

Testimony of Representative Barbara Jordan
Before the Subcommittee on Civil and Constitutional Rights
House Committee on the Judiciary
May 18, 1978

Extension of the time limit for ratification of the Equal
Rights Amendment

Mr. Chairman, members of the Subcommittee, I urge you to act favorably on H. J. Res 638, extending the deadline for the ratification of the equal rights amendment.

Today it is said we confront a unique issue. "What shall we do about an artificial date, which is close upon us, by which time the 92nd Congress decreed the Equal Rights Amendment should be ratified?"

"Artificial" because surely the 92nd Congress, in all its wisdom, did not expect that debate on the issue of equality between men and women should cease on March 22, 1979.

"Decreed" because the 92nd Congress had no constitutional reason to limit ratification to seven years. Why seven as opposed to two years, ten years, or any other number of years, months or days? Tradition, of only recent origin, may have been the motivation. This "tradition" was not mandated by any amendment ratification process set out in my copy of the Constitution.

I am aware of the argument that the time limit on ratification insures a "contemporaneous consensus" on the issues raised by the proposed amendment. The argument is hollow. There is no "contemporaneous consensus" on the issues raised by the 14th Amendment -- decades after its ratification.

We will continue to debate in the Congress, in the Courts and in the Executive Branch, the issues raised by the 14th Amendment. Our system contemplates that debate will continue. We do not have a procedure for saying "All debate on this subject shall cease for all time." We do not even have a procedure for requiring those who are in a minority on a particular question on a given day to cease to challenge the will of the majority. The opposite is true, we guarantee that the minority will always be heard.

The Constitution brought to fruition and continually governs the institutions by which our democratic republic operates. It is through these institutions that we debate the issues, form a majority consensus, and act for the betterment of the country. The Constitution does not serve us when we view it as an inflexible dogma upon which there must be an overwhelming consensus. If we are governed by any dogma at all, it is embodied in the Declaration of Independence. The Constitution created the institutions through which we have agreed to continually seek the liberties and freedoms proclaimed in the Declaration of Independence.

There is no "contemporaneous consensus" on the issues raised by the Equal Rights Amendment. It is folly to think there ever shall be. It took fifty years for the amendment to progress as far as it has. It will take at least another fifty years for its full impact to be felt.

The Equal Rights Amendment is a mandate for change. It is a standard by which to measure our future legal and social constructs. It has as much potential for affecting our political, economic, social and psychological lives as we may want to ascribe to it in the future. It is kinetic.

The Equal Rights Amendment is for men and women. It is a constructive force for liberating the minds of men and the place of women. It is inclusive.

The Equal Rights Amendment is about human values. It defines the standard by which future Congresses, legislatures, Presidents, Governors and courts will define human relationships. It amends the equal protection values of the 14th Amendment beyond race, color and national origin to include gender. It is about equality, and freedom and the pursuit of happiness.

I favor the Equal Rights Amendment and I favor extending the time limit for its ratification. The Congress can extend the time limit by simple majority vote without negating the ratifications of 35 legislatures.

The question of extension is a political one. It is wholly within the prerogative of the Congress to make that judgement. The Constitution does not preclude extension.

Whether or not it is valid for a state to rescind ratification is not an issue which is before us. We should not confront that question until 38 states have ratified the amendment.

It has been said that extension of the time limit for ratification of the Equal Rights Amendment is tantamount to changing the rules in the middle of the game. This is not a game. This is our Constitution we are proposing to amend. This is one citizen who objects to my Constitution being used as a counter on a game board.

Madison thought the amendment process set out in the Constitution "to be stamped with every mark of propriety. It guards equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults."

Rufus King, a member of the Massachusetts ratifying convention summed up the opposition to the Constitution: there is ... "an apprehension that the liberties of the people are in danger...."

There are those who feel similarly about the Equal Rights Amendment. The Equal Rights Amendment poses no danger to our liberties; exactly the opposite. The Equal Rights Amendment proposes to fulfill our liberties.

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