

## A SECRET PLAN TO MAKE SAME SEX MARRIAGE LEGAL IN AMERICA

By David W. New, Esq.

According to some legal experts, 35 states have already passed an amendment to the U.S. Constitution making same sex marriage legal. It is doubtful that anyone knew it at the time, but when the legislatures of 35 states passed the Equal Rights Amendment (ERA) they passed a gay marriage amendment to the Constitution. If three more states pass the ERA, it is possible that this will effectively make same sex marriage legal in the United States. This scenario is a real possibility. Now that the Democrats are in control of Congress, you can be sure that some homosexual activists have already considered the possibilities. The key to understanding how this could happen is the 27<sup>th</sup> Amendment to the Constitution passed in 1992.

### THE TEXT OF THE EQUAL RIGHTS AMENDMENT OF 1972

“Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.”

The key fact to note here is that there is no time limit for the amendment to pass. It does not matter if it takes one year, seven years or 200 years for this amendment to pass and to become a part of the Constitution.

The Constitution does not require an amendment to be ratified by a certain date. Article V says nothing about a deadline. To be sure, the text in several amendments have a requirement that they must be ratified within seven years of the date of their submission. Read the last sections of the 18<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup> and 22<sup>nd</sup> Amendments to the U.S. Constitution. However, except for those amendments, this is not a requirement found in the Constitution. Initially, Congress did require the Equal Rights Amendment to be passed in seven years. The seven year period started in 1972. However, as you can see from above, this requirement was not written in the text of the Equal Rights Amendment. Congress put the seven year time limit in the resolving clause. After receiving pressure from ERA supporters, Congress decided to extend the deadline for the ERA to 1982. This extension did not help. The ERA failed to pass by the new deadline as well. And that is the way things stood until the ratification of the 27<sup>th</sup> Amendment.

### THE TEXT OF THE 27<sup>TH</sup> AMENDMENT

“No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.”

This amendment was passed in 1992. Members of the Senate and the House wanted to pass an amendment to the Constitution to allow for a new pay package they had agreed to. This new pay package would vary the compensation for members of the Senate and the House. This meant that the Constitution had to be amended to permit it.

You might assume that the Congress passed this amendment sometime in 1990 or 1991 and

sent it to the states for ratification. Article V requires that an amendment proposed by Congress be passed by three fourths of the states. This means 38 states must pass any proposed amendment before it can be added to the Constitution. Thus, 38 states should have passed this amendment sometime in 1990 or 1991 or 1992.

In fact, something very different happened. If you want an example of how little respect some members of the Congress have for our Constitution, this is a good example. Rather than wait for 38 states to pass this amendment, Congress got lazy and decided to count the states which passed this same amendment 200 years ago! That's right. What is now our 27<sup>th</sup> Amendment was originally proposed to be a part of the U.S. Bill of Rights. Originally, Congress sent 12 amendments to the states to be our Bill of Rights. The first two on that list failed passage. Only the 3<sup>rd</sup> to the 12<sup>th</sup> passed enough states to be added to the Constitution. This became the first Ten Amendments to the Constitution or the Bill of Rights. What is now our 27<sup>th</sup> Amendment originally was 2<sup>nd</sup> on a list of 12. The following states voted for the 27<sup>th</sup> Amendment 200 years ago: Delaware, Maryland, South Carolina, North Carolina, Rhode Island and Virginia.

Thus, it took 203 years for the 27<sup>th</sup> Amendment to the Constitution to pass. Needless to say, this kind of behavior by Congress makes a mockery of the Constitution. There can be no doubt that the framers of our Constitution would be horrified by this kind of conduct. An important concept in the law is *finality*. It is important for any issue like an amendment or an election to be decided once and for all. An amendment should be fully debated and voted on. After that, the issue should be considered settled. The concept of finality reduces political fights and divisions within the public domain. Imagine how divisive an election for President could be if people were allowed to vote for President over a 6-month period or even for a week.

In 1992, the Congress set a very dangerous precedent for the Constitution and the amendment process.

## GAY RIGHTS AND THE ERA IN MARYLAND

Phyllis Schlafly, a leader in support of traditional family values, predicted 30 years ago that the ERA could be used by homosexual activists and their supporters to advance their radical agenda. Sadly, her prediction may come true. Currently, there is one court in Maryland that has ruled that the Equal Rights Amendment passed by Maryland in 1972 permitted same sex marriage. Judge M. Brooke Murdock of the Circuit Court of Baltimore City used the ERA to rule in favor of same sex marriage. The issue is on appeal.

If Maryland's highest court, the Maryland Court of Appeals affirms Judge Murdock's decision, the consequences for the institution of the family in the United States are ominous. Note 1. Admittedly, the ERA has been used this way before by gay activists and failed. But the probabilities are high that eventually one state supreme court will support same sex marriage using the ERA. Can there be any doubt what the Ninth Circuit in San Francisco would do if the ERA were ratified? You can be certain that gay activists will push the Democrats in Congress to allow for more time for the ERA to be ratified and added to the Constitution. Congress has already set a precedent for this to happen with the passage of the 27<sup>th</sup> Amendment. In a Memorandum, the Congressional Research Service, which takes no official position on this issue, discussed at length how the 27<sup>th</sup> Amendment set a precedent for Congress to extend the deadline for the ERA. Note 2.

Currently, some women's groups are pushing to get the ERA passed by three more states. See <http://www.equalrightsamendment.org/>

Our opponents have an opportunity to abolish all the state amendments limiting marriage to one man and one woman if they can get three more states to ratify the ERA. Coupled with a favorable court ruling that the ERA provides for same sex marriage, the road map for success for the gay community is clear. Let us double our efforts to protect the American family and the future of our children. Should it occur, please oppose any effort by the new Congress to extend the time for the ERA to be ratified.

David W. New is a popular speaker for the freedom of religion issues and the Constitution. Invite David to speak at your church or civic organization. Call 202-333-2678 or email [david\\_new@juno.com](mailto:david_new@juno.com)

#### NOTES.

Note 1. Frank Conaway v. Gitanjali Deane, Maryland Court of Appeals, Case No. 02499 (2006).

Note 2. Five states have rescinded their ratification of the ERA. If Congress extends the time for the ERA to be ratified, it seems only fair to allow this count to be recognized as well. Thus, the ERA would need eight more states to be ratified. See David C. Huckabee, "Equal Rights Amendment: Ratification Issues," Memorandum, page 6, footnote 16, March 18, 1996 (Congressional Research Service, Library of Congress, Washington, D.C.).