

Brief History of ERA Ratification Effort

Article V of the Constitution provides that an amendment may be proposed either by:

1. Congress with a two-thirds majority vote in both the House of Representatives and the Senate or
2. By a constitutional convention called for by two-thirds of the State legislatures.

ERA Passage, Death, Alleged Ressurrection and Second “Death”

The so-called “Equal Rights Amendment” passed both Houses of Congress with the requisite two-thirds majority vote in 1972, but the text of the ERA passed by Congress imposed a seven-year deadline for ratification by two-thirds of the state legislatures.

Following ERA’s passage in Congress, 35 states voted to ratify ERA between 1972 and 1979.

It is important to note that:

***Of those 35 states, 24 of them specifically referenced the 1979 deadline in their ratification bills, indicating that the legislators acknowledged this time limit. Thus, the legislative intent was that the ratification vote expired March 22, 1979.**

Additionally, between 1973 and 1979 five states rescinded their ratification. (ERA proponents say that the Constitution is silent on whether or not a state can rescind a ratification, so they conveniently argue they can’t.)

The Constitution is designed to ensure that government action reflects the will of the people. (It would take a blatantly activist judge to uphold a state’s ratification after rescission, and it would be wildly unpopular.)

When the March 22, 1979 deadline passed without the requisite number of states having ratified the Amendment, ERA proponents argue that Congress adopted a Joint Resolution in the House of Representatives, and this resolution was signed by President Carter.

The Resolution received only a simple majority, **by voice vote**, not a two-thirds majority as the Constitution requires. Thus, the Resolution did not constitute a valid extension.

Even with the “crooked extension” no more states ratified the ERA after 1979.

The only court ruling on the issue of the alleged extension, the U.S. District Court for the District of Idaho’s decision in *Idaho v. Freeman*, declared that the extension was unconstitutional.

Three State Strategy: Feminists’ Effort to Re-Revive the Dead Bill by Ignoring the Constitution

Proponents of the “three-state strategy” rely on the Supreme Court’s decision in *Coleman v. Miller*, , 307 U.S. 433 (1939) in support of their theory that the states’ prior ratification of ERA is still valid.

They claim that *Coleman v. Miller* stands for the proposition that Congress has broad discretion in setting the parameters for ratification of an amendment.

However, Congress did not include a deadline for ratification in the amendment in question in *Coleman* as they did for ERA.

The Court noted in *Coleman* that Congress was well aware of the fact that it could have imposed a time limit on the proposed amendment in question when the amendment was drafted, but it chose not to do so. That is completely different from the situation with ERA in which Congress expressly did impose a time limit for ratification and 24 of the 35 states acknowledged this deadline in their ratification bills.

Talking Points Against Three State Strategy:

- Advocates of the three-state strategy know it is impossible to revive the dead ERA. This is nothing more than a fundraising cause concept for feminists and an effort to distract from conservative successes by attempting to shift focus to past victimization of women.
- Advocates of the three-state strategy are asking Congress to bind citizens in 35 states to a vote that reflected the political climate 38-40 years ago without

any input on the issue today. What if this were a Defense of Marriage Amendment that had been ratified by 35 states? Would three-state strategy opponents argue that such ratification would still be valid?

- Advocates of the three-state strategy insist that judges will accept the idea that a Congress in 2017 can retroactively modify a prior Congress' bill, and override the expressed intent of legislatures in the 24 states that specifically referenced the deadline in their ratification bills.
- Advocates of the three state strategy insist that judges will not only accept a retroactive suspension of Congress' express deadline for ratification, but will also invalidate five states properly passed bills rescinding ratification.

These are just the problems with the Three State Strategy. For more information on the problems with ERA, [click here](#).