Ratifying the ERA

11-16-77

TIME IS RUNNING out on the Equal Rights Amendment, and a move is afoot in Congress to give it a longer lease on life. A resolution now before the House Judiciary Committee would extend from March 22, 1979, until 1986 the deadline by which the amendment must be ratified or die. It is a resolution that has much appeal: The ERA ought to be ratified by the states, and it has suffered mightily from the barrage of misinformation fired by its opponents. But tinkering with the legislation under which it was sent to the states five years ago does not seem to us to be the way to handle the problem.

Amending the Constitution is serious business, the most serious in which Congress and the states engage. And the placing of deadlines by which amendments must be ratified is an important part of that business. A Constitution and its amendments represent a prevailing national consensus. And the creation of a deadline defines the period in which Congress believes that consensus can reasonably be expected to crystalize. This is a practice Congress came upon a half-century ago after noting that five amendments it had proposed, two of them in the 18th century, were still pending before the states. Changing deadlines, once created to define such time periods, is not just changing technical rules but fundamentally altering the process by which the nation expresses itself on constitutional issues.

There is another troubling aspect to this question of the timeliness of national consensus. That is the rule that denies to a state the power to withdraw its ratification once it has acted affirmatively. By ratifying an amendment, a state tells the others that it is prepared to join in this particular change in the nation's basic charter and that they are entitled to rely on its judgment in forming their own. But if Congress is going to give more time for reconsideration by those states that have expressed themselves, in a sense, by not doing anything about the ERA, it should, in fairness, offer an equal opportunity for reconsideration by those states that have acted affirmatively.

We think the Department of Justice is right in arguing that it has power to extend the period in which states can ratify the ERA. But we would argue that Congress ought to do so only if it is prepared to grant to those states that have already ratified the amendment the right to withdraw their assent. Only in this way could a timely period of national consensus be preserved.

Even that, however, seems to us to be unwise. The proponents of the Equal Rights Amendment have been quite properly outraged at some of the methods used to delay or defeat its ratification. For the Virginia House of Delegates to refuse even to consider the amendment, for example, or for the Illinois legislature to invoke a rule requiring more than a majority vote, mocks the spirit, if not the letter, of the ratification process. By changing the rules in mid-game, as is now suggested on Capitol Hill, proponents of the amendment run the risk of being accused by the public of the same kind of rule-breaking employed by their opponents.

We understand the motivation that lies behind the effort to extend the ERA's life. It has been a hard, and not very clean, fight. But the battle is not over. There are 16 months—and only three states—to go. We urge the amendment's friends to focus on getting the job done within the existing timetable instead of trying to change the rules. At the very worst, if that effort should fall short, there will still be nothing to prevent the Congress from starting over two years from now.