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The 1972 Equal Rights Amendment Can No Longer Be Ratified—Because It No Longer Exists

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KEY TAKEAWAYS

As the Congressional Research Service has concluded, the 1972 ERA formally died when its ratification deadline passed on June 30, 1982.

Congress has no role in determining when a proposed amendment has been ratified, and the states cannot ratify an amendment after its deadline has passed.

The ERA can become part of the Constitution only if it is again proposed and is ratified by three-fourths of the states while it is properly pending.

On May 30, 2018, the Illinois House of Representatives followed the state senate in adopting a resolution purporting to ratify the Equal Rights Amendment (ERA) proposed by Congress in 1972.[1] Like many other media outlets, *U.S. News & World Report* reported that "Illinois became the 37th state to ratify the Equal Rights Amendment... putting it within a single state of the 38 needed to ratify a constitutional amendment."[2]

The Congressional Research Service (CRS) has long had a different view. In its work titled *The Constitution of the United States of America: Analysis and Interpretation*, the CRS states that the ERA "formally died on June 30, 1982, after a disputed congressional extension of the original seven-year period for ratification."[3]

The issue is whether the 1972 ERA remains pending before the states. If ERA advocates are correct that

it is, then additional states may ratify it. If the CRS is correct that it is not, then additional states cannot ratify it because the 1972 ERA no longer exists.

The Congressional Research Service is correct. Congress proposed the ERA and sent it to the states on March 22, 1972, with a seven-year ratification deadline. In 1978, before that deadline passed, Congress extended it to June 30, 1982.[4] When that deadline passed with fewer than the constitutionally required number of state ratifications, the 1972 ERA expired and was no longer pending before the states.

Amending the Constitution: The Process

Article V of the U.S. Constitution provides for two methods of proposing amendments. Congress can propose an amendment by a two-thirds vote of the Senate and House of Representatives or, "on the Application of the Legislatures of two thirds of the several States," Congress can call a "Convention for proposing Amendments."[5] In either case, an amendment does not become part of the Constitution until it is "ratified by the Legislatures of...or by Conventions in" three-fourths of the states.[6]

Constitutional amendments proposed by Congress begin as joint resolutions introduced in either the Senate or House of Representatives.[7] Each joint resolution proposing a constitutional amendment has two parts, a "proposing clause" and the text of the amendment being proposed. Joint resolutions have the force of law and, in most cases, must be presented to the President for his signature. Since the President has no role in the constitutional amendment process,[8] however, a joint resolution proposing an amendment is sent to the Office of the Federal Register (OFR) for publication and transmittal to the governor of each state.[9]

States that ratify an amendment send "authenticated ratification documents" to the OFR which, in turn, notifies the Archivist of the United States when such documents are received from three-fourths of the states. The Archivist then certifies a proclamation, published in the *Federal Register*, that the amendment is part of the Constitution.[10] The Archivist's certification is based on "facial legal sufficiency" rather than "substantive determinations as to the validity of State ratification actions."[11] The certification "serves as official notice to the Congress and to the Nation that the amendment process has been completed."[12]

The plain language of Article V gives Congress authority to propose amendments and specify their mode of ratification. Congress, however, has *no role* in determining whether an amendment has been ratified, and no congressional action is necessary for a ratified amendment to become

part of the Constitution. According to the National Archives, a "proposed amendment becomes part of the Constitution as soon as it is ratified by three-fourths of the States."[13]

The constitutional amendment process, therefore, has two stages: proposal and ratification. A joint resolution is pending at the proposal stage during the Congress in which the joint resolution is introduced. When that Congress adjourns, all pending legislative measures expire. A proposed amendment is pending before the states until it is ratified by three-fourths of the states or expires if fewer than that number ratify it by any deadline that Congress has imposed.

Amending the Constitution: The Amendments

Since the Constitution was ratified in June 1788, nearly 12,000 amendments have been introduced in Congress,[14] 33 have been proposed,[15] and 27 have been ratified. Congress first proposed 12 amendments on September 25, 1789, and the states ratified 10 of them, known collectively as the Bill of Rights, on December 15, 1791.[16] The states have ratified 26 of the 27 amendments in an average of 20 months.[17] The 27th, also known as the Madison Amendment, was ratified on May 7, 1992, nearly 203 years after Congress proposed it.

Four of the six unratified amendments remain pending before the states because they were proposed without a ratification deadline. One of those, regarding the number of seats in the House of Representatives, was proposed in 1789 and ratified by 11 states, the last in 1792. In 1810, Congress proposed an amendment that would strip American citizenship from anyone who accepted a title of nobility from an "emperor, king, prince, or foreign power." The last of 12 ratifying states did so in 1812. In 1824, the states received an amendment giving Congress authority to prohibit child labor; 28 states ratified it by 1937. And in 1861, Congress narrowly proposed the so-called Corwin Amendment, which would deny Congress authority to "abolish or interfere with...the domestic institutions" of any state, including slavery.[18] Five states ratified this amendment in the next two years, and two of those states later rescinded their ratification.

The other two unratified amendments had ratification deadlines. On August 22, 1978, Congress proposed and sent to the states an amendment that would give the District of Columbia the same Senate and House representation that states have. The seven-year ratification deadline appeared in the text of the amendment itself and, when that deadline passed with only 16 ratifying states, the amendment expired.

Finally, Congress proposed the 1972 ERA with a seven-year ratification deadline in the joint resolution's proposing clause. By January 1977, 35 states had ratified it and five of those states had rescinded their ratification. In 1978, before the original ratification deadline passed, Congress adopted a resolution extending the deadline to June 30, 1982, but no additional states ratified it. This is the basis for the CRS' conclusion that the ERA "formally died on June 30, 1982."

Equal Rights Amendment: Background

On September 25, 1921, the National Woman's Party (NWP) announced its plan to seek ratification of an amendment to the U.S. Constitution guaranteeing equal rights for women and men. The first proposed language read:

> Section 1. No political, civil, or legal disabilities or inequalities on account of sex or on account of marriage, unless applying equally to both sexes, shall exist within the United States or any territory subject to the jurisdiction thereof.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

Two years later, at the party's 1923 convention, NWP president Alice Paul proposed a simpler version of the ERA, which was introduced in Congress in December of that year:[19]

> Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction.
>
> Congress shall have power to enforce this article by appropriate legislation.

Since then, as of November 1, 2019, a constitutional amendment relating to equal rights between men and women has been introduced 1,133 times,[20] 53 in the Senate and 1,080 in the House. The sponsors have included multiple Members of Congress from all 50 states, 53 percent of them Democrats and 47 percent Republicans. The only period when the ERA was not introduced was immediately after Congress proposed and sent it to the states in 1972.

The 1940 Republican Party presidential platform endorsed the ERA, followed by the Democrats four years later.[21] Significantly, however, organized labor and many women's organizations opposed the ERA during this period.[22] One principal concern was that "the ERA might lead to the loss of protective legislation for women, particularly with respect to wages, hours, and working conditions."[23]

The ERA first came up for a vote on July 19, 1946, when the Senate voted 38–35 on Senate Joint Resolution 61, well short of the two-thirds required by the Constitution. Four years later, when considering Senate Joint Resolution 25, the Senate first voted 51–31 for an amendment offered by Senator Carl Hayden (D–AZ) that read: "The provisions of this article shall not be construed to impair any rights, benefits, or exemptions conferred by law upon persons of the female sex."[24] The Senate then voted 63–19 for the amended version.[25]

During this period, the House Judiciary Committee was chaired by Representative Emmanuel Celler (D–NY), a close ally of organized labor, who blocked the ERA's consideration until the 91st Congress.[26] Representative Martha Griffiths (D–MI) introduced House Joint Resolution 264 in January 1969 and, after it, too, was blocked in the Judiciary Committee, filed a discharge petition on June 11, 1970. The petition had the necessary 218 signatures within just nine days, and the House approved the ERA by a vote of 334–76 on August 10, 1970.

Representative Griffiths introduced House Joint Resolution 208 when the 92nd Congress convened and, this time, Judiciary Committee Chairman Celler did not block its consideration. The committee approved the ERA, but with several amendments on various subjects. The House voted to remove those amendments and approved the ERA by a vote of 352–24 on October 12, 1972.[27] The Senate Judiciary Committee reported the unamended language on March 14, 1972, and the full Senate approved it by a vote of 84–8 on March 22, 1972. This "had the effect of formally proposing the amendment to the states for ratification."[28]

By the fall of 1977, 35 states had ratified the ERA and, by the March 1979 deadline, five of those states had passed resolutions rescinding their ratifications.[29] On October 26, 1977, Representative Elizabeth Holtzman (D–NY) introduced House Joint Resolution 638 to extend the deadline until June 30, 1982. The measure had less than two-thirds support in either the House or the Senate.[30] President Jimmy Carter signed the resolution on October 20, 1978, though this action was entirely ceremonial, as the President has no role in the constitutional amendment process.

Contemporary ERA Ratification Efforts

Contemporary efforts to make the ERA part of the Constitution fall into two categories. The first involves continued introduction of "fresh-start proposals,"[31] new joint resolutions for proposing the ERA and sending it to the states. While, as noted above, these have been introduced in nearly

every Congress since 1923, their frequency has declined significantly since the ERA's extended ratification deadline passed in June 1982. Members of Congress, for example, introduced 277 joint resolutions during the 91st Congress (1969–1970) before the ERA was sent to the states; 10 during the 93rd through the 97th Congresses, while the proposed ERA was pending before the states; and 44 in the 37 years since the ERA's extended ratification deadline expired.

Neither the House nor the Senate has voted on a resolution to propose the ERA in more than three decades. When the 98th Congress convened on January 3, 1983, Representative Peter Rodino (D–NJ) introduced the ERA as House Joint Resolution 1, which failed later that year when the 278–147 House vote fell short of the two-thirds required to send it to the states.

This *Legal Memorandum* analyzes the second category of efforts by ERA advocates, which attempt today to ratify the ERA that Congress proposed in 1972. Advocates began developing this strategy after the Madison Amendment's 1992 ratification. "The ERA is properly before the states for ratification," several scholars wrote in 1997, "in light of the recent ratification of the Madison Amendment."[32] This effort became known as the "three-state strategy" because, ERA advocates claimed at the time, ratification by three more states would add the 1972 ERA to the Constitution.

Advocates have taken several steps to implement this strategy. First, Representative Robert Andrews (D–NJ) began in 1994 to introduce resolutions that would require the House to "take any legislative action necessary to verify the ratification of the Equal Rights Amendment" when "the legislatures of an additional three States" ratify it.[33]

Second, Members of Congress began introducing joint resolutions to repeal the ratification deadline in the 1972 ERA. Senator Ben Cardin (D–MD), for example, has introduced joint resolutions stating that the ERA proposed in 1972 "shall be valid to all intents and purposes as part of the Constitution whenever ratified by the legislatures of three-fourths of the several States."[34]

Third, ERA advocates directly urge additional states to ratify the 1972 ERA, pointing to a 1997 article that, they say, presents the "legal analysis for this strategy."[35] This article asserts three propositions. First, the Madison Amendment's ratification "suggests that amendments, such as the ERA, which do not contain a *textual* time limit, remain valid for state ratification indefinitely."[36] This is because "time limits in a proposing clause are irrelevant"[37] or "inconsequential."[38] Second, "Congress has the power to determine the timeliness of the ERA after final state ratification…and can extend, revise or ignore a time limit."[39] Third, all previous ratifications of

the 1972 ERA remain in effect, and ratification rescissions are invalid.[40] "As with the Madison Amendment, which remained open for ratification for 203 years," they concluded in 1997, "the ERA, after only twenty-five years, remains open for final state ratification."[41]

As this *Legal Memorandum* will explain, advocates who claim that the 1972 ERA can still be ratified make four errors. They ignore the crucial distinction between proposed constitutional amendments that include a ratification deadline and those that do not. They create a baseless distinction between ratification deadlines that appear in an amendment's text and in a joint resolution's proposing clause. They conflate whether Congress can change a ratification deadline before and after that deadline expires. And they incorrectly posit that Congress has complete, plenary authority over the entire constitutional amendment process.

The 1972 ERA: Still Pending Before the States?

States may still ratify the 1972 ERA only if it remains pending before the states. While advocates attempt to draw a close parallel between the Madison Amendment and the 1972 ERA, the most obvious difference between them is the most relevant. The Madison Amendment was pending indefinitely *because it had no ratification deadline*, while the 1972 ERA not only had a deadline, but that deadline, even after one extension, passed in June 1982.

Advocates ignore this difference by focusing instead on a supposed distinction between "a textual time limit"[42] that appears in the proposed amendment's text and "time limits in a proposing clause"[43] that appear in the joint resolution's text. The current strategy to ratify the 1972 ERA rests entirely on this distinction. If a ratification deadline placed in a joint resolution's proposing clause is valid, the 1972 ERA "formally died on June 30, 1982." It would, therefore, no longer be pending before the states and no amendment would exist today for additional states to ratify.

Addressing the validity of the 1972 ERA's ratification deadline begins by determining whether Congress has authority to set any ratification deadline when it proposes a constitutional amendment.[44] Congress has long believed that it does. It has, for example, imposed a ratification deadline for seven of the amendments that today are part of the Constitution and for the District of Columbia Voting Rights Amendment. A total of 56 joint resolutions for proposing the ERA introduced between the 92nd and 102nd Congresses included a ratification deadline.

The Supreme Court has confirmed Congress' view. In *Dillon v. Gloss*,[45] Dillon was arrested for violating the Volstead Act and challenged the

18th Amendment, which imposed Prohibition. Dillon argued that the amendment was invalid because Congress had no authority to impose any ratification deadline. The Supreme Court rejected this argument, holding that Congress' authority under Article V to propose constitutional amendments includes the power, "keeping within reasonable limits, to fix a definite period for the ratification."[46]

If Congress has authority to set a ratification deadline for an amendment it proposes, the question becomes whether the particular deadline that Congress set for the 1972 ERA was valid.[47] ERA advocates today claim it is not because, they say, Congress' power is limited to "impos[ing] reasonable time limits *within the text of an amendment*."[48]

Congress itself disagrees. Like its general authority to impose a ratification deadline, Congress has long believed that it may place such a deadline in either the resolution's proposing clause or the amendment's text. While the deadline appears in the text of the 18th and 20th through 22nd Amendments, for example, it appears in the proposing clause for the 23rd through the 26th Amendments. All 56 joint resolutions for proposing the ERA that include a ratification deadline place it in the proposing clause.

The first constitutional amendment with a ratification deadline, the 18th Amendment, proposed in 1917, placed it in the amendment's text. Discussion about whether to place a ratification deadline instead in the joint resolution's proposing clause began in 1932, when the House considered what would become the 20th Amendment.[49] One reason suggested for the change was to avoid "unnecessary cluttering up of the Constitution."[50]

The House made the shift in 1960, when the House Judiciary Committee reported what would become the 23rd Amendment with the ratification deadline in the joint resolution's proposing clause. "The House report did not note that for the first time Congress had shifted the seven-year limit from the text of the amendment to the resolving clause. Similarly, neither House nor Senate debates on the twenty-third, twenty-fourth, twenty-fifth, or twenty-sixth amendments observed the fact that the seven-year limitation had shifted to the resolving clause."[51] Congress saw no significance whatsoever in the location of a ratification deadline. No evidence exists that any member of either Congress or any state legislature questioned whether placement in the proposing clause affected a ratification deadline's validity in any way.

There was no doubt when Congress proposed the ERA in 1972 that its ratification deadline, placed in the resolution's proposing clause, was binding.[52] The fact that Congress not only imposed the deadline, but acted to

extend it before that deadline passed, shows that Congress considered it valid. A CRS report at the time stated the obvious: "[I]f [the ERA] receives approval in the form of ratification by 38 States before June 30, 1982, the measure will become the [next] Amendment to the Constitution."[53]

As Professor Grover Rees put it when analyzing the 1972 ERA's deadline extension: "The entire case...rests on a single contention: in 1972, when Congress forwarded to the states that sheet of paper containing the ERA and the time limit, the time limit was in the wrong place on the paper."[54] Rather than establish this proposition, however, ERA advocates simply repeat this observation: "When the time limit is in the proposing clause, however, as with the ERA, it is not part of the amendment and is not ratified by the States when they ratify the amendment."[55]

The notion that states may ignore restrictions appearing in the joint resolution's proposing clause presents a problem that ERA advocates have never addressed. Congress designates the necessary method of state ratification for every constitutional amendment it proposes. When Congress also imposes a ratification deadline, it appears in the same location as the designation. The joint resolution proposing the 1972 ERA, for example, opens this way: "Resolved...that the following article is proposed as an amendment to the Constitution of the United States, which shall be valid...when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress." Similarly, Section 3 of the 18th Amendment requires that it be "ratified...by the legislatures of the several States...within seven years from date of the submission hereof to the States by the Congress."

When Congress does not impose a ratification deadline, the designation always appears in the joint resolution's proposing clause. The joint resolution proposing the 21st Amendment, which would repeal the 18th, opens this way: "Resolved...that the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid...when ratified by conventions in three-fourths of the several States."

Here is the quandary for ERA advocates. Congress has authority both to impose a ratification deadline and to designate a method of ratification. If states may ignore a ratification deadline that "is not part of the amendment and is not ratified by the States," then they may similarly ignore Congress' designation of how they must ratify a proposed amendment when it appears in that location. In other words, if states may ignore the deadline and ratify the 1972 ERA today, they should also be able to ignore the rest of the proposing clause and do so by a convention rather than by the legislature.

Contemporaneous Consensus

Rather than establish that a ratification deadline in the joint resolution's proposing clause is invalid, ERA advocates make arguments that are relevant, if at all, only to proposed constitutional amendments that have no ratification deadline. They argue, for example, that the length of time since the 1972 ERA's proposal does not, by itself, render it invalid. They do so because, in *Dillon*, the Supreme Court said that a proposed constitutional amendment should be ratified within a "sufficiently contemporaneous" period. Similarly, in *Coleman v. Miller*,[56] the Court discussed whether a proposed amendment had been ratified within a "reasonable" period of time.[57] Neither of these decisions' treatment of this issue is relevant to the 1972 ERA.

The Supreme Court's general comment in *Dillon* that a proposed constitutional amendment should not be "open to ratification for all time"[58] implied that the Constitution itself imposed a ratification deadline. This suggestion was unusual in *Dillon* because the 18th Amendment, at issue in that case, had a seven-year ratification deadline.[59] The issue in *Dillon* was whether Congress had authority to include any ratification deadline, not whether the time between proposal and ratification met any particular standard. For these reasons, the U.S. Department of Justice's Office of Legal Counsel (OLC) concluded that "*Dillon*'s discussion...was merely a dictum."[60]

While the Court's comment in *Dillon* about ratification being "sufficiently contemporaneous" is irrelevant because, as dictum, it is not legal binding precedent, *Coleman*'s treatment of this issue is irrelevant for a different reason. In *Coleman*, the issue was whether the courts had authority to override Congress' judgment about whether the time between an amendment's proposal and ratification was reasonable. The Court said no. While the Court addressed only whether courts could adjudicate this narrow issue, ERA advocates attempt to turn it into a plenary power of Congress over the entire constitutional amendment process.[61]

ERA advocates incorrectly claim that the Court in *Coleman* held generally "that Congress...determines whether the amendment has been ratified in a reasonable period of time."[62] In fact, the Court distinguished between proposed amendments that, like the 18th Amendment at issue in *Dillon*, have a ratification deadline and those, like the Child Labor Amendment at issue in *Coleman*, that do not.[63] The Court expressly limited its conclusion to proposed amendments for which "the limit has not been fixed in advance."[64] By fixing that limit in advance, as it did for the 1972 ERA, Congress has already made its determination about a reasonable ratification period. The

length of time between a constitutional amendment's proposal by Congress and ratification by the states, therefore, is relevant only when a ratification deadline "has not been fixed in advance."

The Supreme Court's decisions in *Dillon* and *Coleman*, therefore, do not address the central issue raised by the current campaign to ratify the 1972 ERA. Neither case involved a similar kind of amendment: *Dillon* involved an amendment with a ratification deadline in its text, while *Coleman* involved an amendment with no ratification deadline at all. As such, these decisions provide no support for ratifying an amendment after its ratification deadline has passed.[65]

The need for a contemporaneous consensus, however, might actually undermine the case for ratifying the 1972 ERA. The relevant consensus is not about a generalized problem, but about the proposed constitutional amendment as a solution. It is difficult to argue that such a consensus lasted even to 1979—the 1972 ERA's *original* ratification deadline. The number of states ratifying it declined rapidly, from 30 in the first two years to only five in the next four years. Not a single additional state ratified the amendment during the deadline extension period, and five states had already rescinded their ratification. And while the House of Representatives voted 352–24 on the joint resolution proposing the 1972 ERA, the vote on an identical joint resolution in January 1983 was 278–147—less than the two-thirds threshold required by Article V.

Congressional Promulgation

ERA advocates ignore the distinction between proposed constitutional amendments, like the Madison Amendment, that lack a ratification deadline, and those, like the 1972 ERA, that have such a deadline. This leads to their claim that "Congress was free to conclude that the Madison Amendment had been validly ratified" and that "after ratification by the thirty-eighth state, Congress may also conclude that the ERA has been validly ratified."[66] This argument has several flaws.

First, ERA advocates falsely assert that Congress promulgated the Madison Amendment after assessing "whether the amendment had lost its vitality through lapse of time."[67] Michigan became the 38th state to ratify the Madison Amendment on May 7, 1992.[68] On May 18, 1992, pursuant to statute,[69] the Archivist certified that the Madison Amendment "has become valid, to all intents and purposes, as a part of the Constitution of the United States."[70]

Thereafter, the House and Senate passed resolutions "recognizing the Amendment."[71] House Concurrent Resolution 320, for example, declared

that the Madison Amendment "has been ratified by a sufficient number of the States and has become a part of the Constitution."[72] Two Senate resolutions[73] declared that the Madison Amendment "has become valid, to all intents and purposes, as a part of the Constitution." On their face, these resolutions recognize or memorialize what had already occurred. They do not purport to have any legal effect or to play any role in the Madison Amendment becoming part of the Constitution. Such after-the-fact recognition does not, as ERA advocates assert, constitute congressional "promulgation of the Madison Amendment."[74]

Second, "[o]n its merits, the notion of congressional promulgation is inconsistent with both the text of Article V of the Constitution and with the bulk of past practice."[75] Both liberal and conservative scholars reject this theory. Professor Walter Dellinger, for example, writes that Article V "requires no additional action by Congress or by anyone else after ratification by the final state. The creation of a 'third step'—promulgation by Congress—has no foundation in the text of the Constitution."[76] Similarly, Professor Grover Rees writes that this theory "is no more defensible than to find a third house of Congress hidden cleverly in the interstices of the constitutional language vesting all legislative power in a House and a Senate."[77]

Similarly, the OLC concluded that a proposed amendment becomes part of the Constitution when "proposed by the requisite majorities of both house of Congress, and has been ratified by the legislatures of three-fourths of the States."[78] The OLC opinion rejected the proposition that "Congress... may determine whether an amendment has been constitutionally adopted.... We believe that...congressional promulgation is neither required by Article V nor consistent with constitutional practice."[79]

Third, like the Supreme Court's observations about contemporaneous consensus or reasonableness, any suggestion of post-ratification promulgation by Congress was dictum. The OLC opinion explained why "*Coleman* is not authority for this theory."[80] Notably, this issue did not have the support of a majority of justices[81] and none "explained the constitutional basis for the assertion that Congress had authority to 'promulgate' an amendment."[82]

Fourth, this argument fails again to distinguish between amendments that have no ratification deadline and those that do. As outlined above, however, *Coleman* explicitly acknowledged this distinction. Even if Congress had authority to determine whether a proposed constitutional amendment pending indefinitely before the states has been ratified, that could not constitute authority to say that a proposed amendment is still pending even after its ratification deadline has passed.

Finally, ERA advocates offer contradictory conclusions regarding congressional promulgation. The authors of the 1997 analysis behind the three-state strategy, for example, assert that Congress "promulgat[ed] the Madison Amendment in 1992"[83] and that "congressional promulgation of an amendment is not essential for an amendment to become effective."[84] Rather, they write, the "date of the final state ratification is the determinative point of the amendment process and therefore, subsequent congressional promulgation is a mere formality."[85]

Congress, of course, can "conclude" anything it wishes, including whether a proposed constitutional amendment has been properly ratified. But conclusion does equal promulgation. The OLC opinion stated on this point that if "congressional promulgation is required...the executive branch would have illegally certified every [constitutional] amendment except the Fourteenth."[86] Congress has no authority to determine whether the 1972 ERA can still become part of the Constitution now that its ratification deadline has expired.

Amending the Deadline

ERA advocates also assert that Congress has authority to amend or change a ratification deadline that appears in the proposing clause. Congress, they point out, did so when it extended the ERA ratification deadline from March 22, 1979, to June 30, 1982. Because "the proposing clause is merely legislative," they argue, "the time limit can be changed if Congress exercises its power to adjust, amend, or extend its own legislative action with new legislative action."[87] This claim does not, as others do, ignore the distinction between proposed amendments that lack a ratification deadline and those that have one. Rather, it ignores the distinction between when a ratification deadline is in the future and when it has already passed.

It is unclear why ERA advocates advance this argument at all because it is entirely irrelevant to the current strategy for ratifying the 1972 ERA. That strategy does not involve Congress adjusting, amending, or extending that ratification deadline, but urges states to ignore it altogether. Advocates began that effort in 1995, nearly two decades before any Member of Congress had taken a single step to amend or repeal the 1972 ERA's ratification deadline.

Advocates assert that the 1972 ERA is within one state of becoming part of the Constitution by counting as valid the ratification by Nevada in 2017 and by Illinois in 2018. Since Congress has taken no action to change the 1972 ERA's ratification deadline, the only way to do so is by ignoring that

deadline altogether. Whether *Congress* has authority to amend a ratification deadline it has imposed, however, has nothing to do with whether *states* may ignore that deadline and continue ratifying the amendment long after it has passed.

The question today is not only whether Congress can "adjust, amend, or extend" a ratification deadline after sending an amendment to the states, as it did for the 1972 ERA, but whether it can do so after that deadline has passed. Just like a joint resolution for proposing a constitutional amendment no longer exists when the Congress in which it is introduced adjourns, a proposed constitutional amendment no longer exists when its ratification deadline passes. This is why the CRS was correct to conclude that the 1972 ERA "formally died on June 30, 1982."

In May 1979, shortly after the original ratification deadline passed, the states of Idaho, which had rescinded its ratification, and Arizona, which had rejected ratification, filed suit in federal court. They sought a declaratory judgment that the extended ratification deadline was unconstitutional and that ratification rescissions, including by Idaho, were valid. On December 23, 1981, the U.S. District Court for the District of Idaho agreed on both issues[88] and the defendant, the Administrator of General Services, appealed to the Supreme Court.

In July 1982, after the 1972 ERA's extended ratification deadline had passed, the Acting Solicitor General prepared a memorandum for the Administrator of General Services explaining why this legal challenge should be dismissed—and later asked the Supreme Court to do so. The Court agreed after "consideration of the memorandum for the Administrator of General Services."[89] In that memo, the Acting Solicitor General noted that because the 1972 ERA's ratification deadline had passed with fewer than two-thirds of the states ratifying, "the Amendment has failed of adoption."[90]

The *Idaho v. Freeman* case, therefore, is instructive in two respects. First, ERA advocates want to ignore the district court's decision because the Supreme Court vacated it without offering a substantive decision of its own. For that same reason, however, the district court's analysis remains uncontradicted and available for consideration and persuasion. Second, the Supreme Court vacated the district court's decision because, as the Acting Attorney General's memorandum to the Administrator of General Services explained, the 1972 ERA had "failed of adoption" after the ratification deadline passed with fewer than three-fourths of the states ratifying. In other words, the case was moot because, in effect, the 1972 ERA was no longer pending before the states.[91]

According to ERA advocates, one state has issued a "formal opinion concerning the validity of the ERA in light of its 'expired' time limit."[92] Walter S. Felton Jr., Virginia's Deputy Attorney General, opined in 1994 that "the ERA was not currently before the states for ratification because its original and extended time limits had expired."[93]

There was no confusion when the 1972 ERA was proposed that its ratification deadline was binding.[94] Except for ERA advocates involved in the current ratification effort, there does not seem to be any confusion today. Even National Public Radio acknowledges that the 1972 ERA "fell short and expired in 1982."[95] The widely used resource Lexis-Nexis includes the 1972 ERA on a list of "failed amendments," noting that "it never received ratification by the necessary three-fourths of the states."[96]

On February 8, 2016, the American Bar Association's House of Delegates adopted Resolution 10B, submitted by the New Jersey State Bar, generally supporting ratification of the ERA. The accompanying report described the ratification history and stated that the Supreme Court dismissed the *Freeman* litigation "on the grounds that the ERA was dead for the reasons given by the administrator of general services."[97] This echoed CRS' earlier conclusion decades earlier that "the ERA died on June 30, 1982." In other words, the effort to make the ERA part of the Constitution must begin again with a "fresh-start" proposal because the 1972 ERA is no longer pending before the states.

Drawing a specific parallel with the legislative process can further clarify this point. The 115th Congress lasted from January 3, 2017, to January 3, 2019. Legislation could be introduced and amended at any time during this period. When the 115th Congress adjourned, however, bills introduced but not enacted expired. Identical legislation can be, and often is, introduced in the next Congress, but it is new legislation for which the legislative process must begin again.

Similarly, if Congress had authority to amend or repeal the 1972 ERA's ratification deadline after sending it to the states, Congress had to act while the measure was actually pending, that is, before it expired with the passage of the ratification deadline.[98]

Conclusion

The assertion that the 1972 ERA can still be ratified today is based on four errors. First, ERA advocates fail to distinguish between constitutional amendments, like the Madison Amendment, proposed without a ratification deadline and those, like the 1972 ERA, proposed with such a deadline.

That distinction, however, is both constitutional and consequential. Second, these advocates create an artificial distinction between ratification deadlines that appear in the amendment's text and those that appear in the joint resolution's proposing clause. This fictional distinction has no legal or logical basis.[99] Third, they posit that if Congress has authority to change a ratification deadline in a proposed constitutional amendment before that deadline passes, it can do so long afterward.[100] Two scholars offered this answer: "If the first [deadline] extension was like adding an extra quarter to benefit the losing team in a football game, allowing ratification efforts to resume...after ERA's apparent defeat is like authorizing the losing team to continue a game after the winning team has left the stadium."[101] Fourth, ERA advocates incorrectly claim that Congress has plenary authority over the entire constitutional amendment process, when Congress' actual authority is limited to proposing amendments and designating their method of state ratification.

The possibility of additional states ratifying the 1972 ERA depends on the validity of its ratification deadline. Congress has authority to set such a deadline, and its validity does not depend on whether the deadline appears in the resolution's proposing clause or the amendment's text. When that deadline passes without ratification by three-fourths of the states, the proposed amendment expires and is no longer pending. The 1972 ERA, therefore, can no longer be ratified because it no longer exists.

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Endnotes

1. Rick Pearson and Rick Lukitsch, "Illinois Approves Equal Rights Amendment, 36 Years After Deadline," *Chicago Tribune*, May 31, 2018, https://www.chicagotribune.com/politics/ct-met-equal-rights-amendment-illinois-20180530-story.html (accessed December 2, 2019).
2. Gabrielle Lavy, "Equal Rights Amendment, Left for Dead in 1982, Gets New life in the #MeToo Era," *U.S. News and World Report*, June 4, 2018, https://www.usnews.com/news/national-news/articles/2018-06-04/equal-rights-amendment-left-for-dead-in-1982-gets-new-life-in-the-metoo-era (accessed December 2, 2019).
3. Congressional Research Service et al., *The Constitution of the United States of America: Interpretation and Analysis* (Washington, DC: Government Printing Office, 2017), S. Doc. No. 112-9, 112th Cong., 2nd Sess., August 26, 2017, p. 50, https://www.govinfo.gov/content/pkg/GPO-CONAN-2017/pdf/GPO-CONAN-2017.pdf (accessed December 26, 2019). Previous editions of this work include the same language. See, e.g., S. Doc. No. 108-17, 108th Cong., 2nd Sess., June 29, 2002, p. 48, and S. Doc. No. 103-6, 103rd Cong., 1st Sess., June 29, 1992, p. 48.
4. This *Legal Memorandum* does not address the validity of the ratification deadline extension. On January 6, 2020, the Department of Justice's Office of Legal Counsel issued an opinion regarding ratification of the 1972 ERA which, while not addressing the issue fully, stated that "we disagree with the 1977 [OLC] opinion's conclusion that Congress may extend a ratification deadline on an amendment pending before the States." See "Ratification of the Equal Rights Amendment," in U.S. Department of Justice, *Opinions of the Office of Legal Counsel of the United States Department of Justice*, Vol. 44 (January 6, 2020), p. 3, https://www.justice.gov/olc/file/1232501/download (accessed January 9, 2020). For analysis of that subject, see Grover Rees III, "Throwing Away the Key: The Unconstitutionality of the Equal Rights Amendment Extension," *Texas Law Review*, Vol. 59 (1980), p. 875. The analysis here of current efforts to ratify the 1972 ERA would be the same if Congress had not extended its ratification deadline.
5. U.S. Constitution, Article V. Since the Constitution was ratified on March 21, 1789, the states have submitted hundreds of applications for a convention to propose amendments. Congress, however, has never called one, leaving unanswered many questions about the authority of the states, Congress, and a convention. See U.S. House of Representatives, Committee on the Judiciary, *Is There a Constitutional Convention in America's Future?* (Washington, DC: Government Printing Office, 1993).
6. Ibid.
7. See Richard S. Beth, "Bills and Resolutions: Examples of How Each Kind Is Used," Congressional Research Service *Report for Congress*, December 8, 2006, p. 2, https://archives-democrats-rules.house.gov/archives/98-706.pdf (accessed December 2, 2019).
8. The Supreme Court held in 1798 that the President's approval is unnecessary for a proposed constitutional amendment. *Hollingsworth v. Virginia*, 3 U.S. 378 (1798). See also Jean Witter, "Extending Ratification Time for the Equal Rights Amendment: Constitutionality of Time Limitations in the Federal Amending Process," *Women's Rights Law Reporter*, Vol. 4, No. 4 (Summer 1978), p. 223 ("The approval or disapproval of the President in the amending process thus carries no weight.").
9. National Archives, "Constitutional Amendment Process," https://www.archives.gov/federal-register/constitution (accessed December 2, 2019). See also Thomas H. Neale, "The Proposed Equal Rights Amendment: Contemporary Ratification Issues," Congressional Research Service *Report for Congress*, July 18, 2019, p. 3, https://fas.org/sgp/crs/misc/R42979.pdf (accessed December 29, 2019) ("Unlike a standard joint resolution that has the force of law, the President's approval is not necessary for joint resolutions that propose amendments.").
10. 1 U.S. Code § 106b.
11. National Archives, "Constitutional Amendment Process."
12. Ibid.
13. Ibid.
14. According to the U.S. Senate's website, 11,770 amendments were introduced in either the Senate or House of Representatives from 1789 to January 3, 2019. See U.S. Senate, "Measures Proposed to Amend the Constitution," https://www.senate.gov/legislative/MeasuresProposedToAmendTheConstitution.htm (accessed December 29, 2019). As of December 2, 2019, the Library of Congress' website lists an additional 60 constitutional amendments introduced during the 116th Congress, for a total of 11,830.
15. For images of the joint resolutions proposing each constitutional amendment, see National Archives, "Enrolled Acts and Resolutions of Congress, 1789–2013," https://catalog.archives.gov/id/299811 (accessed December 29, 2019).
16. See U.S. Senate, *Amendments to the Constitution: A Brief Legislative History*, Committee on the Judiciary, October 1985, pp. 9–12, https://www.cop.senate.gov/artandhistory/history/resources/pdf/SPrt99-87.pdf (accessed December 29, 2019).
17. For dates of proposal and ratification, see "Ratification of Constitutional Amendments," https://www.usconstitution.net/constamrat.html (accessed December 29, 2019).
18. U.S. Senate, *Amendments to the Constitution*, pp. 96–98.
19. Neale, "The Proposed Equal Rights Amendment: Contemporary Ratification Issues," p. 7.
20. Resolutions introduced through 2014 can be found in the database maintained by the National Archives and Records Administration. National Archives, "Amending America: Proposed Amendments to the United States Constitution, 1787–2014," https://www.archives.gov/open/dataset-amendments.html (accessed December 29, 2019). The remainder can be found at Congress.gov.

21. Neale, "The Proposed Equal Rights Amendment: Contemporary Ratification Issues," p. 11.
22. Ibid., pp. 8–10.
23. Ibid., p. 8.
24. Ibid., p. 9. For information on the vote on the Hayden Amendment, see "Joint Resolution Proposing an Amendment to the Constitution Relative to Equal Rights for Men and Women," S. J. Res. 25, 81st Cong., 2nd Sess., https://www.govtrack.us/congress/votes/81-1950/s235 (accessed December 29, 2019).
25. Senator Carey Kefauver (D–TN) offered a substitute, which the Senate defeated by a vote of 18–65. See "Kefauver Substitute Amend," S.J. Res. 25, 81st Cong., 2nd Sess., https://www.govtrack.us/congress/votes/81-1950/s236 (accessed December 29, 2019). The Senate also passed the ERA, including the Hayden Amendment, as Senate Joint Resolution 49 on July 16, 1953. Neale, "The Proposed Equal Rights Amendment: Contemporary Ratification Issues," p. 9.
26. Neale, "The Proposed Equal Rights Amendment," p. 10.
27. Ibid., p. 12.
28. Ibid., p. 13.
29. Jon O. Shimbakuro, "The Equal Rights Amendment: Close to Adoption?" Congressional Research Service *Legal Sidebar*, November 13, 2019, https://fas.org/sgp/crs/misc/LSB10163.pdf (accessed December 29, 2019).
30. The House voted 233–189 on August 15, 1978, and the Senate voted 60–36 on October 6, 1978.
31. Neale, "The Proposed Equal Rights Amendment: Contemporary Ratification Issues," pp. 2 and 17.
32. Allison L. Held, Sheryl L. Herndon, and Danielle M. Stager, "The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly before the States," *William & Mary Journal of Race, Gender, and Social Justice*, Vol. 3, (1997), p. 117.
33. See House Resolution 432 in the 103rd Congress, https://www.congress.gov/bill/103rd-congress/house-resolution/432/text (accessed January 9, 2020); House Resolution 39 in the 104th Congress, https://www.congress.gov/bill/104th-congress/house-resolution/26/text (accessed January 9, 2020); House Resolution 26 in the 105th Congress, https://www.congress.gov/bill/105th-congress/house-resolution/26/text (accessed January 9, 2020); House Resolution 37 in the 106th Congress, https://www.congress.gov/bill/106th-congress/house-resolution/37/text (accessed January 9, 2020); House Resolution 98 in the 107th Congress, https://www.congress.gov/bill/107th-congress/house-resolution/98/text (accessed January 9, 2020); House Resolution 38 in the 108th Congress, https://www.congress.gov/bill/108th-congress/house-resolution/38/text (accessed January 9, 2020); House Resolution 155 in the 109th Congress, https://www.congress.gov/bill/109th-congress/house-resolution/155/text (accessed January 9, 2020); House Resolution 757 in the 110th Congress, https://www.congress.gov/bill/110th-congress/house-resolution/757/text (accessed January 9, 2020); and House Resolution 794 in the 112th Congress, https://www.congress.gov/bill/112th-congress/house-resolution/794/text (accessed January 9, 2020).
34. See Senate Joint Resolution 6 in the 116th Congress, https://www.congress.gov/bill/116th-congress/senate-joint-resolution/6/text (accessed January 9, 2020). See also House Joint Resolution 38 in the 116th Congress, https://www.congress.gov/bill/116th-congress/house-joint-resolution/38/text (accessed January 9, 2020); Senate Joint Resolution 5, https://www.congress.gov/bill/115th-congress/senate-joint-resolution/5/text (accessed January 9, 2020), and House Joint Resolution 53 in the 115th Congress, https://www.congress.gov/bill/115th-congress/house-joint-resolution/53/text (accessed January 9, 2020); Senate Joint Resolution 15, https://www.congress.gov/bill/114th-congress/senate-joint-resolution/15/text (accessed January 9, 2020), and House Joint Resolution 51 in the 114th Congress, https://www.congress.gov/bill/114th-congress/house-joint-resolution/51/text (accessed January 9, 2020); Senate Joint Resolution 15, https://www.congress.gov/bill/113th-congress/senate-joint-resolution/15/text (accessed January 9, 2020), and House Joint Resolutions 43, https://www.congress.gov/bill/113th-congress/house-joint-resolution/43/text (accessed January 9, 2020), and 113, https://www.congress.gov/bill/113th-congress/house-joint-resolution/113/text (accessed January 9, 2020), in the 113th Congress; and Senate Joint Resolution 39, https://www.congress.gov/bill/112th-congress/senate-joint-resolution/39/text (accessed January 9, 2020), and House Joint Resolution 47, https://www.congress.gov/bill/112th-congress/house-joint-resolution/47/text (accessed January 9, 2020), in the 112th Congress.
35. See, e.g., "Frequently Asked Questions," equalrightsamendment.org, http://erauniversity.com/blogs/a-brief-history-of-the-equal-rights-amendment/ (accessed December 29, 2019).
36. Held, Herndon, and Stager, "The Equal Rights Amendment," p. 114.
37. Ibid., p. 115.
38. Ibid., p. 123.
39. Ibid., p. 115. See also Neale, "The Proposed Equal Rights Amendment: Contemporary Ratification Issues," p. 4.
40. See, e.g., Roberta W. Francis, "The Equal Rights Amendment: Frequently Asked Questions," Alice Paul Institute, February 5, 2019, p. 4, https://www.alicepaul.org/wp-content/uploads/2019/05/ERA-FAQs-updated-2_19.pdf (accessed December 2, 2019).
41. Held, Herndon, and Stager, "The Equal Rights Amendment," p. 123.
42. Ibid., p. 114.
43. Ibid., p. 115.
44. See Office of Legal Counsel, "Ratification of the Equal Rights Amendment," p. 2 ("Congress had the constitutional authority to impose a deadline on the ratification of the ERA").

45. *Dillon v. Gloss*, 256 U.S. 368 (1921).
46. Id. at 376. See also *Coleman v. Miller*, 307 U.S. 433, 452 (1939) ("We have held that the Congress in proposing an amendment may fix a reasonable time for ratification."), and Leslie Gladstone, "Equal Rights Amendment (Proposed)," Congressional Research Service *Issue Brief*, July 8, 1982, p. 5, https://digital.library.unt.edu/ark:/67531/metacrs8412/m1/1/high_res_d/IB74122_1982Jul08.pdf (accessed December 29, 2019) ("[T]here is no disagreement that the Congress has the power to set a reasonable time limit for ratification of a proposed amendment.").
47. See Office of Legal Counsel, "Ratification of the Equal Rights Amendment," p. 12 ("The ERA Resolution thus has expired unless the deadline was somehow invalid in the first place.").
48. Held, Herndon, and Stager, "The Equal Rights Amendment," p. 123 (emphasis added).
49. Witter, "Extending Ratification Time for the Equal Rights Amendment," p. 214.
50. Ibid.
51. Ibid.
52. See Office of Legal Counsel, "Ratification of the Equal Rights Amendment," p. 23 ("Although some ERA supporters have recently questioned the enforceability of the deadline, no one involved with the ERA around the time of its proposal seems to have done so.").
53. Gladstone, "Equal Rights Amendment (Proposed)," p. 1 (emphasis added).
54. Rees, "Throwing Away the Key," p. 914.
55. Held, Herndon, and Stager, "The Equal Rights Amendment," p. 124. See also ibid., p. 127 ("[T]he States that ratify the text of the amendment do not ratify the proposing clause.").
56. 307 U.S. 433 (1939).
57. Ibid., pp. 435–436.
58. *Dillon*, pp. 368, 375.
59. For what it is worth, the Court in *Dillon* concluded that a seven-year ratification deadline is "[un]question[ably]…reasonable." Ibid., p. 376.
60. See "Congressional Pay Amendment," in U.S. Department of Justice, *Opinions of the Office of Legal Counsel of the United States Department of Justice*, Vol. 16 (May 13, 1992), p. 92, https://www.justice.gov/olc/file/626876/download (accessed December 29, 2019). See also Michael Stokes Paulsen, "A General Theory of Article V: The Constitutional Lessons of the Twenty-Seventh Amendment," *Yale Law Journal*, Vol. 103 (December 1993), p. 681 ([T]he "contemporaneous consensus" theory in *Dillon* was "Supreme Court dictum.").
61. Professor Rees criticizes *Coleman* for its "confusion of political question authority with arguments concerning congressional power." Rees, "Throwing Away the Key," p. 930. See also "Rescinding Ratification of Proposed Constitutional Amendments: A Question for the Court," *Louisiana Law Review*, Vol. 37 (1976), p. 896.
62. Held, Herndon, and Stager, "The Equal Rights Amendment," p. 121.
63. *Coleman*, p. 452.
64. Ibid., p. 454 (emphasis added). See also Office of Legal Counsel, "Ratification of the Equal Rights Amendment," p. 29.
65. See Witter, "Extending Ratification Time for the Equal Rights Amendment," p. 218 ("Thus *Dillon* was not dispositive of the validity of a time limit as an integral part of an amendment. The case has even less value regarding validity of a time limit in a resolving clause."). See also ibid., p. 220 ("*Dillon* spoke only to the case where the seven-year limit was an integral part of the ratified amendment.").
66. Held, Herndon, and Stager, "The Equal Rights Amendment," p. 113. See also ibid., pp. 125–26 ("Congress has the power to determine the timeliness of the ERA after final state ratification, as it did with the Madison Amendment.").
67. Ibid., p. 125.
68. Neale, "The Proposed Equal Rights Amendment: Contemporary Ratification Issues," p. 21.
69. 1 U.S. Code § 106(b).
70. *Federal Register*, Vol. 57, No. 97 (May 19, 1992), p. 21187.
71. Thomas M. Durbin, "Amending the U.S. Constitution: By Congress or by Constitutional Convention," Congressional Research Service *Report for Congress*, May 10, 1995, p. 10, https://cusdi.org/wp-content/uploads/2015/09/crs1995durbin.pdf (accessed December 29, 2019).
72. House Concurrent Resolution 320, passed by the House on May 20, 1992, by a vote of 414–3.
73. "A Concurrent Resolution Declaring an Article of Amendment to be the Twenty-Seventh Amendment to the Constitution of the United States," S.Con. Res. 120, 102nd Cong., 2nd Sess., https://www.congress.gov/bill/102nd-congress/senate-concurrent-resolution/120/text (accessed January 9, 2020), and "Declaring an Article of Amendment to be the Twenty-Seventh Amendment to the Constitution of the United States," S. Res.298, 102nd Cong., 2nd Sess., https://www.congress.gov/bill/102nd-congress/senate-resolution/298/text?q=%7B%22search%22%3A%22amendment%22%7D&r=45&s=7 (accessed January 9, 2020).
74. Held, Herndon, and Stager, "The Equal Rights Amendment," p. 113.

75. Ibid., p. 102.
76. Walter Dellinger, "The Legitimacy of Constitutional Change: Rethinking the Amendment Process," *Harvard Law Review*, Vol. 97 (1983), p. 398.
77. Rees, "Throwing Away the Key: The Unconstitutionality of the Equal Rights Amendment Extension," p. 899.
78. Congressional Pay Amendment, "Memorandum Opinion for the Counsel to the President," *Opinions of the Office of Legal Counsel of the United States Department of Justice*, Vol. 16, May 13, 1992, p. 86, https://www.justice.gov/olc/file/626876/download (accessed December 29, 2019).
79. Ibid., p. 99.
80. Ibid.
81. Ibid., p. 100.
82. Ibid.
83. Held, Herndon, and Stager, "The Equal Rights Amendment," p. 125.
84. Ibid., p. 135.
85. Ibid.
86. "Congressional Pay Amendment," p. 105.
87. Held, Herndon, and Stager, "The Equal Rights Amendment," p. 130.
88. *State of Idaho v. Freeman*, 529 F.Supp. 1107 (D. Idaho 1981).
89. *National Organization for Women v. Idaho*, 459 U.S. 809 (1982).
90. *National Organization for Women v. State of Idaho*, Memorandum for the Administrator of General Services Suggesting Mootness, 1982, https://eagleforum.org/era/now-v-idaho-memo.html (accessed December 29, 2019).
91. See Office of Legal Counsel, "Ratification of the Equal Rights Amendment," pp. 23–24.
92. Held, Herndon, and Stager, "The Equal Rights Amendment," p. 124.
93. Ibid.
94. See Office of Legal Counsel, "Ratification of the Equal Rights Amendment," pp. 9–10.
95. Ron Elving, "The Zombie Amendments to the Constitution You've Probably Never Heard Of," National Public Radio, March 10, 2018, https://www.npr.org/2018/03/10/591758259/the-zombie-amendments-to-the-constitution-youve-probably-never-heard-of (accessed December 2, 2019).
96. "The Constitution: Failed Amendments," Lexis-Nexis, https://www.lexisnexis.com/constitution/amendments_failed.asp (accessed Decembe 29, 2019).
97. For the report accompanying Resolution 10B, adopted by the ABA House of Delegates, see American Bar Association, "Resolution," February 8, 2016, https://www.americanbar.org/content/dam/aba/directories/policy/2016_hod_midyear_10B.docx (accessed December 29, 2019).
98. See Office of Legal Counsel, "Ratification of the Equal Rights Amendment," p. 3 ("Although we disagree with the 10977 opinion's conclusion that Congress may extend a ratification deadline on an amendment pending before the States, we agree in any event that Congress may not revive a proposed amendment after the deadline has expired."), and ibid., p. 37 ("[W]hen Congress uses a proposing clause to impose a deadline on the States' ratification of a proposed constitutional amendment, that deadline is binding and Congress may not revive the proposal after the deadline's expiration.").
99. Ibid., p. 3.
100. Ibid., p. 35.
101. Brannon P. Denning and John R. Vile, "Necromancing the Equal Rights Amendment," *Constitutional Commentary*, Vol. 17 (2000) pp. 593 and 597.