

SENATE JOINT RESOLUTION 177

By Akbari

A RESOLUTION to urge the publication and affirmation of the Equal Rights Amendment as the Twenty-Eighth Amendment to the Constitution of the United States of America.

WHEREAS, in 1972, the Ninety-Second Congress of the United States of America at its Second Session, in both houses, by a constitutional majority of two-thirds, adopted the following proposition to amend the Constitution of the United States of America:

"JOINT RESOLUTION RESOLVED BY THE HOUSE OF REPRESENTATIVES AND SENATE 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 a 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.

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

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

WHEREAS, Article V of the Constitution of the United States sets forth a two-step amending procedure; and

WHEREAS, the first step of the Article V amending procedure is proposal of an amendment either by two-thirds vote of both houses of Congress or by a convention called by application of two-thirds of the States; and

WHEREAS, the second and final step of the Article V amending procedure is ratification of an amendment by three-fourths of the States; and

WHEREAS, the Constitution of the United States does not limit the time for States to ratify an amendment; and

WHEREAS, the Constitution of the United States does not grant Congress the unilateral authority to limit the time for States to ratify amendments; and

WHEREAS, a time limit on State ratification of amendments is a substantive change to the Constitution of the United States; and

WHEREAS, to have full force and effect, any substantive change to the Constitution of the United States such as a time limit on ratification must be within the text of an amendment, where it can also be approved by the States as part of each of the two steps of the Article V amending procedure, a proposal step and a ratification step; and

WHEREAS, in the proposal step for the Equal Rights Amendment, the time limit on State ratifications was only in the preamble section of the resolution by Congress and not within the text of the amendment presented to the States for state approval; and

WHEREAS, in the ratification step, the States ratified only the text of the Equal Rights Amendment; and

WHEREAS, a time limit was only approved by Congress in 1972 but not subsequently approved by the States and is thus without force or effect; and

WHEREAS, in comparison, in 1978, two-thirds vote of both houses of Congress passed the District of Columbia Voting Rights Amendment and included a timeline within the text of the Amendment offered to the States for ratification; and

WHEREAS, the time limit for the District of Columbia Voting Rights Amendment ended before completion of the second and final step of ratification of the amendment by three-fourths of the States; and

WHEREAS, because the time limit was within the text of the District of Columbia Voting Rights Amendment, that time limit had full force and effect and that amendment did expire in 1985; and

WHEREAS, in comparison, the text of the Twenty-First and Twenty-Second Amendments both include a timeline within the text of each amendment, and such timelines were ratified by three-fourths of the States within the agreed timeline; and

WHEREAS, in 1789, by two-thirds vote of each house of our First Congress, the so-called Madison Amendment, relating to compensation of members of Congress, completed the proposal step of Article V; and

WHEREAS, approximately 203 years later, the Madison Amendment completed the ratification step of Article V through ratification by three-fourths of the States; and

WHEREAS, in 1992, having met the strict two-step requirements of Article V, the Madison Amendment was published by the Archivist during the Administration of President George H.W. Bush as our Twenty-Seventh Amendment to the Constitution of the United States; and

WHEREAS, following publication of the Madison Amendment, Congress affirmed the Madison Amendment as our Twenty-Seventh Amendment to the Constitution of the United States; and

WHEREAS, as of January 27, 2020, three-fourths of the States have ratified the Equal Rights Amendment; and

WHEREAS, unlike the District of Columbia Voting Rights Amendment, the Equal Rights Amendment does not have a time limit in its text where it would be of full force and effect; and

WHEREAS, in contrast to the Madison Amendment, which took 203 years to ratify, the Equal Rights Amendment took a mere forty-eight years to ratify; and

WHEREAS, the text of Article V of the Constitution references only ratification, not rescission; and

WHEREAS, Samuel Johnson's dictionary of 1755 defines "ratify" as "to confirm; to settle"; and

WHEREAS, Bouvier's Law Dictionary of 1856, considered to be the first American legal dictionary, states that a ratification once done, "cannot be revoked or recalled"; and

WHEREAS, James Madison wrote in a July 20, 1788, letter to Alexander Hamilton that ratification is "in toto and for ever"; and

WHEREAS, the various attempts throughout history to rescind the ratifications of the Constitution of the United States or its amendments, including the Fourteenth, Fifteenth, and Nineteenth Amendments, have never been honored; and

WHEREAS, the Equal Rights Amendment now meets the strict requirements of Article V of our Constitution of the United States to be added as our Twenty-Eighth Amendment; now, therefore,

BE IT RESOLVED BY THE SENATE OF THE ONE HUNDRED THIRTEENTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE HOUSE OF REPRESENTATIVES CONCURRING, that we urge the Administration of President Joseph R. Biden, Jr., to publish without delay the Equal Rights Amendment as our Twenty-Eighth Amendment to the Constitution of the United States of America.

BE IT FURTHER RESOLVED, that we urge the Congress of the United States of America to pass a joint resolution affirming the Equal Rights Amendment as our Twenty-Eighth Amendment to the Constitution of the United States.

BE IT FURTHER RESOLVED, that we call on other States to join in this action by passing the same or similar resolutions.

BE IT FURTHER RESOLVED, that appropriate copies of this resolution be transmitted to the President and Vice President of the United States, each member of the Tennessee Congressional delegation, and the Archivist of the United States.