

# CRS Report for Congress

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## Ratification of Amendments to the U.S. Constitution

David C. Huckabee  
Specialist in American National Government  
Government Division

### Summary

Article V of the U.S. Constitution provides two ways to propose amendments to the document and two ways to ratify them. Amendments may be proposed either by the Congress, by two-thirds votes of the House and the Senate (of those present and voting, provided a quorum is present), or by a convention called by Congress in response to applications from the legislatures of two-thirds (34) or more of the states.

Amendments must be ratified by three-quarters (38) or more of the states. The Congress can choose to refer proposed amendments either to state legislatures, or to special conventions called in the states to consider ratification. Only the 21st Amendment (repeal of Prohibition) has been ratified by conventions held in the states.

In the period beginning with the First Congress, through September 30, 1997 (105th Congress, 1<sup>st</sup> Session), a total of 10,980 proposals had been introduced to amend the Constitution. Thirty-three of these were proposed by Congress to the states, and 27 have been ratified. Excluding the 27th Amendment (Congressional Pay), which took more than 202 years, the longest pending proposed amendment that was successfully ratified was the 22nd Amendment (Presidential Tenure), which took three years, nine months, and four days. The 26th Amendment (18-year-old vote) was ratified in the shortest time: three months and 10 days. The average ratification time was one year, eight months, and seven days.

### Ratification Deadlines

The practice of limiting the time available to the states to ratify proposed amendments began in 1917 with the 18th Amendment (Prohibition). All amendments proposed since then, with the exception of the 19th (Women's Suffrage) and the proposed child labor amendment, have included a deadline either in the body of the amendment proposed to the states, or in the joint resolution transmitting the amendment to the states to be ratified.

The 20th through 22nd Amendments incorporated the ratification deadline in the body of the amendment, so these amendments' deadlines are now part of the Constitution. Beginning with the 23rd Amendment, Congress began imposing the seven-year deadline in the joint resolutions transmitting the amendments to the state legislatures in order to avoid including extraneous language in the Constitution.<sup>1</sup>

The ratification deadline "clock" begins running on the day final action is completed in Congress (presidential approval of proposed amendments is not necessary). The amendment may be ratified at any time after final congressional action, even though the states have not been officially notified. The Archivist of the United States officially notifies the states (by registered letters to the governors) that an amendment has been proposed. The Archivist also keeps track of state ratifications and issues a proclamation when ratification is completed.<sup>2</sup>

The rules governing the consideration of proposed amendments vary among the states. Many legislatures require proposed amendments to be approved by "constitutional majorities"—a majority of the membership of the legislature (rather than a quorum for doing other legislative business). Some states require amendments to be ratified by the same margin as a proposed amendment to their state constitutions; others only require a majority of the legislators present and voting (provided a quorum is present). At least seven states require a "supermajority"<sup>3</sup> vote in one or more "chamber, either by rule, statute, or state constitution."<sup>4</sup>

The unprecedented time period of the 27th Amendment's successful ratification, and the decision by the 95th Congress to extend the seven-year deadline for the proposed Equal Rights Amendment (ERA) for an additional two years, 10 months, and 16 days,<sup>5</sup> has prompted speculation that Congress might have the power to revive other amendments proposed without ratification deadlines (in the body of the amendment) by enacting new ratification deadlines. At this writing, this matter is unresolved, but constitutional scholars

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<sup>1</sup> See: Walter Dellinger, "The Legitimacy of Constitutional Change: Rethinking the Amendment Process," *Harvard Law Review*, vol. 97, Dec. 1983, p. 408. Two exceptions to this practice were the 27th Amendment, because it was proposed in 1789, and the proposed District of Columbia voting representation amendment, where a seven-year time limit was included in the body of it.

<sup>2</sup> Pursuant to 1 U.S.C. 106b.

<sup>3</sup> A "supermajority" requires more than a simple majority (one half, plus one). A supermajority ratification requirement for proposed amendments has been recognized by a federal District Court. In *Dyer v. Blair*, 390 F. Supp. 1291 (N.D. Ill. 1975), a federal District Court upheld an Illinois supermajority requirement for ratification of a proposed amendment to the U.S. Constitution.

<sup>4</sup> The seven States requiring "supermajority" votes to ratify amendments are Alabama, Colorado, Delaware, Georgia, Idaho, Illinois, and Kansas. See Scott Mackey and Brenda Erickson, *The Balanced Budget Amendment: The Road to Ratification: A Preliminary Report*, (Washington: National Conference of State Legislatures, 1995), p. 4.

<sup>5</sup> The Equal Rights Amendment was proposed on March 22, 1972. The original ratification deadline of March 21, 1979 was extended until January 30, 1982, with the adoption of H.J. Res. 638 on October 11, 1978.

distinguish the Equal Rights Amendment extension from efforts to revive amendments whose deadlines have expired because the ERA deadline was extended before the original deadline had expired.

The following tables list information about amendments that were proposed by Congress. Table 1 lists the dates of proposal and ratification, and the number of days each successful amendment was pending before the states before ratification. Table 2 provides summary statistics about amendments, and Table 3 lists the amendments Congress proposed that were not ratified by the states. Table 3 provides the date the amendment was proposed, its ratification deadline (if it had any) and the number of states that ratified it.

**Table 1. Time Required to Ratify Constitutional Amendments**

Amendment	Date Proposed	Date Ratified	No. of days
1—Religion, speech, assembly	25-Sep 1789	15-Dec-1791	811
2—Bear arms	"	"	811
3—Quartering soldiers	"	"	811
4—Searches and seizures	"	"	811
5—Rights of persons	"	"	811
6—Rights of accused	"	"	811
7—Civil trials	"	"	811
8—Punishment for crime	"	"	811
9—Unenumerated rights	"	"	811
10—Reserved powers	"	"	811
11—Suits against states	04-Mar-1794	07-Feb-1795	340
12—Election of Pres. & Vice Pres.	09-Dec-1803	15-Jun-1804	189
13—Slavery	31-Jan-1865	06-Dec-1865	309
14—Rights guaranteed	13-Jun-1866	09-Jul-1868	757
15—Right to vote	26-Feb-1869	03-Feb-1870	342
16—Income tax	12-Jul-1909	03-Feb-1913	1,302
17—Pop. election of Senators	13-May-1912	08-Apr-1913	330
18—Prohibition	18-Dec-1917	16-Jan-1919	394
19—Women's suffrage	04-Jun-1919	18-Aug-1920	441
20—Commencement of terms	02-Mar-1932	23-Jan-1933	327
21—Repeal of prohibition	20-Feb-1933	05-Dec-1933	288
22—Presidential tenure	21-Mar-1947	27-Feb-1951	1,439
23—Pres. electors for D.C.	17-Jun-1960	29-Mar-1961	285
24—Abolition of poll taxes	27-Aug-1962	23-Jan-1964	514
25—Pres. vacancy, disability	06-Jul-1965	10-Feb-1967	584
26—18-year-old vote	23-Mar-1971	01-Jul-1971	100
27—Congressional salaries	25-Sep-1789	07-May-1992	74,003

Source: For dates proposed and ratified: U.S. Congress, House. *The Constitution of the United States of America, As Amended*, H. Doc. 102-188, 102nd Cong., 2nd sess., (Washington: GPO, 1992). Time to ratify calculated by CRS.

**Table 2. Range, Mean, and Median Values for Ratifying Ratifying Constitutional Amendments**

(Excluding 27th Amendment)

Maximum time to ratify	22nd amend.	1,439 days
Minimum time to ratify	26th amend.	100 days
Mean and median times to ratify	Median	Mean
18th & 19th centuries	811 days	670 days
20th century	394 days	546 days
18th - 20th centuries	670 days	617 days

**Table 3. Unratified Amendments**

Subject	Date proposed	Ratification deadline	No. of states ratifying
APPORTIONMENT—Regulates the apportionment of Representatives among the states.	25-Sep-1789	None	10
TITLES OF NOBILITY—Revokes citizenship of people accepting titles of nobility or "any present, pension, office or emolument of any kind whatever, from any emperor, king, prince or foreign power."	1-May-1810	None	12
SLAVERY—Prohibits constitutional amendments that will authorize Congress to "abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State."	2-Mar-1861	None	2
CHILD LABOR—Gives Congress the "power to limit, regulate, and prohibit the labor of persons under 18 years of age."	2-Jun-1924	None	28
EQUAL RIGHTS—"Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."	22-Mar-1972 (proposed) 11-Oct-1978 (extended)	21-Mar-1979 (original) 30-Jan-82 (extension)	35
D.C. REPRESENTATION—Treats the District of Columbia "as a State ... for the purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution."	22-Aug-1978	21-Aug-1985	16

Sources: U.S. Congress, House, *The Constitution of the United States of America As Amended*, H. Doc. No. 102-188, 102nd Cong., 2nd sess, (Washington: GPO, 1992); U.S. Library of Congress, Congressional Research Service, *Proposed Amendments to the Constitution of United States of America Introduced in Congress from the 91st Congress, 1st Session, Through the 98th Congress, 2nd Session, January 1969-December 1984*, by Richard A. Davis, CRS Report 85-36 GOV, (Washington: Feb . 1, 1985.)