

# Amending the Constitution

## *The Various Roles and Responsibilities of Government*

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Article V sets forth procedures for amending the Constitution with the text addressing the proposal and ratification of amendments. Congress and the states have the sole authority of the amendment process.

## The Authority of Congress and the States

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[Article V of the United States Constitution](#) gives the power of amending the Constitution solely to the United States Congress and the states. Article V reads:

*“The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.”*

## The History and Role of the United States Archivist

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Congress passed and President Franklin D. Roosevelt signed legislation establishing the National Archives in 1934 to preserve and care for the records of the United States Government. Although the National Archives was created as an independent agency, Congress transferred it to the newly created General Services Administration (GSA) in 1949, when the National Archives became the National Archives and Records Service (NARS).

In 1984, President Ronald Reagan signed legislation reestablishing the National Archives as an independent agency within the executive branch of government.

On April 1, 1985, the [National Archives and Records Act of 1984](#) went into effect, and the National Archives and Records Administration (NARA) became an independent agency. Under the new law the Archivist had broad authority over records management, facilities, grants, agreements and general agency administration.

Overall, the President has no authority over policy development or actions of independent agencies including NARA.

Independent agencies exist outside the federal executive departments (those headed by a Cabinet secretary) and the Executive Office of the President. While technically considered part of the executive branch, independent agencies such as NARA are meant to be insulated from presidential control.

Although the original Constitution does not include certification and publication as a necessary part of the amendment process, in 1984, Congress gave the Archivist the following role in certification and publication of amendments to the Constitution:

*“Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.”*

The [27<sup>th</sup> Amendment](#) is the only amendment that has been certified by the Archivist under the 1984 Act of Congress. Proposed by Congress in 1789 and ratified 203 years later in 1992, it limits the ability of members of Congress to change their pay until the following term.

## Recent Legal Actions

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The Constitution does not explicitly lay out a role for the courts in the process of amending the Constitution. However, [Article III of the Constitution](#) grants the judicial branch the power to interpret and decide the constitutionality of federal laws and rule on how laws should be applied.

The Congressional Research Services released in July 2023, a report, [The Equal Rights Amendment: Background and Recent Legal Developments](#), that reviews recent litigation including *Virginia v. Ferriero* (2020) and *Illinois v. Ferriero* (2022) brought by attorneys general in Virginia, Nevada and Illinois.

The Columbia Law School ERA Project, issued a paper after the DC Circuit Court dismissed the *Illinois v. Ferriero* lawsuit on standing grounds, meaning that the three states had not shown that they suffered a legally recognized injury. [See: ERA Project FAQ on the Court of Appeals decision in Illinois v. Ferriero, March 2, 2023.](#)

## At a Glance

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**ERA text:** Section One: *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 Two: *The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.*

**Passed by Congress:** March 22, 1972

**38th state ratified:** Virginia, January 27, 2020

**Legislative vehicles:** [S.J. Res. 38](#) (Senate) | [H.J. Res. 80](#) (House)

**Precedent:** 27th Amendment ratified 203 years after proposal