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**Memorandum**

August 19, 2004

**TO:** Representative Carolyn B. Maloney  
Attention: Christine Corbett and Minn Elias

**FROM:** David C. Huckabee  
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Government and Finance Division

**SUBJECT:** Questions Pertaining to the Equal Rights Amendment

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This memorandum responds to two of the questions Representative Maloney posed in her facsimile communication to CRS Director Daniel Mulhollan on August 18, 2004: “which states have ratified the ERA and where the ratification process stands in those states that have not ratified it,” and “what the procedure was for ratifying the Madison Amendment roughly 200 years after it was first sent to the states.” Representative Maloney’s first question pertaining to “which states have adopted Equal Rights Amendments to their constitutions, which states have ERAs pending and which states have taken no action,” will be answered by another CRS analyst.

**“Which states have ratified the ERA and where the ratification process stands in those states that have not ratified it”**

The Equal Rights Amendment was proposed by Congress on March 22, 1972, with a seven-year ratification deadline of March 21, 1979. On October 11, 1978, Congress extended the deadline until June 30, 1982.<sup>1</sup> Thirty-five states ratified the ERA, including five states that sought to have their ratifications rescinded (see table 1). All the ratifications were completed before the end of the original seven-year deadline.

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<sup>1</sup> CRS Report 97-922 GOV, *Ratification of Amendments to the U.S. Constitution*, by David C. Huckabee, p. 4.

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**Table 1. States Which Ratified the Equal Rights Amendment**

State	Date legislature voted to:		Ratification order (first to last)
	Ratify amendment	Seek to rescind ratification	
Alaska	04/05/72		10
California	11/13/72		22
Colorado	04/21/72		13
Connecticut	03/15/73		29
Delaware	03/23/72		3
Hawaii	03/22/72		1
Idaho	03/24/72	02/08/77	5
Indiana	01/24/77		35
Iowa	03/24/72		4
Kansas	03/28/72		6
Kentucky	06/26/72	03/16/78	20
Maine	01/18/74		31
Maryland	05/26/72		18
Massachusetts	06/21/72		19
Michigan	05/22/72		17
Minnesota	02/08/73		26
Montana	01/25/74		32
Nebraska	03/29/72	03/15/73	7
New Hampshire	03/23/72		2
New Jersey	04/17/72		12
New Mexico	02/28/73		27
New York	05/18/72		16
North Dakota	03/19/75		34
Ohio	02/07/74		33
Oregon	02/08/73		25
Pennsylvania	09/27/72		21
Rhode Island	04/14/72		11
South Dakota	02/05/73	03/01/79	24
Tennessee	04/04/72	04/23/74	9
Texas	03/30/72		8
Vermont	03/01/73		28
Washington	03/22/73		30
West Virginia	04/22/72		14
Wisconsin	04/26/72		15
Wyoming	01/26/73		23

Source: CRS Report 85-154 GOV, *The Proposed Equal Rights Amendment*, by Leslie W. Gladstone, p. 33.

Two weeks after the extended ratification deadline expired on June 30, 1982, the amendment was reintroduced in Congress<sup>2</sup>, and it has been introduced in each Congress since that time. Three such measures have been introduced in 108<sup>th</sup> Congress. H.J. Res 31 (Representative Jesse Jackson, Jr.) includes a clause pertaining to reproductive rights in addition to providing that “equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.” Representative Maloney’s proposed equal rights amendment (H.J. Res. 37), and Senator Kennedy’s proposal (S.J. Res. 11) do not include a reproductive rights section. All three proposed amendments have no ratification deadlines.

In 1995, a new theory emerged in the ERA debate: Congress, having extended the deadline once, could extend it again. Thus, some ERA proponents urged the amendment’s supporters to seek to have the amendment ratified in states that had not already done so.

The legal theory underpinning this renewed ratification effort had been proposed in 1995 by three law students at T.C. Williams Law School who published a paper asserting the proposition that the acceptance by Congress of the ratification in 1992 of the 203 year-old 27<sup>th</sup> Amendment (popularly referred to as the “Madison Amendment”) could be a precedent for reviving the Equal Rights Amendment which had been assumed to have ceased to be ratifiable in 1982, with the expiration of the extended ratification period.<sup>3</sup> This theory is now referred to as the “three-state strategy.”<sup>4</sup>

In the intervening years, ERA proponents have sought to have legislatures ratify the amendment. None has done so, but there has been some limited successes. In 2003, for example, a Florida Senate committee approved a measure to ratify the amendment.<sup>5</sup> Also in 2003, the Illinois House of Representatives voted to ratify the ERA by a margin of 76-41.<sup>6</sup>

### **“What the procedure was for ratifying the Madison Amendment roughly 200 years after it was first sent to the states?”**

As noted above, the “Madison Amendment” was proposed by Congress to the states in 1789. The text of the amendment reads as follows:

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.

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<sup>2</sup> CRS Report 97-4 GOV, *The Equal Rights Amendment: A Chronology*, by Leslie W. Gladstone, p. 5.

<sup>3</sup> Allison Held, Sheryl Herndon, and Daniel Stager. “The Equal Rights Amendment: Why the ERA Remains Legally Viable & Properly Before the States,” *T.C. Williams Woman Law Student’s Association*, 1995, p. 2

<sup>4</sup> Marth Ezzard, “Women Need Amendment, Despite Gains,” *Atlanta Constitution*, May 6, 2003, available at [<http://www.qualrightsamendment.org/status.htm>], visited Aug. 19, 2004.

<sup>5</sup> Peter Wallsten, “Florida GOP Divided over New Push to Ratify ERA,” *Miami Herald*, April 7, 2003, available at [<http://www.qualrightsamendment.org/status.htm>], visited Aug. 19, 2004.

<sup>6</sup> Christi Parsons, “Measure Banning Sex Bias Goes to State Senate,” *Chicago Tribune*, May 22, 2003, available at [<http://www.qualrightsamendment.org/status.htm>], visited Aug. 19, 2004.

This proposal was one of 12 proposed by Congress on September 25, 1789 —10 of them became the Bill of Rights on December 15, 1791, when three-fourths of the states completed ratification of the proposed articles numbered three through twelve. The other amendment proposed along with the “Madison Amendment” numbered article one, pertained to how Representatives would be allocated among the states.

State ratification of the “Madison Amendment” can be divided into three periods: the initial period from 1789 until 1791, when six states approved the amendment; 1792 until 1978, when two states ratified; and, 1983 until 1992, when 33 states ratified.<sup>7</sup>

The only thing that might be characterized as unusual about the 1980s through early 1990s ratifications of the “Madison Amendment” is the means by which the proposal came to the attention of the individual state sponsors. In 1992, Gregory Watson, an aide to a Texas State Legislator, wrote a college paper entitled: “Can an Amendment to the United States Constitution Proposed by Congress in 1789, Which Has Never Been Ratified, Still be Ratified — Even After all These Years.” Reportedly, his political science professor disputed Mr. Watson’s theory, leading to a letter writing campaign that revived the congressional pay amendment and led to its eventual ratification.

It is interesting to note that the current effort to ratify the Equal Rights Amendment is based, in part, on the work of three law students. If the ERA is eventually ratified as the result of these students’ research, we will have another modern example of how a few people can affect history (or in Mr. Watson’s case, of how one person can make a difference).

I trust that this memorandum and accompanying reports will meet your needs in this matter. Please feel free to call me at 7-7877 if I can further assist you.

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<sup>7</sup> See: CRS Report 88-889 GOV, *the Constitutional Amendment to Regulate Congressional Salary Increases: a Slumbering Proposal’s New Popularity*, by David C. Huckabee, p. 2, and CRS Report 93-547, *Ratification Issues Raised by the Congressional Pay Constitutional Amendment*, by David C. Huckabee, p. 9. These archived reports are available on request from the author.