong contention of his opponents that this was a "political question" on which the House could do anything it wanted and be im-

mune to judicial review. The Court actually reversed the House's judgment on its own internal rules. Can it thus be seriously argued that the Court will close its eyes while Congress tampers with the very structure of the Constitution? I think not. And I think it unfair to continue citing Coleman as if it were a respected and undisturbed precedent.

The reasoning of Powell and of Baker leaves no room for the reasoning of Coleman. The Court will not shy away from an issue because it involves a possible conflict with Congress, or because Congress has done the allegedly unconstitutional action in the past, or because Congress has used nomenclature to make the appearance of doing something it has a right to do, while achieving a result it is otherwise prohibited from achieving. But Senator BAYH has said that Coleman is still good law because Powell distinguished it. That assertion, Mr. President, simply does not survive a careful reading of Powell. It is true that Coleman was one of a laundry list of old cases that Powell cited for the proposition that there are such things as political questions. But that was all. There was no discussion of Coleman, and no examination of its logic or its facts. You cannot read Powell and continue to hold the belief that the courts will blindly give effect to an unconstitutional act of Congress, on the strength of the "political questions doctrine." Yet that is what the proponents of extension would have us believe.

Another myth concerns the case of Dillon against Gloss. Contrary to what has been asserted, this case did not recognize any right in Congress to extend a ratification deadline. Dillon merely stated the obvious:

> That Congress has the power to limit its own proposals, by imposing a reasonable time limit in the first place.

Dillon did not hold that Congress could come back, after 35 States had voted on its original proposal, and change that proposal without giving the States a chance to indicate whether they liked the change.

On the contrary, Dillon affirmed the concept that a "contemporaneous consensus" was needed for ratification. As such, the only importance that case has for the present debate is to underscore the right of each State to rescind its ratification—especially if the period is extended beyond the original 7 years.

Perhaps the newest and most creative myth to emerge from these proceedings is something called "Madison's Principle." Nobody had ever heard of "Madison's Principle" until just a few months ago, when the Assistant Attorney General of the United States unearthed a letter from James Madison to Alexander Hamilton, took it entirely out of context, misstated its conclusion, and elevated the remains into a sacred precedent.

What really happened was that New York was considering the adoption of the original Constitution. Some members of the New York legislature were concerned that the document contained no bill of rights, and they wanted to ratify the Constitution with the condition or proviso that a bill of rights be ratified by other States. Madison replied that such a conditional ratification would not be enough to make New York a member of the Union. That is all that happened.

Several points need to be made about Madison's letter: First, it did not even purport to interpret article V, the provision for constitutional amendments. Indeed, article V had not even been adopted. The New York Legislature was discussing the ratification of the Constitution itself, not of any amendment to it. Senator BAYH has suggested that what Madison thought about the adoption of the Constitution must have been the same as what he thought about the ratification of amendments. But that suggestion cannot stand in the face of the clear action of the framers when they wrote two different articles for the two different procedures—article V for amendments to the Constitution, and article VII for the adoption of the Constitution itself by the 13 original States. The two articles contain entirely different formulas and procedures, because they involve two entirely different situations. So even if Madison really had said that the States could not rescind, it would have had no bearing on article V, which is the only question before us today.

But even assuming for the sake of argument that Madison was talking about constitutional amendments, a close examination of his words tends to support the State right to rescind. What Madison said was that a conditional ratification is no ratification:

> A reservation of a right to withdraw if amendments be not decided on . . . is a conditional ratification, that . . . does not make New York a member of the New Union, and consequently . . . she does not be received on that plan. Compacts must be reciprocal, this principle would not in such a case be preserved.

What Madison was saying was that if two parties to a compact ratify it with different thoughts in mind, there is no meeting of the minds, and so the compact is totally ineffective. Applying this reasoning to rescission and extension, if a State ratified in the erroneous impression that it could rescind—or on condition that the proposal expire in 7 years—its ratification would be totally ineffective. Instead, the proponents of extension without rescission would have us believe that a conditional ratification would be absolutely valid, as though it contained no condition at all. This is simply not what Madison was saying. The proponents of an unfair extension should be

ashamed to give Madison's name to their novel and meet-to-order "principle."

One of the biggest distortions concerns the so-called "historic precedent" of the 14th amendment. I think it is important to review what actually happened on that day in 1868, to show how weak the precedent really is. The reconstruction precedent is discussed in a comment in volume 37 of the Louisiana Law Review:

On July 20, 1868, Secretary of State William Seward announced that he had received documents from legislatures in at least three-fourths of the states purporting to certify ratification of the fourteenth amendment. He noted, however, that he had also received official notice that Ohio and New Jersey had withdrawn their consent to the amendment. Expressing his "doubt and uncertainty" as to the legality of these resolutions, he certified that if the Ohio and New Jersey ratifications were still in force, the amendment was valid as part of the Constitution.

On thhe following day, both houses of Congress passed a resolution declaring that three-fourths of the states, including Ohio and New Jersey, had ratified and that the amendment was part of the constitution. The record of the proceedings suggests bluntly that the Republican majority neither knew nor cared whether the Constitution gave states the right to rescind. The Senate passed the resolution without debate and without a roll-call vote. In the House, the entire debate appears to have lasted only a minute or two. A Massachusetts Republican moved to send the resolution, not to the Judiciary Committee, but to the Committee on Reconstruction. A Democrat protested that "it is an important question, and should go to the committee on the Judiciary." The Republican floor leader then indicated that his intention was to "pass it now," without any committee consideration at all. After some discussion of the idea of adding Georgia to the list (on the strength of a telegram in the possession of the Speaker which a Democrat suggested was a fabrication), the resolution was passed by a near-perfect party line vote. The Congressmen who voted that Ohio and New Jersey could not rescind were, virtually man for man, those who five months earlier had voted to impeach President Andrew Johnson for his refusal to obey unconstitutional orders.

It should be emphasized that this Congressional action was never tested in court. By the time the Supreme Court was called upon to construe the fourteenth amendment, in the 1873 *Slaughterhouse Cases*, four additional states had ratified the amendment so that ratification *vel non* by Ohio and New Jersey was a moot point.

Apparently, the resolution of the Reconstruction Congress was not regarded as an important precedent even by contemporaries. The discussion over including Georgia—whose ratification would have brought the total to three-fourths even without Ohio and New Jersey—suggests that the Republican leadership was not entirely confident the gambit would succeed. Moreover, two years later New York rescinded its ratification of the fifteenth amendment, and the Secretary of State did not certify the amendment as valid until enough states had ratified so that New York's action was moot. Shortly thereafter, the Senate twice rejected attempts to declare that no state might rescind its ratificaton of any future amendment.

The Justice Department, and the Assistant Attorney General in particular, have done yeoman service in the creation and promulgation of tall stories about the amending process. In addition to "Madison's Principle," the Assistant Attorney General's memorandum to the House subcommittee contained the following language:

However, the 92d Congress did not put a time limit in the text of the ERA but rather stated in the proposing resolution that the States should have at least 7 years to consider ratification of the amendment.

The fabrication, out of whole cloth, of the words "at least," gives one a bit of the flavor of the Justice Department's approach. Of course, the Assistant Attorney General posed not as an advocate of the administration's position on the ERA, determined to get it through whatever the effect on the integrity of the amending process, but as a counselor, whose role is "not to discuss the merits of the proposed extension but rather to provide whatever legal advice I can regarding the constitutional issues raised by this resolution."

The national press subsequently reported that the Justice Department had "ruled" that Congress could extend and that States could not rescind. I suppose that after we pass this resolution, there will be reports that Congress has "ruled" about extension and rescission. But, of course, the Assistant Attorney General and the Congress cannot "rule" anything about the Constitution. As Professor Black put it when he spoke to the House subcommittee, "Congress has the right to say anything it wants to, but the question is whether the Supreme Court should give effect to what they say, as it is with all questions of constitutionality of acts of Congress."

All of these myths are part of the central fallacy that this is a matter resolved by precedent, so that Congress need not consider the constitutionality or fairness of what it is doing. Mr. President, there are no precedents here. And the only thing that can be said about the weak and illogical precedents that have been advanced is what the Supreme Court said in Powell against McCormack:

That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date. . . . The relevancy of [such] cases is limited largely to the insights they afford in correctly ascertaining the draftsmen's intent. Obviously, therefore, the precedential value of these cases tends to increase in proportion to their proximity to the Convention in 1787.

The advocates of extension have cited a few isolated incidents that began with the reconstruction. Those precedents, if anything, show why even more concern for fairness and constitutionality is needed when we are dealing with the Constitution than with ordinary legislation, and why there is a pressing need

for judicial review of congressional actions that affect the structure of the Constitution.

The political branches, Congress and the executive, have shown what they can do when they go about making rules of constitutional law. Now it is time for the judicial branch to straighten out the mess we have made, to restore some fairness and logic and certainly to the amending process.

V. THE STATE RIGHT TO RESCIND

I cannot emphasize too strongly, Mr. President, that this resolution does not affect in any way the State right to rescind ratification of proposed constitutional amendments. That right exists. It is a necessary conclusion from the concept of "contemporaneous consensus" of which Hamilton spoke in the Federalist No. 85, and which was affirmed by the Supreme Court in Dillon against Glos. And it flows from pure fairness and common sense. If you have 38 States that have indicated their consent to a proposal, and four that have withdrawn, then you have a "consensus" of only 34. That is not enough.

The Senate rejected my amendment, which would have reaffirmed the right to rescind, as a limitation to mitigate the unfairness of rescission. But if there is an absolute right to rescind, flowing from the constitutional requirement of consensus, then nothing we do here can detract from that right.

Yet the opponents of my amendment did not base their opposition on the absence of a state right to rescind. I quote Senator BAYH:

> Anyone listening to my voice or anyone else's voice who is responsibly debating this on the other side of this issue has to have heard us say that we do not know what the answer to this is, that the proper time to decide is after the necessary three-fourths of the States have ratified.

It was by appealing to the Senate to be "neutral" on the question of rescission that Senator BAYH ably persuaded 54 Members of this body to reject my amendment:

> I do not see how the rescission effort is going to be blunted in any way by a neutral action here when it has not been blunted by specific legal advice to the contrary up to now.

Those are the words of Senator BAYH. And I agree that the rescission effort should not be blunted, for it is a just and good effort.

The right to rescind has long had the support of thoughtful scholars. In 1942, Prof. Lester Orfield wrote the definitive treatise on the amending process. In "Amending the Federal Constitution," Professor Orfield indicated that the right to rescind was fair and logical:

> Ratification by less than three-fourths of the states is ineffectual. Such is the theoretical approach. But there are even stronger practical arguments. It is more democratic to allow the reversal of prior action. A truer picture of public opinion at the final date of ratification is obtained. No great confusion is likely to result from such a rule. Not to allow reversal of an acceptance may cause a cautious legislature not to act.

Moreover, Professor Orfield, writing only a few years after the Coleman decision—the major "precedent" cited by opponents of rescission, although its fact had nothing to do with rescission—largely discounted the effects of that case, and concluded that "there has as yet been no test of the finality of a ratification."

Prof. Charles Black, who of all the eminent constitutional scholars invited to speak before the House subcommittee, was the only one who had previously published anything about the amending process, strongly supports the right to rescind. He calls the view that an affirmative vote cannot be reconsidered, but that a negative vote can be reconsidered time and time again, a "silly lobster-trap" model of the amending process.

Senator Sam Ervin, a former Member of this body who has long been respected for his sincerity and erudition in constitutional law, believes strongly in the right to rescind.

But that is not all. Outside the context of the ERA controversy—that is, when they were able to separate the constitutional question from the desirability of a particular amendment—the Senate unanimously passed a bill that recognized a State right to rescind. The vote was 84 to 0. That was in 1971. The report of the Judiciary Committee—signed by Senator BAYH, among others—strongly endorsed the right to rescind:

> The question of whether a State may rescind an application once made has not been decided by any precedent, nor is there any authority on the question. It is one for Congress to answer. [Note that this statement deals with an application of a state for a Constitutional convention.] Congress previously has taken the position that having once ratified an amendment, a State may not rescind.
>
> The committee is of the view that the former ratification rule should not control this question and, further, should be changed with respect to ratifications. Since a two-thirds consensus among the States in a given period of time is necessary to call a convention, obviously the fact that a State has changed its mind is pertinent—An application is not a final action. It merely registers the State's views. A State is always free, of course, to reject a proposed amendment. On these grounds, it is best to provide for rescission. Of course, once the constitutional requirement of petitions from two-thirds of the States has been met and the amendment machinery is set in motion, these considerations no longer hold, and rescission is no longer possible. On the basis of the same reasoning, a State should be permitted to retract its ratification, or to ratify a proposed amendment it previously rejected. Of course, once the amendment is part of the Constitution this power does not exist.

The current struggle illustrates the unfairness of denying the right to re-

scind. Thirty of the thirty-five States that ratified the ERA did so in 1972 or 1973. Since then there have been five additional ratifications—and four rescissions. The ERA was aging gracefully toward a peaceful death when the ratifications that had not been rescinded would expire according to their own terms. Now this has been cast into doubt. There is a greater incentive than ever for States that no longer support the ERA to take affirmative action to indicate their rejection. Before today, there was perhaps no need for that. But Congress has left the States with no choice.

Senator BAYH and others are of the opinion that some future Congress, the Congress that is sitting when there are 38 ratifications by the most inflated count, will be the ultimate tribunal to rule on whether the rescissions are valid. I personally believe the Supreme Court will rule. In either case, one rescission should be enough, because if there are 38 ratifications and one rescission, there is no "contemporaneous consensus" of 38 States. But suppose there are 12 rescissions. Suppose there are 20. If there are only four or five, then perhaps Senator BAYH's future Congress could ignore them, by saying that they are from small and unimportant States, or that ERA opponents distorted the issues, or that we simply love our wives and daughters enough not to quibble over a few States. But what about 20 rescissions? Would Congress declare an amendment adopted that had only 18 States currently endorsing it? And would the Supreme Court close its eyes and give effect to such a declaration? I think not.

So the message to the States is clear. Rescission is not only permissible; after today, it may be the only way to avoid being counted as part of a trumped-up "consensus." Under Senator BAYH's theory or my own, a State that wants out of that nonexistent consensus should signal that intention immediately by rescinding its ratification of ERA.

VI. ONE EXTENSION DESERVES ANOTHER

Finally, Mr. President, I point out that we are about to vote on this resolution; 10 days ago, before the debate had even begun, we set an arbitrary time for the vote. Yet the issue is still alive. There is more feeling, pro and con, on this resolution today than ever before. Why cut off the debate at some arbitrary point?

Mr. President, I propose that we go ahead and hold the vote this morning. Give every Senator 15 minutes to make up his or her mind. But at the expiration of that 15-minute period, do not just shut off the debate. Instead, I suggest that the "no" votes on this resolution—those of us who will vote against the resolution because we do not feel it is fair—be considered final and binding on the Senators who cast them. I have worked very hard in trying to oppose this resolution, and I think it is important. I would like to continue the debate. So I propose that after the vote, I be granted an additional 2 weeks to try to get Senators who voted "yes" to change their minds.

Some may ask why I am proposing that only one side be given the chance to change their minds. The answer is simply that I want to win. I want all votes on my side locked into place, and we will work on Senator BAYH's side for 2 weeks to try to change them.

There must be some moment of finality to this whole rollcall process, and I think it should be after I have won. That is when we will cut it off. So when a Senator finally sees the light and votes my way, his decision-making power lapses. But that is no reason to shut off the debate altogether. After all, what is fair is fair.

Obviously, I say this with tongue in cheek, but I think it makes my point. That is what I have been trying to accomplish in behalf of the Constitution of the United States during the last 2 weeks.

SB 288

1. Title, lines 4 and 5.
Strike: "AMENDING SECTION 35-1-801, MCA,"

2. Title, line 6
Following: "MERGER"
Insert: "OR CONSOLIDATION; AMENDING SECTIONS 35-1-801 AND 35-1-802, MCA"

3. Page 2.
Following: line 19
Insert: "Section 2. Section 35-1-802, MCA, is amended to read

"35-1-802. Procedure for consolidation.

(1) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or any other corporation or, in whole or in part, into cash or other property;

(d) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(e) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.""

STANDING COMMITTEE REPORT

February 9 19 79

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 288

Respectfully report as follows: That Senate Bill No. 288,
introduced bill, be amended as follows:

1. Title, lines 4 and 5.
Strike: "AMENDING SECTION 35-1-801, MCA,"

2. Title, line 6.
Following: "MERGER"
Insert: "OR CONSOLIDATION; AMENDING SECTIONS 35-1-801 AND 35-1-802, MCA"

3. Page 2.
Following: line 7
Insert: "Section 2. Section 35-1-802, MCA, IS AMENDED TO READ:
"35-1-802. Procedure for consolidation. (1) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

DO PASS

(Continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

February 9 19 79

(2) The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

(a) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or any other corporation or, in whole or in part, into cash or other property;

(d) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(e) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable."

Renumber: subsequent section

And, as so amended,
DO PASS

Everett R. Lensink, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 9 19 73

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 293

Respectfully report as follows: That Senate Bill No. 293,
introduced bill, be amended as follows:

1. Page 9, lines 14 through 16.
Following: "youth" on line 14
Strike: remainder of line 14 through "$1,500" on line 16

And, as so amended,

DO PASS.

Everett R. Lensink, Chairman.

STATE PUB. CO.
Helena, Mont.

DATE 2/8/79

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Linnea Larson	MT. EQUAL RIGHTS COUNCIL	SJR 12		✓
Constance S Waterman	" " " "	SJR 12		✓

(Please leave prepared statement with Secretary)

DATE 2/8/29

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
Linnea Larson	MT. EQUAL RIGHTS COUNCIL	SJR 12		✓
Constance S Waterman	" " " "	SJR 12		✓

(Please leave prepared statement with Secretary)

As submitted to the States by Congress in House Joint Resolution 208, the Equal Rights Amendment to the United States Constitution reads in full:

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. 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.

MONTANA
EQUAL RIGHTS COUNCIL
P.O. Box 297, Helena, Mt. 59601

MONTANA ORGANIZATIONS SUPPORTING ERA

Altrusa of Helena
American Association of University Women, Montana Division
American Civil Liberties Union
American Federation of Teachers
American Women in Radio and Television
Associated Students, University of Montana
Common Cause of Montana
Communications Workers of America
Montana AFL-CIO
Montana Association of Social Concerns
Montana Bar Association
Montana Church Women United
Montana Democratic Party
Montana Democratic Women's Club
Montana Education Association
Montana Farmers Union
Montana Federation of Business and Professional Women
Montana General Federation of Women's Clubs
Montana Home Economics Association
Montana League of Women Voters
Montana Nurses Association
Montana Press Women
Montana Public Employees Association
Montana State Low-Income Organization

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Section 3. This amendment shall take effect two years after the date of ratification.

MONTANA
EQUAL RIGHTS COUNCIL
P.O. Box 297, Helena, Mt. 59601

MONTANA ORGANIZATIONS SUPPORTING ERA

Montana United Methodist Church

Montana Women's Political Cau us

Montana Women's Law Association

National Organization for Women

Soroptimist International Association, Lewistown

Soroptimist International Association, Missoula

Y.W.C.A., Billings

Zonta International, District XII, Billings

Zonta of Missoula

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Section 2. 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.

THE NEED FOR ERA

State Laws

State laws are full of provisions that treat women, solely on the basis of their sex, as second-class citizens:

-- In Georgia, a married couple's home belongs only to the husband, even when it has been paid for by the wife.

-- In West Virginia, the courts have decided that when a wife earns money working in her husband's business, those earnings belong to the husband. If a Maine couple jointly run a business, the profits belong to the husband.

-- In Arkansas, homestead rights belong to the husband, not the wife. The Arkansas husband can choose, abandon and sell homesteads without the wife's consent, since state law presumes that all personal property, including household furnishings, belong to him.

-- In Louisiana, a wife cannot receive her husband's half of community property even if he wishes to will it to her; instead, the property goes to his children or living parents, who are "forced heirs" under state law.

-- According to the laws of 42 states, the one who earns a salary is the one who owns the property acquired in a marriage. The homemaker, having no earnings of her own, therefore, has no ownership of the property. If her husband dies without a will, she may be penniless.

ERA will eliminate these unfair state laws. This does not mean, however, that ERA will alter family structure. It will not force women out of the home or downgrade the roles of mother and homemaker. On the

contrary, it will dignify these important roles.

Federal Laws

Federal laws need changing. The U.S. Civil Rights Commission has identified more than 800 sections of the U.S. Code that are inconsistent with a national commitment to equal rights, responsibilities and opportunities:

-- Married women who work pay into Social Security the same as their male co-workers. But when they retire, their benefits are determined by their husbands' pensions, with little regard for their own earnings.
-- Since the homemaker has no independent entitlement to benefits, if she becomes disabled, she and her dependents have no right to social security, even though her services are lost to her family.
-- The earnings gap between men and women is higher now than it was before enactment of federal equal employment legislation in 1956. In that timespan, women's earnings have dropped from 63 per cent of men's earnings to 60 per cent.
-- Some employees, such as those who work for Congress, still are not covered by laws that prohibit sex and other forms of discrimination in employment.
-- Federal loan programs also discriminate against women. The Farmers' Home Administration provides that when a farmer with an FHA loan dies, his widow cannot continue repaying the loan but must obtain refinancing even though she was a co-signer on the loan and continues to operate the farm.

These are just some of the examples of inadequacies that still exist in our state and federal laws. As workers, women are the victims of an

earnings gap that is wider today than it was before enactment of equal employment legislation. As wives, women are still subject to laws that deny them an equal partnership in marriage.

It is clear that existing constitutional provisions, like the 5th and 14th amendments will not provide the remedy needed to end sex discrimination. Armed with the 5th and 14th amendments, women have gone to court to win the right to vote, to serve on juries and to enter occupations ranging from attorney to bartender. In each case, they lost.

Not only is the Equal Rights Amendment needed to establish equal legal rights for men and women, but ERA is needed to provide a comprehensive, orderly revision of our laws and to put an end, finally, to the piecemeal approach to equality. The orderly legislative review that has taken place in states that have adopted their own state ERA provisions, like Montana, indicates that necessary changes do not produce the chaos predicted by ERA opponents. As Congress recognized in 1972, "only a constitutional amendment can provide the legal and practical basis for the necessary changes."

FAIRNESS

-- ERA proponents are told that equal rights can be provided statutorily rather than by constitutional amendment. Relying on legislation, rather than a constitutional amendment, guarantees endless court cases as women challenge every law that needs to be changed. Is it fair to require women to bear the costs of these court cases?

-- ERA proponents are told that ERA is unnecessary because equality is guaranteed under the 5th and 14th Amendments to the U.S. Constitution. Women have tried to use these Amendments to win equality. By doing so, women have been denied the right to vote, the right to serve on juries and the right to enter various occupations. Women lost all these cases in court -- under the 5th and the 14th Amendments. Is it fair to argue that the ERA is not needed because of existing Constitutional guarantees?

-- The U.S. Supreme Court has consistently refused to declare sex a "suspect" classification because, as one justice explained in a 1973 decision:

> The Equal Rights Amendment, which if adopted will resolve the substance of this precise question, has been approved by the Congress and submitted for ratification by the States.

If the Supreme Court admits that the issue of equality has yet to be decided, is it fair to claim that women already have equal rights?

-- Opponents to the ERA claim that the extension is unfair. The precedent of setting a time limit for the ratification of a proposed Constitutional amendment was established to keep amendments (such as the one prohibiting child labor) from "floating" around the States after debate had subsided. Debate on ERA has not subsided. Mississippi, for example, has never

debated ERA in either house of the state legislature. Is it fair to cut off debate before all have spoken?

-- Opponents to the ERA have repeatedly stated their intention to fight Montana's ratification in court after March 22, 1979. Two previous recision attempts have been defeated by the Montana Senate. Is it fair that this issue is once again consuming legislators' time and Montanans' tax dollars?

MEMORANDUM ON THE LEGAL EFFECT AND VALIDITY OF SENATE JOINT RESOLUTION NO. 12 UNDER MONTANA LAW AND THE CONSTITUTION OF THE UNITED STATES

Prepared for the
46th Legislature
of the State of Montana

February 8, 1979

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MONTANA'S RATIFICATION OF THE EQUAL RIGHTS AMENDMENT DID NOT INCLUDE A LIMITATION OF SEVEN YEARS BECAUSE THE LANGUAGE CONTAINING THE SEVEN YEAR LANGUAGE WAS CONTAINED IN THE PREAMBLE OF HOUSE JOINT RESOLUTION 4, WHICH HAS NO LEGAL EFFECT:

Senate Joint Resolution No. 12 bases its legal authority upon the fact that House Joint Resolution 4 incorporated the text of the Congressional ERA resolution (J.R. 208), including the language:

> ". . . 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: . . . "(Emphasis supplied).

While it is true that Montana H.J.R. 4 contained the full text of the proposed amendment, including the seven year ratification language, that does not mean that such a limitation was included under Montana law.

The proponents of S.J.R. 12 have overlooked the fact that there are several parts of a proposed legislative measure, including the enacting clause or, in the case of resolutions, the resolving clause, and a preamble. A preamble of a resolution is:

> "[A]n introductory or prefatory clause, following the title and preceding the enacting clause, explanatory of the reasons for its enactment and the objects sought to be accomplished. It is usually introduced by the word 'whereas,' meaning 'considering that' or 'that being the case.' It is not an essential or effect part of an act. The preamble cannot enlarge or confer powers, or cure inherent defects in the statute." 73 Am.Jur.2d, Statutes §92 (Emphasis supplied).

Montana accepts the law that a preamble has no legal effect.

The 1978 edition of the Bill Drafting Manual of the Montana Legislature, prepared by the Montana Legislative Council, notes:

> "The preamble follows the title and precedes the enacting clause. Because of its placement, it does not become a part of the law and is rarely used. It is a preliminary statement of the reasons for the enactment of the law and begins with the word 'Whereas.'" Montana Legislative Council, Bill Drafting Manual, p. 38 (1978); (Emphasis supplied). See also, Montana Legislative Council, Bill Drafting Manual, 28 (1962 Ed.).

In resolutions,

> "The preamble of a resolution is identical to the preamble of a bill. It usually begins with 'WHEREAS' and states the purpose of or reason for the resolution." Id., p. 56.

In Montana an enacting clause is required for the passage of laws. §43-516, R.C.M. 1947; Joint Rule 6-3, Senate Joint Resolution No. 2 (46th Legislature, 1979).

> "In a resolution, a resolving clause takes the place of the enacting clause of a bill. In the past, the body of a resolution has consisted of one or more paragraphs, each beginning with the statement "BE IT FURTHER RESOLVED." Montana Legislative Council, Bill Drafting Manual, p. 56 (1978).

Therefore, since the purported seven year limitation was contained in the preamble to H.J.R. 4, and since the language in a preamble has no legal effect, Senate Joint Resolution No. 12 cannot presume to give effect to a legally ineffective part of the ratification resolution. As will be discussed further, the seven year language in H.J.R. 4 cannot be even now interpreted as a limitation on Montana's ratification of the Equal Rights Amendment.

THE INSTRUCTIONS TO THE SECRETARY OF STATE CONTAINED IN

SENATE JOINT RESOLUTION NO. 12 HAVE NO LEGAL EFFECT:

While the Secretary of State of Montana is instructed by the proposed resolution to obtain the return of Montana's ratification documents, the measure has no legal effect. While the Secretary might wish to follow the resolution, if enacted, he can refuse to do so because a joint resolution is not a general law and cannot be used to control the discretion of state officers. Gildroy v. Anderson, ___Mont.___, 30 St. Rep. 389, 507 P.2d 1069; 12 Atty. Gen. Ops., p. 40. This is because laws, which are mandatory in character, must be passed by bill and not resolution. Montana Constitution, Art. V, §11(1).

If this measure is deemed to be "legislative in character," in that it goes beyond mere opinion, it is subject to veto by the governor. 26 Atty. Gen. Ops., p. 26.

For the same reason, the proposed "sense" of this legislative session has no legal effect. The resolution clause of H.J.R. 4 was the legally effectual part of the measure, and since the time language of the resolution was contained in the preamble, that was not a part of the ratification by Montana in legal effect. Aside from the fact that it would be presumptuous for this legislative session to read intent into the prior measure, as is indicated by the title of S.J.R. 12, the fact remains that the ratification was absolute in its terms, as required by the United States Constitution.

SENATE JOINT RESOLUTION 12 IS AN ATTEMPTED RESCISSION OF MONTANA'S RATIFICATION OF THE EQUAL RIGHTS AMENDMENT WHICH IS NOT PERMITTED BY THE RULES OF THE MONTANA LEGISLATURE:

Montana law does not permit the rescission of a proposed constitutional amendment once the amendment has been ratified by the Montana Legislature. §6-1(2) of the Joint Rules of the Montana Legislature (S.J.R.2, 46th Legislature) provides:

> "A joint resolution must be adopted by both houses and is not approved by the governor. It may be used to express desire, opinion, sympathy, or request of the legislature; to adopt or amend the joint rules; to ratify or propose amendments to the United States Constitution; and to direct changes to, repeal, or direct adoption of a rule in the Montana Administrative Code. Except as otherwise provided in these rules or the Constitution of the State of Montana, a joint resolution is treated in all respects as a bill." (Emphasis supplied).

The descriptions of the separate functions of the joint resolution, separated by semicolons (;), clearly are intended to separate their functions. On the one hand, joint resolutions are used to express nonbinding desires of the legislature, and on the other, the joint resolution is used to ratify proposed amendments. The rule does not permit joint resolutions to rescind the ratification of proposed constitutional amendments. Given the repeated attempts at rescission in the Montana Legislature in past sessions, this body could have well provided for rescission. They did not, and aside from the fact that rescission is not permitted (as is discussed below), it is not permitted.

Given the clear fact that the seven year language of H.J.R. 4 was not in the enacting clause, which is required by Joint Rule 6-3 and prior rules, this measure is clearly an attempt at rescission, which is forbidden by the joint rules.

THE HISTORICAL, JUDICIAL AND CONGRESSIONAL PRECIDENT REGARDING

THE ATTEMPTED RESCISSION OF THE RATIFICATION OF PROPOSED CONSTITUTIONAL AMENDMENTS BY THE STATES IS AGAINST RESCISSION:

A. MONTANA CANNOT IMPOSE A LIMIT UPON ITS RATIFICATION:

S.J.R. 12 is clearly an attempt to impose a limitation upon Montana's ratification of the Equal Rights Amendment. What is the precident regarding the legality of such an attempted limitation?

James Madison was one of the primary drafters of our federal constitution. He was an active and vocal delegate to the constitutional convention, the drafter of many of the provisions of our constitution, and one of the authors (along with Hamilton and Jay) of the Federalist papers, which have been used to resolve questions of constitutional law. See I Morison and Commager, The Growth of the American Republic 279, 288, 296 (6th Ed. 1955).

When the ratification of our constitution was being considered by the states, there was discussion that New York should ratify upon the condition that certain amendments to the federal constitution must be adopted. V Papers of Alexander Hamilton 147, 177 (Syrett Ed. 1961). Hamilton did not agree with conditional ratification, and he sought Madison's opinion on the matter. Madison replied that any condition would be improper.

In 1922 the United States Supreme Court described the ratification function of states and noted that states cannot impose limitations upon their ratification:

> "The function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed

> by the people of a State." Leser v. Garnett, 258 U.S. 130, 137 (1922). (Emphasis supplied).

In 1973 a United States District Court in Florida invalidated a statute which put limitations upon the state's ratification of constitutional amendments. The court cited the language forbidding state limitations. Trombetta v. Florida, 353 F. Supp. 575, 578 (M.D. Fla. 1973).

In Montana it has been clearly recognized that our state may not impose limitations upon the ratification process. In State ex rel. Hatch v. Murray, our own Supreme Court held that:

> "[A]state may not subject ratification by its legislature of a proposed amendment to the federal constitution to referendum nor may it otherwise limit its legislature in the exercise of its federal function of ratifying such amendments. 526 P.2d 1369, 1371 (1974) (Emphasis supplied).

The resolution clause of H.J.R. 4 fully ratified the ERA without condition. That being the case, a proper statement of the law is:

> "[W]hen a proposed amendment has once been ratified the power to act on the proposed amendment ceases to exist." Coleman v. Miller, 146 Kan. 390, 403 (1937), affd. 307 U.S. 433, 449 (1938).

Ratification must be full, complete and unequivocal. Where there is such language, such as in H.J.R.4, it will be accepted as a valid ratification by the General Services Administration with regard to its certification of ratification under 1 U.S.C. §106b. Glass, "Amending the Federal Constitution - - Procedures of the General Services Administration and of the State Legislatures, p. 8 (Congressional Research Service, April 6, 1971).

Therefore, since Montana unequivocally ratified the

ERA in the resolution clause of H.J.R. 4, this session of the Montana Legislature cannot attempt to place conditions upon the ratification.

B. HISTORICAL AND CONGRESSIONAL PRECIDENT IS AGAINST RESCISSION POWER:

No attempted rescission of a ratification of a constitutional amendment has ever been accepted.

North Carolina's rejection of the Constitution in 1788 after ratification in 1789 was ineffective. Warren, The Making of the Constitution 820 (1928). In the case of the adoption of the Fourteenth Amendment, Ohio and New Jersey first ratified the amendment and then passed resolutions to withdraw their consent. 15 Stat. 707 (1868). Congress accepted the original ratifications of the states and rejected attempts to rescind them. 15 Stat. 701-710 (1868).

The question again came before Congress when New York attempted to rescind its ratification of the Fifteenth Amendment. New York was counted with the ratifying states. 16 Stat. 1131 (1870). J. William Heckman, in a letter to a state legislator on the question, expressed the view of Congress:

> "Congress, therefore, has expressed itself quite definitely on this question. It is my legal opinion as Counsel of the Subcommittee on Constitutional Amendments of the United States Senate that once a State has exercised its only power under Article V of the United States Constitution and ratified an Amendment thereto, it has exhausted such power, and that any attempt subsequently to rescind such ratification is null and void."

While the measure extending the time for ratification of the Equal Rights Amendment did not address the question of rescission, and the final decision as to the efficacy of

any purported rescission will be made by Congress when the requisite number of states are certified as having ratified, the report of the House Committee on the Judiciary recommending the passage of the extension resolution (H.J.R. 638) discusses the point well:

> "Although the decision most properly belongs to a subsequent Congress to determine the efficacy of any attempted withdrawals of ratifications of the proposed equal rights amendment, nevertheless the committee believes it important to point out that its own analysis of this issue revealed that past congressional and judicial precedent stand for the proposition that rescissions are to be disregarded. Over the years Congress has taken the position that a State's attempt to rescind is ineffectual, both when confronted with actual rescissions, as in the case of the 14th amendment, and when drafting legislation clarifying the amendment process." Proposed Equal Rights Amendment Extension, Committee on the Judiciary, Report No. 95-1405 (House of Representatives, 95th Congress, 2d Session).

C. JUDICIAL PRECEDENT IS AGAINST RESCISSION:

The first Supreme Court commentary on the question of rescission was contained in the case of White v. Hart. 13 Wall. 646 (1871). In discussing the effect of the adoption of the 14th and 15th Amendments by Georgia, the court noted:

> "Upon the same grounds she might deny the validity of her ratification of the constitutional amendments. The action of Congress upon the subject cannot be inquired into. The case is clearly one in which the judicial is bound to follow the action of the political department of government, and is concluded by it." Id. 649.

The state courts have agreed with federal judicial interpretation. In Opinion of the Justices, the Maine Supreme Court noted that ratification of an amendment was final and could not be rescinded. 118 Me. 544 (1919). In Coleman v. Miller the Kansas Supreme Court noted:

> "It is generally agreed by lawyers, statesmen and publicists who have debated this question that a state legislature which has rejected an amendment proposed by Congress may later reconsider its action and give its approval, but that a ratification once given cannot be withdrawn." 146 Kan. 390, 400 (1937).

When the Kansas case reached the United States Supreme Court, that body held that the question of rescission is a "political question" which the federal courts cannot decide. Coleman v. Miller, 307 U.S. 433, 450 (1938). However the court noted:

> "[T]he political departments of the Government dealt with the effect both of previous rejection and of attempted withdrawal and determined that both were ineffectual in the presence of actual ratification." Id. 449.

Article V of the Constitution only requires the states to ratify constitutional amendments:

> "[Amendments] shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths thereof . . . ." (Emphasis supplied).

The article itself only requires a state to ratify, and when a state has done so, its function in the amendment process is complete.

> "The function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution." Leser v. Garnett, 258 U.S. 130, 137 (1921).

The proposed resolution attempts to retroactively interpret the intent of the intent of the 43rd Legislature by subsequent resolution and thereby attempt to change the absolute character of Montana's ratification. However, this measure cannot be effective because:

> "Ratification by a State of a constitutional

> amendment is not an act of legislation within the proper sense of the word. It is but the expression of the assent of the State to a proposed amendment." Hawke v. Smith, 253 U.S. 221, 229 (1919).

In other words, Montana has already performed its federal function of assenting to the Equal Rights Amendment, and has fully performed its function under the Constitution.

D. STATE ATTORNEYS GENERAL AGREE THAT THEIR STATES CANNOT RESCIND RATIFICATION:

There have been several state attorney general opinions to legislatures advising on the legality of rescission, and those opinions have indicated that rescission is not permissible.

On March 15, 1977 the Attorney General of Ohio gave the opinion that rescission would be invalid. (Letter of Assistant Attorney General). In May of 1973, the Attorney General of Michigan indicated that rescission would be a "futile gesture." In February of 1973 the Kansas Attorney General indicated that rescission would probably not be recognized by Congress indicating, "there is no ground upon which to anticipate other than continued adherence to this precedent." In August of 1973 the Attorney General of Kentucky indicated that a rescission attempt "would simply be ignored by Congress," and would be "futile." In March of 1973 the Legislative Council of California indicated that "a state once having certified its ratification thereof to the Administrator of General Services is without power to rescind or reconsider its action." Finally, in January of 1973 the Attorney General of Idaho indicated that "Subsequent attempts by the same state legislature to retract or appeal its prior ratification would be of no legal effect."

THE SEVEN YEAR EXTENSION OF TIME WITHIN WHICH STATES MAY RATIFY THE EQUAL RIGHTS AMENDMENT IS PERMISSIBLE FOR THE REASONS THAT THE ORIGINAL TIME PERIOD WAS NOT A PART OF THE PROPOSITION TO BE RATIFIED BY THE STATES, AND FOR THE FURTHER REASON THAT CONGRESS HAS THE FULL POWER TO EXTEND THE RATIFICATION PERIOD:

A. THE TIME PERIOD WAS NOT PART OF THE MEASURE TO BE CONSIDERED BY THE STATES:

It is important to note that the original seven year period of ratification is not contained in the text of the proposed Equal Rights Amendment. The preamble of House Joint Resolution 208 reads as follows:

> "Proposing an amendment to the Constitution of the United States relative to equal rights for men and women.
> Resolved by the Senate and House of Representatives 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:" [Text].

Congress agreed that if the seven year limitation had been placed within the body of the proposed amendment, "a decision by Congress to extend that period . . . would be an attempt retroactively to change the character of an amendment on which other states had already voted." Proposed Equal Rights Amendment Extension, Committee on the Judiciary, Report No. 95-1405, p. 6 (House of Representatives, 95th Congress, 2d Session). However, the time period was not contained in the proposed amendment and was not one of the items to be considered by the states.

The House report indicates that Congress did not intend to submit the time question to the states for a vote, and the report approved by Congress commented upon the argument that there could be no extension of the ratification time by stating: "The committee found that argument unpersuasive." Id. p. 9 f.6.

> "[T]he critical fact here is that we are not presented with such a case. The amendment itself, as voted on by the States, contains no time limit." Id.

In a situation precisely like the one under consideration here, the Vermont Attorney General agreed that Vermont's ratification of the ERA, containing a preamble like that of H.J.R. 4 in Montana, was valid, concluding that Congress did not submit the time question to the states, and concluding that Congress could extend the ratification period. Opinion No. 50-79 (January 5, 1979).

B. CONGRESS HAS THE AUTHORITY TO EXTEND THE RATIFICATION PERIOD;

Article V of the Constitution contains no provision as to time limits, and such limits are left to Congress to determine. For the first 125 years of American constitutional history, no time limit was provided by Congress. House Report No. 95-1405, p. 7. As stated by the House Judiciary Committee, and approved by the full Congress:

> "[T]he authority of Congress to extend a time limit once established may be implied, if the time limit is reasonable and if the action of the 92nd Congress in proposing the original time limit is not binding on subsequent Congresses. In favorably reporting House Joint Resolution 638 to the full House, the committee resolves both of those questions in the affirmative and endorses the principle that the Congress has the authority

> to extend the time period within which the proposed 27th amendment to the Constitution may be ratified." Id.

Why is it that Congress can make such an extension? Because the United States Supreme Court has indicated that Congress can put time limits on the ratification as a threshold matter, or deal with time after two-thirds of the states have acted. Id., Citing Dillon v. Gloss, 256 U.S. 368 (1921) and Coleman v. Miller, 307 U.S. 433 (1939).

EQUAL DIGNITIES PROVISION

Article II of the 1972 Montana Constitution contains a section popularly referred to as the "Equal Dignities Provision", which states:

> Section 4. Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

This section, which became effective July 1, 1973, provides protection for individuals against unequal treatment on the basis of sex. Ratification of the federal Equal Rights Amendment, according to ERA opponents, portends legal havoc and social upheaval. The effect of the "Equal Dignities Provision" in Montana proves the contrary.

The Montana Legislature in 1974, 1975, and 1977 undertook and accomplished extensive amendments to Montana statutes to eliminate discriminatory provisions. These amendments occurred in areas such as marital relations, child custody, probate, employment opportunities and benefits, criminal law, and property rights. The statutory implementation of the "Equal Dignities Provision" has been an orderly transition to equalization of application of Montana laws. There is no evidence of social chaos, unwarranted government intrusion into areas of private activity, an inordinate increase in divorce rates in the state,

or any other symptoms of social or legal malaise as the result of this equalization.

The freedom from discrimination granted individuals by the laws of the State of Montana does not, unfortunately, protect them beyond its borders. Furthermore, the "Equal Dignities Provision" of the 1972 Montana Constitution cannot protect Montana citizens against discriminatory provisions contained in federal statutes and regulations because the laws of Montana are not binding on the federal government. Such protection would be granted, however, under the provisions of the Equal Rights Amendment to the U.S. Constitution.