

Ammending the Constitution

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## 2-1 Amending the Constitution

### **Procedure for Amending the Constitution**

The United States Constitution can be amended through a rigorous process outlined in Article V. The process requires an amendment to be proposed either by two-thirds of both houses of Congress or by a national convention called by Congress at the request of two-thirds of the state legislatures. Once proposed, the amendment must be ratified by three-fourths of the state legislatures or by conventions in three-fourths of the states. The dual process of proposal and ratification ensures a broad consensus before any changes are made to the Constitution, reflecting the federal structure and the diverse interests across states.

In contrast, state constitutions can often be amended through more straightforward processes, which may include a proposal by the state legislature with a lower threshold than the federal process and ratification by a simple majority vote in a subsequent public referendum. For example, the California Constitution allows amendments either by a two-thirds vote of the state legislature followed by a majority public vote or by a public initiative process.

### **Current Status of the ERA**

The Equal Rights Amendment (ERA), designed to guarantee equal legal rights for all American citizens regardless of sex, was passed by Congress in 1972 but has not yet been ratified into the Constitution. The amendment initially had a seven-year deadline, later extended to 1982, but failed to achieve ratification by the necessary three-fourths of the state legislatures within this period (Zarella, 2023). Despite recent ratifications by additional states bringing the total to 38, the required number for adoption and legal and political controversies continue to cloud its status, particularly around the legitimacy of rescissions and the expired deadline.

### **Legal Determinations Regarding the ERA**

State of Idaho v. Freeman (1982) and Virginia v. Ferriero (2021) are pivotal in understanding the legal complexities of the ERA's ratification. In Freeman, the court held that states have the right to rescind their ratification of a federal amendment before it reaches the necessary threshold for ratification. Conversely, Virginia v. Ferriero tackled the modern implications of the ERA's ratification process, including whether the archivist must certify the ERA as ratified despite the expired deadline (Suk, 2021). The court decided against compelling the archivist to certify, indicating ongoing legal debates about the procedural aspects under Article V of the Constitution.

### **State Constitutional Amendment**

The California Constitution has been amended numerous times, demonstrating the flexibility of state constitutions compared to the federal Constitution. One notable amendment is Proposition 8, passed in 2008, which amended the state constitution to ban same-sex marriage (Stephens, 2020). However, it was later deemed unconstitutional by federal courts, illustrating the dynamic interplay between state and federal legal frameworks and the checks and balances inherent in the U.S. legal system.

### **Proposed Hypothetical Constitutional Amendment**

Given the complexities observed in the ratification debates of the ERA, a proposed hypothetical amendment could aim to clarify the ratification process for constitutional amendments. The amendment would stipulate that once Congress has proposed a constitutional amendment, states must complete their ratification process within a specific timeframe, and any state's rescission must occur within this period. Such a measure would aim to streamline the amendment process, ensuring clarity and efficiency in changing the Constitution.

### **Proposed Amendment Language**

"Once an amendment to this Constitution has been duly proposed, the states shall have ten years to ratify the amendment. Any rescission of ratification must occur within this same ten-year period. This period may only be extended by a subsequent amendment."

The language addresses problems of prolonged uncertainty and legal ambiguity in the amendment process. However, it could create challenges by imposing time constraints that may pressure states and potentially lead to hurried decisions without sufficient public discourse.

### **Role of Technology in Legal Change**

Technology, especially digital platforms, and social media, can significantly influence the discourse around constitutional amendments. These tools offer unprecedented opportunities for education, advocacy, and mobilization of support. However, they also pose risks of misinformation and polarized debates. To mitigate these challenges, it would be prudent to enhance digital literacy programs and fact-checking mechanisms, ensuring that discussions about constitutional changes remain informed and constructive.

### **Conclusion**

Amending the Constitution is a complex process that balances the need for stable governance with the flexibility to adapt to changing societal values. The proposed amendment to streamline the ratification process, supported by the strategic use of technology and robust legal frameworks, aims to enhance the efficiency and clarity of constitutional amendments. The initiative underscores the ongoing evolution of American constitutional law in response to both historical challenges and future opportunities.

## References

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