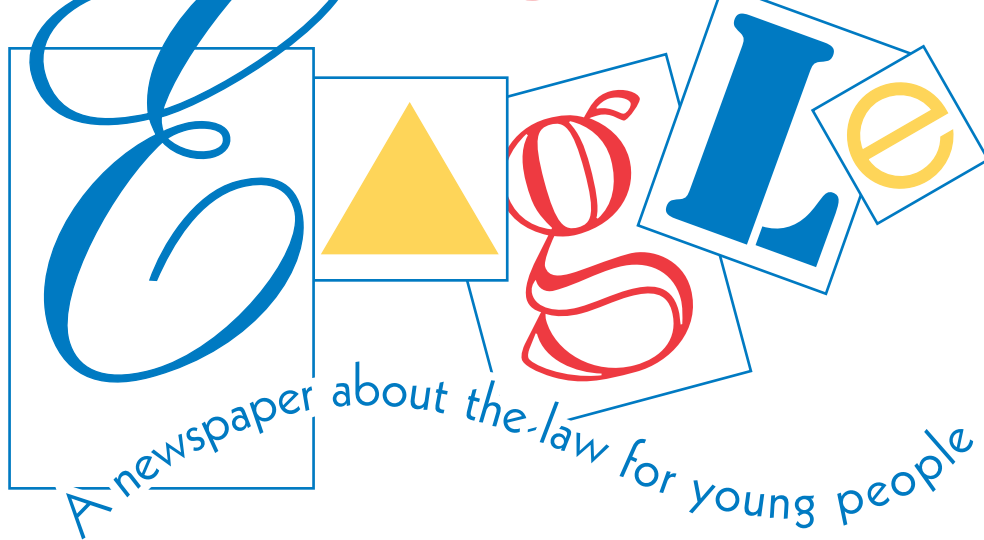


THE LEGAL



More Than 200 Years — Only 27 Amendments

by Roberta K. Glassner, Esq.

Two proposed amendments to the U.S. Constitution have recently been debated in the U.S. Congress. One is the Flag Desecration Amendment and the other would limit marriage in all states to a relationship between a man and a woman. While many amendments to our federal Constitution have been proposed over the years, few get very far in the lengthy process of changing it.

To understand the process of amending the U.S. Constitution, we need to go back to the beginning when in 1786, 55 representatives from the 13 colonies met in the stifling heat of a Philadelphia summer to hammer out what would eventually be the original U.S. Constitution. At the end of 127 days of impassioned debate, the framers succeeded in crafting an instrument “to secure the blessings of liberty to ourselves and our posterity.” The original Constitution, which would contain seven articles, was adopted by the states on March 4, 1789.

In more than 200 years the document has changed very little. It is the oldest written constitution in the world still in effect today and has been the model of democracy for many other nations. Establishing the supreme law of our complex nation, the U.S. Constitution gives power and authority to our national and state governments, while at the same time vigorously protecting each of us, as individual citizens, from the power of those governments. Credit must be given to the genius of those who wrote the U.S. Constitution. The framers’ intent was to create a Constitution not only for their time, but for future generations as well. They designed it not as a set of rules cast in stone, but as a vital, enduring foundation for an active democracy.



FALL 2004

Indecency Standards: Who Should Decide?

by Dale Frost Stillman

If you watched the Super Bowl last January, you may remember the halftime show better than the result of the game. According to published reports, the Janet Jackson/Justin Timberlake “wardrobe malfunction” generated more than half a million complaints to the Federal Communications Commission (FCC) and set the course for a discussion of what is considered indecent on the airwaves.

What is the FCC?

The U.S. Congress established the FCC with the Communications Act of 1934. An independent government agency, the FCC reports directly to Congress and was initially responsible for enforcing the Communications Act. Its jurisdiction in 1934 included not only radio communications, but interstate telephone and telegraph communications as well. Later, the FCC’s authority would expand to include the regulation of television.



Governed by five commissioners, today the FCC consists of six bureaus, including consumer and government affairs, enforcement, international, media, wireless communications, and wireline competition. To insure bipartisan representation, no more than three FCC commissioners may belong to the same political party.

The six FCC bureaus process applications for licenses, analyze complaints, conduct investigations, develop regulatory programs and take part in hearings. The FCC itself does not monitor the airwaves, but investigates complaints from the public about TV or radio content.

FCC vs. freedom of speech

Although the FCC’s authority encompasses regulating broadcast indecency, it is prohibited from interfering with the First Amendment’s right of free speech. However, with the 1978 landmark case of *FCC v. Pacifica Foundation*, the U.S. Supreme Court found that the Commission can restrict indecent speech on the airwaves

CONTINUED ON PAGE 3

Who Would Get Your VOTE?

by Cheryl Baisden

If you are like most kids your age, keeping up with the November elections is probably not a priority. Barring the presidential candidates—George W. Bush and John Kerry—you might not even know who is running. But if you lived in California there could come a time when you would have the legal right to help decide who wins local, county and state elections at the age of 14.

Training wheels in California

California Senator John Vasconcellos has proposed legislation that would drop that state’s legal voting age from 18 to 14. Under the plan, the ballots

cast by California residents between the ages of 14 and 16 would be worth one-quarter of an adult vote, while those cast by 16- and 17-year-olds would be worth half a vote.

Vasconcellos calls his voter proposal Training Wheels for Citizenship, and sees it as a way to interest teenagers in elections and keep them voting as they get older. While some people support the idea as a way to teach teenagers about the value of their vote, others strongly oppose the plan.

The Committee on Moral Concerns

in California opposes giving 14- to 17-year-olds the right to vote because it feels teenagers do not know enough about life and the world to cast an intelligent vote, the committee spokesman, Art Croney, told *The Washington Post*.

Haddonfield attorney Richard Perr, who specializes in election law, disagrees and says the same argument could be made for many adults, who are automatically given the right to vote when they turn 18.

“Some people would say, ‘Johnny can’t clean his room, why should he be able to vote?’ but plenty of adults with the right to vote lack responsibility too,” said

CONTINUED ON PAGE 4



CONTINUED ON PAGE 3

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Foundation school-based programs.



How Much is that Doggie in the Window? — The Dark Side of the Puppy Business

by Phyllis Raybin Emert

A trip to the mall wouldn't be complete without a visit to the pet shop to see the puppies. You might even want to buy one. If the puppy you like has a glassy, sick look, it could come from a puppy mill and have a higher cost than just its price tag.

What's a puppy mill?

A puppy mill is a term used to describe mass breeding facilities of animals. Imagine a place where hundreds of dirty cages are stacked and filled with dogs and puppies. The female dogs are bred continuously, never leaving their wire cages. In some cases, the puppies have skin and ear infections and eat fly-infested food.

While many puppies are bred by responsible breeders, those puppies bred at puppy mills are usually taken from their mothers too soon, and as a result, can have numerous health problems. In addition, many of the puppies have socialization problems, never having been around people or having the benefit of individual care.

This is the reality of puppy mills, according to the New Jersey Consumers Against Pet Shop Abuse (NJCAPSA), a voluntary, non-profit organization dedicated to raising awareness about the horrors of puppy mills. NJCAPSA claims that many pet shop dogs come from puppy mills and that the owners of these mills are focused on profits and provide minimal care for the animals. Inbreeding, which is the process of mating two dogs that are too closely related, is very common in puppy mills, according to NJCAPSA. Inbreeding can result in genetic defects that may not surface in a dog for years.

The Pet Purchase Protection Act

Not all pet stores are disreputable and there are laws to guard against the ones that are. New Jersey is one of a dozen states that has passed laws protecting consumers from pet shop abuse. Just as lemon laws protect car owners who purchase defective automobiles, the Pet Purchase Protection Act (PPPA), passed in 1999, covers unfit dogs and cats purchased from pet dealers. If an animal becomes ill or dies within 14 days after the sale, or becomes sick or dies from a congenital (inherited) condition within six months after the sale, consumers have a number of options in seeking **restitution**.

First, the consumer must obtain a certificate of unfitness describing the pet's condition from a veterinarian and present it to the pet shop. The buyer may then either return, exchange, or keep the puppy and is also entitled to reimbursement of veterinarian expenses up to two times the purchase price. While the buyer is encouraged to report

the incident, according to the law, it is up to the pet shop to notify the local health department of any unfitness certificates issued for animals from its store. The health department may revoke the pet shop's license or put it on suspension, depending upon the number of complaints lodged against the store and the percentage of animals that have become ill or have died.

According to the Pet Purchase Protection Act, consumers should also be aware that when purchasing a pet the pet store must provide a record of the animal's health, veterinarian exams, and shots, as well as information about the breeder. Most importantly, it is the responsibility of the pet store to have the animal examined by a licensed veterinarian within five days of receiving the animal and have that animal declared fit and healthy before it is sold. It is then up to the pet owner to have the animal examined by an independent veterinarian within 14 days after its purchase.

Is it enough?

While the PPPA offers consumers some protections, animal rights attorney Isabelle R. Strauss of Toms River believes that the Act is "ineffective." Strauss explained that the Act does not cover conditions that occur after six months, noting that many congenital diseases take longer to develop. In addition, she says the Act does not take into account the high cost of veterinary care that can often amount to much more than twice the original purchase price of the animal.

"The owner is faced with a dilemma," stated Strauss. "Either return a sick animal that may be resold sick or may be **euthanized**, or spend a huge amount of money on a condition that may last the lifetime of the pet."

Strauss said the Pet Purchase Protection Act was put into effect to deal with occasional problems at pet shops, but the reality is that "a large number of the animals sold in stores are ill," and the Act doesn't address the greater problem of making pet shops more responsible.

One of the few attorneys in the state to specialize entirely in animal law, Strauss believes the only solution to the problem is "for stores not to sell dogs and cats," reducing the demand for puppy mills.

Libby Williams, president and founder of the NJCAPSA, agrees and claims that many pet shops are currently in violation of the Pet Purchase Protection Act and that complaints are not regularly reported. Williams would recommend changing the Act to make veterinarians responsible for reporting to the Health Department any certificates of unfitness they have issued, instead of leaving that responsibility up to the pet shop owners.

Many breeders, few inspections

There are thousands of licensed dog breeders in the U.S. and less than 100 inspectors from the U.S. Department of Agriculture (USDA) to monitor them. In addition to overseeing dog breeders, the USDA also oversees research labs, zoos, circuses and airlines that transport animals. Breeders must meet regulations of the Federal Animal Welfare Act, which requires minimum space, shelter, feeding, and veterinary care standards to obtain a license, but the USDA simply does not have enough inspectors to routinely keep track of conditions in all breeding facilities and to enforce laws against puppy mills.

In the 1990s, the U.S. Congress passed tougher USDA regulations requiring coating on wire cages to avoid injuries and banning the tethering of dogs (limiting their movement on a chain or rope). The regulations stopped short of proposing bigger cages, better sanitation, access to water 24-hours a day and limiting the breeding of the same females.

Finding the pet that's right for you

The NJCAPSA recommends anyone who wants a dog or cat to try an animal shelter first. Some pet stores, like PETSMART and Petco refuse to sell dogs or cats in their stores but regularly donate floor space so that local shelter and rescue organizations can bring animals to be adopted by their customers. In addition, almost every breed of dog has a corresponding rescue organization that you may find online. For referral to responsible breeders in your area, NJCAPSA suggests contacting the New Jersey Federation of Dog Clubs.

To learn more about pet issues and your consumer rights, visit NJCAPSA's Web site, www.njcapsa.org.



Indecency Standards CONTINUED FROM PAGE 1

even though such speech is protected under the First Amendment.

The Pacifica case centered on a 1973 broadcast by a public radio station in New York owned by the Pacifica Foundation. The station broadcast comedian George Carlin's "Filthy Words" monologue as part of a program on contemporary language and society's attitudes toward it. The monologue consisted of Carlin identifying seven dirty words that can't be said on public airwaves and then using those words in a variety of ways. A listener who happened to be in the car with his son heard the broadcast and complained to the FCC.

In its declaratory order against the Pacifica Foundation, the FCC did not fine the station but stated that the incident would be noted in the radio station's file and if any other complaints were received, the commission would consider revoking the station's license. Ultimately the case came before the U.S. Supreme Court. The Court rejected Pacifica's argument that the First Amendment protected the broadcast and upheld the FCC action based on what has become known as the pervasiveness doctrine.

"Broadcast media have established a uniquely **pervasive** presence in the lives of all Americans," the Court stated in its ruling. "Patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the privacy of the home, where the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder," the Court said.

The ban on indecent broadcasts applies between 6 a.m. and 10 p.m. when children are more likely to tune in.

Broadcast Decency Enforcement Act of 2004

The Broadcast Decency Enforcement Act of 2004 was introduced in Congress two weeks before the incident at the Super Bowl. Originally calling for an increase in fines for violating FCC regulations from \$27,000 to \$275,000, the bill was amended after the Super Bowl episode to increase the fines to \$500,000 for each infraction. The bill also calls for holding those who deliver what the FCC deems indecent speech personally responsible for their actions and increases fines for individual performers from a maximum of \$11,000 to a maximum of \$500,000. Another penalty added to the bill after the Super Bowl calls for broadcasters (radio stations, television networks) to face a license revocation hearing if indecency standards are violated three times.

In its 70-year history the FCC has never revoked a license on the basis of indecency.

Although the Act would only cover broadcast airwaves and not cable networks, Michael Copps, one of the five FCC commissioners, told *Entertainment Weekly* that its jurisdiction could expand and cable networks would not necessarily be exempt.

The FCC is aggressively pursuing violators since the Super Bowl incident. According to the Center for Public Integrity, the FCC proposed more fines in 2004 than for the last 10 years combined. *Entertainment Weekly* also reports that Congress is in the process of issuing legislation that could increase penalties to as much as \$3 million per incident.

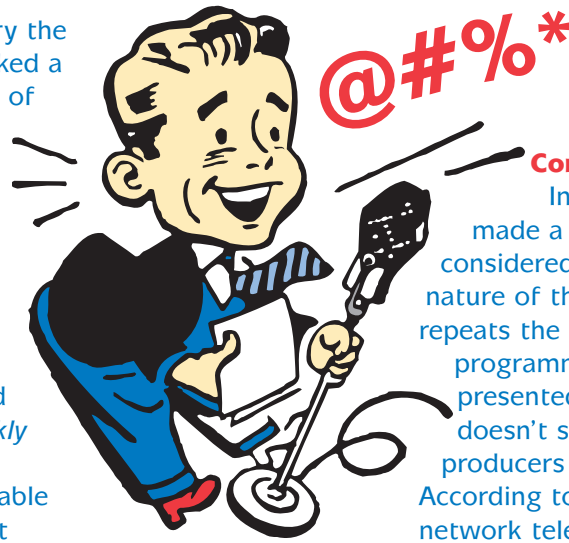
Targeting Howard Stern

In June of this year, Clear Channel Communications, one of the nation's largest owners of radio stations, agreed to pay \$1.75 million in penalties to settle indecency complaints, many of them against shock jock Howard Stern. Clear Channel stopped carrying Howard Stern's show on its station permanently last April.

"Howard Stern has First Amendment rights," contends Peter Skolnik, a media law attorney in Roseland. "But when speech crosses a line, and sometimes the line is vague, the law places some restrictions on obscenity," he says.

Howard Stern's show has been ranked number one in Los Angeles and New York, the nation's two largest markets. Since 1990, the FCC has fined broadcasters of Stern's show over one million dollars because of his allegedly indecent sexual remarks. Through the media, Stern has characterized himself as the victim of a "witch hunt" and encouraged the FCC to fine talk show host Oprah Winfrey because of a show she did on teen sex. A *Newsweek* article confirmed that the FCC has been reviewing complaints against Winfrey. However, in 2001, the FCC stated that if sexual material is presented in a **clinical** context, it may not be considered indecent, so Winfrey may be in the clear.

Stern announced recently that he will take his show to Sirius satellite radio in January



2006 where he will no longer be bound by government sanctions.

Confusing times for television

In 2001, the FCC listed factors that made a broadcast more likely to be considered offensive, including the graphic nature of the broadcast, whether the station repeats the indecent material and whether the programming appears to have been presented for shock value. That clarification doesn't seem to be helping writers, producers and network executives today. According to an article in *The New York Times*, network television is in a "state of confusion" about what they are allowed to say and show on television. Jeff Filgo, executive producer of *That '70's Show*, blames the FCC.

"The problem is the FCC is trying to enforce a standard that doesn't exist," Filgo stated in the article. "[The commissioners] make decisions about violations based on readings of broadly worded federal obscenity and indecency statutes," he said.

Not surprisingly, the FCC crackdown has had far-reaching effects. According to *The New York Times*, the producers of Masterpiece Theatre sent out edited versions of the British series *Prime Suspect* to its PBS member stations because the original contained language that might have been construed as indecent. After the fallout from the Super Bowl, according to *Entertainment Weekly*, several shows, including *NYPD Blue* and *Without a Trace*, were ordered to tone down some scenes that contained nudity, and NBC ordered the producers of *ER* to edit a scene that exposed the breast of an 80-year-old patient.

Super Bowl brings super fines

The FCC recently announced its ruling regarding the Super Bowl halftime show, fining 20 CBS-owned television stations \$27,500 each, but letting more than 200 CBS affiliate stations off the hook. The affiliates escaped penalty because the FCC's enforcement bureau decided those stations had no control over the show and would not have known that it contained indecent material. According to *The Washington Post*, CBS is expected to protest the record-setting \$550,000 fine and has 30 days to do so. The network maintains that neither CBS nor MTV, who produced the halftime show, had any prior knowledge of the Janet Jackson/Justin Timberlake stunt.

27 Amendments CONTINUED FROM PAGE 1

truly important issue and must be with the consent of a super majority (three-quarters) of the states.

A constitutional amendment is born in either the House of Representatives or the Senate of the U.S. Congress. In every session of Congress, hundreds of amendments are proposed, but few ever get out of committee and even fewer are ever **ratified**.

If a proposed amendment does succeed in reaching the full House or Senate, it is put to a vote. In those rare instances where it receives a two-thirds majority vote in both houses of Congress, the proposed amendment must then be submitted to every state for a vote. To be ratified, it must receive a vote of the legislatures of three-quarters of the states. The states have seven years to ratify or defeat the amendment, once Congress has approved it.

In this way, the final decision of whether or not to amend the Constitution ultimately is made by the American public. The president of the United States has no role in the amendment process. While he is free to express his position, the president cannot veto a ratified amendment.

Although the people do not vote directly on an amendment, their will is expressed by the vote of the state legislators they elect to represent them. Today, 38 states must vote in favor of a constitutional amendment to constitute a super majority. Failure to win the vote in 13 states defeats an amendment's passage. Without this 38-state super majority within seven years, the proposed amendment becomes just one of the more than 10,000 other failed amendment proposals.

State vs. federal government

Although the framers intended the U.S. Constitution to establish the supreme law of the land, they also recognized the need to create a balance between the power of the federal government and the rights of the individual states to govern themselves. What is good for someone living in the state of New Jersey, for example, may not be relevant to someone living in Idaho.

To create this balance, under the 10th Amendment, every state has its own constitution and its own laws that govern the lives of its citizens in matters such as education, law enforcement, taxes and public health. The only limitation upon the states is that their constitutions and laws may not conflict with the guaranteed rights of the U.S. Constitution.

Amending New Jersey's Constitution

As the U.S. Constitution may be amended, so may changes be made to a state constitution. For more than 10 years, New Jersey's legislators have debated amending the state constitution to deal with property taxes.

Many New Jersey lawmakers, both Republican and Democrat, are now calling for a constitutional convention to deal with the issue. If the convention takes place, it will be the fifth in the state's 200-year history. The last constitutional convention in New Jersey was held in 1966 to reorganize the state's voting districts.

Perr. “And when people argue that kids don’t know what’s going on in the world, they could be very wrong. With the Internet, plenty of kids know more about politics and world affairs than their parents,” he said.

Perr also points out that there is nothing in the law that says a citizen must understand politics or have certain experiences to be able to vote.

New Jersey State Senator Joseph Coniglio, who chairs New Jersey’s Senate State Government Committee, doesn’t think California’s proposal would fly in New Jersey and agrees with the Committee on Moral Concerns that “14-year-olds don’t possess the life experiences necessary to make mature, informed decisions when it comes to voting.”

Senator Coniglio does believe, however, that “a better job needs to be done of educating our children about the election process so that they are able to

make their voices heard and fight for the issues that are important to them once they reach the age of 18.”

Counting for less

What concerns Perr when it comes to the California proposal is the idea of votes from 14- to 17-year-olds counting less than adult votes.

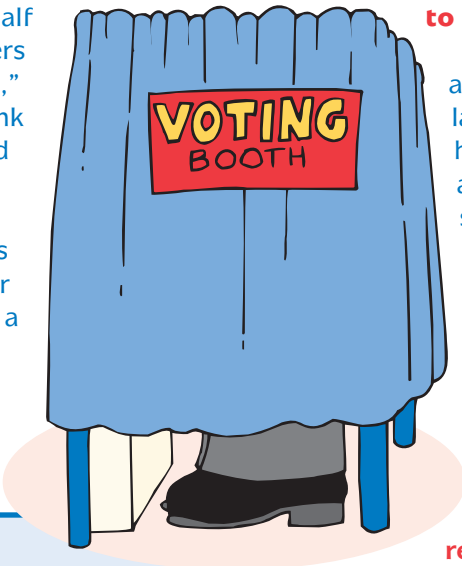
“Legally there would be a problem with valuing some votes as one-quarter of a vote, some at half a vote and others at a whole vote,” Perr said. “I think California would have to make everyone’s vote count equally as a whole vote, or there would be a constitutional problem.”

Placing different

values on votes would violate the 14th Amendment to the U.S. Constitution, which guarantees every citizen equal protection under the law, explained Perr. Passed after the Civil War in 1868, the amendment granted African-Americans citizenship and changed a political policy that counted them as three-fifths of a person for determining congressional representation.

What will it take to pass?

To lower the voting age in California, lawmakers would have to pass an amendment to the state constitution, with two-thirds of the state Assembly and two-thirds of the state Senate approving the change and a majority of the voters approving the idea in a state referendum.



While the California proposal would lower the voting age for state, county and local elections, voters would still have to be 18 to cast ballots in presidential and congressional elections. Changing the voting age for national elections would require an amendment to the U.S. Constitution, like the 26th Amendment passed in 1972, which lowered the voting age from 21 to 18.

The idea behind the 26th Amendment may seem similar to California’s proposal for young voters, however, the circumstances surrounding the 1972 amendment were very different. The voting age was dropped in 1972 because more

Does One Vote Really Matter?

History has shown that a single vote can have a huge impact on world events. Here are some examples:

- One vote in 1649 resulted in England’s King Charles I being beheaded.
- One vote in 1776 made English the official language of America instead of German.
- One vote in 1820 kept President James Monroe from being elected for a second term, and in 1876 a single vote won Rutherford B. Hayes the presidency.
- One vote in 1846 led to the decision to go to war with Mexico.
- One vote in 1868 saved impeached President Andrew Johnson from being removed from office.
- One vote resulted in Texas, California, Idaho, Oregon and Washington becoming states.
- One vote in 1923 made Adolph Hitler the leader of the Nazi Party.

Source: WorldNow and WBNS-TV Inc.

GLOSSARY



bipartisan — supported by two political parties.

clinical — scientific.

euthanized —put to death painlessly.

jurisdiction — authority to interpret or apply the law.

pervasive — having the tendency to spread; repeated.

Prohibition — a decree from the government (in this case) against selling alcohol.

ratified — approved or endorsed.

referendum —the referral of a measure proposed or passed by a legislative body to the voters for approval or rejection.

restitution — the act of making things right as a result of an injury or loss.

than half of the American soldiers dying in battle in the Vietnam War were under 21, yet they were considered too young to vote.

“The California proposal makes sense in some ways because the number of young voters who are actually casting ballots these days is very low and I’m sure they see lowering the voting age as a way to get young people involved so they will continue to vote when they get older,” Perr said. “But there’s a lot more to consider in making that decision, and it may not be as easy as it sounds.”

For now, the merits of Senator Vasconcellos’ legislation is still being debated. So, California teenagers will not be voting anytime soon.

27 Amendments CONTINUED FROM PAGE 3

The process of amending New Jersey’s Constitution is a lot simpler than amending the U.S. Constitution. One possible method is to submit an amendment proposed by the state legislature to a direct vote by the public as a public question in the November election. Another is to submit the proposal to members of a constitutional convention for approval.

One repealed amendment

In the 213 years between 1791 and 2004, a total of 27 amendments to the original Constitution have been ratified by Congress, including the first 10, known as the Bill of Rights. The distinguishing feature of 26 of the 27 amendments to the U.S. Constitution is that they all gave greater freedom to or expanded the rights of American citizens. Only one amendment took away a right.

The 18th Amendment of 1919 brought **Prohibition** to the U.S., making it illegal to sell, buy or drink any kind of alcoholic beverage in this country. Fourteen years after this amendment went into effect, Congress passed the 21st Amendment repealing Prohibition.

Could this be number 28?

Not all failed amendments slip away quietly. A proposed amendment defeated in one session of Congress may very well be brought up in another session. Consider the story behind the Equal Rights Amendment, which was proposed and defeated in every session of Congress from 1923 to 1972.

In 1920, Alice Paul, a leader in the women’s rights movement, had just succeeded in winning women the right to vote with the passage of the 19th Amendment. Paul then turned her energy to the fight for a constitutional amendment that would guarantee “equal justice under the law” for women in the workplace and in all aspects of life.

According to the National Council of Women’s Organizations, who led the drive for ratification, the Equal Rights Amendment “would give equal legal status to women for the first time in our country’s history” and “would raise the standard for sex discrimination claims in the courts,” such as claims for equal pay for equal work.

In 1972, both houses of Congress finally passed the Equal Rights Amendment and sent it to the states for ratification. In anticipation of a difficult passage, Congress extended the seven-year time limit for the ERA’s approval by the states to 10 years.

And, there were difficulties indeed. By 1982, at the end of the 10-year period, only 35 states had ratified the amendment—three states short. Congress then voted to remove the deadline for state ratification entirely.

The 15 states in which the amendment has not been ratified are Alabama, Arizona, Arkansas, Florida, Georgia, Illinois, Louisiana, Mississippi, Missouri, Nevada, North Carolina, Oklahoma, South Carolina, Utah and Virginia.

If and when any three of these states ratifies the Equal Rights Amendment, it could become the 28th Amendment to the U.S. Constitution.

As for the amendment to define marriage, in July 2004, that measure failed in the U.S. Senate by a vote of 48–50. The proposal needed 60 votes to move forward. In October 2004, the proposal was defeated in the house 227–186, well short of the two-thirds majority.

