

Nothing in the status of the precedent created by the Twenty-seventh Amendment suggests that Congress may not, when it proposes an amendment, include a time limitation either in the text or in the accompanying resolution, simply as an exercise of its necessary and proper power.

Whether Congress may extend a ratification period without necessitating new action by states that have already ratified embroiled Congress, the states, and the courts in argument with respect to the proposed Equal Rights Amendment.⁴⁰ Proponents argued and opponents doubted that the fixing of a time limit and the extending of it were powers committed exclusively to Congress under the political question doctrine and that in any event Congress had power to extend. It was argued that inasmuch as the fixing of a reasonable time was within Congress's power and that Congress could fix the time either in advance or at some later point, based upon its evaluation of the social and other bases of the necessities of the amendment, Congress did not do violence to the Constitution when, once having fixed the time, it subsequently extended the time. Proponents recognized that if the time limit was fixed in the text of the amendment Congress could not alter it because the time limit as well as the substantive provisions of the proposal had been subject to ratification by a number of states, making it unalterable by Congress except through the amending process again. Opponents argued that Congress, having by a two-thirds vote sent the amendment and its authorizing resolution to the states, had put the matter beyond changing by passage of a simple resolution, that states had either acted upon the entire package or at least that they had or could have acted affirmatively upon the promise of Congress that if the amendment had not been ratified within the prescribed period it would expire and their assent would not be compelled for longer than they had intended. Congress did pass a resolution extending by three years the period for ratification.⁴¹

Litigation followed and a federal district court, finding the issue to be justiciable, held that Congress did not have the power to extend, but before the Supreme Court could review the decision the extended time period expired and mooted the matter.⁴²

Also much disputed during consideration of the proposed Equal Rights Amendment was the question whether, once a state had rati-

⁴⁰ See *Equal Rights Amendment Extension: Hearings Before the Senate Judiciary Subcommittee on the Constitution*, 95th Congress, 2d Sess. (1978); *Equal Rights Amendment Extension: Hearings Before the House Judiciary Subcommittee on Civil and Constitutional Rights*, 95th Congress, 1st/2d Sess. (1977-78).

⁴¹ H.J. Res. 638, 95th Congress, 2d Sess. (1978); 92 Stat. 3799.

⁴² *Idaho v. Freeman*, 529 F. Supp. 1107 (D. Idaho, 1981), *prob. juris. noted*, 455 U.S. 918 (1982), *vacated and remanded to dismiss*, 459 U.S. 809 (1982).