

THREE AMENDMENTS THAT GOT AWAY

Equal Rights Amendment (ERA)

Equal rights for women has been the subject of approximately 1,100 of the over 11,000 amendments proposed to the Constitution. An amendment was first introduced in Congress in 1921. It was reintroduced in 1971 and was approved by Congress and sent to the states for ratification in 1972. The purpose of this amendment was to guarantee women equality in areas such as employment and pay. Proponents argued that it was necessary because there was still disparity between the way women and men were treated under the law. They also point out that the only place in the Constitution that specifically guarantees equality to women is the 19th Amendment which grants women suffrage (the right to vote). Opponents argue that the 14th Amendment's Equal Protection Clause, which states that all citizens enjoy "the equal protection of the laws," makes the ERA unnecessary. They also point to laws like the Equal Pay Act of 1963, the Civil Rights Act of 1964, and Title IX of the Education Amendment Act of 1972 to show that women already enjoy the protections this amendment aimed to secure. This amendment included a deadline for ratification that was extended once. At the expiration of the second date, it had received 35 of the 38 state ratifications it needed to become an amendment.

"Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

Text of House Joint Resolution 208, known as the Equal Rights Amendment

Flag Desecration (Flag Burning) Amendment

Congress passed the Flag Protection Act in 1968 amid protests against the Vietnam War, which sometimes involved flag burning. Many states also had laws that made flag burning and desecration (treating the flag disrespectfully) illegal. The Supreme Court declared these laws unconstitutional and overturned them with their decision in *Texas v. Johnson* (1989) stating that flag burning was a protected form of expressed or symbolic speech. In other words, by burning the flag, protestors were voicing their disagreement with government policy through symbols. Because of the Supreme Court's interpretation, the only recourse those opposed to flag burning had was to amend the Constitution. This amendment would allow the federal and state governments to pass legislation outlawing the desecration of the flag. Proponents argue that flag burning is an extremely offensive action that shows disrespect to the nation. They point out that there are many forms of speech that are not protected by the First Amendment such as "fighting words" (speech that incites violence). Opponents argue that freedom of political speech is highly protected by the First Amendment. They also note that one accepted way to properly dispose of a flag is by burning. This amendment was passed by the House of Representatives, but needed four more votes to pass in the Senate.

"The Congress shall have power to prohibit the physical desecration of the flag of the United States."

Text of House Joint Resolution 79, proposed Flag Desecration Amendment

District of Columbia Voting Rights Amendment

In 1961, the 23rd Amendment to the Constitution gave the District of Columbia three electoral votes for the president of the United States. It did not, however, address the capital city's lack of representation in Congress. The District has no senators. In the House of Representatives, it has a delegate who may participate in some activities but may not vote on legislation. This amendment would treat the District like a state for purposes of representation to Congress granting it two senators and representatives to the House based on population. Proponents of this amendment argue that the residents of the nation's capital pay federal taxes and, therefore, deserve votes in both houses of Congress. The District even offers a license plate that reads, "End taxation without representation" echoing one of the battle cries of the American Revolution. Proponents also argued that the 14th Amendment's Equal Protection Clause guarantees District residents the same rights as all Americans including representation. Opponents of this amendment point out that the Constitution has a provision that states Congress would "exercise exclusive legislation" over the seat of government. Opponents also argue that Washington, D.C. is not a state—only a city—and, therefore, should not be represented in Congress on an equal basis with states. This amendment was passed by both houses of Congress and sent to the states in 1978. It received only 16 of the 38 state ratifications required.

"For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State."

Text of House Joint Resolution 554, proposed D.C. Voting Rights Amendment

Answer the following questions on the back of this paper.

1. What is the main idea of each amendment?
2. Select one of the amendments. For each, consider: What is one reason that this amendment should be ratified? What is one reason that this amendment should not be ratified?
3. Whether you approve of it or disagree with it, which of these amendments is most interesting to you? Why?