

of the United States, in order to form a more perfect Union, establish Justice, ensure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, We ordain and establish this Constitution for the United States of America.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

No Person shall be

Numbers, which shall be dete

Forty Thousand, but each of

When vacancies happen

Section 3. The Senate  
Senator shall have one Vote



## Grades 9-12

Section 6. The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Misdemeanor, and Breach of this Oath, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same, and for any Speech or Debate in either House, they shall not be questioned in any other Place.

17  
No Senator or Representative shall, during the term for which he was elected, be appointed to any civil office or position which shall have been created, or the Emoluments whereof shall have been increased during such term, and nor Person holding any office under the United States, shall be a Member of either House during his continuance in office.

## **Instructions**

1. Review the background information provided on the next page (including hyperlinks).
2. Analyze each of the primary sources using the Document Analysis Sheets provided for Written Documents, Photographs, and Maps (four copies of Written Document analysis sheet required); it's okay if you can't answer every question, as no single primary source should provide a researcher with all of the answers they seek (if it does, it's probably a secondary source!).
3. Provide a narrative response to the following questions:
  - **Why do you think Article V of the United States Constitution does not prescribe a formal role for the President in the Constitutional Amendment process? What ways do you think the President could have a role in the process?**
  - **Do you agree with the opinion that proposed Constitutional amendments are “contemporaneous” and thus justify Congress imposing a deadline for ratification? Does that assumption validate a state rescinding ratification for an amendment after previously approving it?**
  - **The relatively vague language of Article V has provided for intense, complex debate concerning ratification and implementation. Do you think its language has been adequate for the evolving history of the United States? If you had the opportunity to rewrite Article V, what changes, if any would you make?**
  - **Do you agree with the opinion that any amendment ratification deadline must be in the language of the amendment itself voted on by the states, or is it sufficient to include it in the preamble to the proposed amendment? Why do you think this?**
  - **Are amendment ratification deadlines constitutional? Cite at least four examples from the documents to justify your opinion.**

## Debate: Are Amendment Ratification Deadlines Constitutional?

On May 30, 2018, the state of Illinois voted to ratify the proposed Equal Rights Amendment to the Constitution 36 years after its ratification deadline expired, reviving several debates about the shelf life of constitutional amendments.

In March 1972, Congress approved a joint resolution presenting the Equal Rights Amendment to the states for ratification. Its first section read, “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 resolution consisted of an introductory preamble explaining its purpose and the proposed amendment’s text. Within the preamble, Congress stated the amendment would become “part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years of its submission by the Congress.”

Similar ratification deadlines or sunset clauses were included in eight other proposed constitutional amendments, all of which were ratified by the time of their expiration periods. For the 18<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> Amendments, the actual amendment text included the deadline; for the 23<sup>rd</sup>, 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> Amendments, the deadline was in the introductory text to the amendment.

In 1921, the Supreme Court held in [\*Dillon v. Gloss\*](#) that Congress, when proposing a constitutional amendment under the authority given to it by Article V of the Constitution, may fix a definite period for its ratification, and further, that the reasonableness of the seven-year period, fixed by Congress in the resolution proposing the Eighteenth Amendment is beyond question.

For the Equal Rights Amendment, after a quick push for ratification, the movement stalled and fell three states short of the 38 states needed for ratification within seven years. Amid controversy, Congress in 1978 extended the ratification deadline to June 1982. No new states ratified the ERA during its extended deadline, but five states voted to rescind their previous ratification of the proposed amendment.

Also in 1982, arguments over the legality of the extended ratification deadline and the ability of states to rescind their ratifications made it to the Supreme Court. In a one paragraph

statement in [\*National Organization of Women v. Idaho\*](#), the Court dismissed the case as moot because the ERA's deadline had just expired.

But that didn't end the debate, particularly over a lower-court decision (that was then mooted by the Supreme Court) that Idaho had a right to rescind its ratification of the ERA and the Congress lacked the power to extend a ratification deadline.

Before that, the Supreme Court had something to say about the amendment ratification process in 1939 during the Roosevelt administration, in a dispute about Kansas' ratification vote for a proposed amendment regulating child labor. In the majority opinion in [\*Coleman v. Miller\*](#), Chief Justice Charles Evans Hughes said when it came to a ratification dispute, it was a "question for the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment."

Hughes also added that "Congress, in controlling the promulgation of the adoption of a constitutional amendment, has the final determination of the question whether, by lapse of time, its proposal of the amendment had lost its vitality before being adopted by the requisite number of legislatures."

To the supporters and opponents of a revived Equal Rights Amendment ratification process, the Court's prior statements and the ratification of the 27<sup>th</sup> Amendment after a 203-year delay offer evidence that they are both correct.

The current ERA ratification supporters believe Congress would have the power to decide if the amendment can be ratified today under a "three-state proposal" that would see Nevada (which also voted in 2017 to approve ratification), Illinois and a third state get the vote total to 38 states. They also believe the 27<sup>th</sup> Amendment's long-delayed ratification rejects the viability of deadlines imposed by Congress on ratification. (There is also an argument that the ERA deadline's placement in its preamble doesn't make it as applicable as to other amendments



# Analyze a Written Document

## Meet the document.

Type (check all that apply):

- |   |                                    |  |  |  |
|---|------------------------------------|--|--|--|
| <input type="checkbox"/> Letter                 | <input type="checkbox"/> Speech    | <input type="checkbox"/> Patent                  | <input type="checkbox"/> Telegram      | <input type="checkbox"/> Court document        |
| <input type="checkbox"/> Chart                  | <input type="checkbox"/> Newspaper | <input type="checkbox"/> Advertisement           | <input type="checkbox"/> Press Release | <input type="checkbox"/> Memorandum            |
| <input type="checkbox"/> Report                 | <input type="checkbox"/> Email     | <input type="checkbox"/> Identification document |  | <input type="checkbox"/> Presidential document |
| <input type="checkbox"/> Congressional document | <input type="checkbox"/> Other     |  |  |  |

Describe it as if you were explaining to someone who can't see it.

*Think about: Is it handwritten or typed? Is it all by the same person? Are there stamps or other marks? What else do you see on it?*

## Observe its parts.

Who wrote it?

Who read/received it?

When is it from?

Where is it from?

## Try to make sense of it.

What is it talking about?

Write one sentence summarizing this document.

Why did the author write it?

Quote evidence from the document that tells you this.

What was happening at the time in history this document was created?

## Use it as historical evidence.

What did you find out from this document that you might not learn anywhere else?

What other documents or historical evidence are you going to use to help you understand this event or topic?



# Analyze a Photograph

## Meet the photo.

Quickly scan the photo. What do you notice first?

Type of photo (check all that apply):

- |                                      |                                    |   |                                 |  |
|--------------------------------------|------------------------------------|---|---------------------------------|--|
| <input type="checkbox"/> Portrait    | <input type="checkbox"/> Landscape | <input type="checkbox"/> Aerial/Satellite | <input type="checkbox"/> Action | <input type="checkbox"/> Architectural |
| <input type="checkbox"/> Event       | <input type="checkbox"/> Family    | <input type="checkbox"/> Panoramic        | <input type="checkbox"/> Posed  | <input type="checkbox"/> Candid        |
| <input type="checkbox"/> Documentary | <input type="checkbox"/> Selfie    | <input type="checkbox"/> Other            |                                 |  |

Is there a caption? ☐ yes ☐ no

## Observe its parts.

List the people, objects and activities you see.

PEOPLE	OBJECTS	ACTIVITIES

Write one sentence summarizing this photo.

## Try to make sense of it.

Answer as best you can. The caption, if available, may help.

Who took this photo?

Where is it from?

When is it from?

What was happening at the time in history this photo was taken?

Why was it taken? List evidence from the photo or your knowledge about the photographer that led you to your conclusion.

## Use it as historical evidence.

What did you find out from this photo that you might not learn anywhere else?

What other documents, photos, or historical evidence are you going to use to help you understand this event or topic?



# Analyze a Map

## Meet the map.

What is the title?

Is there a scale and compass?

What is in the legend?

Type (check all that apply):

- |                                      |   |   |  |
|--------------------------------------|---|---|--|
| <input type="checkbox"/> Political   | <input type="checkbox"/> Topographic/Physical | <input type="checkbox"/> Aerial/Satellite | <input type="checkbox"/> Relief (Shaded or Raised) |
| <input type="checkbox"/> Exploration | <input type="checkbox"/> Survey               | <input type="checkbox"/> Natural Resource | <input type="checkbox"/> Planning                  |
| <input type="checkbox"/> Land Use    | <input type="checkbox"/> Transportation       | <input type="checkbox"/> Military         | <input type="checkbox"/> Population/Settlement     |
| <input type="checkbox"/> Census      | <input type="checkbox"/> Other                |   |  |

## Observe its parts.

What place or places are shown?

What is labeled?

If there are symbols or colors, what do they stand for?

Who made it?

When is it from?

## Try to make sense of it.

What was happening at the time in history this map was made?

Why was it created? List evidence from the map or your knowledge about the mapmaker that led you to your conclusion.

Write one sentence summarizing this map.

How does it compare to a current map of the same place?

## Use it as historical evidence.

What did you find out from this map that you might not learn anywhere else?

What other documents or historical evidence are you going to use to help you understand this event or topic?





## Article. V. of the United States Constitution

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.



S. J. Res. 17.

Sixty-fifth Congress of the United States of America;

At the Second Session,

Begun and held at the City of Washington on Monday, the third day of December,  
one thousand nine hundred and seventeen.

### JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States.

*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 amendment to the Constitution be, and hereby is, proposed to the States, to become valid as a part of the Constitution when ratified by the legislatures of the several States as provided by the Constitution:*

“ARTICLE —.

“SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

“SEC. 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

“SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.”

*Champ Clark*

Speaker of the House of Representatives.

*Thos. R. Marshall*

Vice President of the United States and  
President of the Senate.

H. J. Res. 208

## Ninety-second Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday, the eighteenth day of January,  
one thousand nine hundred and seventy-two*

### Joint Resolution

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:*

#### "ARTICLE —

"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.

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

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

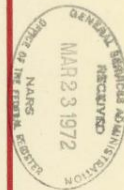
*Carl Albert*

*Speaker of the House of Representatives.*

*Alben W. Barkley*

*Vice President of the United States and*

*President of the Senate pro Tempore*





President Carter signing legislation to extend the ratification deadline for the Equal Rights Amendment, 10/20/1978 (National Archives Identifier: [181970](#))



**ARCHIVIST OF THE UNITED STATES  
UNITED STATES OF AMERICA**

**TO ALL TO WHOM THESE PRESENTS SHALL COME,  
GREETING:**

*KNOW YE, That the first Congress of the United States, at its first session, held in New York, New York, on the twenty-fifth day of September, in the year one thousand seven hundred and eighty-nine, passed the following resolution to amend the Constitution of the United States of America, in the following words and figures in part, to wit:*

*The Conventions of a number of the States having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government will best ensure the benificent ends of its institution;*

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as Amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.:*



*Articles in addition to, and amendment of, the  
Constitution of the United States of America,  
proposed by Congress and ratified by the  
Legislatures of the several States, pursuant to the  
fifth Article of the original Constitution.*

*\* \* \* \* \**

*Article the Second...No law, varying the  
compensation for the services of the Senators and  
Representatives, shall take effect, until an  
election of Representatives shall have intervened.*

*\* \* \* \* \**

*And, further, that Section 106b, Title 1 of the United States Code provides  
that whenever official notice is received at the National Archives and  
Records Administration that any amendment proposed to the  
Constitution of the United States has been adopted, according to the  
provisions of the Constitution, the Archivist of the United States shall  
forthwith cause the amendment to be published, with his certificate,  
specifying the States by which the same may have been adopted, and that  
the same has become valid, to all intents and purposes, as a part of the  
Constitution of the United States.*

*And, further, that it appears from official documents on file in the  
National Archives of the United States that the Amendment to the  
Constitution of the United States proposed as aforesaid has been ratified  
by the Legislatures of the States of Alabama, Alaska, Arizona, Arkansas,  
Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois,  
Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan,  
Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey,  
New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon,  
South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia,  
West Virginia, Wisconsin, and Wyoming.*

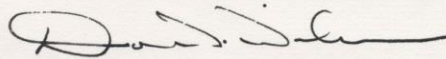
*And, further, that the States whose Legislatures have so ratified the said proposed Amendment constitute the requisite three fourths of the whole number of States in the United States.*

*NOW, Therefore, be it known that I, Don W. Wilson, Archivist of the United States, by virtue and in pursuance of Section 106b, Title 1 of the United States Code, do hereby certify that the aforesaid Amendment has been ratified, to all intents and purposes, as a part of the Constitution of the United States.*

IN TESTIMONY WHEREOF,

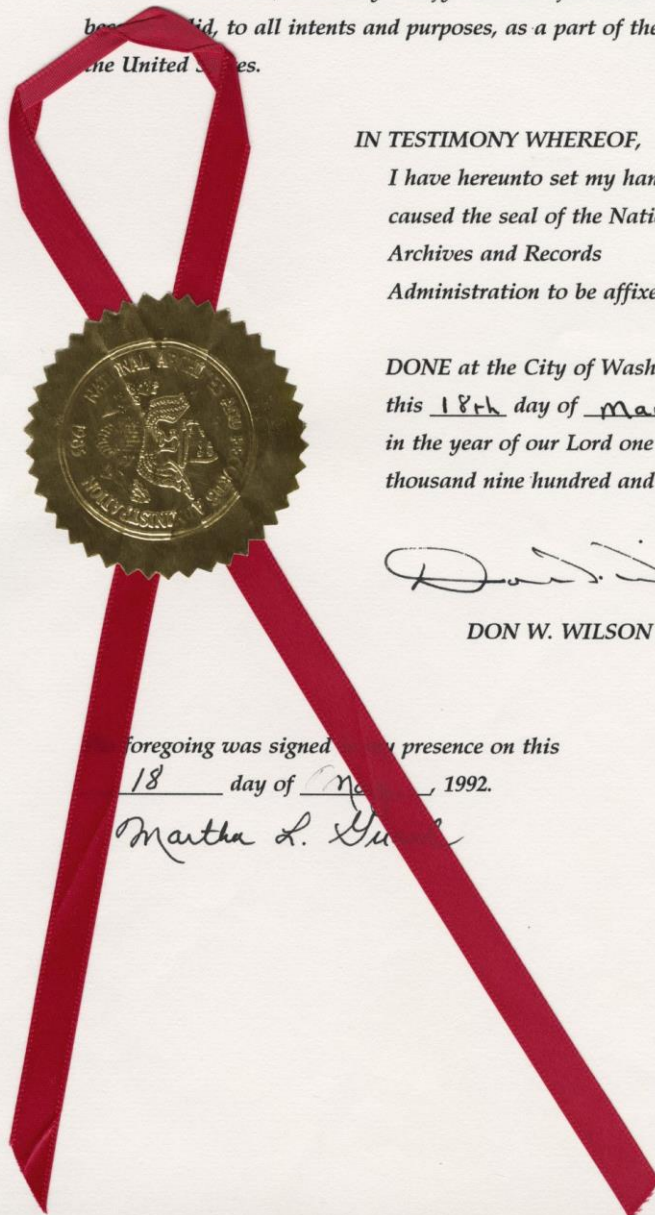
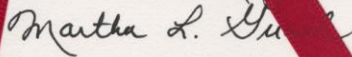
*I have hereunto set my hand and  
caused the seal of the National  
Archives and Records  
Administration to be affixed.*

*DONE at the City of Washington  
this 18th day of May  
in the year of our Lord one  
thousand nine hundred and ninety-two.*

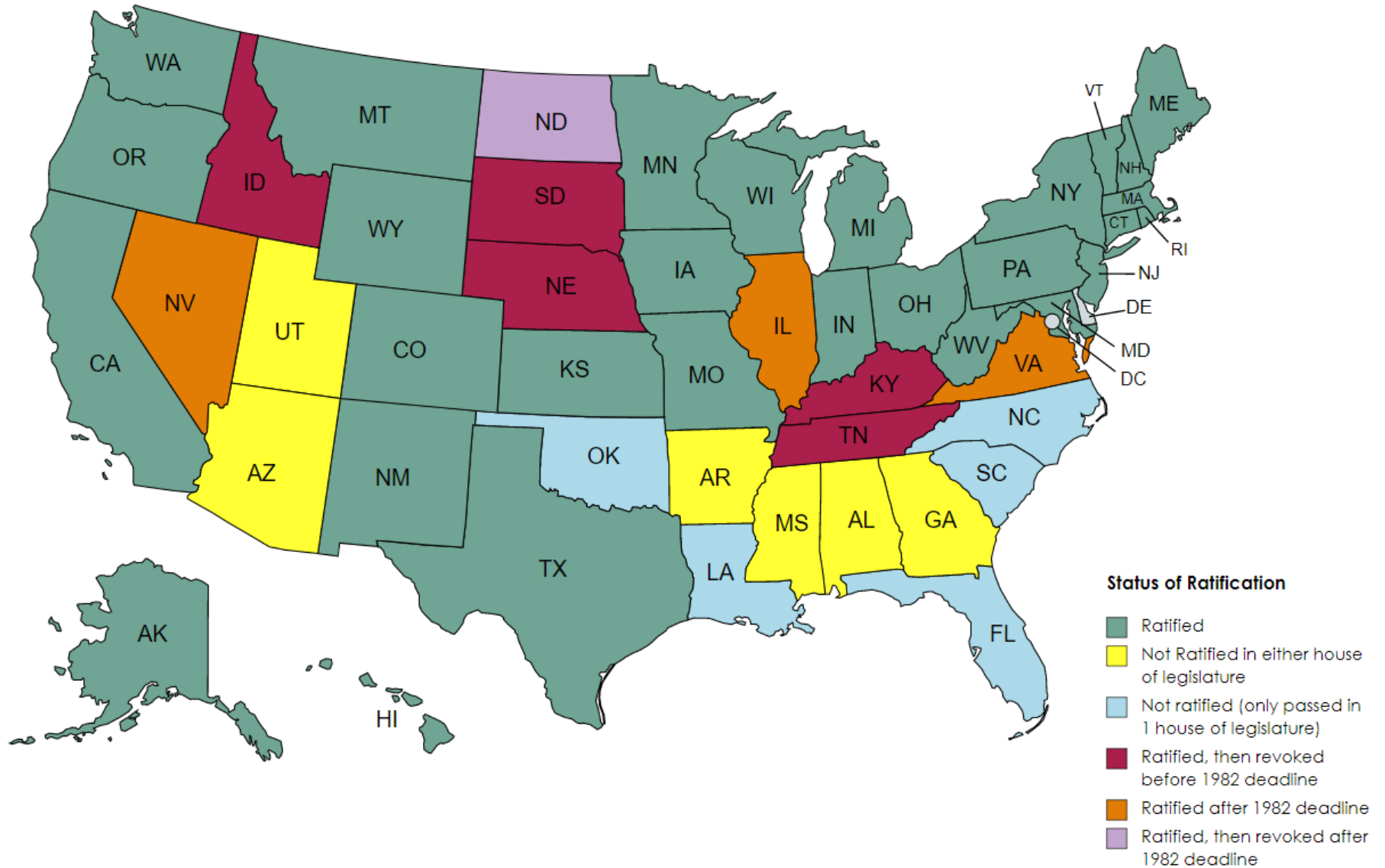


DON W. WILSON

*foregoing was signed in my presence on this  
18 day of May, 1992.*



## Status of Ratification of the Equal Rights Amendment of 1972





struction, ambiguities are not to be solved so as to embrace offenses not clearly within the law. We are unable to remedy the uncertainties of this statute by attributing to Congress an intention to include a baggage porter with those who discharge official duties in the operation of a railroad controlled by an officer of the Government.

It follows that the judgment of the Circuit Court of Appeals must be

*Reversed.*

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DILLON *v.* GLOSS, DEPUTY COLLECTOR OF  
UNITED STATES INTERNAL REVENUE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 251. Argued March 22, 1921.—Decided May 16, 1921.

1. Article V of the Constitution implies that amendments submitted thereunder must be ratified, if at all, within some reasonable time after their proposal. Pp. 371, 374.
2. Under this Article, Congress, in proposing an amendment, may fix a reasonable time for ratification. P. 375.
3. The period of seven years, fixed by Congress in the resolution proposing the Eighteenth Amendment, was reasonable. P. 376.
4. The Eighteenth Amendment became a part of the Constitution on January 16, 1919, when, as the court notices judicially, its ratification in the state legislatures was consummated; not on January 29, 1919, when the ratification was proclaimed by the Secretary of State. P. 376.
5. As this Amendment, by its own terms, was to go into effect one year after being ratified, §§ 3 and 26, Title II, of the National Prohibition Act, which, by § 21, Title III, were to be in force from and after the effective date of the Amendment, were in force on January 16, 1920. P. 376.

262 Fed. Rep. 563, affirmed.

THE case is stated in the opinion.



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Argument for Appellant.

*Mr. Levi Cooke*, with whom *Mr. Theodore A. Bell* and *Mr. George R. Beneman* were on the brief, for appellant:

The Eighteenth Amendment is invalid because of the extra-constitutional provision of the third section. Congress has no power to limit the time of deliberation or otherwise control what the legislatures of the States shall do in their deliberation. Any attempt to limit voids the proposal.

The legislative history of the Amendment shows that without § 3 the proposal would not have passed the Senate. Cong. Rec., 65th Cong., 1st sess., pp. 5648-5666; Cong. Rec., 65th Cong., 2d sess., p. 477.

The same taint attended the passage of the amendment in the House, because there what is now § 3 was considered and the limitation changed from six to seven years, and it is impossible to say now that without the attempted time limitation upon the States two-thirds of the House would have assented to the proposal of the amendment.

The fact that thirty-six States thus ratified within the time emphasizes the evil that was accomplished by the limitation, and can in no way be invoked to suggest that the third section became surplusage in view of this result attained so well within the seven-year limitation attempted to be set by Congress. On the contrary, the fact of there being a time limitation tended to destroy any deliberation by the States and to enable the faction which was pressing for ratification of the amendment to urge immediate indeliberate action in order to avoid the possibility of the time limitation expiring without thirty-six States having made ratification.

The history of the times discloses, if the court may take judicial notice thereof, that legislators elected prior to the submission by Congress were urged to act forthwith, without awaiting the election of legislators by an electorate aware of the pendency of the congressional proposal, and that in some legislatures ratification was secured without

debate in the precipitate action urged by the faction advocating the amendment. The speed with which the amendment was disposed of by the state legislatures tends to establish the absence of deliberation; and in any view the fact stands that the States were acting in the presence of a limitation fixed by Congress, violative of Art. V, in terms unheard of in the history of the country, and contrary to any procedure sanctioned by the organic law, with the very nature and structure of which both the Congress and the state legislatures were dealing. See 2 Story, Const., 3d ed., § 1830.

The National Prohibition Act should be found to have become effective, if at all, January 29, 1920, a year after ratification of the amendment was proclaimed and made known to the public. The proclamation of the Secretary of State must be treated as the publication of the fact of ratification, under Rev. Stats., § 205, of which all persons may be considered to be charged with knowledge.

*Mrs. Annette Abbott Adams*, Assistant Attorney General, for appellee.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This is an appeal from an order denying a petition for a writ of *habeas corpus*. 262 Fed. Rep. 563. The petitioner was in custody under § 26 of Title II of the National Prohibition Act, c. 85, 41 Stat. 305, on a charge of transporting intoxicating liquor in violation of § 3 of that title, and by his petition sought to be discharged on several grounds, all but two of which were abandoned after the decision in *National Prohibition Cases*, 253 U. S. 350. The remaining grounds are, first, that the Eighteenth Amendment to the Constitution, to enforce which Title II of the act was adopted, is invalid because the congressional

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Opinion of the Court.

resolution, 40 Stat. 1050, proposing the Amendment, declared that it should be inoperative unless ratified within seven years; and, secondly, that, in any event, the provisions of the act which the petitioner was charged with violating, and under which he was arrested, had not gone into effect at the time of the asserted violation nor at the time of the arrest.

The power to amend the Constitution and the mode of exerting it are dealt with in Article V, which reads:

"The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments of 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."

It will be seen that this article says nothing about the time within which ratification may be had—neither that it shall be unlimited nor that it shall be fixed by Congress. What then is the reasonable inference or implication? Is it that ratification may be had at any time, as within a few years, a century or even a longer period; or that it must be had within some reasonable period which Congress is left free to define? Neither the debates in the federal convention which framed the Constitution nor those in the state conventions which ratified it shed any light on the question.

The proposal for the Eighteenth Amendment is the

first in which a definite period for ratification was fixed.<sup>1</sup> Theretofore twenty-one amendments had been proposed by Congress and seventeen of these had been ratified by the legislatures of three-fourths of the States,—some within a single year after their proposal and all within four years. Each of the remaining four had been ratified in some of the States, but not in a sufficient number.<sup>2</sup> Eighty years after the partial ratification of one an effort was made to complete its ratification and the legislature of Ohio passed a joint resolution to that end,<sup>3</sup> after which the effort was abandoned. Two, after ratification in one less than the required number of States, had lain dormant for a century.<sup>4</sup> The other, proposed March 2, 1861, declared: "No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State."<sup>5</sup> Its principal purpose was to protect slavery and at the time of its proposal and partial ratification it was a subject of absorbing interest, but after the adoption of the Thirteenth Amendment it was generally forgotten. Whether an amendment

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<sup>1</sup> Some consideration had been given to the subject before, but without any definite action. Cong. Globe, 39th Cong., 1st sess., 2771; 40th Cong., 3d sess., 912, 1040, 1309-1314.

<sup>2</sup> Watson on the Constitution, vol. 2, pp. 1676-1679; House Doc., 54th Cong., 2d sess., No. 353, pt. 2, p. 300.

<sup>3</sup> House Doc., 54th Cong., 2d sess., No. 353, pt. 2, p. 317 (No. 243); Ohio Senate Journal, 1873, pp. 590, 666-667, 678; Ohio House Journal, 1873, pp. 848, 849. A committee charged with the preliminary consideration of the joint resolution reported that they were divided in opinion on the question of the validity of a ratification after so great a lapse of time.

<sup>4</sup> House Doc., 54th Cong., 2d sess., No. 353, pt. 2, pp. 300, 320 (No. 295), 329 (No. 399).

<sup>5</sup> 12 Stat. 251; House Doc., 54th Cong., 2d sess., No. 353, pt. 2, pp. 195-197, 363 (No. 931), 369 (No. 1025).



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Opinion of the Court.

proposed without fixing any time for ratification, and which after favorable action in less than the required number of States had lain dormant for many years, could be resurrected and its ratification completed had been mooted on several occasions, but was still an open question.

These were the circumstances in the light of which Congress in proposing the Eighteenth Amendment fixed seven years as the period for ratification. Whether this could be done was questioned at the time and debated at length, but the prevailing view in both houses was that some limitation was intended and that seven years was a reasonable period.<sup>1</sup>

That the Constitution contains no express provision on the subject is not in itself controlling; for with the Constitution, as with a statute or other written instrument, what is reasonably implied is as much a part of it as what is expressed.<sup>2</sup> An examination of Article V discloses that it is intended to invest Congress with a wide range of power in proposing amendments. Passing a provision long since expired,<sup>3</sup> it subjects this power to only two restrictions: one that the proposal shall have the approval of two-thirds of both houses, and the other excluding any amendment which will deprive any State, without

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<sup>1</sup> Cong. Rec., 65th Cong., 1st sess., pp. 5648-5651, 5652-5653, 5658-5661; 2d sess., pp. 423-425, 428, 436, 443, 444, 445-446, 463, 469, 477-478.

<sup>2</sup> *United States v. Babbitt*, 1 Black, 55, 61; *Ex parte Yarbrough*, 110 U. S. 651, 658; *McHenry v. Alford*, 168 U. S. 651, 672; *South Carolina v. United States*, 199 U. S. 437, 451; *Luria v. United States*, 231 U. S. 9, 24; *The Pesaro*, 255 U. S. 216.

<sup>3</sup> Article V, as before shown, contained a provision that "No amendment which shall 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." One of the clauses named covered the migration and importation of slaves and the other deals with direct taxes.

its consent, of its equal suffrage in the Senate.<sup>1</sup> A further mode of proposal—as yet never invoked—is provided, which is, that on the application of two-thirds of the States Congress shall call a convention for the purpose. When proposed in either mode amendments to be effective must be ratified by the legislatures, or by conventions, in three-fourths of the States, “as the one or the other mode of ratification may be proposed by the Congress.” Thus the people of the United States, by whom the Constitution was ordained and established, have made it a condition to amending that instrument that the amendment be submitted to representative assemblies in the several States and be ratified in three-fourths of them. The plain meaning of this is (a) that all amendments must have the sanction of the people of the United States, the original fountain of power, acting through representative assemblies, and (b) that ratification by these assemblies in three-fourths of the States shall be taken as a decisive expression of the people’s will and be binding on all.<sup>2</sup>

We do not find anything in the Article which suggests that an amendment once proposed is to be open to ratification for all time, or that ratification in some of the States may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts but as succeeding steps

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<sup>1</sup> When the federal convention adopted Article V a motion to include another restriction forbidding any amendment whereby a State, without its consent, would “be affected in its internal police” was decisively voted down. The vote was: yeas 3—Connecticut, New Jersey, Delaware; nays 8—New Hampshire, Massachusetts, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia. Elliot’s Debates, vol. 5, pp. 551, 552.

<sup>2</sup> See *Martin v. Hunter’s Lessee*, 1 Wheat. 304, 324–325; *McCulloch v. Maryland*, 4 Wheat. 316, 402–404; *Cohens v. Virginia*, 6 Wheat. 264, 413–414; *Dodge v. Woolsey*, 18 How. 331, 347–348; *Hawke v. Smith*, 253 U. S. 221; Story on the Constitution, 5th ed., §§ 362–363, 463–465.

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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. These considerations and the general purport and spirit of the Article lead to the conclusion expressed by Judge Jameson<sup>1</sup> "that an alteration of the Constitution proposed today has relation to the sentiment and the felt needs of today, and that, if not ratified early while that sentiment may fairly be supposed to exist, it ought to be regarded as waived, and not again to be voted upon, unless a second time proposed by Congress." That this is the better conclusion becomes even more manifest when what is comprehended in the other view is considered; for, according to it, four amendments proposed long ago—two in 1789, one in 1810 and one in 1861—are still pending and in a situation where their ratification in some of the States many years since by representatives of generations now largely forgotten may be effectively supplemented in enough more States to make three-fourths by representatives of the present or some future generation. To that view few would be able to subscribe, and in our opinion it is quite untenable. We conclude that the fair inference or implication from Article V is that the ratification must be within some reasonable time after the proposal.

Of the power of Congress, keeping within reasonable

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<sup>1</sup> Jameson on Constitutional Conventions, 4th ed., § 585.



limits, to fix a definite period for the ratification we entertain no doubt. As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require;<sup>1</sup> and Article V is no exception to the rule. Whether a definite period for ratification shall be fixed so that all may know what it is and speculation on what is a reasonable time may be avoided, is, in our opinion, a matter of detail which Congress may determine as an incident of its power to designate the mode of ratification. It is not questioned that seven years, the period fixed in this instance, was reasonable, if power existed to fix a definite time; nor could it well be questioned considering the periods within which prior amendments were ratified.

The provisions of the act which the petitioner was charged with violating and under which he was arrested (Title II, §§ 3, 26) were by the terms of the act (Title III, § 21) to be in force from and after the date when the Eighteenth Amendment should go into effect, and the latter by its own terms was to go into effect one year after being ratified. Its ratification, of which we take judicial notice, was consummated January 16, 1919.<sup>2</sup> That the Secretary of State did not proclaim its ratification until January 29, 1919,<sup>3</sup> is not material, for the date of its consummation, and not that on which it is proclaimed, controls. It follows that the provisions of the act with which the petitioner is concerned went into effect January

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<sup>1</sup> *Martin v. Hunter's Lessee*, 1 Wheat. 304, 326; *McCulloch v. Maryland*, 4 Wheat. 316, 407.

<sup>2</sup> Sen. Doc., No. 169, 66th Cong., 2d sess.; Ark. Gen. Acts, 1919, p. 512; Ark. House Journal, 1919, p. 10; Ark. Sen. Journal, 1919, p. 16; Wyo. Sen. Journal, 1919, pp. 26-27; Wyo. House Journal, 1919, pp. 27-28; Mo. Sen. Journal, 1919, pp. 17-18; Mo. House Journal, 1919, p. 40.

<sup>3</sup> 40 Stat. 1941.

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16, 1920. His alleged offense and his arrest were on the following day; so his claim that those provisions had not gone into effect at the time is not well grounded.

*Final order affirmed.*

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APPEAL FROM THE COURT OF CLAIMS.

No. 453. Argued January 6, 7, 1921.—Decided May 16, 1921.

1. The Act of October 3, 1917, c. 63, Tit. II, 40 Stat. 300, 302, in providing for a deduction of a percentage of "invested capital" before computation of the "excess profits" tax upon the income of a domestic corporation, does not mean to include in its definition of invested capital (§ 207) any marking up of the valuation of assets upon the corporate books to correspond with increase of market value or any paper transaction by which new shares are issued in exchange for old ones in the same corporation but which is not in substance and effect a new acquisition of capital property by it. Pp. 386, 389.
2. A corporation, having acquired ore lands for \$190,000, proved, by extensive explorations and developments, that their actual cash value was over \$10,105,400; thereupon, in 1912, it increased their book valuation by adding \$10,000,000, as surplus, and, based thereon, declared a stock dividend for \$9,915,400, which was carried out by surrender and cancellation of all the common stock, of like aggregate par value, and the issuance of one share each of preferred and new common stock for each share of the stock surrendered. The increased value of the ore lands persisted when an excess profits tax was laid under the Act of 1917, *supra*. *Held*: That such increase of value was not included in "invested capital" under § 207 (a) (3), as "paid in or earned surplus and undivided profits," (though an amount equal to the cost of the exploration and development might be), pp. 386, 390; nor under *id.* (2) as "the actual cash value of tangible property paid in other than cash, for the stock or shares" of the corporation. Pp. 386, 390.
3. The Fifth Amendment having no "equal protection" clause, the